

Yukon Surface Rights Board

Our Website

Application forms for the Yukon Surface Rights Board, all Board decisions and supporting documents, including copies of the legislation governing the Board, the Board's Rules of Procedure, and other material are available at the Board's office and on the website:

www.yukonsurfacerrights.com

Yukon Surface Rights Board

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The Yukon Surface Rights Board

The primary role of the Yukon Surface Rights Board (the "Board") is to resolve access disputes between persons owning or having an interest in the surface of the land and others having a right to access or use the land. The Board's process starts when the parties are unable to reach an agreement and a party applies to the Board.

The Board's jurisdiction is derived from several statutes. The primary authority for the Board is set out in the *Yukon Surface Rights Board Act* (Canada).

Additional responsibilities of the Board are set out in other laws and agreements including the *Quartz Mining Act* (Yukon), *Placer Mining Act* (Yukon), *Oil and Gas Act* (Yukon), *Expropriation Act* (Canada), *Radiocommunications Act* (Canada), and individual Yukon First Nation Final Agreements.

What types of disputes does the Board hear?

The Board's primary responsibility is to hear and decide disputes related to accessing or using Yukon First Nation settlement land and, in certain circumstances, disputes involving access to or use of non-settlement land.

Settlement land

In relation to settlement land, the responsibilities of the Board include:

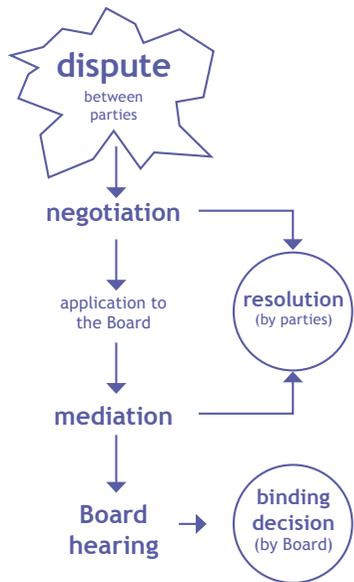
- resolving access disputes between a Yukon First Nation and a person with a right to enter and use, cross, or stay on that Yukon First Nation's settlement land;
- resolving access disputes between a Yukon First Nation and a person with right to access settlement land in order to exercise a mineral right;
- resolving disputes between Government and a Yukon First Nation relating to Government's use or restoration of gravel quarries located on settlement land; and
- determining the compensation to be provided to a Yukon First Nation for the expropriation of settlement land.

Non-settlement land

In relation to non-settlement land the primary responsibility of the Board is to resolve disputes between a person with a right or interest in the surface of land, for example a landowner, and a person who has a right of access to that land under a mineral right. The Board also has specific responsibilities under the *Placer Mining Act* (Yukon) and the *Quartz Mining Act* (Yukon) to hear and determine disputes about compensation to be paid under those Acts for loss or damages, and about the adequacy of security required by the mining recorder.

Application and Hearing Process

What to do if there is a dispute?



Negotiate

The Board is intended to be the last means of resolving disputes. Consequently, applicants must attempt to resolve their disputes through negotiation before they apply to the Board for an order. Negotiation attempts must be documented and meet the minimum requirements outlined in the Board's *Rules of Procedure*. Attempts at negotiation may include:

- telephone discussions
- in-person meetings
- mediation attempts
- correspondence between parties

What to do if negotiations are unsuccessful?

Apply to the Board

If the dispute is not resolved by negotiation, either party may submit an application to the Board for consideration. The application must include the supporting documentation required by the *Yukon Surface Rights Board Act* and the Board's *Rules of Procedure*.

The *Guide to Making an Application to the Yukon Surface Rights Board* has helpful advice on completing and filing an application.

If the Chairperson of the Board determines that the application is complete, the application is submitted to the Board.

Mediation

When the Board accepts an application it will first offer mediation to the parties. If the parties agree to mediation, the Board will appoint a mediator and contribute a nominal amount, set out in the *Rules of Procedures*, towards the cost of mediation. The parties involved in the dispute are responsible for any additional mediation costs.

If mediation is successful, the parties may agree to:

- not involve the Board further and have their mediated settlement direct future interactions between the parties; or
- request that the terms and conditions of a mediated settlement be made an order of the Board. The Board may make the settlement an order only if the terms and conditions of the submitted mediated settlement fall within the scope of the Board's authority.

What if mediation is unsuccessful?

Proceed to a hearing

If the dispute is not resolved by mediation, the matter will normally proceed to a hearing.

The hearing will follow the process set out in the *Yukon Surface Rights Board Act* and the Board's *Rules of Procedure*.

An application to the Board will usually be heard and decided by a panel of three Board members. If settlement land is involved at least one of the panel members will be a Board member nominated by the Council of Yukon First Nations. However, the *Act* does allow the parties to an application to agree to a panel comprised of a single Board member.

Who may participate in a hearing?

Section 29 of the *Yukon Surface Rights Board Act* identifies the parties to a hearing. The parties to a hearing may include:

- the parties to the dispute and any other party the Board determines has a right or interest in the land areas affected by the dispute;
- where settlement land is an issue, the affected Yukon First Nation and any affected interest holder;
- in some cases, the Minister of Aboriginal Affairs and Northern Development and/or a designated minister of the Government of Yukon; and
- in the case of applications related to accessing mineral rights on non-settlement land, the mining recorder.

FAQ's

What are surface rights?

Surface rights refer to the rights and/or interests associated with the surface of land which may include land ownership, leasehold interests, or other rights to access or use the surface of land.

What are subsurface rights?

Subsurface rights refer to rights associated with resources below the surface of land such as minerals, oil, and gas.

Do land owners have subsurface rights to their land?

Not usually. Most private landowners have "fee simple" title to their land which typically does not include the subsurface rights.

Does First Nation settlement land include subsurface rights?

First Nations have both surface and subsurface rights on Category A Settlement Lands. On Category B Settlement Lands, they have only the surface rights; the subsurface rights on Category B lands are reserved to the Crown.