CANADIAN
HUMAN RIGHTS
COMMISSION

A Toolkit for Developing Community-based Dispute Resolution Processes in First Nations Communities

Rights - Responsibility - Respect

Canada

Contact the Canadian Human Rights Commission

For more information about human rights, contact the following:

National Office

344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Telephone: 613-995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661
www.chrc-ccdp.gc.ca

National Aboriginal Initiative

175 Hargrave Street, Room 750
Winnipeg, Manitoba R3C 3R8
Telephone: 204-983-2189
Toll Free: 1-866-772-4880
TTY: 1-866-772-4840
Fax: 204-983-6132
www.doyouknowyourrights.ca

This publication is available in alternative formats on the National Aboriginal Initiative's website: www.doyouknowyourrights.ca

This toolkit is not intended as legal advice. Consultation with legal advisors is recommended when developing a community-based dispute resolution process or related policies.

Five Values that Guide the Canadian Human Rights Commission's Application of the *Canadian Human Rights Act* in First Nations and other Aboriginal Communities

1. **Aboriginal peoples have an inherent right to self-determination and self-government.** The Commission supports Aboriginal peoples' right to self-determination and self-government, as recognized in the United Nations *Declaration on the Rights of Indigenous Peoples*. The Commission does not have the jurisdiction to make decisions on these matters.

2. **First Nations legal traditions and customary laws are important.** The Commission, the Canadian Human Rights Tribunal and the courts must give due regard to First Nations legal traditions and customary laws. This is a unique opportunity for First Nations legal traditions and customary laws to influence the future development of Canadian law.

3. **Aboriginal peoples have existing Aboriginal and treaty rights.** The Commission acknowledges the Aboriginal and treaty rights enshrined in section 35(1) of the *Constitution Act, 1982*. The constitutionally protected rights of Aboriginal peoples cannot be impacted by the application of the *Canadian Human Rights Act.*

4. **Women and men have equal human rights.** The Commission supports the principle of gender equality in all aspects of life. The Commission recognizes that there are circumstances in which men and women can be treated differently to obtain an equal result.

5. **Aboriginal people have the right to be free from discrimination.** Aboriginal people, like all people in Canada, have the right to be free from discrimination in all aspects of life, including in employment and the provision of services.

Did You Know?

Throughout this publication the terms 'First Nations', 'Aboriginal', and 'Indigenous' are used. Each has its own specific meaning.

The term 'First Nations' came into common usage in the 1970s to replace the term 'Indian', which some people found offensive. Many First Nations people and communities prefer to be called by the names of their nations (e.g. Cree, Haida, Dene, etc.), or 'First Nations', or 'First Nations people', instead of 'Indians'. The term 'First Nations' generally applies to both 'Status' and 'Non-status Indians'. This term is not a synonym for 'Aboriginal', because it does not include Métis or Inuit peoples. The term 'Aboriginal' is used to refer to the First Nations, Métis and Inuit peoples of Canada. The term 'Indigenous' is used internationally to refer to the world's first peoples.

This publication is generally geared towards First Nations governments and communities.

Table of Contents

1

2

3

4

5

APPENDICES

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

Did You Know?

You can find more appendices on the CD at the back of this toolkit, including:

Appendix C: Four Stages to Developing a Community-based Dispute Resolution Process

Appendix D: A PowerPoint Template for Engaging Your Community

Appendix E: Contact Information for all of the Human Rights Commissions and Tribunals in Canada

Appendix F: Suggested Human Rights Education and Training for Your Community

Appendix G: Human Rights Reading Guide

Appendix H: Understanding Policy and Procedure

Appendix I: Developing Policies

Appendix J: Reviewing Policies

These appendices can also be downloaded from:
www.doyouknowyourrights.ca

> **Did You Know?**
>
> This toolkit complements other Commission publications for **Aboriginal** people, including *Your Guide to Understanding the* **Canadian Human Rights Act** and the *Human Rights Handbook for First Nations*. You can find these other publications at: www.doyouknowyourrights.ca or by calling 1-866-772-4880.

1. Introduction

Aboriginal peoples have always had their own systems and

> *Terms in **bold** are explained in the glossary in Appendix A.*

processes for addressing human rights within their communities. The principles and values expressed in **Indigenous** customs and laws, such as the Grandfather and Grandmother teachings, and the Great Law of Peace, have governed how Aboriginal peoples relate to one another since time immemorial. As colonization was imposed and became increasingly entrenched through law, Aboriginal peoples were not allowed to use their traditional ways of resolving disputes.

As part of their journey towards self-governance **First Nations** and other Aboriginal communities are now starting to revitalize and build on their traditional ways of resolving disputes.

1.1 Purpose

The **Canadian Human Rights Commission** (**the Commission**) has created this toolkit to offer assistance to First Nations governments that want to address **discrimination complaints** in their communities using a **community-based dispute resolution process**.

1.2 The Commission's Guiding Principles for Dispute Resolution

This toolkit is founded on the **Commission's Guiding Principles for Dispute Resolution**.

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

These guiding principles came from legal rules about fairness. They were developed based on Canadian case law involving Aboriginal peoples. They are meant to provide guidance to First Nations governments that want to handle their disputes independently. These guiding principles can be used along with your community's own values and principles to create the foundation of your community's dispute resolution process.

Did You Know?

The Commission's Guiding Principles for Dispute Resolution are:

1. Make the process **accessible**.
2. Obtain community input about the process.
3. Ensure the process is acceptable to everyone involved in the dispute.
4. Make sure the decision-maker knows about human rights.
5. Ensure impartiality and independence.
6. Allow people to bring a representative.
7. Give people the opportunity to be heard.
8. Encourage people in a dispute to share information.
9. Keep information confidential.
10. Give reasons for decisions.
11. Help ensure no **retaliation**.

You can learn more about the Commission's Guiding Principles for Dispute Resolution in the *Human Rights Handbook for First Nations* available at: www.doyouknowyourrights.ca or by calling 1-866-772-4880.

This publication was inspired by a number of First Nations communities who are at various stages of developing or revitalizing their own community-based dispute resolution processes. Parts of their stories are featured throughout the Toolkit to offer a picture of what it is like to develop a community-based dispute resolution process.

The Commission would like to acknowledge the following First Nations communities and organizations for their contributions to this publication:

- Tsleil-Waututh Nation and the British Columbia Aboriginal Human Rights Project (funded by the Law Foundation of British Columbia)
- Anishinabek Nation (Union of Ontario Indians)
- 6 member communities of the Southern First Nations Secretariat (i.e. Chippewas of the Thames First Nation; Aamjiwnaang First Nation; Munsee-Delaware First Nation; Oneida Nation of the Thames; Moravian of the Thames First Nation; and Chippewas of Kettle and Stony Point First Nation)
- The Treaty Four Governance Institute

To learn more about these communities and organizations go to Appendix B at the back of the Toolkit.

Did You Know?

In Canada both federal and provincial laws may apply in a First Nations community. Self-governing First Nations also have responsibilities, as negotiated between the First Nation and the federal government. Many First Nations governments are **federally regulated**. This means that federal laws like the *Canadian Human Rights Act* apply to First Nations governments. Other organizations run by First Nations people or located on a reserve could be regulated by a provincial or territorial government. For example, a band office is federally regulated, but a gas station or a corner store on a reserve is regulated by the provincial or territorial government. A discrimination complaint against a gas station or corner store would be handled by a provincial or territorial human rights commission under that province's or territory's human rights law. As this toolkit is intended for First Nations governments, it will generally focus on federal laws.

1.3 What is a Community-based Dispute Resolution Process?

A dispute resolution process is what an employer or service provider (e.g. a First Nations government) develops to deal with complaints and disputes. A community-based dispute resolution process is one kind of dispute resolution process, and involves including the entire community throughout the stages of its development. The end goal of a dispute resolution process is to offer a fair way for everyone involved in a complaint or dispute to deal with it. In a human rights context, the process would outline how a discrimination complaint would be dealt with and potentially resolved. Generally, there will be measures in place to guarantee that everyone is safe and that there is a power balance between everyone involved in the complaint or dispute. In a community these measures may also help to restore balance and harmony by helping the people involved to find reconciliation.

1.4 Why develop a Community-based Dispute Resolution Process?

If people accept and trust your community's dispute resolution process, it is more likely that they will use it when they have a complaint or dispute. As a result, the Commission would be less likely to be involved if there was ever a discrimination complaint in your community.

Discrimination complaints can arise in many situations and can be expected in any employment or service context. External complaints processes can be long and costly for everyone, and lead to bad feelings in a community.

There are several benefits to effectively resolving discrimination complaints at the community level. For one, having leadership, staff and service providers, that are knowledgeable about human rights and dispute resolution can help prevent complaints from happening in the first place. This shows people that your community's government has good public service and employment practices.

Did You Know?

Under **section 41 of the *Canadian Human Rights Act***, the Commission has the ability to decide that a discrimination complaint should be dealt with in a community rather than by the Commission, when there is a dispute resolution process to address it. When making a decision under section 41 the Commission considers things like:

- Does the other dispute resolution process ensure fairness?
- Will the other dispute resolution process be able to deal with the human rights issues being raised?
- Is the **complainant** in a vulnerable situation?
- Does the other dispute resolution process have measures in place to protect people from retaliation?

There are some circumstances in which the Commission may choose to have a discrimination complaint go through its own process, even if a community-based dispute resolution process exists. People have the right to explain if they would rather go through the Commission's process, instead of using a process in your community. For example, if one of the decision-makers in the community-based process is the same person that the complainant believes has discriminated against them, it is reasonable to expect that they could lack confidence in the process. In cases like these, the Commission may choose to deal with the complaint, rather than refer it to the community-based process. Every case is unique and is looked at on an individual basis.

Committing to human rights and developing a community-based dispute resolution process also shows that community leaders are serious about good governance and honour the role they play in ensuring the health of the community. It also demonstrates that the community's leadership is accountable and committed to continuous learning in the community.

Effective complaint management can help strengthen overall Band governance by improving the way people relate to one another. It also shows people that their voice is heard and valued in their community.

It has been found that resolving disputes as close to their source as possible is generally the most effective way to ensure that both sides of a dispute are satisfied with the outcome. It is also faster and less disruptive than external legal proceedings. This can help stop a dispute from escalating, and save legal fees and/or court costs for your First Nation, or the people involved in the dispute.

Did You Know?

Having a community-based dispute resolution process is consistent with Aboriginal peoples' right to self-governance. Part of good governance involves protecting and promoting people's human rights. Even at the international level it is recognized that all governments have a responsibility to protect all people's (i.e. women, men, children, youth, Elders, persons with disabilities, etc.) human rights.

"To be certain, neutrality and competence are critical features of the Northwest Intertribal Court System arrangement. The challenge of developing, organizing, and funding effective and fair tribal courts is well known in Indian Country, **yet the Northwest Intertribal Court System member tribes have recognized the critical importance of neutral dispute resolution for the health of Indian nations and built an arrangement that provides it. A tribal court similar to the ones supported by Northwest Intertribal Court System, whose basis of authority derives from tribal values and laws, allows tribes to adjudicate disputes within a system of justice created on their own terms. A tribal court can legitimately adjudicate constitutional crises and thereby strengthen the legitimacy of tribal institutions of government.**" (emphasis added)

The Harvard Project on American Indian Economic Development from the John F. Kennedy School of Government at Harvard University citing the achievements of the Northwest Intertribal Court System at the 2003 Honouring Nations Ceremony
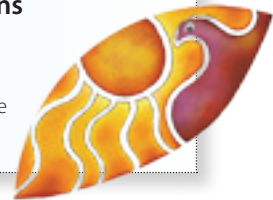
Another benefit to resolving disputes close to their source is that any decisions affecting the community will be made by the community. A decision-maker who knows the community is more likely to be able to consider its unique issues and/or needs throughout the decision-making process.

Communities that control their own dispute resolution process can include their unique culture, identity, traditions, language and institutions in it. Having your own community-based dispute resolution process is also consistent with article 34 of the United Nations *Declaration on the Rights of Indigenous Peoples*, which states:

> *Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the case where they exist, juridical systems or customs, in accordance with international human rights standards.*

Finally, another benefit is that, like some of the community processes highlighted in this toolkit, your community-based dispute resolution process can be used to deal with more than discrimination complaints. It could also deal with other complaints or disputes from within your community that do not involve human rights issues.

Did You Know?

The *Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations in 2007. It confirms that all Indigenous peoples are entitled to individual equality rights and to collective equality rights as members of First Nations or other Aboriginal peoples. The Declaration also recognizes the right of Indigenous peoples to self-determination. In 2010, the Government of Canada endorsed the Declaration. To learn more about the Declaration go to: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

1.5 Regional Dispute Resolution Processes

Your community might even consider reaching out to other First Nations communities in your area to develop a *regional* dispute resolution process. A regional dispute resolution process is similar to a community-based process, except that it would provide dispute resolution services to more than one community within the same region.

Developing a regional dispute resolution process also offers many benefits like:

- Consistency across similar bands and regions that share features such as shared language and culture, or Treaty area, etc.
- Reduced costs (e.g. human and financial resources) for all of the communities involved
- The opportunity to begin developing a broader Aboriginal human rights system
- The chance to demonstrate how equality principles are being implemented in a community

For a regional dispute resolution process the general considerations and development process would not change. It would just involve more people.

Questions to ask:

- Is a regional dispute resolution process a good option for our community?
- Are there other communities near ours that might also be interested in developing a regional dispute resolution process?

1.6 Four Stages to Developing a Community-based Dispute Resolution Process

Through the work of various communities and organizations, including the First Nations featured in this toolkit, the Commission has found a number of things that are needed to successfully develop a community-based dispute resolution process. All of these pieces and steps have been incorporated into four stages.

The Four Stages are:

1. Leadership, values and principles
2. Capacity building for development and engaging your community
3. Developing your community's **dispute resolution model**
4. Implementation, monitoring and continuous improvement

Four Stages to Developing a Community-based Dispute Resolution Process

Implementation, Monitoring and Continuous Improvement

Developing Your Community's Dispute Resolution Model

Capacity Building for Development and Engaging Your Community

Leadership, Values and Principles
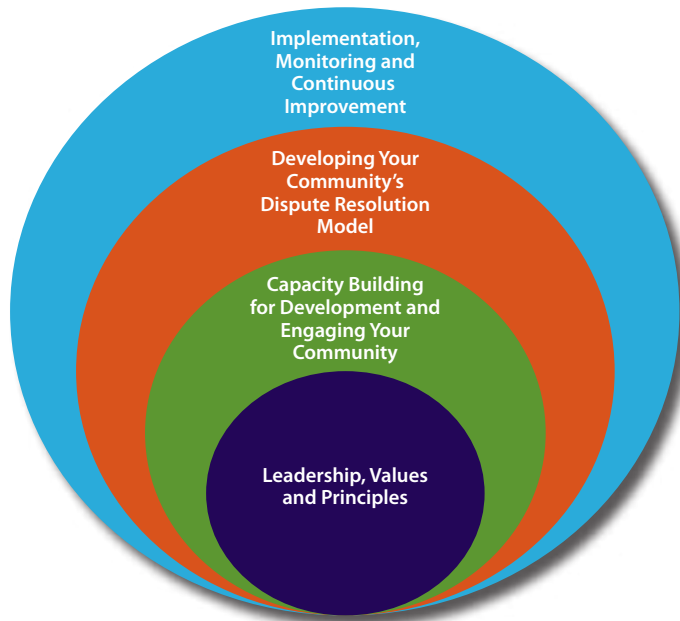
Did You Know?

Appendix C can be used to help you at each stage of the development process. It provides shorter step-by-step instructions related to the issues discussed throughout the Toolkit.
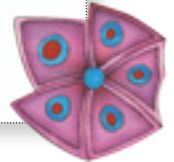
The chapters that follow will provide more detail about the Four Stages and help guide your community through the development and implementation processes. Some of the stages will take your community longer to go through than others. You might also find that certain steps within each stage do not apply to your community, or that you may want to change the order of them in some way. We encourage you to adapt the stages and their various steps, based on your community's unique needs and identity.

1.7 Things to Consider as You Develop Your Community's Dispute Resolution Process

While it is important to be thinking about 'how' you will develop your community's dispute resolution process from the beginning, it is also important to have a vision of 'what' your process will l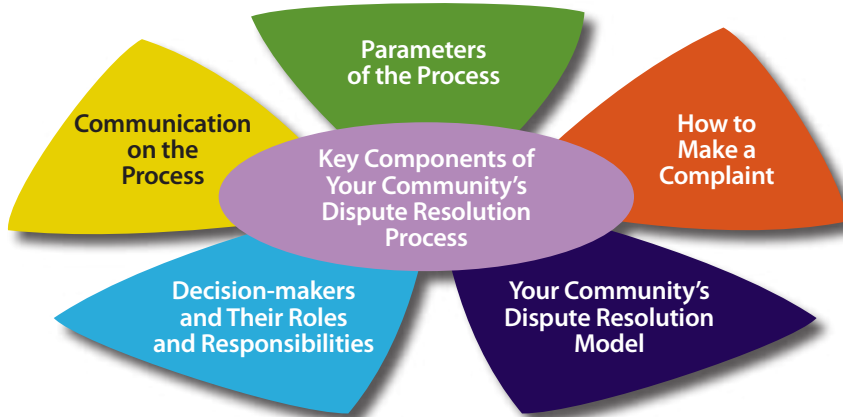ook like. There are many things that your community will have to consider when developing your community-based dispute resolution process. It will likely take your community some time to consider all of the parts that go into a community-based dispute resolution process. The more time that your community takes to develop the process, the more likely the process will run smoothly once it is implemented. These considerations are outlined below and discussed in more detail in Chapter 4.

Things to Consider as you Develop Your Community's Dispute Resolution Process

- Parameters of the Process
- Communication on the Process
- How to Make a Complaint
- Key Components of Your Community's Dispute Resolution Process
- Decision-makers and Their Roles and Responsibilities
- Your Community's Dispute Resolution Model

1. **Parameters of the process**: You will need to consider what framework your process will have and what laws or policies it will deal with. It will be important to ask questions like:

    -   What are the applicable laws or policies our dispute resolution process will deal with (e.g. *Canadian Human Rights Act*, human resources policies, First Nation law, etc.)?
    -   Does our community want the process to apply only to discrimination complaints, or other kinds of complaints and disputes as well?
    -   Will the process only deal with complaints made by community members against the Band, or will it deal with complaints and disputes between individual community members as well?

2. **How to make a complaint**: You will need to consider how a complaint will be made and accepted in your community's process. You will need to ask questions like:

    -   How will a complaint be made (e.g. in writing, verbally, etc.)?
    -   Who will accept complaints?
    -   What information will have to be provided in the complaint?

3. **Your community's dispute resolution model**: You will need to decide how your process will work. This will involve asking questions like:

    -   Will there be an investigation?
    -   How will the parties share information in this process?
    -   Will the process be confidential?

4. **Decision-makers and their roles and responsibilities**: It will be important to consider how decisions will be made in the process and who will make those decisions. Chief and Council should not be decision-makers in your community's dispute resolution process. This is because they could be seen to be **biased**, if a complaint or dispute was ever made against them. You will have to consider questions like:

    -   Who should make decisions on the complaints (e.g. Elders, a circle process, lawyers, judges, a panel of Elders that have legal principles explained to them by an Aboriginal lawyer, etc.)?

- Will there be one decision-maker or several?
- What experience or training will the decision-maker(s) need?

5. **Communication on the process**: Consider how you will involve the community first in the development process and then how you will communicate with the community once you are ready to implement the process. Throughout you will have to consider things like:

   - How will we involve community members in developing the process?
   - Once the process exists how will we let the community know about it (e.g. put information on the Band's website, post information at the Band office, hold a community meeting, etc.)?
   - How will we ensure information about the process is accessible to all community members?

Keep these points in mind throughout the development process. They are all discussed in more detail in Chapter 4.

2. Leadership, Values and Principles

The purpose of this chapter is to help your community get started

*Terms in **bold** are explained in the glossary in Appendix A.*

on the journey to developing a **community-based dispute resolution process**. These first couple of steps are part of the core of your community's dispute resolution process.

2.1 Leadership

The support of your leaders is one of the most crucial things needed to make a community-based dispute resolution process a success. The best way for leaders in your community to demonstrate their commitment to human rights and dispute resolution is by publicly committing to the development process and leading by example. In other words, leaders should treat all community members fairly and without discrimination, at all times. This shows the community that they are serious about addressing human rights in an effective and fair manner. It also demonstrates how treating others with respect is important for the collective health of the community.

Did You Know?

Fairness does not always mean treating people the same, sometimes it means offering accommodation to someone who has a disability or other special needs (e.g. single parents who need a flexible work schedule for child care reasons).

There are many ways that you can approach the subject of human rights and community-based dispute resolution with your community's leaders. Consider asking to have it placed on the agenda of a Band Council meeting or offering Chief and Council human rights-related education and training.

You can gain your leadership's support by increasing their awareness and understanding of why respecting human rights is an important part of good governance practices.

Questions to ask:

- How can I get my leaders' support to develop a community-based dispute resolution process?
- Have my leaders publicly committed to promoting and protecting human rights in our community?
- Do I have my leaders' support to develop a community-based dispute resolution process?

2.2 Defining Your Community's Values and Principles

Aboriginal peoples have resolved disputes in many different ways for thousands of years. It is not the Commission's goal to impose one way of resolving disputes for every community. Since every community is unique, there is no *one-size-fits-all* model for community-based dispute resolution. How your dispute resolution process works will depend on your community and the conclusions you come to throughout the development process.

Identifying your community's values and principles can help form the foundation of your dispute resolution process. Experience has shown that **Indigenous** legal traditions are fluid enough to change over time to support evolving concepts of human rights.

Consider ways that your community's underlying legal traditions and customs can shape your dispute resolution process. Think about how those values and principles relate to human rights and relationships between community members. Also consider how those individual relationships affect the collective health and well-being of the whole community.

> "Indigenous legal traditions…have survived and continue to be followed by many Aboriginal peoples. These legal traditions are not ancient artefacts, frozen in time, but living systems of beliefs and practices, revised over time to respond to contemporary needs and challenges."
>
> Excerpt from *Justice Within: Indigenous Legal Traditions* by the Law Commission of Canada (based on *Indigenous Legal Traditions in Canada: Report for the Law Commission of Canada* by John Borrows, January 2006)

One option might be to gather the community's Elders, or other knowledge keepers, and seek their guidance on the best way to undertake this process. Another way your community might start this process is to look at your traditional stories and consider how the lessons in these stories guide behaviour and other expectations among community members. Whatever way you decide to go about defining the values and principles that will form the foundation of your dispute resolution process, it is important to ensure that your process suits everyone's needs and works for your community.

Did You Know?

The Grandfather Teachings and human rights principles are more similar than you may think. For example, respect is one of the Grandfather Teachings. It is also a very important human rights concept. Human rights disputes are likely to be very rare in a community where people treat each other with respect. The same could be said about teachings around truth, honesty and humility.
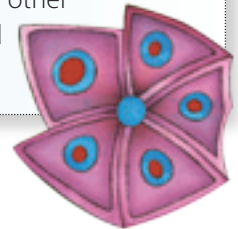
There are many historical factors that have impacted Aboriginal communities, and their legal traditions and customary laws. The Commission acknowledges that in some cases the revitalization of a community's legal traditions and customary laws may be the longest and possibly, most difficult aspect of the development process. In fact, some communities may continue to undertake activities to revitalize their legal traditions and customary laws even once they have developed a community-based dispute resolution process. This continued work could also lead to changes in their dispute resolution process in the future. Each community will need to decide how much time, effort, and resources can be used to determine the values and principles that guide how people interact with one another in the community.

Questions to ask:

- How have disputes, including human rights disputes, been resolved in our community traditionally?
- Are these methods still used today? If not, how could these methods be used today?
- What traditional teachings or values guide how we interact with each other in our community?
- What are the human rights issues facing our community today?
- Are there processes in place to address these issues?

Tsleil-Waututh Nation: Recovering the Past

Many of the communities featured in this toolkit have sought guidance from their Elders. For example, the Tsleil-Waututh Nation and the British Columbia Aboriginal Human Rights Project sought advice from a group of Tsleil-Waututh Nation Elders to identify and recover their customary laws and legal traditions.

Through this dialogue a number of values and principles that are important to the Tsleil-Waututh Nation were identified. The values and principles they identified were:

- Respect
- Justice
- Empathy
- Fairness – an understanding of how a decision is made
- Voice – a sense that people have been heard
- Equal treatment (but not necessarily the "same" treatment)
- Prevention, including ways to build and maintain unity and restore balance in the community

The British Columbia Aboriginal Human Rights Project has developed a tool for **First Nations** interested in incorporating their customary laws and legal traditions into a dispute resolution process.

It can be found at: http://www.mediatebc.com/PDFs/LRG2046-Aboriginal-Human-Rights-Project---final-re.aspx.

3. Capacity Building for Development and Engaging Your Community

The purpose of this chapter is to help you build capacity and

*Terms in **bold** are explained in the glossary in Appendix A.*

engage your community so that you can start to develop your community's **dispute resolution model**. This includes identifying the human and financial resources that will be needed, how and when you should start engaging your community in the development process, and how policies can help support your community's governance structure.

3.1 Identifying Available Human Resources

Determine the human resources your organization has available to be responsible for the development process.

Consider asking your leadership to appoint a human rights officer, or assign human rights responsibilities to a Band Councillor, or administrator to help bring attention to human rights issues in your community.

The person in charge of human rights responsibilities could also help lead the development of the community's dispute resolution process. Once the process is implemented, this person could also be responsible for ensuring that any decisions made regarding human rights disputes or complaints are carried out in a timely manner. This person should be someone who is well respected by the women, men, youth and Elders of the community, and that has some knowledge and/or experience working in this area.

Think about who in your community is willing and able to help develop your **community-based dispute resolution process**.

Knowing how many people are available to help develop the process will allow you to figure out approximately how much time it might take to develop. Try to make sure that there is a good mix of people (i.e. women, men, youth, Elders, persons with disabilities, members living off reserve, etc.) represented within the planning committee to ensure that all voices and perspectives are considered.

Once you decide who will be involved in the planning process, consider the kinds of skills each person has and how those skills could help develop your community's process.

Having a full understanding of your human resource capacity and any human resource needs (e.g. human rights subject matter experts) will help you determine your initial budget.

Questions to ask:

- Who in our community is available, willing and able to help in the development process?
- What kind of expertise or knowledge will be needed from those who get involved (e.g. knowledge of human rights, legal expertise, knowledge of our community's language, traditions and customs, writing skills, etc.)?
- Are there people in the community that have the expertise or knowledge that is needed?
- How many people will we need to involve in the development of our community-based dispute resolution process?
- Are women, men, youth, Elders, people living off reserve and persons with disabilities represented in the planning process?
- Are there other people or experts from outside the community that we need working on the project (e.g. human rights experts, facilitators, mediators, legal experts, etc.)?
- When will the people who have been identified need to get involved in the development process?

3.2 Identifying Available Financial Resources for the Development Process

It is important to consider the financial resources you will need *before* you start developing your community's dispute resolution process. The amount of financial resources your community has at its disposal may influence how your process is designed. Early on you should also identify who is going to be responsible for the costs of developing the process and any ongoing costs once it is implemented.

Your community will need to have a good understanding of how to find and secure financing for your dispute resolution process. In some cases this can seem like the greatest hurdle to overcome, but it does not have to be. Although the costs upfront may seem like a lot, it will likely cost your community less in the long-run to have its own dispute resolution process.

Determine the financial resources you already have to dedicate to developing your community's process, and how much you still need. At this point, you may also want to start considering what kind of financial resources you might need once you are ready to implement your community's process. The cost of developing a community-based dispute resolution process varies for every community, because it depends on what you decide to include in the process, as well as how large your community is, what kinds of expertise you can find that does not have costs attached to it, etc.

Educate yourself and those involved in the planning process about what is needed to secure funding and the steps you will need to take to get there. Every funding application or grant proposal will likely have different requirements, but all of them will ask about the amount of money you need and what it would be used for.

Even in the earliest days of planning your community's dispute resolution process, there may be a need for funding to cover the initial costs of things like:

- Paying the people who are responsible for leading the development of your community's dispute resolution process

- Communications materials (e.g. advertising, website design, gender-based analysis of materials being developed, etc.)
- Engaging the community and ensuring that you meet with women, men, youth, Elders, persons with disabilities, members living off reserve, etc.
- Any external expertise that is required (e.g. trainers, researchers or other experts)
- Education and/or training for leadership, managers, staff, decision-makers and the community
- An office and/or meeting room space

Although every situation is different, there are some general steps that can be useful to follow when creating your initial budget. You can use the step-by-step approach below to figure out how much money your community will need to start developing its dispute resolution process.

Step 1: Identify everything you would like to do or have during the development process. At this point do not worry about the actual costs of items. Just focus on creating a wish-list of what you think you will need to develop your community's dispute resolution process.

Step 2: Go through the list and identify which items will be absolutely necessary to successfully develop your community's dispute resolution process and include representation from all members of your community. Also identify the items that may be helpful, but not crucial. This may save you time later, if you have to limit your funding for any reason.

Step 3: Identify any items you already have or that could be provided at no cost.

Step 4: Identify any experts from within your community that you may be able to get involved in the development process. For example, Elders can offer incredible insight into Traditional Knowledge. Ensuring that both men and women are included can also help create a good balance.

Step 5: Research the approximate costs of the items that you do not already have. This cost-breakdown will help you know how much funding you need to develop the process. Subtract this total from the amount you already have. This will tell you how much more funding you still need.

Questions to ask:

- Approximately how much money do we need upfront to develop our dispute resolution process?
- Are there programs or funds that are already part of our governance structure that we could use to start developing our dispute resolution process?
- What costs might be involved in implementing our dispute resolution process?
- What limitations might we have when developing and/or implementing our dispute resolution process?

Once you know how much money you are likely going to need to develop your community's dispute resolution model, do some research to find out what funding options are available.

Try to tap into as many different funding sources as possible. There are many potential sources of funding, such as:

- already existing governance funds
- government grant programs
- non-governmental organizations
- private business
- philanthropic organizations

Questions to ask:

- How are we going to finance the development of our dispute resolution process?
- What financing options are available to develop our dispute resolution process?
- Are there people working on this project that have experience applying for project funding?
- Do we need to do more research before we can apply for funding?

Did You Know?

The Commission does not have **statutory authority** for grants or contributions. This means that the Commission cannot provide grants or contributions to another organization, person or entity. As a result, the Commission cannot help fund your community-based dispute resolution process.

However, there are government organizations that can provide funding to **First Nations** communities for different activities. For example, the Department of Aboriginal Affairs and Northern Development Canada and the Department of Justice are two government departments that may have funding available.

To learn more about these departments go to:

Aboriginal Affairs and Northern Development Canada:

http://www.aadnc-aandc.gc.ca/eng/1100100010002

The Department of Justice: http://www.justice.gc.ca/eng/index.html

The Commission cannot guarantee that your community will receive any funding you apply for, as that decision can only be made by the funding organization.

Once you have determined where or who you will seek funding from, find out if any of the people helping to develop the process have experience putting together funding applications or proposals.

Afterward, the person or persons, who are responsible for this task should follow the directions provided by the particular funding source to complete any applications or proposals that are required.

3.3 Community Engagement

The entire community should be involved as you develop your community-based dispute resolution process. The input that is provided by community members can be beneficial in a number of ways. For example, it can help ensure your process is **accessible** and can also encourage community members to use the process once it is implemented. Community engagement also involves education and awareness building in the community, so that everyone knows what their rights and responsibilities are.

At this point in the development process you will likely want to start getting the whole community involved. Community engagement takes time. It will not happen overnight. However, all of the time and effort that your community puts into developing its process at the front-end will likely save you time and money in the long-run.

As you begin to develop your community process it is a good idea to encourage the community to talk about human rights and dispute resolution. It will help you explain the importance of community-based dispute resolution, and make everyone aware of their rights and responsibilities. Engaging the community will also help you decide what kind of process makes sense for your community and give you an idea of how long that process will take to develop. This will also help you build awareness and community support for a dispute resolution process. Use an inclusive approach by providing transportation, food, and child care for meetings to ensure that everyone can participate.

People who feel they are involved in developing a community-based dispute resolution process are more likely to trust it and want to use it. By engaging the entire community, your community's dispute resolution process is likely to be more accepted and successful once it is implemented.

Encourage everyone to get involved—Elders, women, men, people with disabilities, youth and members living off reserve. Involving as many people as possible in the beginning will also help demonstrate that your community's leaders want to be accountable for their decisions and actions.

You can use community-wide information meetings, family meetings, Elders' forums, child care/education events, technology (e.g. webinars, video conferencing, Facebook, Twitter, Survey Monkey, etc.), and/or focus groups to talk to community members on and off reserve.

Did You Know?

There are many things that you may want to discuss with your community as you develop your community's dispute resolution process. Consider engaging the community on issues like:

- What kind of human rights issues are facing the community today
- How disputes (including human rights disputes) have been resolved traditionally
- What your community's goals are for a dispute resolution process
- What kind of dispute resolution approaches should be used and who any potential decision-makers could be
- How to make the process accessible for everyone in the community
- What **confidentiality** means to the community and if it should be included in the process
- The kinds of education and training that might be useful for community members

Appendix D is a PowerPoint template that was designed to help you start engaging the community in the development process. It can be adapted to include anything that you think is important to discuss with the community about developing your community-based dispute resolution process.
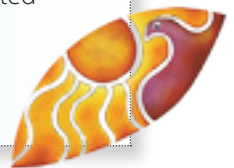
This gives everyone in the community the chance to be included in the development process. Try to make it as easy as possible for Elders, parents and other community members to attend these meetings. For example, you could engage the community by calling a town hall-style meeting to discuss the results of your work so far (e.g. the values and principles that your community's process will be founded on). Consider providing transportation for those who need it and child care for single parents during meetings. This gives the whole community the opportunity to share their thoughts and feelings, about the values and principles your community's process will be founded on.

Questions to ask yourself:

- What is being done, or can be done, to raise awareness of human rights and dispute resolution processes within our community?
- When and how will we involve the community in the development process?
- Who are the vulnerable groups in our community and how will we involve them?
- Have we had special meetings to target involvement from specific groups and provided them with the services, such as child care and transportation, to allow them to participate?

Questions to ask your community:

- What are the human rights issues facing our community today?
- Are there processes in place to address these issues?
- What other questions might be important to increase our understanding of human rights and dispute resolution?
- What can be done to protect people from retaliation?

> **Did You Know?**
>
> The Commission has heard concerns from various groups who represent **Aboriginal** women that, in some communities, women may be reluctant to file **discrimination complaints**. Concerns have also been raised that intimidation or the threat of **retaliation** are possible in some communities. Similar challenges may also exist for people in other vulnerable groups.
>
> It is important to include vulnerable groups (e.g. women, people with disabilities, youth, etc.) when you are developing your dispute resolution process. This helps ensure that it is accessible and fair for everyone in the community.

3.4 Community Education and Training

Providing human rights education and training is an important part of the development process. And like community engagement, it cannot be done in a day.

Start by providing human rights education and training to those who will be responsible for leading the development process. Consider offering child care and transportation, so that everyone who needs to can participate. Once this is done, consider how and when you will provide human rights education and/or training to:

- Leadership
- Staff (including employees that deal with human rights, managers and other employees)
- Community members (i.e. children, youth, parents, Elders, men, women, persons with mental and/or physical disabilities, members living off reserve, etc.)
- People who will be decision-makers in your community's process

> **Did You Know?**
>
> The Commission or a provincial human rights commission may be able to help you organize human rights education and/or training at little or no cost. Check out Appendix E for the contact information of all the human rights commissions and tribunals in Canada.
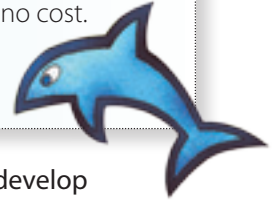
Human rights education and training should be ongoing as you develop and implement your community-based dispute resolution process. Consider developing an education and training plan to help you decide when and how you will provide human rights-related education and/or training to everyone in the community. Your education and training plan should also outline how and when you will connect your audience(s) with the information they need to know.

Make sure to do a gender-analysis of all of the information materials. Sometimes materials can appear gender-neutral, but do not take into account real differences among community members, such as their needs. Consider how you can encourage all community members (e.g. women, Elders, persons with disabilities, etc.) to actively participate and attend any community meetings you hold. For example, many women are single parents. By providing child care, you can help ensure that more women participate. Similarly by providing transportation you can ensure that more Elders and persons with disabilities can participate.

Use an *evergreen* approach when you are creating your community training plan. This means you should plan to provide human rights and dispute resolution education and/or training to your community on a continuous basis, and in a flexible way. In other words, community education and/or training should not be a one-time event. You should plan to provide your different audiences (i.e. leadership, staff, all community members, decision-makers, etc.) with ongoing human rights-related education and training.

Start by identifying the specific education and training your different audiences will need at the beginning. Then consider any ongoing training needs that they

may have. For example, consider making human rights-related education and training part of your orientation program for new employees. This ensures that everyone in your organization has the same understanding of human rights and dispute resolution, at all times.

There will likely be several stages involved in providing education and training to your different audiences, including:

- Basic human rights education and/or training for everyone in the community (i.e. leadership, managers, staff, all community members, decision-makers, etc.)
- Educating people about how your community-based dispute resolution process will work
- Training for frontline managers and service-staff on how to support the implementation of your dispute resolution process
- Gender-based analysis and in-depth human rights and dispute resolution training for decision-makers

Consider providing human rights education and training that is tailored to the specific roles and responsibilities of each of your audiences (i.e. employees dealing with human rights, leadership, managers, employees, and all community members).

Community members should also be made aware of what their rights and responsibilities are when it comes to human rights and your community's dispute resolution process. People who are informed of their rights and responsibilities are also more likely to believe that any concerns they raise will be dealt with fairly. If meetings are going to be held in the evenings or on weekends, consider providing child and/or Elder care for those who need it.

3
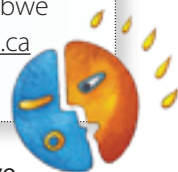
It is important that employers and service providers (and their staff) have a working knowledge of human rights concepts and principles. Try to use all forms of materials and methods to communicate with all of your audiences. For example, you can use social media, print materials, meetings, and even door-to-door visits to ensure that everyone has access to what is going on or being offered.

One way you could provide education and/or training for everyone in the community is by providing a small number of people with in-depth human rights and dispute resolution education and training. They can then take what they have learned and teach other people in the community. This is known as a *train the trainer* approach.

Other ways you could educate community members include:

- Putting human rights and dispute resolution-related information on the Band's website and in its publications and pamphlets
- Holding group and town hall-style discussions and presentations
- Including human rights education in school curriculums for children and youth
- Sharing information at the Elders' Lodge or at events for Elders

When you use an evergreen approach you should always be aware of changes to the law or within your community. You might have to adjust your education and training plan when a law or something else in the community changes. This can help you make people aware of the change and meet any new needs within the community.
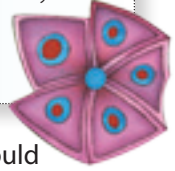
Anyone who will be making decisions on complaints and disputes should know about human rights. Consider if the person (or people) the community has identified to be the decision-maker knows about human rights.

Decision-makers should know about the *Canadian Human Rights Act* and other human rights laws and principles like:

- The *Charter of Rights and Freedoms*
- The United Nations *Declaration on the Rights of Indigenous Peoples*
- Provincial and/or territorial human rights laws
- Legal principles of procedural fairness
- The values, laws, principles, customs and traditions that will be a part of your community's process

Having knowledgeable decision-makers will help ensure that the process is respected by the community and that disputes are resolved successfully.

Another way that this could be done is to have a person who is knowledgeable in these areas (i.e. a lawyer or other expert) who would act as a neutral party to explain legal concepts etc. and help the decision-maker to understand how to apply the relevant legal principles to the facts of the dispute. For example if a panel of Elders who did not have specific human rights training were to act as the decision-makers, they could have a lawyer present to help them understand the legal principles in question.

Depending on the expertise and experience of the people working on the project, you may also require additional expertise or facilitation from outside of the community.

Questions to ask:

- What is our community's (i.e. leadership, staff, community members, decision-makers, etc.) level of knowledge about human rights and dispute resolution processes?
- Who in the community (i.e. leadership, staff, community members, decision-makers, etc.) will need training about human rights or community-based dispute resolution before we start developing our dispute resolution model?
- What kinds of human rights and dispute resolution education and training will be needed for each audience?
- What experience or training will decision-makers need?
- Will decision-makers need to have legal experience?
- Are there other kinds of education and training that the entire community, or a specific audience, might need (e.g. gender-based analysis training for decision-makers)?
- What areas of expertise or knowledge are we lacking?

3.5 Policy Development

Policies and **procedures** can help guide decisions about who has to do what, and who gets what benefits in your organization and community. Clear policies and procedures can help prevent and/or resolve disputes about these requirements and decisions.

There are several kinds of policies that your organization will likely have or want to develop, such as:

- **Human rights protection policies**
- Human resources policies
- Other employment and corporate policies
- Service provision policies

Human Rights Protection Policies

Human rights protection policies protect people's human rights. They set standards for respectful behavior, and help an organization meet its obligation to protect human rights and prevent discrimination. It is important to define your organizational commitment to human rights by creating formal policies for your organization.

There are three basic human rights protection policies that are the most important to have:

1. A strong senior leadership statement that supports equality and human rights
2. A policy on anti-harassment that covers the workplace and service delivery (including a complaint and dispute resolution procedure)
3. A policy on the **duty to accommodate** that covers the workplace and service delivery (including a complaint and dispute resolution procedure)

3

Did You Know?

Senior leadership statements should express support for human rights and equality, and commit the organization to preventing discrimination and harassment, and meeting its duty to accommodate. This can be done in one or two sentences. Language should be strong, clear and simple.

The Commission has developed some policy templates that you can use as a starting point for creating your own duty to accommodate and anti-harassment policies. For more information go to: www.doyouknowyourrights.ca or call 1-866-772-4880.

Appendix I also talks more about developing human rights protection policies.

Human Resources Policies

As an employer, your First Nation will have many responsibilities and legal obligations to protect the health and safety of its employees. Many specific human rights issues that arise in employment situations (under federal or provincial jurisdiction) can be addressed by creating human resources policies. Developing human resources policies that prevent discrimination or provide accommodation for staff based on grounds like age, gender, religion, or family status, can help tell people what is expected from the employer and from the employee.

Consider the needs of your organization and community. There may be some additional policies that deal with human rights issues directly or indirectly that your organization may already have or want to develop. They could deal with issues like:

- Hiring and recruitment
- Salaries and promotions
- Performance evaluations and discipline
- Gender equality
- Pregnancy
- Drug and alcohol testing
- Sexual harassment (This could also be included in your anti-harassment policy)
- Preferential hiring of Aboriginal employees
- Disability leave and return to work
- Accommodation of mental illness
- Religious accommodation
- Family-related leave and caregiving
- Retirement
- Employment equity
- Sick leave, compassionate leave, vacation leave and education leave

Other Employment and Corporate Policies

There are also many policies that an organization could have, that are not directly related to human resources but could still deal with human rights-related issues. These policies might include:

- Contracting
- **Privacy** and records
- Accessibility of the premises and workstations, and accommodating disabilities
- Accessibility of technology

Service Provision Policies

As a service provider in your community, your organization will likely also have a number of policies explaining who is eligible for services and how those services are provided. It is possible that these policies could affect people's human rights as well.

These policies might cover things like:

- Housing
- Education
- Social assistance
- Health care or disability support
- Membership
- Leadership selection, elections or voting
- Residency

Questions to ask:

- Do we have a strong human rights statement of commitment from senior leadership?
- Have we developed an Anti -Harassment Policy? Does it specifically mention sexual harassment?
- Have we developed a Duty to Accommodate Policy?

Did You Know?

Employers and service providers have a duty to create policies that accommodate employees and clients to the point of **undue hardship**. Undue hardship is assessed based on health, safety and cost. An employer or service provider can claim undue hardship when adjustments to a policy, procedure, by-law or building would cost too much, or create risks to people's health and safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.

When you update or develop policies, your organization needs to be able to show that you tried to be as inclusive as possible, and that you did your best to build in accommodation. If a potentially discriminatory policy is justified for safety, health and/or cost reasons, include evidence of this in your review. Documenting any potential undue hardship will help your organization if a dispute arises, or if a complaint is ever filed with the Commission.

- How could our traditional teachings and values be incorporated into our human rights protection policies?
- Have we developed workplace human resources policies on specific human rights topics, such as pregnancy leave or religious accommodation?

3.6 Policy Review

Policies are created to offer guidance and structure within an organization and can help make decisions about who does or does not get a benefit such as a job, education funding, housing, etc. However, their effects are not always obvious when they are first developed. Sometimes policies or their related procedures can have an unintentional negative impact on certain employees and/or community members. Once you have developed a policy it is also important to review it regularly to ensure that it continues to be fair for everyone affected by it. Your organization can use a policy review process to:

- Update your policies overall
- Reduce (or eliminate) any unintentional discrimination
- Meet your human rights obligations
- Promote human rights
- Prevent discrimination and harassment
- Resolve disputes

There are a number of times when your organization should consider reviewing its policies, including:

- Within the first two years of introducing a new policy
- As outlined in the text of a policy itself (or every 5 years, if there is no review period in the policy itself)
- When a large number of similar complaints are made about a policy
- When there are changes to leadership, organizational priorities or structures, or key staff positions within the organization
- When the community, or a vulnerable group or stakeholder within the community raises a significant concern
- When directed by a commission, tribunal, or court, to comply with a legal decision or remedy order
- When other conditions (e.g. funding, operations, etc.) that frame or support a policy change
- When leadership or senior management requests a review or report

Did You Know?

Appendices H, I and J have more information about developing policies and reviewing already existing policies.

Questions to ask:

- What workplace or operational policies do we have that mention human rights, or one or more of the specific grounds of discrimination in the *Canadian Human Rights Act*?

- What policies mention human rights protections or principles?
- What policies might give or deny people benefits based on one or more of the grounds of discrimination in the *Canadian Human Rights Act* (e.g. mandatory retirement, family leave, religious holidays, disability leave, etc.)?
- What policies allow decisions to be made based on one or more grounds of discrimination, without a good reason?
- What policies appear to have a neutral rule or process, but have an unintended negative effect on people related to one of the grounds of discrimination?
- What policies might go against human rights laws or principles?

Anishinabek Nation: Engaging the Community

In 2003 the Anishinabek Nation received funding through their self-government negotiations with Aboriginal Affairs and Northern Development Canada to start developing a community-based dispute resolution process.

Four regional workshops were held, as well as a wrap-up conference that brought all of the regional participants together. The Anishinabek Elders Council was also included from the beginning. They attended each of the workshops and have acted as a strong source of Traditional Knowledge to help solidify the Anishinabek Nation's understanding of dispute resolution.

The goal of the workshops was to engage Anishinabek citizens in a dialogue about dispute resolution. The results of the four regional workshops were shared at an Anishinabek national conference. These discussions helped strengthen community support to develop a community-based dispute resolution process in the Anishinabek Nation.

In 2004-2005, a second set of regional sessions were held, along with a second Anishinabek national conference. This time Anishinabek citizens discussed external dispute resolution processes (e.g. the Commission's process, the role of an **ombudsperson**, dispute resolution panels, etc.) The purpose was to get people to start thinking about the different dispute resolution options available.

Since some of the 39 communities in the Anishinabek Nation have only a couple hundred people living on reserve, they realized that it would not be feasible for each community to have its own process at this time. As a result, Anishinabek citizens decided that there was a need for one national and four regional dispute resolution processes in the Anishinabek territory. The Anishinabek Nation still supports and encourages dispute resolution processes to be developed within Anishinabek First Nations communities. The regional and national processes are meant to enhance and support this.

Working groups comprised of Anishinabek citizens were formed in each region. The working groups were tasked with developing four regional dispute resolution processes and one national process, based on the feedback that was provided by Anishinabek citizens during the preliminary workshops and conferences.

It was originally decided that these groups would have one year to develop the necessary pieces and get community input. In the end, however, it took the working groups two and half years to engage the community and finish the dispute resolution models.

> "Everyone has really appreciated that it has taken a long time, but we wanted to make sure that it was done properly. And that we didn't just adopt a system that was foreign to us and implemented into our communities, because we know that wouldn't work. We really wanted to make sure that it was built from the ground up, through the Nation."

Jenny Restoule-Mallozzi, Legal Counsel for the Union of Ontario Indians

To see the Anishinabek Nation's video about their community-based dispute resolution process go to: http://www.youtube.com/user/AnishinabekNation

3

4. Your Community's Dispute Resolution Model

A **dispute resolution model** is your entire dispute resolution process mapped-out on paper. It can help your community see what the process will look like *before* it is actually implemented. This chapter is intended to help your community develop a dispute resolution model and determine any funding needs, before you implement your community's process.

Developing your dispute resolution model will be one of the more challenging steps in your development process, because it is the step where the community will actually decide what should be included in your dispute resolution process. Remember, there is no *one-size-fits-all* model for community-based dispute resolution.

Start by talking to community members about their vision for a dispute resolution process in the community. At this point it will also be important to consider the financial resources you have available, as well as any ongoing funding you might need. This could affect what kind of model you develop.

Things to Consider as you Develop Your Community's Dispute Resolution Process

Parameters of the Process

Communication on the Process

How to Make a Complaint

Key Components of Your Community's Dispute Resolution Process

Decision-makers and Their Roles and Responsibilities

Your Community's Dispute Resolution Model
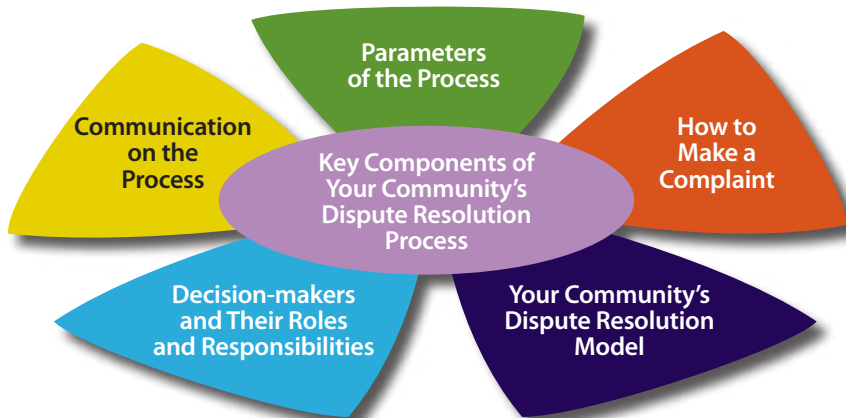
4.1 Developing Your Community's Dispute Resolution Model

There will be a number of questions that you and your community will have to make decisions about when you are mapping out your model. These questions are outlined and discussed in more detail in the pages ahead.

> **Did You Know?**
>
> You can go to the end of Chapter 4 to see a sample dispute resolution model that was developed by one of the Southern First Nations Secretariat's community working groups.

How will we make our dispute resolution process as accessible to all community members as possible?

Accessibility is important to keep in mind while developing your community's model. In the context of human rights, the term **accessible** is related to how easily people can use a specific product, device, service or environment.

A dispute resolution process is accessible when all members of the community can use it easily.

Remember to consider your process from a human rights perspective. This means making sure the dispute resolution process treats everyone involved with equality, dignity and respect.

Consider things like:

- **Alternative arrangements** for people with disabilities or special needs (e.g. providing child care for single parents, etc.)
- Reading level of printed materials (i.e. use plain language)
- Languages to be offered
- Whether people will need a lawyer or other representation
- What kind of power imbalances could exist and how to deal with them
- Fair timelines

4

- Multiple options for how people can resolve their dispute
- The location of your dispute resolution process and if it is in an accessible building or meeting facility

Seek input from everyone—men, women, youth, children, Elders, people with physical and mental disabilities, members living outside of the community, etc. This input will help ensure that you hear and consider a variety of perspectives about the process model. This will also help you identify any barriers that may prevent the process from being accessible to everyone in the community. Remember, the more accessible the process is, the more likely community members will be to use it, once it is implemented.

People from different perspectives (e.g. youth, adults, women, men, children, **Aboriginal**, non-Aboriginal, etc.) can provide you with insight, and help you consider things like **universal design**. Universal design is an approach to designing buildings, physical environments, objects and spaces so that they are accessible to as many people as possible.

Making sure new buildings are wheelchair-accessible and having accommodation plans for people with mental health issues or other disabilities are good examples of accessibility.

Did You Know?

You can learn more about universal design from a number of sources including:

Universal Design.com: http://www.universaldesign.com/

Center for Universal Design at North Carolina University: http://www.ncsu.edu/project/design-projects/udi/

Universal Design Education: http://www.udeducation.org/

Universal Design Handbook: Building Accessible and Inclusive Environments by the City of Calgary: http://www.calgary.ca/CSPS/CNS/Pages/Publications-guides-and-directories/Universal-Design-Handbook.aspx

What kind of approach, or approaches, will be used in our community's process?

Another way to ensure that everyone accepts the process is to ensure that there are multiple options for resolving disputes (e.g. **mediation**, **arbitration**, circle, etc.). This way people can choose the method that they believe is most likely to help them.

Decide how decisions will be made in the process and who the decision-maker, or decision-makers, will be:

- If mediation will be offered, decide who will be responsible for mediating complaints that are brought forward.
- If there will be a process for investigating complaints, decide who will conduct those investigations and what the investigation process will involve
- If your process will involve an adjudicative body with hearings, decide who and how many people will be involved in the decision-making process

Did You Know?

There are many people in Canada with training in mediation and other forms of alternative dispute resolution. They may be able to help you deal with a complaint or dispute, before a discrimination complaint is filed with the Commission. For more information about alternative dispute resolution practitioners with experience in an Aboriginal context go to: www.doyouknowyourrights.ca or call 1-866-772-4880.
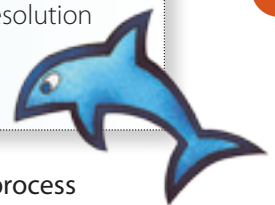
Also consider how you will ensure that any decision-makers in the process remain impartial. In other words, the decision-maker should be able to make an independent decision. This means they should be neutral and not be improperly influenced by anyone involved in the dispute and/or community leaders. Decision-makers should also be aware of any power imbalances that might exist among people involved in the dispute. This ensures decisions are fair to everyone involved in the process.

Did You Know?

Potential decision-makers could include:

- An Elders Council
- An **Arbitrator**
- A panel of adjudicators
- A panel of community members with human rights training
- An Aboriginal lawyer or judge

You can also have a facilitator or mediator that helps the parties settle the dispute, but does not provide a decision for them. Consider what the decision-maker, mediator or facilitator needs to know about the disputes they might deal with in your community.
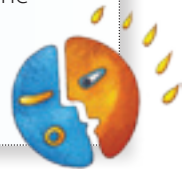
One way to help people involved in a dispute feel the decision-maker will be fair is to allow them to have a say in who the decision-maker will be. This can help ensure that everyone involved agrees and is comfortable with the choice of the decision-maker. For example, consider developing a roster, or list, of potential decision-makers that people involved in a dispute could choose from.

Questions to ask:

- What are our goals for our community's dispute resolution process?
- What are the applicable laws or policies that our dispute resolution process will deal with (e.g. *Canadian Human Rights Act*, human resources policies, First Nation law, etc.)?
- Do we want the process to only apply to discrimination complaints or other kinds of complaints and disputes as well?
- Will the process only deal with complaints made by community members against the Band, or will it deal with complaints and disputes between individual community members as well?
- What approach, or approaches, will we include in our dispute resolution model?
- Will there be an initial investigation of the complaint? If so, by whom? What kind of training should they have?

- If there is an initial investigation, what would the purpose be? Would it be to determine if the complaint fits within the timeframes allowed, or the applicable laws, or whether it should go to the Commission instead (i.e. should the Government of Canada be involved in the resolution of the complaint)?
- Would the investigator make the decision to deny the complaint, or make a recommendation to someone else? If so, who would that be?
- Could the complaint be denied at this early stage or should all complaints go forward?
- Would mediation or a decision-making body (such as a tribunal) be useful ways to resolve disputes in our community?
- How will decisions be made?
- Will complaints go forward to a hearing in front of a decision-maker?
- Will any customs or traditions be included in the hearing (e.g. prayer, smudge, circle, etc.)?
- Will there be an oral hearing, or would the decision-maker decide based on written submissions?
- If there is an oral hearing, can the sides provide written submissions beforehand?
- What languages could a hearing be held in?
- Who should make decisions on the complaints that are made (e.g. Elders, a circle process, lawyers, judges, a panel of Elders that would have legal principles explained to them by an Aboriginal lawyer, etc.)?
- Will there be one decision-maker or several?
- Is the decision-maker a person that all community members would feel comfortable speaking with?
- Will the decision-maker mostly listen and let the parties make their case, or will they actively ask questions?
- Would the decision-maker have a personal, political, business or other reason to favour one party over the other?
- What would happen if people involved in the process think the decision-maker will not be fair?

4

- What would happen if the decision-maker knows or is related to one of the people involved in the dispute or complaint?
- Will a potential **complainant** feel safe going to this person?

What kind of timelines will our community's process have?

Questions to ask:

- Will there be a deadline for complaints? If so, how long will it be?
- How long will people have to wait to find out if their complaint has been accepted?
- How long would a hearing be after the initial complaint?
- Will there be time limits on how long the hearing should take?
- Should there be a time limit on how long the decision-maker has to make a decision about the complaint?
- How long will it take to receive a decision?
- Will the decision be confidential between the people involved in the dispute?
- How long (in theory) should it take to go through the entire dispute resolution process?

How will we record information and where will it be stored?

Questions to ask:

- What is our community's practice for recording decisions?
- What types of forms, if any, will be used?
- Will there be a specific form for complaints?
- How will complaints be accepted (i.e. in writing, orally, both, etc.)?
- What information will have to be provided in the complaint?
- Who will take complaints when they come in?
- What will that person's responsibilities be once they receive the complaint (e.g. Will they notify the person/people the complaint was made about? Will they make arrangements for a hearing or mediation? What timelines will they have to operate in? etc.)?
- Will the other side have to make its position on the complaint known? Will they also have to file a form? Can the other side opt out or ignore the process?

- How will the parties share information in the process?
- How will evidence be recorded?
- Will records be confidential?
- If so, how will we ensure that records are confidential?

What kind of supports will be in place for people who participate in the process?

Make your process fair by ensuring that there are ways to balance the power of the people involved. Find ways to provide support to people who might be intimidated by the process or afraid of **retaliation** from the other party, or others in the community. If a **settlement** is reached all of the parties involved in the dispute should agree to the terms.

A **hearing-style process** usually involves some sort of decision-maker, or panel of decision-makers, who would hear the facts of a complaint and provide a decision to try to resolve the dispute. In these types of situations, some people might need a representative, or someone to speak for them. For example, a person might need an interpreter if they do not usually speak the language used in the dispute resolution process.

If you decide to include mediation or a hearing-style process you may want to allow people the option of bringing a representative or support person. For example, a person might want to bring a family member, a friend, an Elder or a lawyer with them for support.

In most dispute resolution processes, both sides must share information with one another. It is believed that this helps increase each side's understanding of the other. It can also help people respond more effectively to each other.

All of the people involved in a dispute should be allowed to tell their side of the story. This can be done orally, or in writing, as long as both parties have enough time to prepare and present their side. Ensuring that both parties are heard and feel listened to, is likely to make everyone involved in the dispute feel better about how it is dealt with.
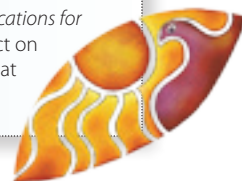
4

Did You Know?

Chief and/or members of the Band Council should not be decision-makers in your community's dispute resolution process. This is because there may be situations where the Chief and/or Band Council are involved in the dispute (i.e. a complaint is made against them or a decision they have made) and could be seen as **biased**. If the process is thought to be biased by community members, they will be less likely to use and trust the process.

"Providing for the fair and non-political resolution of disputes: The government also needs to assure the nation's citizens that when they have disputes, either with each other or with the government itself, they will be dealt with fairly. **This requires some sort of mechanism to resolve the disputes, a First Nation court, a council of Elders, or some other body that can be empowered to evaluate and adjudicate competing claims. The most effective dispute resolution mechanisms are well insulated from other functions of government and from other elected officials such as legislators. This sends a clear message to citizens and outsiders alike that their claims will not be hostage to politics.**

That message is critical to the nation's success. As long as people feel their claims will not be fairly addressed or that court decisions or appeals will be politicized, they will tend to mistrust their government and may take their knowledge and their energy and go somewhere else to live their lives, draining crucial assets from the nation.

This same mechanism, a court or other body also may be charged with interpreting the rules established in the nation's constitution, codes, and common law. Here again, insulation from politics is essential if the nation's citizens are to trust the rules themselves." (emphasis added)

Joint Occasional Papers on Native Affairs No 2004-02 *The Concept of Governance and its Implications for First Nations* by Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, The Harvard Project on American Indian Economic Development from the John F. Kennedy School of Government at Harvard University

Questions to ask:

- Have we considered ways to address power imbalances that might exist between the people involved in a dispute? For example, how would the process deal with a dispute between a band administrator and a staff member who is their subordinate?
- If a power imbalance cannot be leveled out, how will we ensure all of the people involved in a dispute feel safe? For example, can the people involved in a dispute work toward resolving the conflict in different rooms?
- Will people be given a certain amount of time, or will they be allowed as much time as it takes for them to tell their story?
- Will people be allowed to ask each other and their witnesses questions?
- Who will speak first?

Did You Know?

When developing your community's dispute resolution process, you may want to consider developing a complaint form for people to fill out when they have a complaint. A complaint form could ask for:
- Who is making the complaint (i.e. name, address and phone number)
- Who or what the complaint is about
- The reason(s) for the complaint (e.g. description of a rule, decision or practice that is being disputed or complained about)
- What happened (i.e. when and where the incident occurred, what happened and what was said, etc.)
- Any supporting evidence, including any relevant documents and names of any witnesses who were present or have information about the incidents related to the complaint
- The signature of the person making the complaint
- The date the complaint was made/signed
- The person's consent to share information with the person and/or organization that the complaint is about

- Does each side get to make a presentation? Can they call witnesses?
- Will the process offer language interpretation when it is needed?
- Can people bring witnesses or other people who might know about the situation?
- What kind of representatives will people be allowed to bring with them (i.e. friends, family members, Elders, lawyers, etc.)?
- What safety measures will we have in place to protect vulnerable people and ensure that everyone feels safe throughout the process?

Did You Know?

Sometimes there is confusion between *privacy* and *confidentiality*.

Privacy is usually linked to a person's personal information. There are a number of federal laws that deal with privacy and the protection of people's personal information. For example, the personal information that people submit in their complaint forms (i.e. name, address, etc.) would be protected by federal privacy laws. To learn more about any legal obligations your organization might have to protect people's personal information go to: http://www.priv.gc.ca/index_e.asp

Confidentiality in this context is related to protecting information shared between two parties that are trying to settle a dispute. Information that is kept *confidential* is not always personal or private in nature. It could simply be the facts related to a dispute.

Confidentiality puts controls around how and when certain information will be shared within or outside an organization. Many dispute resolution processes keep information that is shared confidential. This means that people involved in the dispute cannot share any of the information discussed during the dispute resolution process with others. It is believed that this shows that everyone respects the process and the other people involved.

As long as people's identities are protected, confidentiality should not limit the monitoring and enforcement of settlements, information-sharing for research, or information used for training or evaluation purposes.

Will confidentiality be a part of our dispute resolution process?

The Commission has heard from some groups that their community's understanding of **confidentiality** is different from the Commission's. Consider what confidentiality means to your community. A good way to do this would be to discuss the issue of confidentiality with the community, and develop a common definition and understanding of what it will mean in your dispute resolution process.

Consider writing a **policy** about **privacy** and confidentiality for your community's dispute resolution process. Make it available for people who use the process. This can help give people reassurance that any information they provide will be handled appropriately.

Questions to ask:

- How were disputes in our community heard in the past? Publicly or privately?
- What does the word *confidentiality* mean in our community?
- Are there different understandings?
- Would it help to develop one shared definition of confidentiality so everyone in the community has the same understanding?
- Is confidentiality important to our community?
- Should confidentiality be part of our community's dispute resolution process? If so, how will the information that people share in a dispute be protected?

Will our community's process offer written decisions and/or settlements?

Giving written reasons for decisions can help the people involved understand how the issues were considered and what led to the end result. This could also reduce the number of people who **appeal** decisions.

Written decisions can also make it easier to keep track of the different kinds of decisions that have been made in the past. They can also help you know if decisions are being made in a consistent and fair way.

Also consider if you want to have people put any settlements they reach in writing. A settlement is an agreement that outlines what each side has

4

committed to do to resolve the dispute. Putting settlements in writing can help avoid misunderstandings in the future, and help everyone involved follow through on any steps and timelines that were agreed to.

Questions to ask:

- Will the decision-maker(s) have to give reasons for their decisions?
- Could the decision-maker(s) give only oral reasons, or would they have to give written reasons?

What kind of restorative measures will our community's process offer?

Restorative measures, or **remedies**, are the steps or actions that are taken to restore harmony among the people involved in a dispute. Restorative measures may come in many forms, and will likely depend on the cause of the dispute and the people involved. There is usually some focus put on making the person who was wronged in the dispute whole again by restoring their dignity in some way.

Consider ways that your process can encourage people to play an active role in designing solutions to resolve their disputes. This can create a sense of *ownership*, which means that people will feel they helped find a solution they can live with, rather than having one imposed on them. This will help increase the commitment of everyone involved, including their commitment to the solution.

The Commission supports restorative measures and settlements that reflect your First Nation's legal traditions and/or customary laws.

Questions to ask:

- What kind of restorative measures have we used traditionally?
- What kind of restorative measures will our process offer?
- What power will the decision-maker(s) have to order restorative measures (remedies)?
- Could the decision-maker declare that the respondent discriminated against the person who made the complaint?
- Could the decision-maker order the respondent to do, or not do, something (e.g. give someone back their job, give someone a house, etc.)?

- Could the decision-maker order the respondent to pay the complainant compensation for hurt feelings, or for out of pocket expenses?
- Will the parties have to sign something saying they agree to be bound by the decision?
- How can we ensure that commitments made to settle disputes are followed through on?
- How will we evaluate whether the restorative measures are working in our community?

> **Did You Know?**
>
> Your dispute resolution process does not have to give the same restorative measures that the Commission's dispute resolution process might provide. The important thing is that they appropriately address the human rights issues related to the dispute and are fair to everyone involved.
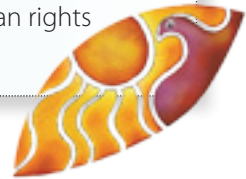
Will there be an appeal process?

Sometimes people will not like a decision that is made about how to resolve a dispute. It is important that they are able to voice this. That is what an appeal process is for. An appeal process gives people a way to have a decision reviewed by a second decision-maker. Giving people a way to appeal a decision and have the complaint re-examined can increase their confidence that the process is fair.

An appeal process can also help people to understand and accept a decision. If you decide to offer an appeal process, determine how it would work and who would be responsible for hearing appeals.

It is important for your appeal process to also have an end, or people involved might feel like the dispute has not concluded. This could cause the dispute to stay 'alive' within the community. Consider how many appeals will be allowed and over what period of time they will be accepted.

Questions to ask:

- Will there be an appeal process? If so, how will it work?

- Who would appeals be made to?
- What would the process and timelines for appeals be?

How will we help protect people who use the dispute resolution process from retaliation?

Retaliation involves threatening, intimidating or treating another person badly because that person filed a discrimination complaint, represented a person who filed a discrimination complaint, acted as a witness in a complaint, or was otherwise involved in the dispute.

A **community-based dispute resolution process** should clearly forbid any form of retaliation. Generally, a dispute resolution process is most successful when people believe that they can have their concerns heard in a respectful manner and without fear of retaliation.

Questions to ask:

- Have we considered ways to protect people from retaliation?
- What protective measures do we have in place for vulnerable people, or groups, that come forward with complaints?
- What options could we give people who believe they are experiencing retaliation for making a complaint?

Who will be responsible for monitoring and evaluation once our process is implemented?

Monitoring and evaluation are key components to any successful dispute resolution process. They help your community know what is working in the process and where there might be room for improvement.

You can use the information you gather to help you come up with ways to make the process better and easier for people to use. For example, you could use feedback from people who have used the process to find out if they encountered any barriers along the way. Consider how you can monitor and evaluate the process once it is implemented.

You can evaluate and measure things like:

- The process overall
- The number of people who use the process
- People's experience when interacting with staff and decision-makers
- Who is accessing the process (i.e. Are there specific groups of people, or age groups, or other patterns?)
- Who is not accessing the process
- The kinds of complaints and disputes that are being resolved using the process
- The average length of time it takes to go through the process
- The number of appealed decisions
- The number of successful appeals
- The process' actual costs compared to its projected costs (i.e. Is the community spending more or less on dispute resolution than you thought you would? Do you know why?)
- The cost to the community if disputes are not dealt with, or are dealt with through an external dispute resolution process

Questions to ask:

- How will we know if the process we choose to use is working for our community?
- What kinds of evaluation methods will we use?
- Who will be responsible for coordinating monitoring and evaluation once our process is implemented?
- When should we do the first overall evaluation of the process and how often after that?

Once you have a complete dispute resolution model on paper, look at what kinds of barriers might be built-into it. These barriers were likely not made on purpose, and may not be clear to you right away. This is why it is important to look at each part of your community's model carefully. Consider sharing the

4

model with community members before it is implemented, so that you can get different perspectives on it. This might help you identify barriers that you had not considered.

4.2 Identifying the Financial Resources Needed for Implementation

Once your community has developed its dispute resolution model, it will likely be necessary to find more funding in order to implement it. Earlier on during the capacity building stage (discussed in Chapter 3), you may have already started to consider what kind of funding you need to actually implement your community's process. Now that your community has a model, you can start to look more closely at your costs for implementation, as well as any potential ongoing costs.

Once again it will be important to consider all of your needs. You can follow a set of steps similar to those outlined in section 3.2. However, there will be a few differences. For example, now that you have a dispute resolution model you can identify exactly what items (e.g. human resources, office/facility space, etc.) will have some cost attached to them. Also consider the kinds of activities you would like to do, or things you would like to have during the implementation process. For example, what kind of advertising will you do to let community members know that the process is now available?

First consider if there are already existing governance or program funds that you might be able to use for implementation. If it has been a long time, or you are not sure where to get funding to implement your community's model, do some research to find out what funding options are available to your community.

If you need to apply for funding, follow the directions provided by the particular funding source to complete the application or proposal. If the same people are still working on the project that were responsible for writing any funding applications last time, consider having them be responsible for this activity again.

Questions to ask:

- What activities do we plan to do to implement our dispute resolution model?
- Will the dispute resolution process be set out in a policy?
    - If so, will copies be available at the Band office?
    - Will copies be available on the Internet?
- What kind of advertising will we do to let community members know that the process is now available?
- What kinds of costs will be related to these activities?
- What kinds of ongoing costs will there be once the process is up and running?
- How will we finance the implementation and ongoing costs of our dispute resolution process?
- What financing options are available to us?
- Will we have to do more research before we can apply for more funding?
- Are the same people who were responsible for writing any past applications for funding available to do the same thing again? If not, do any of the people working on the project have experience developing funding applications and proposals?

Southern First Nations Secretariat: A Model for the Future

In May 2010 the Commission started working with the Southern First Nations Secretariat (the Secretariat) in a pilot project. The objective of the pilot project was for six of the Secretariat's member communities to develop draft dispute resolution models that would be designed with the goal of resolving discrimination complaints.

Introductory meetings were held between the Secretariat and the Commission in August and November 2010. These early meetings focused on defining the complete scope and principles of the project. This included identifying the people who would be leading the project, and deciding what their roles and responsibilities would be.

4

With the assistance of a facilitator, six working groups were created (one in each participating member community). Each working group was tasked with creating a dispute resolution model that incorporated their community's values, beliefs, and traditions into it.

The goal of all of the draft models was to promote reconciliation, and restore harmony and unity in the community and among the parties involved. All of the communities developed draft models that brought western and Aboriginal concepts of dispute resolution together into one process. These teachings and concepts included the Seven Grandfather Teachings, Rules of Natural Justice and Rules of Procedural Fairness.

The pilot project helped the communities realize that they have similar ideas about dispute resolution, and that all of the communities involved might benefit from having one regional dispute resolution process. When 'looking back' on the project, the Secretariat also concluded that there were six major steps that they would follow, if they were ever to undertake a project like this again.

These steps are:

Step 1: Identify a project manager and/or facilitator
Step 2: Engage the community
Step 3: Identify working group members
Step 4: Hold working group sessions
Step 5: Present proposed models to leadership and communities for approval
Step 6: Implementation

The Secretariat also identified that community engagement was a huge step that needed a longer period of time than was originally envisioned at the start of the project. The Secretariat and its member communities are now in the process of considering their options and deciding on their next steps.

"There are people with strong traditional values in our community and others with strong Judeo-Christian values, so we really wanted to respect and acknowledge that in our model."

Southern First Nations Secretariat working group member

Draft Dispute Resolution Model developed by one of the Southern First Nations Secretariat's community working groups

This model combines Aboriginal and western ideas about dispute resolution

Seven Grandfather Teachings and traditional healing processes (Christian principles, spiritual values, and local healers)

Complaint

Need to be filed within one year of the incident Needs to be in a written format

Human Rights Dispute Resolution Clerk

Notify Respondent within 7 days

- Notify Respondent of the complaint within seven days
- Form a team within 30 days from the day the Clerk receives the complaint form
- Non-community member contracted by Council on a case-by-case basis
- Select human rights dispute resolution team members (three to four from a roster, non-community members could be included)
- Help complainants fill out complaint forms
- Check if there is any conflict of interest
- Initial validation of the complaint
- Create a master copy of all documents relevant to the complaint
- Keep records of the complaint confidential

Respondent

Complete answer-form within 30 days and send it back to the Human Rights Dispute Resolution Clerk

Valid
Human Rights Dispute
Resolution Team

Not valid
No further action

The Complainant will receive a letter explaining the decision

- Three to four members including: community member, Elder, youth and clergy member
- Adjudicator/facilitator is appointed to manage the hearing
- Members need to be ethical, impartial and informed of human rights and the process (procedures will be implemented to test these qualities)
- Sign a conflict of interest form, follow an ethics code, and take an oath of confidentiality
- Role of team leader will rotate among members
- Chief and Council should not have control over the process
- One member must describe the traditional principles clearly at the onset of the resolution process and members need to approve them
- Reach an agreement within seven days
- Try to resolve dispute peacefully and restore harmony in the community
- Validate the complaint and make a consensus decision
- In the absence of an agreed resolution, the goal is to reach an appropriate disposition

4

5. Implementation, Monitoring and Continuous Improvement

This chapter is intended to help your community implement, monitor and

*Terms in **bold** are explained in the glossary in Appendix A.*

continually improve your dispute resolution process. Monitoring and evaluation can help your community ensure that the process continues to be **accessible** and useful for the people who use it. Over time this can also help you determine where you might be able to improve the process.

5.1 Implementing Your Community's Process

Once you have secured the funding that you need to implement your process, you can start taking steps toward implementation. At this stage your community should be making arrangements to put each part of your **dispute resolution model** into action. For example, if you have decided to have an adjudicative body with a panel of decision-makers, now would be the time to advertise for and then hire those decision-makers.

Also decide when the process will be available for the community to use. This will be your process' implementation date. To help ensure a smoother implementation process, give yourself time to get all of the pieces of the dispute resolution process in place.

If your community has the resources and capacity, it may also be helpful to *pilot* the dispute resolution process. Conducting a pilot project can allow you to evaluate the process and refine it before it is implemented full scale. This could reduce your costs in the future.

Questions to ask:

- Now that the process exists, how will we let community members know about it?
- How will we ensure that information about the process is accessible to all community members?
- What language(s) will information about the process be available in?

5

5.2 Monitoring and Evaluating How the Process is Working

Monitoring and evaluating your community's process can help you make decisions about where and how to use your organization's human and financial resources. It can also help your community decide what kinds of strategies could be used to prevent complaints and disputes from certain groups or about certain issues. A little prevention can seriously reduce the operating costs of your community's process in the long-run.

> **Did You Know?**
>
> You can learn more about preventing discrimination in the *Human Rights Handbook for First Nations,* available at: www.doyouknowyourrights.ca or by calling 1-866-772-4880.

Every time you evaluate the process, think about how it could be improved. If necessary, create a plan for how to improve the process based on the feedback you receive each time the process is evaluated. It may not be possible to make all the improvements right away. Do what you can and then include how your community will make further changes over time in an improvement plan. Your community may not always have to make improvements every time the process is evaluated. The important thing will be to continue monitoring and evaluation on an ongoing basis and always be open to exploring new ways to improve the process.

5
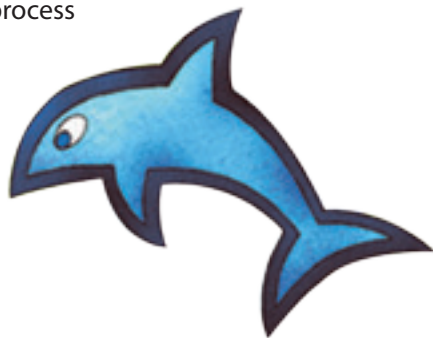
The Treaty Four Administrative Tribunal: A Regional, Treaty-based Process

In 1999, the Treaty Four Governance Institute was established by the 34 **First Nations** of Treaty Four as part of the re-establishment of their collective governance model. One component of the Institute's mandate was to develop an alternative dispute resolution mechanism that would be empowered by First Nation community-based law.

The purpose of the Treaty Four Administrative Tribunal is to adjudicate disputes involving the application of First Nation law within the Treaty Four territory. In order for the Tribunal to assert its jurisdiction, the First Nation law must designate the Tribunal as the dispute resolution mechanism to use. The Tribunal is intended to assist Treaty Four citizens to resolve disputes that cannot be resolved at the community level.

The Governance Institute developed and trained a roster of professional panel members to adjudicate disputes involving the application of First Nation community-based law. In order to help ensure that the panel members have no direct connection to the community that they are helping to resolve a dispute, the roster includes professionals from throughout the Treaty Four territory. It is believed that this gives people a sense that the process will be fair and that the panel members will not be **biased**.

The Treaty Four Tribunal model is based on rules of Natural Justice and Fairness, and incorporates traditional and contemporary dispute resolution approaches. The overall goal of the Tribunal is to promote and restore harmony within the Treaty Four Nations. The process also incorporates ceremonial practices, if a participant requests it. There are also Elders who speak to everyone involved in the process to ensure that they have a good understanding of dispute resolution methods used in the process, as well as the Laws of Kinship that govern the community.

5

Essentially there are five stages in the Administrative Tribunal:

1. Determination of Jurisdiction: at this stage the Administrative Tribunal determines if it has the jurisdiction to deal with the dispute.
2. Pre-hearing Stage: The Administrative Tribunal will work with both sides of the dispute to determine if **mediation** is possible.
3. The Hearing: If mediation is attempted or does not go forward for another reason, the dispute will go to a Tribunal hearing.
4. Decision-Writing: The Tribunal prepares a written decision that includes the issue/dispute, decision, hearing particulars and reasons for the decision. Immediately after the decision has been written, copies are sent to all the parties involved.
5. If appropriate, the Tribunal may make non-binding recommendations to the parties on possible ways to resolve the conflict or dispute.

Currently, there are approximately 40 Tribunal members and two Chairs across the Treaty Four territory.

5

Appendix A: Glossary

Aboriginal (peoples)	This term is used to refer to the First Nations, Métis and Inuit peoples of Canada.
Accessible (accessibility)	In the context of human rights, the term *accessible* refers to how easily people can use a specific product, device, service or environment. The more people who can easily use a product, device, service or environment, the more accessible it is considered to be. When developing a community-based dispute resolution process consider things like: • Alternative arrangements for people with disabilities • Reading level of printed materials • Languages to be offered • Whether people will need a lawyer or other representation • Fair timelines • Accessibility of buildings and/or meeting spaces
Alternative arrangements	Special arrangements meant to reduce or mitigate barriers that single out and treat an individual, or group, differently and negatively, because of one of the grounds of discrimination. Alternative arrangements are made when an employer or service provider is meeting its duty to accommodate.
Appeal process	An appeal process allows a decision to be reviewed by a second decision-maker if a person does not agree with the original outcome.

Arbitration (Arbitrator)	The hearing and resolution of a dispute by a decision-maker (Arbitrator), usually chosen and agreed upon by both parties, who has the power to impose a settlement.
Bias (biased)	When a person who handles a complaint has, or appears to have, some reason – personal, political, business or otherwise – to favour one party over the other.
Canadian Human Rights Act (the Act)	A federal law. The Act protects all people legally allowed to be in Canada. It prohibits discrimination by federally regulated employers and service providers. The Act has priority over most other federal laws, with the exception of the Constitution.
Canadian Human Rights Commission (the Commission)	An organization that was created by the *Canadian Human Rights Act* to receive discrimination complaints and try to help resolve human rights disputes. It is separate and independent from the Government of Canada and the Canadian Human Rights Tribunal.

(the) Commission's Guiding Principles for Dispute Resolution	The Guiding Principles for Dispute Resolution were developed by the Commission. They are based on research of successful dispute resolution processes, Canadian law and legal rules about what is fair. There are 11 guiding principles. They are: 1. Make the process accessible. 2. Obtain community input about the process. 3. Ensure the process is acceptable to everyone involved in the dispute. 4. Make sure the decision-maker knows about human rights. 5. Ensure impartiality and independence. 6. Allow people to bring a representative. 7. Give people the opportunity to be heard. 8. Encourage people involved to share information. 9. Keep information confidential. 10. Give reasons for decisions. 11. Help ensure no retaliation.
Community-based dispute resolution process	What an employer or service provider develops with input from the community to deal with complaints and disputes. If an individual raises a human rights concern, this process explains how that concern will be addressed and potentially resolved, without having to involve the Canadian Human Rights Commission.
Complainant	A person who files a discrimination complaint with the Commission or your community's dispute resolution process.

Confidentiality	In a dispute resolution context, confidentiality is related to protecting the information that is shared between the parties involved in the complaint or dispute. This means that people involved in the dispute cannot share any of the information discussed during the dispute resolution process with others. It puts controls around how and when certain information will be shared within or outside of the organization.
Discrimination complaint	A complaint made under the *Canadian Human Rights Act.*
Dispute resolution model	A dispute resolution model shows what an entire dispute resolution process would look like once it is implemented. In other words, it is an entire dispute resolution process mapped-out on paper.
Duty to accommodate	The duty to accommodate is an employer or service provider's obligation to take steps to eliminate the different and negative treatment of individuals or groups, based on the grounds of discrimination and up to the point of undue hardship. Those steps are known as alternative arrangements.

Federally regulated	The *Canadian Human Rights Act* applies to federally regulated employers and service providers. These include: • First Nations governments and some other First Nations organizations • Federal government departments, agencies and Crown corporations • chartered banks • airlines • television and radio stations • interprovincial communications and telephone companies • interprovincial transportation companies, like buses and railways that travel between provinces • other federally regulated industries, like some mining companies
First Nations (peoples)	The term came into common usage in the 1970s to replace the term 'Indian', which some people found offensive. Many First Nations people and communities prefer to be called by the names of their nations (e.g. Cree, Haida, Dene, etc.), or 'First Nations', or 'First Nations people', instead of 'Indians'. The term 'First Nations' generally applies to both 'Status' and 'Non-status Indians'. This term is not a synonym for 'Aboriginal', because it does not include Métis or Inuit peoples.

Grounds of discrimination (protected under the *Canadian Human Rights Act*)	Grounds of discrimination are reasons a person may experience discrimination. This means that federally regulated employers and service providers cannot discriminate against people for these reasons. The grounds of discrimination protected under the *Canadian Human Rights Act* are: • race • national or ethnic origin • colour • religion • age • sex (includes pregnancy) • sexual orientation • marital status • family status • disability (mental or physical) • a conviction for which a pardon has been granted or for which a record suspension has been ordered
Hearing-style process	A hearing-style process usually involves some sort of decision-maker, or panel of decision-makers, who would hear the facts of a complaint and provide a decision to resolve the dispute.
Human rights protection policies	Policies that protect human rights. They set guidelines for respectful behaviour and explain how an organization or government meets their responsibility to respect human rights.
Indigenous (peoples)	This term is used internationally to refer to the world's first peoples.

Mediation	When a mediator works with the parties involved in a complaint or dispute to help them achieve reconciliation, settlement, or compromise.
Ombudsperson	An impartial person who investigates complaints, reports findings and helps to achieve equitable settlements.
Policy (policies)	Any direction by senior leadership that tells an organization or community what it will do, and why.
Privacy	Privacy is usually linked to protecting a person's personal information (e.g. their name, age, address, etc.).
Procedure(s)	Practices that are used to implement a policy. They outline how an organization will carry out its policies.
Retaliation (retaliate)	Threatening, intimidating or treating another person badly because that person: • filed a discrimination complaint • represented a person who filed a discrimination complaint • acted as a witness in a complaint • was otherwise involved in the dispute
Restorative measures (remedies)	Restorative measures, or remedies, are the steps or actions that are taken to restore harmony among the parties involved in a dispute. Remedies may come in many forms and will likely depend upon the cause of the dispute and the people involved. There is usually some focus put on making the person who was wronged in the dispute whole again by restoring their dignity in some way.

Section 41 of the *Canadian Human Rights Act*	Section 41 of the *Canadian Human Rights Act* outlines the reasons that the Commission may decide not to deal with a complaint. Specifically it says:
	41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that
	(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;
	(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;
	(c) the complaint is beyond the jurisdiction of the Commission;
	(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or
	(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.
Settlement	An agreement that outlines what each party involved in a dispute agrees to do to resolve that dispute.

Statutory authority	The legal power to make decisions or take specific actions based on law. In this context, the Commission cannot provide grants or contributions to another organization, person or entity.
Undue hardship	Undue hardship is assessed based on health, safety and cost. An employer or service provider can claim undue hardship when adjustments to a policy, procedure, by-law or building would cost too much, or create risks to people's health and safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.
Universal design	Universal design is an approach to designing buildings, physical environments, objects and spaces so that they are accessible to as many people as possible.

Appendix B: About the Communities Featured in the Toolkit

The Tsleil-Waututh Nation and the British Columbia Aboriginal Human Rights Project (funded by the Law Foundation of British Columbia)

The Tsleil-Waututh Nation is located on their traditional lands around the Burrard Inlet, between Maplewood Flats and Deep Cove in North Vancouver, British Columbia. Working directly with the British Columbia Aboriginal Human Rights Project (funded by the Law Foundation of British Columbia), the Nation is developing their own community-based dispute resolution process.

The goal of the project is "…to explore a First Nation's community-based approach to human rights dispute resolution." The project will directly benefit the Tsleil-Waututh Nation by supporting the community while they recover their legal traditions and customary laws. In the final stage of the project, the Nation will use the recovered knowledge to develop their own community-based dispute resolution process for resolving human rights disputes.

For more information about the Tsleil-Waututh Nation go to: http://www.twnation.ca/

To learn more about the British Columbia Aboriginal Human Rights Project go to: http://www.mediatebc.com/Mediation-Services/Dispute-Resolution-Design-Services.aspx

The Anishinabek Nation (Union of Ontario Indians)

The Anishinabek Nation was incorporated as the Union of Ontario Indians in 1949. The Union of Ontario Indians is a political advocate representing 39 First Nations throughout the province of Ontario. The Anishinabek Nation territory reaches as far east as Golden Lake, as far south as Sarnia, and as far north as Thunder Bay and Lake Nipigon.

There are approximately 55,000 citizens living in the 39 First Nations that make up the Anishinabek Nation. The Anishinabek Nation has four strategic regional areas (Southwest, Southeast, Lake Huron and Northern Superior). Each region is represented by a Regional Grand Chief.

The Anishinabek Nation became interested in developing their own community-based dispute resolution process during self-governance negotiations in 2003.

To learn more about the Anishinabek Nation go to: http://www.anishinabek.ca/

Southern First Nations Secretariat

Located on Delaware Nation territory, near the town of Bothwell, Ontario, the Southern First Nations Secretariat is responsible for service delivery to seven member nations. Of those member nations, six were involved in the pilot project to develop dispute resolution models:

- Chippewas of the Thames First Nation
- Aamjiwnaang First Nation
- Munsee-Delaware First Nation
- Oneida Nation of the Thames
- Moravian of the Thames First Nation
- Chippewas of Kettle and Stony Point First Nation

The Secretariat's member communities became interested in developing their own dispute resolution models so they could deal with human rights disputes in their communities. Their intent was to reduce their reliance on the Commission's process and increase each nation's autonomy.

To learn more about the Southern First Nations Secretariat and its member communities go to: http://www.sfns.on.ca/

The Treaty Four Governance Institute

The Treaty Four Governance Institute was developed by the 34 First Nations of Treaty Four in 1999 as part of their larger governance model. The Governance Institute has a three pronged mandate:

1. To be a research and resource centre on governance affairs, as they relate to the goals and interests of the Treaty Four territory.
2. To create and subsequently maintain the *Treaty Four Gazette.*
3. To develop governance institutions, including an alternative dispute resolution mechanism.

Appendix C: Four Stages to Developing a Community-based Dispute Resolution Process

The purpose of this appendix is to assist you once you are ready to start developing your community's process. You can use the suggested stages and their corresponding steps to help you create and implement your community's dispute resolution process.

The steps are based on the various chapters in the Toolkit. They include relevant questions for you to consider at each stage of the development and implementation process. Next to each step is the chapter in the Toolkit where you can find more detailed information related to that step.

You might find that certain steps do not apply to your community, or that you must change the order of them in some way. The steps are only suggestions. We encourage you to adapt the steps based on your community's unique needs and identity.

> **Did You Know?**
>
> Copies of the steps and questions covered in this appendix are also available at: www.doyouknowyourrights.ca or call 1-866-772-4880.

Four Stages to Developing a Community-based Dispute Resolution Process

- Implementation, Monitoring and Continuous Improvement
- Developing Your Community's Dispute Resolution Model
- Capacity Building for Development and Engaging Your Community
- Leadership, Values and Principles
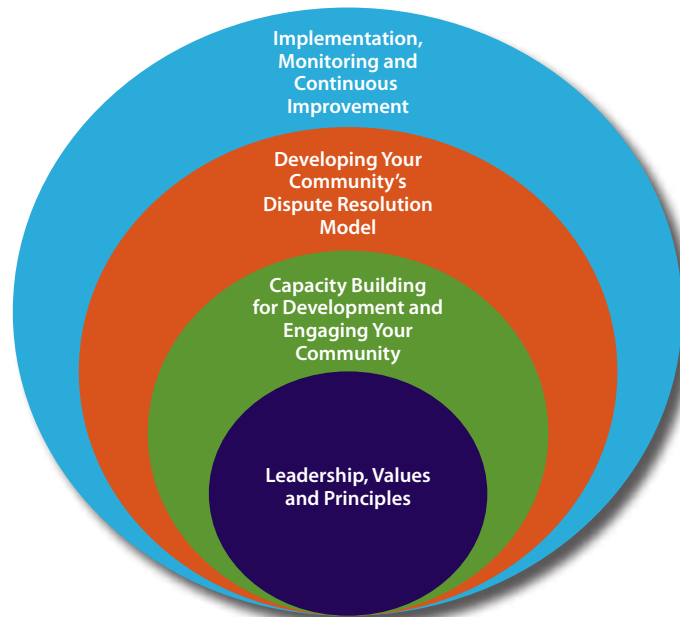
Stage 1: Leadership, Values and Principles

Step 1: Get your leadership's commitment. (Chapter 2)

Questions to ask:

- How can I get my leaders' support to develop a community-based dispute resolution process?
- Have my leaders publicly committed to promoting and protecting human rights in our community?
- Do I have my leaders' support to develop a community-based dispute resolution process?

Step 2: Define your community's values and principles. (Chapter 2)

Questions to ask:
- How have disputes, including human rights disputes, been resolved in our community traditionally?
- Are these methods still used today? If not, how could these methods be used today?
- What traditional teachings or values guide how we interact with each other in our community?
- What are the human rights issues facing our community today?
- Are there processes in place to address these issues?

Stage 2: Capacity Building for Development and Engaging Your Community

Step 1: Determine the human resources you have available to be responsible for leading the development process. (Chapter 3)

Questions to ask:

- Who in our community is available, willing and able to help in the development process?
- What kind of expertise or knowledge will be needed from those who get involved (e.g. knowledge of human rights, legal expertise, knowledge of our community's language, traditions and customs, writing skills, etc.)?
- Are there people in the community that have the expertise or knowledge that is needed?
- How many people will we need to involve in the development of our community-based dispute resolution process?
- Are women, men, youth, Elders and persons with disabilities represented in the planning process?
- When will the people who have been identified need to get involved in the development process?
- Are there other people or experts from outside the community that we need working on the project (e.g. human rights experts, facilitators, mediators, legal experts, etc.)?

Step 2: Determine the financial resources you already have available to dedicate to the development process. (Chapter 3)

Questions to ask:

- Approximately how much money do we need upfront to develop our dispute resolution process?
- Are there programs or funds that are already part of our governance structure that we could use to start developing our dispute resolution process?
- What costs might be involved in implementing our dispute resolution process?
- What limitations might we have when developing and/or implementing our dispute resolution process?
- How are we going to finance the development of our dispute resolution process?
- What financing options are available to develop our dispute resolution process?
- Are there people working on this project that have experience applying for project funding?
- Do we need to do more research before we can apply for funding?

Step 3: Do research to find appropriate sources of funding (if necessary). (Chapter 3)

Step 4: Apply for funding (if necessary). (Chapter 3)

Step 5: Start engaging the community in the development process. (Chapter 3, Appendix D and Appendix G)

Questions to ask yourself:

- What is being done, or can be done, to raise awareness of human rights and dispute resolution processes within our community?
- When and how will we involve the community in the development process?
- Who are the vulnerable groups in our community and how will we involve them?
- Have we had special meetings to target involvement from specific groups and provided them with services, such as child care and transportation, to allow them to participate?

Questions to ask your community:

- What are the human rights issues facing our community today?
- Are there processes in place to address these issues?
- What other questions might be important to increase our understanding of human rights and dispute resolution?

Step 6: Identify your community's education and/or training needs. (Chapter 3, Appendix F and Appendix G)

Questions to ask:

- What is our community's (i.e. leadership, staff, all community members, decision-makers, etc.) level of knowledge about human rights and dispute resolution processes?
- Who in the community (i.e. leadership, staff, all community members, decision-makers, etc.) will need training about human rights or community-based dispute resolution before we start developing our dispute resolution model?

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

- What kinds of human rights and dispute resolution education and training will be needed for each audience?
- What experience or training will decision-makers need?
- Will decision-makers need to have legal experience?
- Are there other kinds of education and training that the entire community, or a specific audience, might need (e.g. gender-based analysis training for decision-makers)?
- What areas of expertise or knowledge are we lacking?

Step 7: Create a community training plan. (Chapter 3, Appendix F and Appendix G)

**Step 8: Provide community training (if necessary).
(Chapter 3, Appendix F and Appendix G)**

Step 9: Develop any missing human rights protection policies (if necessary). (Chapter 3, Appendix H and Appendix I)

Questions to ask:

- Do we have a strong human rights statement of commitment from senior leadership?
- Have we developed an Anti-Harassment Policy? Does it specifically mention sexual harassment?
- Have we developed a Duty to Accommodate Policy?
- How could our traditional teachings and values be incorporated into our human rights protection policies?
- Have we developed human resources policies on specific human rights topics, such as pregnancy leave or religious accommodation?

There are more questions and several checklists that can be used to support this step in Appendix H and Appendix I.

Step 10: Review your organization's policies. (Chapter 3, Appendix H and Appendix J)

Questions to ask:

- What workplace or operational policies do we have that mention human rights, or one or more of the specific grounds of discrimination in the *Canadian Human Rights Act*?
- What policies mention human rights protections or principles?
- What policies might give or deny people benefits based on one or more of the grounds of discrimination in the *Canadian Human Rights Act* (e.g. mandatory retirement, family leave, religious holidays, disability leave, etc.)?
- What policies allow decisions to be made based on one or more grounds of discrimination, without a good reason?
- What policies appear to have a neutral rule or process, but have an unintended negative effect on people related to one of the grounds of discrimination?
- What policies might go against human rights laws or principles?

There are more questions and several checklists that can be used to support this step in Appendix H and Appendix J.

Stage 3: Developing Your Community's Dispute Resolution Model

Step 1: Develop your community-based dispute resolution model. (Chapter 4)

At this step make decisions about:

How will we make our dispute resolution process as accessible to all community members as possible?

What kind of approach, or approaches, will be used in our community's process?

Questions to ask:

- What are our goals for our community's dispute resolution process?
- What are the applicable laws or policies that our dispute resolution process will deal with (e.g. *Canadian Human Rights Act*, human resources policy, First Nation law, etc.)?
- Do we want the process to only apply to discrimination complaints or other kinds of complaints and disputes as well?
- Will the process only deal with complaints made by community members against the Band, or will it deal with complaints and disputes between individual community members as well?
- What approach, or approaches, will we include in our dispute resolution model?
- Will there be an initial investigation of the complaint? If so, by whom? What kind of training should they have?
- If there is an initial investigation, what would the purpose be? Would it be to determine if the complaint fits within the timeframes allowed, or the applicable laws, or whether it should go to the Commission instead (i.e. the Government of Canada should be involved in the resolution of the complaint)?
- Would the investigator make the decision to deny the complaint, or make a recommendation to someone else? If so, who would that be?
- Could the complaint be denied at this early stage or should all complaints go forward?
- Would mediation or a decision-making body (such as a tribunal) be useful ways to resolve disputes in our community?
- How will decisions be made?
- Will complaints go forward to a hearing in front of a decision-maker?
- Will any customs or traditions be worked into the hearing (e.g. prayer, smudge, circle, etc.)?
- Will there be an oral hearing, or would the decision-maker decide based on written submissions?
- If there is an oral hearing, can the sides provide written submissions beforehand?
- What languages could a hearing be held in?
- Who should make decisions on the complaints that are made (e.g. Elders, a circle process, lawyers, judges, a panel of Elders that would have legal principles explained to them by an Aboriginal lawyer, etc.)?
- Will there be one decision-maker or several?

- Is the decision-maker a person that all community members would feel comfortable speaking with?
- Will the decision-maker mostly listen and let the parties make their case, or will they actively ask questions?
- Would the decision-maker have a personal, political, business or other reason to favour one party over the other?
- What would happen if people involved in the process think the decision-maker will not be fair?
- What would happen if the decision-maker knows or is related to one of the people involved in the dispute or complaint?
- Will a potential complainant feel safe going to this person?

What kind of timelines will our community's process have?

Questions to ask:

- Will there be a deadline for complaints? If so, how long will it be?
- How long will people have to wait to find out if their complaint has been accepted?
- How long would a hearing be after the initial complaint?
- Will there be time limits on how long the hearing should take?
- Should there be a time limit on how long the decision-maker has to make a decision about the complaint?
- How long will it take to receive a decision?
- Will the decision be confidential between the people involved in the dispute?
- How long (in theory) should it take to go through the entire dispute resolution process?

How will we record information and where will it be stored?

Questions to ask:

- What is our community's practice for recording decisions?
- What types of forms, if any, will be used?
- Will there be a specific form for complaints?
- How will complaints be accepted (i.e. in writing, orally, both, etc.)?
- What information will have to be provided in the complaint?
- Who will take complaints when they come in?
- What will that person's responsibilities be once they receive the complaint (e.g. Will they notify the person/people the complaint was made about? Will they make arrangements for a hearing or mediation? What timelines will they have to operate in? etc.)?
- Will the other side have to make its position on the complaint known? Will they also have to file a form? Can the other side opt out or ignore the process?
- How will the parties share information in the process?
- How will evidence be recorded?
- Will records be confidential?
- If so, how will we ensure that records remain confidential?

What kind of supports will be in place for people who participate in the process?

Questions to ask:

- Have we considered ways to address power imbalances that might exist between the people involved in a dispute? For example, how would the process deal with a dispute between a band administrator and a staff member who is their subordinate?
- If a power imbalance cannot be leveled out, how will we ensure all of the people involved in a dispute feel safe? For example, can the people involved in a dispute work toward resolving the conflict in different rooms?
- Will people be given a certain amount of time, or will they be allowed as much time as it takes for them to tell their story?
- Will people be allowed to ask each other and their witnesses questions?
- Who will speak first?
- Does each side get to make a presentation? Can they call witnesses?
- Will the process offer language interpretation when it is needed?
- Can people bring witnesses or other people who might know about the situation?
- What kind of representatives will people be allowed to bring with them (i.e. friends, family members, Elders, lawyers, etc.)?
- What safety measures will we have in place to protect vulnerable people and ensure that everyone feels safe throughout the process?

Will confidentiality be a part of our dispute resolution process?

Questions to ask:

- How were disputes in our community heard in the past? Publicly or privately?
- What does the word *confidentiality* mean in our community?
- Are there different understandings?
- Would it help to develop one shared definition of confidentiality so everyone in the community has the same understanding?
- Is confidentiality important to our community?
- Should confidentiality be part of our community's dispute resolution process?
- If so, how will the information that people share in a dispute be protected?

Will our community's process offer written decisions and/or settlements?

Questions to ask:

- Will the decision-maker have to give reasons for their decisions?
- Could the decision-maker give only oral reasons, or would they have to give written reasons?

What kind of restorative measures will our community's process offer?

Questions to ask:

- What kind of restorative measures have we used traditionally?
- What kind of restorative measures will our process offer?
- What power will the decision-maker(s) have to order restorative measures (remedies)?
- Could the decision-maker declare that the respondent discriminated against the person who made the complaint?
- Could the decision-maker order the respondent to do, or not do, something (e.g. give someone back their job, give someone a house, etc.)?
- Could the decision-maker order the respondent to pay the complainant compensation for hurt feelings, or for out of pocket expenses?
- Will the parties have to sign something saying they agree to be bound by the decision?
- How can we ensure that commitments made to settle disputes are followed through on?
- How will we evaluate whether the restorative measures are working in our community?

Will there be an appeal process?

Questions to ask:

- Will there be an appeal process? If so, how will it work?
- Who would appeals be made to?
- What would the process and timelines for appeals be?

How will we help protect people who use the dispute resolution process from retaliation?

Questions to ask:

- Have we considered ways to protect people from retaliation?
- What protective measures do we have in place for vulnerable people, or groups, that come forward with complaints?
- What options could we give people who believe they are experiencing retaliation for making a complaint?

Who will be responsible for monitoring and evaluation once our process is implemented?

Questions to ask:

- Who will be responsible for coordinating monitoring and evaluation once our process is implemented?
- How will we know if the process we choose to use is working for our community?
- What kinds of evaluation methods will we use?
- When should we do the first overall evaluation of the process and how often after that?

Step 2: Determine the financial resources you need to implement and run your community-based dispute resolution process. (Chapter 3 and Chapter 4)

Questions to ask:

- What activities do we plan to do to implement our dispute resolution model?
- What kind of advertising will we do to let community members know that the process is now available?
- What kinds of costs will be related to these activities?
- What kinds of ongoing costs will there be once the process is up and running?
- How will we finance the implementation and ongoing costs of our dispute resolution process?
- What financing options are available to us?
- Will we have to do more research before we can apply for more funding?
- Are the same people who were responsible for writing any past applications for funding available to do the same thing again? If not, do any of the people working on the project have experience developing funding applications and proposals?

Step 3: Do research to find appropriate sources of funding (if necessary). (Chapter 3 and Chapter 4)

Step 4: Apply for funding (if necessary). (Chapter 3 and Chapter 4)

Stage 4: Implementation, Monitoring and Continuous Improvement

Step 1: Implement your community-based dispute resolution process. (Chapter 5)

Questions to ask:

- Now that the process exists, how will we let community members know about it?
- How will we ensure that information about the process is accessible to all community members?
- What language(s) will information about the process be available in?

Step 2: Monitor and evaluate how the process is working. (Chapter 4 and Chapter 5)

Step 3: Create a plan for how to improve the process based on the results of monitoring and evaluation (if necessary). (Chapter 5)

Step 4: Implement the identified improvements (if necessary). (Chapter 5)

Step 5: Repeat steps 2-4 as often as your community decides is necessary. (Chapter 5)

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

Appendix E: Contact Information for all of the Human Rights Commissions and Tribunals in Canada

Agency	Telephone Number	Website
Alberta Human Rights Commission	Edmonton and area 1-780-427-7661 Calgary and area 1-403-297-6571 Education and Engagement 1-403-297-8407	www.albertahumanrights.ab.ca
British Columbia Human Rights Tribunal	1-604-775-2000 (TTY) 1-604-775-2021 Toll Free 1-888-440-8844	www.bchrt.bc.ca
British Columbia Human Rights Coalition	1-604-689-8474 Toll Free 1-877-689-8474	www.bchrcoalition.org/
Canadian Human Rights Commission	National Aboriginal Initiative 1-204-983-2189 (TTY) 1-866-772-4840 Toll Free 1-866-772-4880 For complaints or other general information call 1-613-995-1151 (TTY) 1-888-643-3304 Toll Free 1-888-214-1090	www.doyouknowyourrights.ca www.chrc-ccdp.gc.ca
Canadian Human Rights Tribunal	1-613-995-1707 (TTY) 1-613-947-1070	www.chrt-tcdp.gc.ca/
Manitoba Human Rights Commission	Toll Free 1-888-884-8681 (TTY) 1-888-897-2811	www.gov.mb.ca/hrc
New Brunswick Human Rights Commission	Toll Free 1-888-471-2233	www.gnb.ca/hrc-cdp
Newfoundland and Labrador Human Rights Commission	1-709-729-2709 Toll Free 1-800-563-5808	www.justice.gov.nl.ca/hrc
Northwest Territories Human Rights Commission	1-867-669-5575 Toll Free 1-888-669-5575	www.nwthumanrights.ca

Nova Scotia Human Rights Commission	1-902-424-4111 (TTY) 1-902-424-3139 Toll Free 1-877-269-7699	www.gov.ns.ca/humanrights
Nunavut Human Rights Tribunal	Toll Free 1-866-413-6478	www.nhrt.ca
Ontario Human Rights Commission.	1-416-326-9511 (TTY Local) 1-416-326-0603 (TTY Toll Free) 1-800-308-5561 Toll Free 1-800-387-9080	www.ohrc.on.ca
(Ontario) Human Rights Tribunal of Ontario	1-416-326-1312 Toll Free 1-866-598-0322	www.hrto.ca
(Ontario) Human Rights Legal Support Centre	1-416-597-4900 (TTY Local) 1-416-597-4903 (TTY Toll Free) 1-866-612-8627 Toll Free 1-866-625-5179	www.hrlsc.on.ca
Prince Edward Island Human Rights Commission	1-902-368-4180 Toll Free 1-800-237-5031	www.gov.pe.ca/humanrights
(Québec) Commission des droits de la personne et des droits de la jeunesse	1-514-873-5146 (TTY) 1-514-873-2648 Toll Free 1-800-361-6477	www2.cdpdj.qc.ca/en
Saskatchewan Human Rights Commission	Saskatoon 1-306-933-5952 (TTY) 1-306-373-2119 Toll Free 1-800-667-9249 Regina 1-306-787-2530 (TTY) 1-306-787-8550 Toll Free 1-800-667-8577	www.shrc.gov.sk.ca
Yukon Human Rights Commission	1-867-667-6226 Toll Free 1-800-661-0535	www.yhrc.yk.ca

Appendix F: Suggested Human Rights Education and/or Training for Your Community

Below you will find some examples of potential human rights education and/or training you could offer your community. Table 1 matches the various training packages (described below) to the right audience, at the recommended stage of development.

These packages are meant to act as a guide to help you identify the kinds of human rights-related information that each audience might need to know about. As you develop your community's dispute resolution process there may be other types of education and/or training that your community identifies as being important.

Even after your community's dispute resolution process is implemented, human rights education and/or training should be ongoing. Consider making human rights education and training part of your orientation for new employees, and offering human rights information sessions to community members on an ongoing basis.

Table 1: Matching Community Members with Human Rights Training

Stage of Development	Capacity Building for Development and Engaging Your Community	Developing Your Community's Dispute Resolution Model	Implementation Monitoring and Continuous Improvement
Employees dealing with Human Rights	Training packages B and C	Training packages D, E and F	Training package G
Leadership	Training packages B and C	Training packages D, E and F	Training package H
Managers	Training packages B and C	Training packages D, E and F	Training package H
Employees	Training package A		Training package H
Community Members	Training package A		Training package H
Decision-makers	Training package B	Training packages D, E and F	Training package G

Training package A – Human Rights 101 for the Community

- Hierarchy of laws in Canada (including federal/provincial/territorial jurisdiction)
- Overview of the *Canadian Human Rights Act* including:
    - sections 2 and 15
    - the grounds of discrimination
    - the discriminatory practices
    - the definition of discrimination
    - the definition of harassment and sexual harassment
    - the duty to accommodate
- The difference between the Canadian Human Rights Commission and the Canadian Human Rights Tribunal
- Overview of the Canadian Human Rights Commission including:
    - the Commission's mandate
    - general information about complaints that come to the Commission
    - the Commission's dispute resolution process
- Overview of the Canadian Human Rights Tribunal (the Tribunal) including:
    - the Tribunal's mandate
    - the Tribunal's mediation and hearing processes
- Overview of the United Nations *Declaration on the Rights of Indigenous Peoples* (as a minimum set of human rights standards)

Did You Know?

The *Employment Equity Act* is a federal law, which aims to provide equal opportunities for employment to members of four designated groups: Aboriginal peoples, women, persons with disabilities, and members of visible minorities. The *Employment Equity Act* applies to all federally regulated organizations with more than 100 employees, including federally regulated Aboriginal organizations. The *Employment Equity Act* allows private sector employers who primarily promote or serve the interests of Aboriginal peoples to give preference to Aboriginal peoples when hiring.

The Commission also has an Aboriginal Employment Preferences Policy, which allows Aboriginal employers to give preferential treatment to Aboriginal people in hiring, promotion or other aspects of employment. This policy can be found at: http://www.chrc-ccdp.gc.ca/legislation_policies/aboriginal_employment-eng.aspx

Training package B – Human Rights 101 for Your Organization

- Hierarchy of laws in Canada (including federal/provincial/territorial jurisdiction)
- The *Constitution Act,1982* including the *Canadian Charter of Rights and Freedoms*
- The *Employment Equity Act* (if applicable)
- Summary of the *Universal Declaration of Human Rights*
- Summary of the United Nations *Declaration on the Rights of Indigenous Peoples* (as a minimum set of human rights standards)
- Overview of the *Canadian Human Rights Act* including:
  - sections 2 and 15
  - the grounds of discrimination
  - the discriminatory practices
  - the definition of discrimination
  - the definition of harassment and sexual harassment
  - the duty to accommodate
- The difference between the Canadian Human Rights Commission and the Canadian Human Rights Tribunal
- Overview of the Canadian Human Rights Commission including:
  - the Commission's mandate
  - general information about complaints that come to the Commission
  - the Commission's dispute resolution process
- Overview of the Canadian Human Rights Tribunal (the Tribunal) including:
  - the Tribunal's mandate
  - the Tribunal's mediation and hearing processes

Training package C – Leadership, Accountability and Human Rights

- Human rights strategic planning around systemic discrimination
- Managing human rights at work
- Human rights performance measurement systems
- Organizational support for human rights
- Human rights trends
- Conflict resolution and alternative dispute resolution
- Developing human rights protection policies
- Developing other types of policies

Training package D – Diversity

- Respecting differences and anti-discrimination
- Gender-based analysis
- Anti-racism
- Cultural sensitivity
- Diversity management
- Special programs

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

Training package E – Duty to Accommodate

- Duty to accommodate
- Managing the return to work
- Accessibility and universal design
- Workplace ergonomics
- Alternative and accessible formats
- Strategic planning and alternative work arrangements
- Three-step test for Bona Fide Occupational Requirements
- Occupational safety and health versus human rights

Training package F – Anti-harassment

- Leadership skills to prevent harassment and sexual harassment
- The respectful workplace
- The Commission's policy on the prevention and resolution of harassment in the workplace
- Bullying and violence in the workplace

Training package G – Dispute Resolution for Practitioners

- Your community's dispute resolution process
- Mediation
- Negotiation
- Human rights investigation

Training package H – Dispute Resolution for the Community

- Your community's dispute resolution process

A TOOLKIT FOR DEVELOPING COMMUNITY-BASED DISPUTE
RESOLUTION PROCESSES IN FIRST NATIONS COMMUNITIES

Appendix G: Human Rights Reading Guide

This is a list of suggested reading that you can use to help inform your organization and community about human rights. It is not an exhaustive list, but it is a good starting point to increase your understanding of human rights in Canada. All of these publications (except where noted otherwise) can be downloaded for free from: www.doyouknowyourrights.ca or call 1-866-772-4880.

Human Rights Handbook for First Nations

Your Guide to Understanding the Canadian Human Rights Act

Anti-Harassment Policies for the Workplace

Bona Fide Occupational Requirements and Bona Fide Occupational Justifications under the Canadian Human Rights Act

Duty to Accommodate Fact Sheet

Guide for Managing the Return to Work

Harassment and the Canadian Human Rights Act

Pregnancy and Accommodation in the Workplace: A Guide for Employers

Canadian Human Rights Act

Employment Equity Act

Universal Declaration of Human Rights
(available at: http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf)

Declaration on the Rights of Indigenous Peoples
(available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Appendix H: Understanding Policy and Procedure

What is a Policy?

The word 'policy' can mean a lot of things, but basically the term means any direction by senior leadership that tells an organization or community what it will do, and why.

Policies often set standards, rules, or guidelines, for deciding who gets what. When you put policies in place, set rules, or allow decisions to be made, you should make sure they are as inclusive as possible.

For a small organization, a policy is often less than ten pages long. It provides the main information listed in the Checklist for Developing a Policy found in Appendix I.

Why have Policies?

Policies do some important things for an organization overall. They can:

- Communicate values and priorities
- Set expectations for how things are done in your organization
- Help staff and community members to better understand how the organization works
- Ensure the organization operates within the law, and help to protect against lawsuits
- Support fairness, transparency, and consistency in rules, standards, or decision-making that affects staff or community members
- Assist management to make decisions that are consistent, fair, unbiased and predictable
- Put the community's 'way of doing things' into writing and clarify people's roles and responsibilities
- Avoid miscommunication and help reduce disputes and complaints

What is the Difference Between a Policy and Procedures?

Policies outline *what* an organization wants to do. Procedures outline *how* an organization will carry out its policies.

Policies are developed by an organization to govern its actions and to define the principles that guide decision-making. Policies are generally created by upper management. Effective policies help focus attention and resources on high priority issues.

Procedures are practices that are used to implement a policy. They are created by lower level management, or at the operational level of an organization.
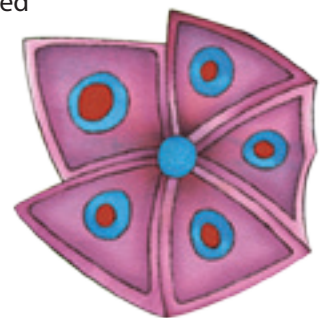
Did You Know?

Some of the most common differences between a policy and its procedures are:

A Policy often…	A Procedure often…
Tells WHAT an organization will do and WHY it must do it, or WHY it has decided to do it	Explains HOW staff in the organization will apply, use, or enforce a policy
Provides rules, standards, or principles	Provides a set of specific instructions
Commits an entire organization or community	Directs managers and staff
Focuses an organization's attention and overall resources towards key priorities or requirements	Makes implementing the policy easier by laying out steps and tasks logically
Sets expectations: tells what behaviour is required, or what behavior is not allowed, along with the potential consequences	Provides step-by-step information: tells how to follow the policy, make decisions under the policy, how to make a complaint, or report a violation of the policy, and who will make decisions about complaints or hear disputes
Outlines the roles and responsibilities of key positions in the organization	Assigns administrative tasks to managers and staff
Tells who is responsible for meeting the goal of the policy	Provides the specific requirements of what information or results must be reported, to whom, and how often
Highlights critical or legal deadlines and obligations for the organization	Highlights administrative timeframes for forms, reports, tasks, or steps for individuals
Made or approved by senior leadership	May be made or approved at the organizational or administrative level

How can we Identify our Organization's Policy Needs?

Briefly go through all of your organization's policies to:

1. Make a list or inventory of all of your organization's current policies.
2. Determine if there are any policies your organization wants to eliminate because they are no longer needed, or they go against human rights principles or laws.
3. Identify any policies that your organization needs to develop. You can develop these policies using the Policy Development Checklist provided in Appendix I. If you have unwritten policies, you can also take this time to write them down.
4. Determine how your traditional teachings and values could be incorporated into your policies.
5. Decide if there are some policies you still need to change or make more inclusive, by including mention of human rights laws, principles, or protections. You can review these policies using the Policy Review Checklist and the Human Rights Analysis Checklist provided in Appendix J.

6. Determine if your policies each have a set of procedures to go with them. If not, you should develop them. Good policies always have a set of procedures to support them.

7. Explore whether any policies could have unintended negative effects on people, based on a ground of discrimination. Be sure to review these policies using the Policy Review Checklist and the Human Rights Analysis Checklist provided in Appendix J.

Did You Know?

Some activities of First Nations organizations are federally regulated and others are provincially regulated, so it is important to gather the legal information you need to understand your organization's human rights obligations.

Review the *Human Rights Handbook for First Nations* and other human rights publications developed by the Commission to help you better understand your organization's human rights obligations. They can be found at: www.doyouknowyourrights.ca or by calling 1-866-772-4880.

Appendix I: Developing Policies

Every organization will have different capacity and organizational support for policy development. As you will recall from Chapter 3 in the Toolkit, there are four different kinds of policies that organizations can have:

1. Human rights protection policies (e.g. Duty to accommodate policy)
2. Human resources policies (e.g. Hiring and recruitment policy)
3. Other employment or corporate policies (e.g. Privacy and records policy)
4. Service provision policies (e.g. Membership policy)

If your organization has any unwritten policies, you could also take this opportunity to develop them into written policies.

Follow the steps outlined in the Stages for Developing a Policy section, and use the Policy Development Checklist to develop policies for your organization.

Policy Development Cycle

Stages for Developing a Policy

Stage 1: Plan

Step 1. Prepare

- Get leadership support and identify a champion
- Assign someone with expertise on the issue to advise staff, or train a staff member on the issue
- Organize a small working group to provide advice and discuss issues as you proceed (e.g. experts, lawyers, human resources staff, people who will be affected, Elders, community members, etc.)

Step 2. Identify Key Issues

- Gather information about the topic: get legal information, and ask members of the community, especially vulnerable groups for their perspectives
- Define the goal of the organization and why that goal needs a policy to get there
- Decide the audience you are trying to reach (e.g. employees, managers, community members, etc.) and why they will help solve the problem or address the issue in question
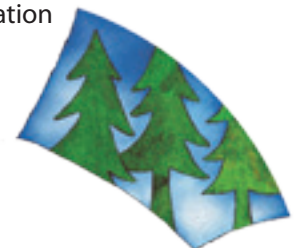
Step 3. Research

- Find out how the law applies to the issue: international, domestic, traditional and customary laws and principles, labour laws, employment laws, law specific to that area (e.g. education, housing, etc.)
- Gather information on policies from many sources (e.g. experts or technical specialists, lawyers, leaders, Elders, managers, employees, community members, other communities, etc.)
- Talk to community members (e.g. Elders, youth, women, men, people with disabilities, single parents, members living off reserve, etc.)

Step 4. Generate and Analyze Policy Options

- Develop some possible policy options that would be most likely to resolve the problem or meet the goal your organization identified earlier
- Choose the most reasonable solution(s) and estimate the costs of developing and implementing the policy
- Highlight human rights protections and laws where they apply
- Use a human rights analysis to identify and eliminate (or minimize) any possible discriminatory effects of the policy
- Assess the policy solutions to ensure they would work practically for your organization

Step 5. Choose the Best Policy Option

- Present senior leadership with a summary of the best options and a recommendation on which one to choose
- Have senior leadership choose and approve the direction or approach

Stage 2: Write

Step 1. Research

- Find good practice examples, policy samples, templates, or sample clauses from the United Nations, non-governmental organizations, commissions, or other organizations

Step 2. Draft

- Write a draft policy using the Checklist for Developing a Policy
- Draft any procedures that will be related to the policy
- Do a more detailed human rights analysis to identify and minimize barriers or possible unintentional discrimination (especially important if the policy provides or limits benefits)
- Plan how your organization will communicate the policy to your intended audiences to ensure it is followed
- Get approval of the Draft Policy to proceed with engagement

Stage 3: Engagement

Step 1. Get Input and Adjust

- Publicize your policy development process early to maximize the stakeholder input that you are seeking
- Ask for input from those who will be affected by the policy and those who will likely use the policy
- Talk to other stakeholders
- Talk to experts
- Talk to community members (e.g. women, men, youth, members living off reserve, people with disabilities, Elders, etc.)
- Talk to policy leaders in other communities through the use of Tribal Councils, national organizations, Aboriginal industry or professional groups

Step 2. Finalize

- Make any adjustments that are needed based on the input you received
- Write the final policy
- Get a legal review
- Ensure the final version of the policy is in plain language and translated into any languages that are required (e.g. your Indigenous language, etc.)
- Get the policy approved by senior leadership

Stage 4: Implementation

Step 1. Implement

- Post the policy in prominent areas (e.g. on the Internet, on bulletin boards in the Band office, other public areas, etc.)
- Communicate the policy to staff who will be responsible for implementing and/or following the policy

- Communicate the policy to your target audiences that were identified earlier (e.g. community members affected by the policy)
- Provide training on the policy for senior leaders, managers, supervisors, and employees
- Use and apply the policy in the daily operations of your organization

Step 2. Monitor and Evaluate

- Track results (e.g. complaints, cases, resolutions, etc.)
- Get feedback from those using the policy and those affected by it to determine how well the policy is working

Stage 5: Review and Adjust

Step 1. Review the Policy Regularly

- Use the Policy Review Checklist and the Human Rights Analysis Checklist located in Appendix J to review any policies you develop

Did You Know?

The Commission has heard that some First Nations hire consultants to develop their policies for them. If this is the case in your community, consider including a clause in the consultant's contract that says that any documentation relating to the policy being developed remains the property of your First Nation or Tribal Council.

Policy Development Checklist

This checklist is intended to help you when you are developing a policy. It highlights the major points that should be included in a policy.

❑ **Policy statement:** identifies the goal or objective of the policy, or the organization's position on the issue in question.

❑ **Rationale:** explains why the policy is needed.

❑ **Legal Framework:** provides a summary of the relevant laws and regulations related to the issue being addressed in the policy. Some of the laws that might be relevant include:

- International laws: *Universal Declaration of Human Rights* and United Nations *Declaration on the Rights of Indigenous Peoples*
- *Canadian Charter of Rights and Freedoms*
- Applicable sections of the *Canadian Human Rights Act* or provincial human rights codes
- Labour Codes
- Health and Safety Codes
- Accessibility laws
- Privacy laws

❑ **Scope of the Policy:** explains who and/or what is affected by the policy, and when the policy applies. Consider:

- Who (e.g. all employees, managers, etc.) the policy applies to (i.e. who must follow it)
- How the policy applies to decision-making/what kinds of decisions must take this policy into consideration
- What activities are covered and how the policy interacts with other organizational policies
- The date the policy is effective

❑ **Policy Requirements:** identifies what is required or expected from the people who must follow the policy. For example:

- What actions or behaviours are required or expected
- What actions or behaviours are not allowed
- What values, principles or approaches will be followed
- The consequences of violating the policy (i.e. potential disciplinary actions or other implications)
- What kind of complaints can be made and any deadlines for making a complaint
- Community-based dispute resolution processes and/or appeal processes available
- External dispute resolution processes that are available

❑ **Definitions:** explains any important terms and phrases used in the policy. This is especially important if they have a specific legal meaning.
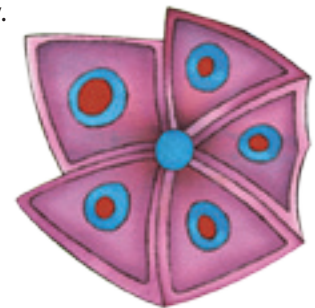
- ❑ **Roles and responsibilities:** identifies the people, or groups, affected by the policy, and explains their roles and responsibilities relating to the policy. For example, what would the roles and responsibilities be of:
  - Senior Leadership
  - Managers and supervisors
  - Employees
  - Employee representatives (e.g. Unions)
  - Clients or customers, community members and/or members of the public
  - Staff responsible for receiving complaints about violations to the policy and dealing with disputes
- ❑ **Administration:** identifies the people responsible for dealing with the policy on a day-to-day basis and other aspects of overseeing the policy. This section identifies things like:
  - Who will keep records
  - How privacy and confidentiality will be ensured
  - How often the policy will be reviewed
  - Who is responsible for communication about the policy
  - Who is responsible for training related to the policy
  - Who is responsible for clarification or analysis related to the policy
  - Who is responsible for reviewing, approving or making changes to the policy
- ❑ **Questions:** explains where people can get more information or ask questions about the policy.
- ❑ **Related Procedures:** explains how the policy will be used, implemented or carried out. This section would:
  - Identify timelines for decisions or actions to be made under the policy (including timelines for various stages or steps)
  - Provide any sample forms or templates that are needed
  - Provide information resources and tools (or identify where to find them)
  - Provide examples of situations that highlight how the procedures work
  - Provide examples of best practices to follow the policy, and what behaviours might go against the policy
  - Outline the process for complaints:
    - Identify what office or who should be contacted to make a complaint about a violation of the policy or to raise a concern about the policy
    - Explain how to make a complaint (e.g. what form(s) to fill out or other details that are required)
    - Explain the steps involved in your community-based dispute resolution process
    - Explain the steps involved in your community's appeal process
    - Explain how to make complaints or appeals to outside organizations (e.g. the Canadian Human Rights Commission, provincial human rights commissions, Employment Tribunals, Ombudspersons, etc.)
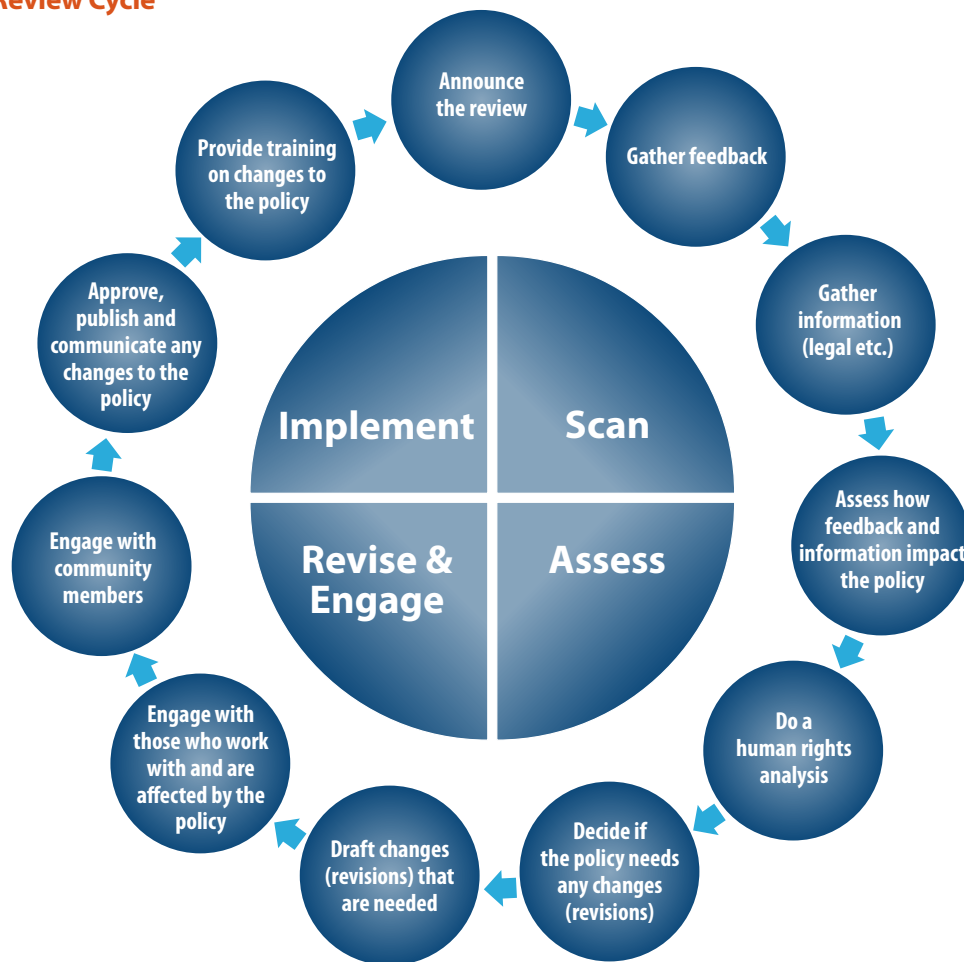
Appendix J: Reviewing Policies

Sometimes the impacts of a policy can only be seen after a couple of years, or they are easier to see after you have been using the policy for a while. When you have written policies and procedures in place, it is important to review them regularly.

Sometimes policies do have to treat people differently. However, the different treatment must be for a good reason. Different and negative treatment that is not justified may be a problem and could result in complaints and/or disputes. Any policy that could be potentially discriminatory based on one or more of the grounds of discrimination listed in the *Canadian Human Rights Act* should be changed to prevent discrimination complaints and/or reduce disputes.

You may want to focus on human resources policies first. Once this is done, review other workplace policies, as well as any service provision policies your organization has.

Follow the steps outlined in the Stages for a Policy Review section, and use the Policy Review Checklist and the Human Rights Analysis Checklist to review your organization's policies.

Policy Review Cycle

The cycle (clockwise) consists of four central stages — **Implement**, **Scan**, **Assess**, **Revise & Engage** — surrounded by the following steps:

- Announce the review
- Gather feedback
- Gather information (legal etc.)
- Assess how feedback and information impact the policy
- Do a human rights analysis
- Decide if the policy needs any changes (revisions)
- Draft changes (revisions) that are needed
- Engage with those who work with and are affected by the policy
- Engage with community members
- Approve, publish and communicate any changes to the policy
- Provide training on changes to the policy

Stages for a Policy Review

Stage 1: Scan

Step 1. Let people within your organization and community members know you are conducting a review, and gather feedback from them. Ask for feedback on the policy and its impact from:

- Senior leadership
- Managers
- Employees
- Community members
- The person or people who make decisions using the policy
- Those responsible for training or reporting on the policy
- Those who receive benefits from it
- Those who do not receive benefits from it, or may be negatively affected by it

Step 2. Gather information on changes that have happened within your organization or community

Step 3. Gather information on any changes in the law(s) that relate to the policy

Step 4. Look at what the policy does or what effect it has on people. It is good to engage community members from many different backgrounds (e.g. Elders, youth, women, men, single parents, gay and two spirited people, people with disabilities, etc.) as they may be able to share different perspectives that you have not even considered

Stage 2: Assess

Step 1. Use the Policy Review Checklist to assess your policies. If you assess the policy and determine that no changes are necessary, your review could end at this stage

Stage 3: Revise and Engage

Step 1. Make any necessary changes (revisions)

Step 2. Have the changes reviewed by a lawyer if necessary

Step 3. Share the proposed changes with anyone that you talked to during Stage 1 (Scan) and ask their views on the changes before you finalize them

Stage 4: Implement

Step 1. Get the changes approved by senior leadership or management

Step 2. Advertise the changes that have been made

Step 3. Provide training to managers and/or employees on the changes if necessary

Policy Review Checklist

You can use this checklist to assess your policies and help you determine whether they need to be changed.

1. **Ensure the policy is necessary, relevant and up to date**
   - ❑ Does the policy still reflect the goals of the organization?
   - ❑ Has the policy accomplished the goal it was intended to accomplish?
   - ❑ Does the policy still reflect the way the industry works? Does the policy meet best practices in the area?
   - ❑ Are the policy's related procedures up to date?
   - ❑ Is the policy still needed (i.e. could it be eliminated or combined with another policy)?
2. **Make the policy clearer and easier to understand**
   - ❑ How has the policy worked with other policies in the organization?
     - ❑ Has there been any confusion or contradiction between this policy and other policies or rules in the organization?
   - ❑ Are people following the policy?
     - ❑ If not, do you know why?
     - ❑ How could the policy be changed to get people to follow it better?
   - ❑ Can the policy be clearer?
   - ❑ Is more communication or training about the policy needed?
     - ❑ Do people who are responsible for applying or administering the policy understand it, and their roles and responsibilities in relation to the policy?
     - ❑ Do people who have to follow the policy understand it, and their roles and responsibilities in relation to the policy?

> **Did You Know?**
>
> It is important to record your policy review in writing. This can help demonstrate that careful thought was given to the impact and consequences of your policy decisions. Make sure that your records include who you talked to during the review process, and how information about your policies was made available to both employees and community members.
>
> The Commission has heard that some First Nations hire consultants to do their policy reviews for them. If this is the case in your community, consider including a clause in the consultant's contract that says that any documentation relating to the policy review remains the property of your First Nation or Tribal Council.

3. **Make the policy more effective and/or fair**
   - ❑ Is the policy being interpreted and implemented fairly?
   - ❑ Has the policy resulted in fair decision-making?
   - ❑ Has the policy had any unanticipated or negative effects?
     - ❑ Could these negative effects be eliminated or reduced in any way?
   - ❑ Has the policy helped to prevent disputes, clarify concerns, or resolve complaints on the issue it deals with?
   - ❑ How many disputes, concerns or complaints have been raised about the policy?
   - ❑ What kinds of disputes, concerns or complaints have been raised about the policy?
   - ❑ Does the policy refer people to an internal or community-based dispute resolution process?

4. **Ensure the policy complies with current laws and regulations**
   - ❑ Has the legislation or case law related to the policy developed or changed?
   - ❑ Does the policy mention the right laws or regulations (where appropriate)?
   - ❑ Does the policy comply with current international laws and principles, federal and/or provincial/territorial laws (e.g. labour laws, health and safety laws, etc.)
   - ❑ Does the policy mention human rights principles or specific grounds of discrimination (where appropriate)?
   - ❑ What is the impact of the policy on vulnerable groups such as people with disabilities, women, Elders, single parents, etc.?
   - ❑ Can the rules or decision-making in the policy be changed to be more inclusive, or to eliminate or reduce negative impacts or discrimination?
   - ❑ Use the Human Rights Analysis Checklist to discover and remove (or minimize) any negative impacts or discrimination within the policy

Did You Know?

You can follow the same steps outlined in the Policy Review Checklist to review any unwritten policies your organization might have. Reviewing an unwritten policy is often easier if you start by writing down your understanding of how things are done in relation to the policy. Also consider whether it would make sense to develop the unwritten policy into a written policy.

Human Rights Analysis Checklist

You can use this checklist to help review your policies to ensure that they meet your organization's human rights obligations and do not discriminate against people or groups for unfair reasons.

1. **What is the goal of the policy?**
   - ❏ Does the original problem or reason for the policy still exist or have circumstances changed?
   - ❏ Is the goal of the policy still important?
   - ❏ Does the policy actually help in reaching the goal?
     - ❏ How can you tell?
     - ❏ How do you measure this?
   - ❏ Why was this particular policy chosen?
     - ❏ Who decided this?
     - ❏ Based on what information?
   - ❏ How and when was the policy put in place?

> **Did You Know?**
>
> When a person needs accommodation it is very important to do an individual assessment. This means determining how to best meet each person's accommodation needs separately and independently. Just because two people appear to have the same need, does not mean that the same solution will work for both of them. It is important to look at every request for accommodation on a case by case basis.

2. **Is anyone affected differently *and* negatively by the policy?**
   - ❏ What individuals or groups are affected by the policy?
   - ❏ What distinctions does the policy make?
   - ❏ Does the policy require a decision-maker to make individual assessments of situations, or to make assumptions or generalizations about groups of people?
   - ❏ Who receives benefits from the policy?
   - ❏ Who does not receive benefits from the policy?
     - ❏ Does this affect them negatively?
   - ❏ Is anyone excluded from the policy?

3. **Is the negative effect based on one of the grounds of discrimination listed in the *Canadian Human Rights Act*?**
   - ❏ Does the policy create a negative effect for any person or group based on a ground of discrimination listed in the *Canadian Human Rights Act*, or on a combination of these grounds?

> **Did You Know?**
>
> If a policy creates a negative effect (including a barrier or disadvantage) for a person or group based on a ground of discrimination, it could cause a dispute or result in a discrimination complaint. To avoid this, you should try to eliminate (or minimize) the negative effect that is caused.

4. **If you find that a policy results in a person, or group, being treated differently and negatively based on one (or more) of the grounds of discrimination, ask yourself:**
   - ❏ Is there a reason that might justify the negative effect in the policy?
     - ❏ Does it balance or attempt to correct pre-existing inequities or a larger historic unfairness?
     - ❏ Is it based on a "special program" under the *Canadian Human Rights Act* or the *Employment Equity Act* (if applicable)?
   - ❏ Is there an Aboriginal or treaty right at stake?
     - ❏ Make sure any links between a policy and your Aboriginal and treaty rights are clearly explained.
   - ❏ Is the policy based on a First Nations legal tradition or customary law?
     - ❏ Make sure any links between a policy and your community's legal traditions and customary laws are clearly explained.

> **Did You Know?**
>
> The *Canadian Human Rights Act* has an interpretive provision. An interpretive provision is different from a regular clause in a law passed by Parliament. Basic pieces of a law are contained in regular clauses. However, an interpretive provision usually gives legal definitions and explains how those words apply to the law. In this case the interpretive provision provides guidance on how to apply and understand the *Canadian Human Rights Act.*
>
> The interpretive provision states:
>
> *In relation to a complaint made under the* Canadian Human Rights Act *against a First Nation government, including a band council, tribal council or governing authority operating or administering programs or services under the* Indian Act*, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.*
>
> The Commission has undertaken a number of research projects related to the interpretive provision. For copies of this research and more information about the interpretive provision go to: www.doyouknowyourrights.ca or call 1-866-772-4880.

5. **Is there a way to accomplish the objective of the policy in a different, more inclusive way?**
   - ❏ Is the current way of doing things the least discriminatory way of achieving the goal of the policy?
     - ❏ What would be the result if the parts of the policy that caused the negative effect were removed or changed?
     - ❏ Could the overall goal of the policy still be achieved?
   - ❏ Have you talked to the person or group that experiences the negative effect about possible alternative arrangements?
     - ❏ Is there a way to eliminate the negative effect (i.e. the barrier or disadvantage)?
     - ❏ Are there other ways of accomplishing the policy's goal that are less discriminatory?
     - ❏ Could the policy be changed to include these alternatives?
   - ❏ Would there be an undue hardship in changing the policy to eliminate or reduce the negative effect and make the policy more inclusive?

Did You Know?

Alternative arrangements are special arrangements meant to eliminate or reduce negative effects, such as barriers or disadvantages, that single out and treat an individual, or group, differently and negatively because of one of the grounds of discrimination.
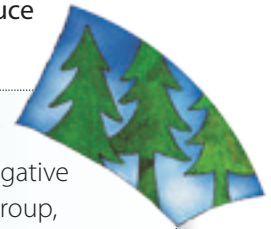
6. **Is there an appeal process if someone disagrees with the policy?**
   - ❏ Can people complain if they disagree with the policy or a decision made under the policy?
     - ❏ Who can make a complaint?
   - ❏ Is there a community-based dispute resolution process available?
   - ❏ Does the policy offer any outside or external dispute resolution processes (e.g. a federal government department, a labour board, a human rights commission, etc.)?