

SAWRIDGE FIRST NATION

DISPUTE RESOLUTION ACT (2019)

First Reading – December 15, 2018

Second Reading – March 23, 2019 (with Amendments)

Third Reading – April 13, 2019

Came in to Force – April 13, 2019

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DISPUTE RESOLUTION ACT (2019)

Preamble

WHEREAS Article 2 (2) of the *Sawridge Constitution* states that all Members and others affected by decisions made by First Nation officials or employees shall have access to a conflict resolution instrument established or to be established for by Law or regulation of the First Nation when a person believes he or she has been treated unfairly, discriminated against, or treated in a manner not in accord with accepted standards of administrative fairness,

The Sawridge General Assembly hereby enacts as follows:

Title

1. (a) This Act may be cited as the Dispute Resolution Act (2019).
- (b) The Dispute Resolution Act which came in to force on March 27, 2010 is repealed.

Definitions

2. In this Act, the following terms are defined:

"Administrative fairness" means that decisions are arrived at fairly in accord with natural justice and procedural fairness, and includes both substantive and procedural aspects, such as the right to know the reasons for a decision, that concerned parties have had adequate notice and an opportunity to express their concerns, there has been no unreasonable delay, that appropriate actions have been taken, that established procedures have been followed, that correct and accurate information has been provided, that appropriate policies, procedures and practices have been applied;

"Administrative decision" means a decision in which discretion is limited by law or policy and for which a duty of administrative fairness must be fulfilled, thus making the decision reviewable by a judicial body;

"Body" means any Sawridge Board, Commission, Committee, Council, or other body created by or recognized by the Sawridge First Nation;

"business day" means a day that the principle office of the Sawridge First Nation is open for business, but shall not include any Saturday, Sunday or Holiday.

“Official” means any Sawridge Official whether elected, appointed or employed by the Sawridge First Nation;

“Political decision” means a decision made by an elected official or elected body of a policy nature and which has general application and for which the accountability is to the electorate;

“without prejudice” with respect to a right or interest means that the information provided or position taken shall not affect that right or interest.

Interpretation

3. The Constitution is hereby interpreted as meaning that the number of Elders Commissioners shall be the same as the number of Councilors on Council.

Regulations

4. The Council may make regulations respecting such subjects as are permitted by this Act.

Initializing the Dispute Resolution Process

5. (1) Any person has the right to make an oral complaint or to express concerns in a respectful manner to any Sawridge Official or Body, without prejudice to the complainant’s rights or interests, regarding any administrative decision which affects that person’s interests or rights, or when a person believes he or she has been treated unfairly, discriminated against, or treated in a manner not in accord with accepted standards of administrative fairness.

(2) Additionally, a Sawridge member has the right to make an oral complaint or to express concerns in a respectful manner to any Sawridge Official or Body, without prejudice to the member’s rights or interests, regarding any administrative decision which affects the member’s interests or rights or which the member believes is detrimental or injurious to the Sawridge First Nation or which the member believes is wrong.
6. If a person making an oral complaint is not satisfied with the way in which the complaint or issue was resolved, or if a person wishes to initiate in writing a complaint for the first time as a written complaint on the grounds set out in the above section, the person may make a written complaint addressed to the Official, or Body without prejudice to the person’s rights or interests.
7. An oral complaint shall be made at the earliest appropriate time possible, but in any case, not later than seven business days after the complainant learned or in the

circumstances ought to have learned of the decision or issue giving rise to the complaint.

8. A written complaint shall be made at the earliest appropriate time possible, but not more than 30 days after the decision or issue giving rise to the complaint occurred or 30 days after the adverse effects of the decision or issue became known or should have been known to the person or member, but in any case, within one year of the date of the decision or issue giving rise to the complaint even if the adverse effects have not yet become known within that time.
9. The written complaint shall be accompanied by any documents, photographs, or other materials relevant to the complaint or issue which are in the possession of the complainant.
10. The contents of the written complaint shall be held in absolute confidence by any Sawridge Official or any member of a Body receiving or seeing the complaint.
11. Decisions made by Council or the Elders Commission which are of a political nature or in which Council or the Elders Commission is permitted or expected to make a policy decision of general application are not considered to be administrative decisions but where an administrative decision is made by Council or the Elders Commission, as the case may be, it shall be considered to be a Body for purposes of this Act.
12. Decisions made by the Council or the Elders Commission while acting as an Appeals Tribunal are not considered administrative decisions.
13. Where other legislation has set out a dispute resolution process with regard to a particular official or matter, that legislation shall prevail.

Handling of a Written Complaint Involving Officials

14. Any Official receiving a written complaint shall within seven business days of receipt of the complaint forward a copy of the complaint together with any other written explanation, documents, or other materials, to the Official's immediate supervisor, or if the official is an elected Official, to the Chief and Council.
15. The supervisor of the Official who is the subject of a written complaint, or the Chief and Council, without the participation of the elected Official in the disposition of the complaint when that Official is the subject of the complaint, as the case may be, shall, within ten business days after receiving the Official's explanation and materials, provide to the complainant

- a) a copy of the materials received from the Official including the Official's written explanation;
- b) a copy of any other reports made;
- c) a letter to the complainant
 - i) rejecting the complaint on grounds that it is unsupported by the facts in the materials provided;
 - ii) rejecting the complaint because the Official's version of the facts is accepted and is contrary to the complainant's version of the facts;
 - iii) accepting the complaint wholly or partially as warranted, and offering to resolve the matter.

16. If the complainant and the Officials involved agree to enter into discussions or mediation regarding resolution of the matter, which can happen at any time during the process, those discussions shall be considered open and active and on a without prejudice basis and shall continue until such time as the parties reach an agreement set out in writing or one party provides the other party with notice that the discussions are considered to be terminated. While such discussions are ongoing, the time for steps in the Appeal process shall stand still.

Appeal of Complaint Handling Involving Officials

17. (1) If the complainant is not satisfied with the letter received or is not satisfied with the final result of resolution, the complainant may, within 30 days after the letter is received or 30 days after notice that the discussions are considered to be terminated,

- a) place the complaint before the Elders Commission which will act as an Appeals Tribunal except where the complaint is with regard to the Elders Commission or a member of the Elders Commission, or
- b) place the complaint before Chief and Council which will act as an Appeal Tribunal where the complaint is with regard to the Elders Commission or a member of the Elders Commission, and
- c) provide notice to the Official or Officials involved in the complaint that the complaint has been placed before the Elders Commission or the Chief and Council, as the case may be.

(2) Part II of the Governance Act shall apply where a member of an Appeals Tribunal is in a Conflict of Interest.

18. All documents exchanged between the complainant and Officials shall be provided to the Elders Commission or the Chief and Council, as the case may be, by

the author of the letter within 30 days of receipt of notice of the Appeal to the Appeal Tribunal.

Handling of a Written Complaint Involving A Body

19. Any Body receiving a complaint shall within 30 days of receipt of the complaint reach a decision as to how it wishes to respond to the complaint.

20. The Body may respond to the complaint by

- a) reconsidering its decision;
- b) reopening its proceedings;
- c) rejecting the complaint;

and providing written reasons for its decision.

21. The Body shall provide written notice of its response to the complaint within 10 business days after reaching its decision.

Appeal of Complaint Handling Involving Bodies

22. If the complainant is not satisfied with the decision of the Body regarding the handling of the complaint, the complainant may, within 30 days after receipt of the decision, place the complaint before the Elders Commission which will act as an Appeals Tribunal, unless the Elders Commission is the Body being complained about, in which case the Council shall be the Appeals Tribunal.

Appeals

23. Upon receiving an appeal, the Appeals Tribunal will order the Official or Body to provide within 30 days its written answer to the appeal, together with all papers, documents, and decisions which it has made.

Appeal Handling Process

24. The Appeals Tribunal will convene to hear the appeal within 30 days after receiving the papers, documents, and decision.

25. The Appeals Tribunal shall act as a creative facilitator to assist all parties to craft a mutually-satisfactory solution to the issue and the complaint.

26. The objective of the Appeal Tribunal's consideration shall be to reconcile the parties involved in the complaint and to assist the parties to resolve the matter by helping the parties to see all sides of the issue and to explore available options for resolution.

Further Appeal To the General Assembly Regarding Complaint Handling

27. If a complainant or a respondent is not satisfied with the results of the Appeal and reconciliation process provided by the Appeal Tribunal, the complainant or respondent may lodge an Appeal to the General Assembly by providing written notice to the Clerk of the Assembly.
28. The Clerk of the Assembly shall call for the Appeal Tribunal to provide to the Assembly all written and other materials which were tabled with it regarding the matter, and the Appeal Tribunal shall provide the materials without delay.
29. The Clerk of the Assembly shall excise from copies of the materials presented any information of a confidential nature.
30. The General Assembly shall hear the appeal at the first ordinary or Special Assembly which occurs at least 30 days after the notice has been provided to the Clerk.
31. Subject to the approval of the Assembly, the Speaker of the Assembly shall decide the appropriate, just and fair manner in which the appeal will be dealt with by the Assembly in a dignified and respectful manner, including referral of the appeal to a Committee struck for that purpose, and shall make rules as to the degree of confidentiality which is appropriate in the Assembly's proceedings, including, if deemed appropriate, referral of confidential information excised from the materials by the Clerk to the same or another Committee.
32. The Assembly may, by resolution, provide itself with whatever powers it considers appropriate for it to resolve the matter, including powers to call witnesses, to review documents, to conduct investigations to determine the facts against which allegations can be examined and evaluated and about which conclusions can be drawn.
33. The Assembly may provide such appropriate, just and fair relief and remedies as it sees fit, including making recommendations to Council, the Elders Commission, and government boards, commissions, committees and other agencies.
34. The Assembly may reserve its final disposition of the matter until such time as an opportunity has been given for the implementation of the recommendations.

General

35. Any party who might be affected by decisions made by the Appeal Tribunal or the General Assembly shall have the right to disclosure of all materials before the Appeal Tribunal or the General Assembly, to respond to allegations and to provide evidence and submissions.

36. A Complainant or Appellant may at any time withdraw their complaint or appeal by providing notice to the person or body which is required to deal with the matter and all other parties. Once a Complaint or Appeal is withdrawn, no new complaint or appeal with respect to the decision complained about or appealed may be made by that person.