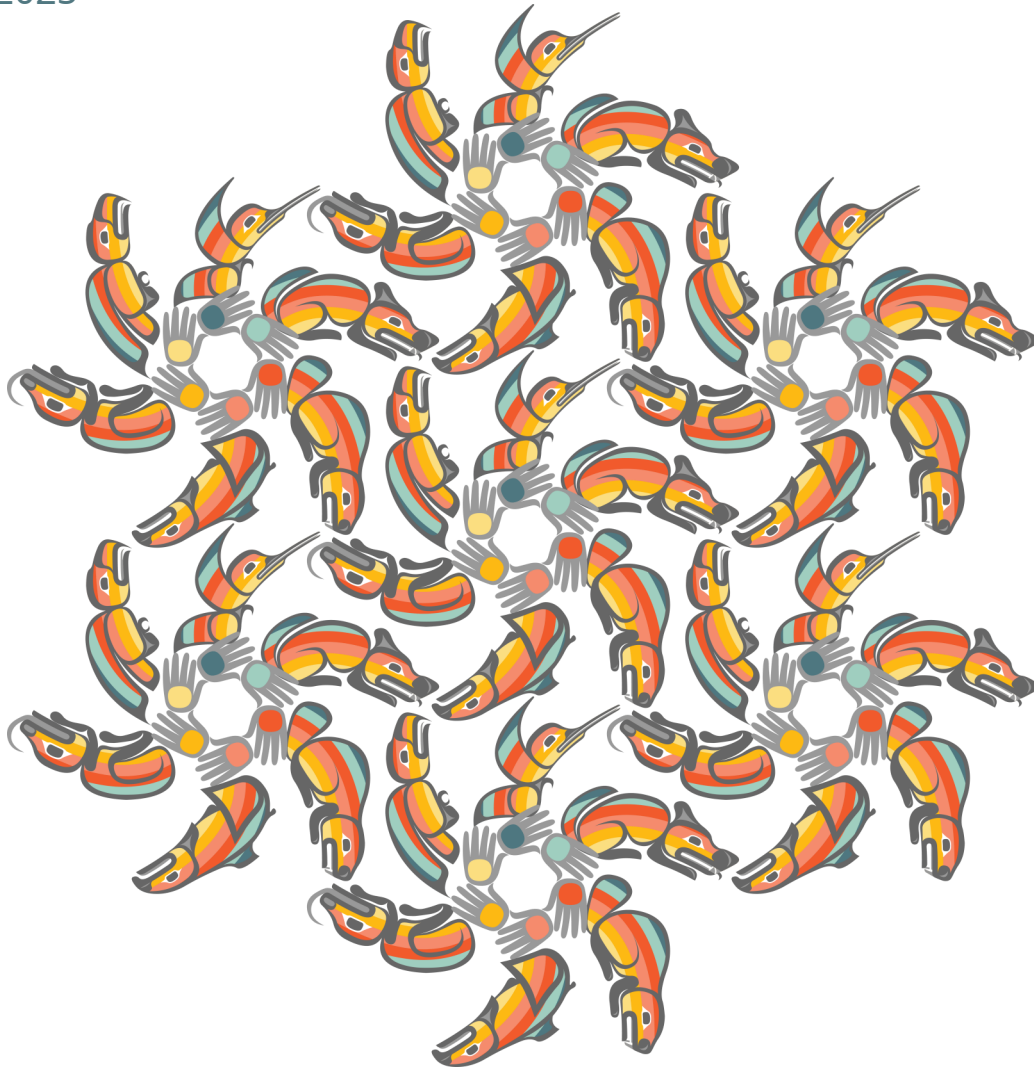


REVISING DISPUTE RESOLUTION IN ENVIRONMENTAL ASSESSMENTS

DISCUSSION PAPER

OCTOBER 2025



EAO

Environmental
Assessment Office

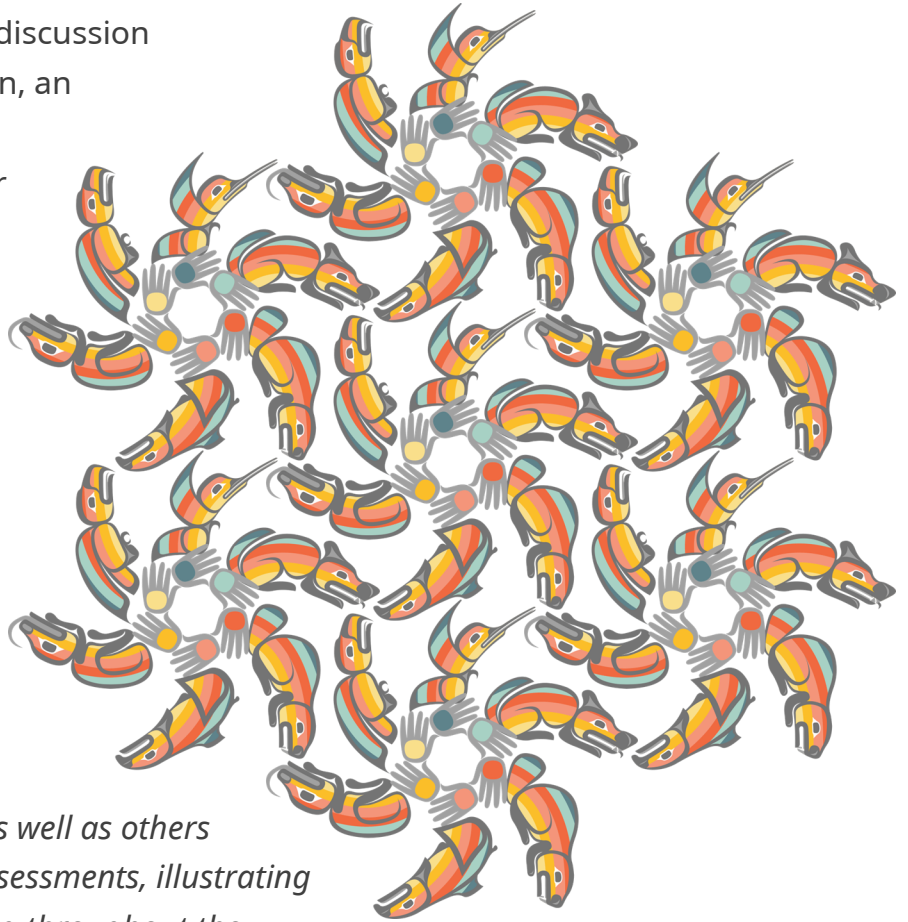


Acknowledgement

The artwork used throughout the discussion paper was created by Andy Everson, an accomplished artist from the K'omoks First Nation on Vancouver Island. He draws upon his roots amongst the Kwakwaka'wakw, Salish and Tlingit peoples to create artwork that reflects the convergence of ancient traditions with modern society.

Artist's Statement:

This design represents Interconnectedness. The six hands represent the coming together of Indigenous peoples and representatives from the Province, as well as others who participate in environmental assessments, illustrating the necessity for relationship-building throughout the decision-making process. Spiraling out from the hands are six animals representing what is assessed in environmental assessment in B.C.: eagle (First Nations & their rights), salmon (environment), hummingbird (culture), beaver (economy), frog (health) and wolf (social). Within each animal are six coloured ribbons representing the strands of unity binding us together. The art style was chosen to be inclusive to all First Nations within the province. ~Andy Everson



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Revising Dispute Resolution in Environmental Assessments



A MESSAGE FROM THE CHIEF EXECUTIVE ASSESSMENT OFFICER

Dispute resolution was introduced in British Columbia's revitalized [*Environmental Assessment Act*](#) in 2018 to help the Environmental Assessment Office (EAO) and First Nations work through issues that may arise at key stages of an environmental assessment of a major project proposal where the parties are not able to reach consensus.

Dispute resolution is available to support achieving consensus, and was designed to facilitate a fair and collaborative process that supports reconciliation and respects Indigenous governance. Dispute resolution was also designed to support clarity, consistency and predictability of the environmental assessment process and timelines for decision-making.

Since the first dispute resolution process began in 2022, the EAO has worked with First Nations and other partners to implement this new tool. Eleven dispute resolution processes have been initiated in that time. These experiences have shown that while dispute resolution has the potential to be a valuable tool in the assessment process and for

supporting the EAO's role in reconciliation, the intended outcomes are not being met.

None of the dispute resolution processes so far has ended with consensus on the decision in question. This has led to tensions between the parties involved rather than improving relationships, which does not support reconciliation with First Nations (a key purpose of the EAO).

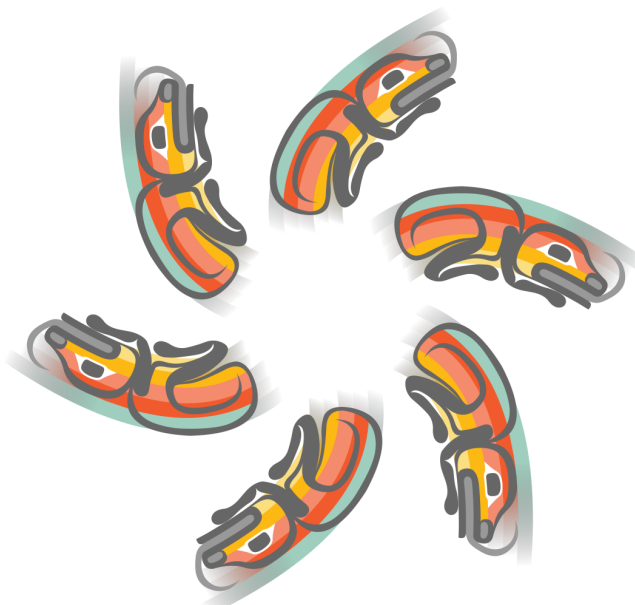
We have also seen unintended consequences as we've implemented the tool. Cascading dispute-resolution processes have led to extended environmental assessment timelines, increasing unpredictability and uncertainty for all parties involved in the assessment. Attempts to address issues through dispute resolution that fall outside of the scope of the EAO's mandate, particularly ones best addressed by other regulators or ministries, has also led to confusion. And as administrators of the environmental assessment process, we see a need for greater clarity of roles and responsibilities to help alleviate the significant commitment of time and resources required by all parties, including



First Nations, to participate in dispute resolution. This discussion paper goes into more detail on the key challenges that have emerged through the implementation of dispute resolution and explores what an ideal future state might achieve. It sets the stage for developing a revised dispute resolution regulatory framework¹ that supports predictable environmental assessment processes and timely decision-making in a manner that is supports implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UN Declaration). This paper is intended to support the EAO's consultation and cooperation with First

Nations as set out in the [Declaration on the Rights of Indigenous Peoples Act](#).

Our work on dispute resolution is part of the broader [legislative review](#)² of the Environmental Assessment Act. We are inviting feedback from First Nations, Indigenous Governing Bodies, Indigenous organizations, industry and dispute resolution experts. We are committed to engaging in an inclusive manner to refine the dispute resolution regulatory framework to more effectively support the work carried out under the *Environmental Assessment Act* in a way that works better for everyone involved in the environmental assessment process.



¹ The term Dispute Resolution Regulatory Framework is used to collectively describe Section 5 of the EA Act, the Regulation and associated policies

² Appendix 1 Legislated Review of the EA Act



Background

ENVIRONMENTAL ASSESSMENT ACT

The EAO is responsible for carrying out environmental assessments of major project proposals in British Columbia. The environmental assessment process was revitalized in 2018 when the *Environmental Assessment Act* was passed. Key changes to the process included how the Province makes decisions about major projects with First Nations, and measures to support the implementation of the UN Declaration.

The *Environmental Assessment Act* was designed to achieve three clear outcomes:

1. Enhance public confidence, transparency and meaningful participation;
2. Support reconciliation with First Nations; and
3. Protect the environment while offering clear pathways to sustainable project approvals, including by carrying out assessments in a thorough, timely, transparent and impartial way.

SOURCES FOR THIS PAPER

This discussion paper has been informed by:

- The EAO's 2023 *Dispute Resolution Regulation Development Discussion Paper*, which provided context, legal framework, intended outcomes and early engagement feedback;
- Feedback provided in 2024 during the Review Preparation Phase of the Legislative Review of the *Environmental Assessment Act* (see *What We Learned Report*); and
- Experiences during dispute resolution processes to date, including feedback from First Nations participants in dispute resolution, proponents of projects, EAO staff and dispute resolution facilitators .



CONSENSUS-SEEKING IN THE ACT



In supporting reconciliation and the implementation of the UN Declaration, the *Environmental Assessment Act* includes specific provisions for the EAO to seek consensus with participating Indigenous nations³ throughout the environmental assessment process in a manner that supports the free, prior and informed consent of First Nations.

Under the Environmental Assessment Act, the EAO must seek consensus with participating Indigenous nations at the following key decisions in the environmental assessment process:

- Determination of which First Nations will participate in an environmental assessment as participating Indigenous nations;
- At the 'Readiness Decision' to either begin the environmental assessment, exempt the project from an assessment and go straight to permitting, require the proponent to revise their Detailed Project Description, or terminate the assessment process;
- Setting out the process, scope and methods for the environmental assessment, i.e. Process Planning;
- The EAO's conclusions about impacts of the proposed project and draft recommended conditions and requirements if an environmental assessment certificate is issued.

(see also Appendix 2, The Assessment Process and Consensus Seeking)

There may be times, at these decision points in the environmental assessment process where, despite efforts of participating Indigenous nations and the EAO to reach consensus, consensus is not reached. Dispute resolution is an additional tool available to support reaching consensus on issues of non-consensus related to a decision in environmental assessment process. It is a non-binding and time-limited process, the parameters of which are set out in section 5 of *Environmental Assessment Act*, and the corresponding [Environmental Assessment Dispute Resolution Facilitators Regulation](#) (see Appendix 2), which was developed in consultation and cooperation with Indigenous peoples in 2024.

In addition, at the end of an environmental assessment process, ministers are required to consider the consent or lack of consent of participating Indigenous nations. Where there is not alignment between the views of a participating Indigenous nation and the EAO's recommendation on whether to issue an environmental assessment certificate, ministers must offer to meet to seek to achieve consensus. If consensus is still not achieved, the ministers are required to provide reasons for their decision.

³ A First Nation that has indicated they would like to participate in the environmental assessment of a project as a participating Indigenous nation and seek consensus with the EAO during the process, under Section 14 of the *Environmental Assessment Act*.



Dispute resolution regulatory framework



The [*2018 Environmental Assessment Revitalization Intentions Paper*](#) (Intentions Paper) set out the following intention for dispute resolution:

“The Act identifies a number of specific decision points, including where the EAO will aim to secure consent of participating Indigenous nations, that is supported by a time-bound, non-binding dispute resolution process consistent with Indigenous approaches to governance.”

Section 5 of the *Environmental Assessment Act* and the associated *Environmental Assessment Dispute Resolution Facilitators Regulation* (Regulation) (see Appendix 2) are included under the Act and structured to reflect the principles of the UN Declaration, particularly Articles 27, 32(2), and 40 (see Appendix 3). These articles affirm the right of Indigenous Peoples to participate in fair, transparent and culturally appropriate processes for resolving disputes, and to make decisions about projects that affect their lands, territories, and resources.

Section 5 and the Regulation together establish the basic elements of how dispute resolution processes should be implemented including:

- Who can access dispute resolution: Participating Indigenous nations and the Chief Executive Assessment Officer (the head of the EAO)
- When dispute resolution can be used: Dispute resolution is available in relation to specific “matters pending decision” at key stages of an environmental assessment process and must be initiated prior to the decision being made.
- The effect of initiating a dispute resolution process: The initiation of dispute resolution pauses the pending decision, which cannot be made until a final report is submitted by the appointed dispute resolution facilitator.
- The length of a dispute resolution process: After initiation of dispute resolution, the EAO consults the First Nation on the appointment of a facilitator; the appointment begins the 90-day time limit for dispute resolution to be completed, with one opportunity for a limited time extension.

Experience implementing dispute resolution has identified issues with the current regulatory framework and/or the emergence of unintended consequences, which is further explored under the “Current State” next.



Current state



Since its introduction, dispute resolution has been used in 11 instances across three environmental assessments. Most dispute resolution processes initiated by participating Indigenous nations have been in the final days or after a multi-year environmental assessment. These experiences have provided valuable insights into how the process works in practice, and revealed a number of challenges the Province is seeking to address in consultation and cooperation with First Nations and through engagement with others involved in environmental assessments.

Supporting Consensus Seeking

The dispute resolution process was intended as a tool to support the parties in achieving consensus at key decision points in the environmental assessment process, which, in turn could reduce conflict and foster collaboration. In practice, however, it has led to the opposite: unresolved disputes and increased tension between parties. And, critically, none of the 11 dispute resolution processes supported the parties in achieving consensus on the matters raised.

Respecting First Nations Governance

First Nations have raised concerns that the dispute resolution framework does not align with a distinctions-based approach, thus failing to respect the unique rights, laws and governance structures of individual First

Nations. Furthermore, and related, the relationship between the nature and extent of a project's potential impacts on a First Nation and its rights, and access to dispute resolution raises important considerations. The lack of an approach that is proportional to potential impacts to guide how dispute resolution is accessed appears to have contributed to conflict in a number of circumstances.

Predictability, Timelines and Confidentiality

Dispute resolution was included in the *Environmental Assessment Act* as a way to predictably support achieving consensus within clear timelines. The dispute resolution processes to date have resulted in lengthy delays and added significant uncertainty to environmental assessment timelines. Each instance has added five to six months to the respective phase of the environmental assessment. Some of the contributing factors to these delays have included the additional time to identify a qualified and acceptable dispute resolution facilitator, and additional dispute resolution processes being initiated on potential changes that emerged from an initial dispute resolution process (this is known as cascading dispute resolution).

The uncertainty and unpredictability arising from the challenges described above increase the significant time, effort and cost for all parties involved. With no dispute resolution



process leading to consensus to date, and only minor issues resolved and one case of non-objection to a decision, the significant investments of time and resources by all parties are not yielding the outcomes being sought.

In addition, concerns have been raised about the role and appropriateness of confidentiality in the process, for matters not related to protection of Indigenous knowledge. For example, even though the issues under dispute may relate to potential changes that would impact the title and rights of another Nation, or impact the project and/or proponent, the Act does not provide clarity for broader participation in the dispute resolution process by others affected unless the parties agree.

Scope of Matters Subject to Dispute Resolution

There is a lack of clarity around what issues can be addressed through dispute resolution. In some circumstances, dispute resolution has been sought to address matters that fall outside the EAO's legislated mandate, such as advancing broad interests related to Indigenous title and rights, financial benefits associated with a project or matters of federal jurisdiction. This has made it difficult to reach resolution as the process was intended to support consensus-seeking on matters within a provincial environmental assessment process.

Structure and Interpretation

Dispute resolution has been sought for decisions that were not intended to be subject to dispute resolution (i.e. Ministers' decision), which would result in the same matters being subject to multiple, consecutive dispute resolution processes. The utility of dispute resolution near the end of the process when parties have already been in discussion for multiple years is unclear, particularly as the likelihood of reaching consensus is quite low as a result.

Experience to date has revealed gaps in how the process is structured. There are no defined time limits for when dispute resolution can be initiated, and ambiguity around what the "matter[s] pending decision" are under each section of the Act for which dispute resolution is available. The dispute resolution framework relies on third-party facilitators that require a specialized skillset, including experience with environmental assessment and working with First Nations, and who also need clarity on the desired outcomes of the process. These ambiguities make it difficult to set up a fair and efficient dispute resolution process.



Future state



By learning from the experiences with dispute resolution processes to date and engaging in open dialogue with First Nations and other partners, the EAO aims to revise the dispute resolution framework to support reaching consensus, advancing reconciliation and ensuring predictable and timely environmental assessments. The intention is a more effective dispute resolution framework that aligns with the purpose and scope of the *Environmental Assessment Act* and with the principles of the UN Declaration.

Improving the dispute resolution regulatory framework will create a more effective tool for reaching consensus between First Nations and the EAO. The goal is to make the process clearer, more predictable and better suited to supporting respectful and effective dialogue between First Nations and the EAO.

Based on the feedback and lessons learned to date as well as the intent of dispute resolution under the Act, the EAO has identified the following desired outcomes of a revised dispute resolution regulatory framework:

- **Assists in reaching consensus:** promotes positive, cooperative relationships that support reaching consensus, fosters safe and constructive conversations between the EAO and First Nations, and identifies pathways to improving relationships or resolving issues
- **Respects First Nations governance:** respects the laws, traditions and governance systems of First Nations
- **Provides process and timeline certainty:** provides for a predictable process within the scope of the Act and supports timely environmental assessments;
- **Is proportional to potential impact:** participation respects the distinct rights of First Nations and nature of potential for impacts to those rights;
- **Supports reconciliation:** works in conjunction with a number of tools within the Act to support implementation of the UN Declaration.

To achieve these desired outcomes through a revised dispute resolution regulatory framework, any future proposed amendments may apply to the *Environmental Assessment Act* itself, the Regulation, or both.



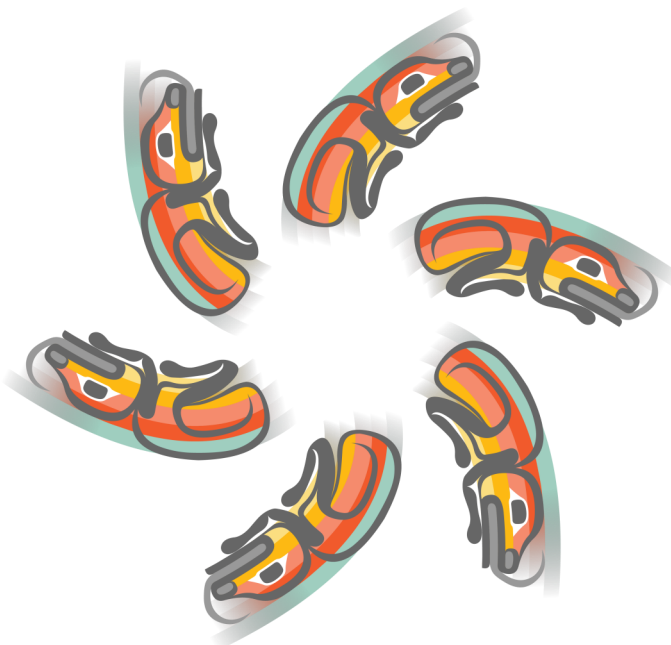
Discussion questions



The following questions and considerations are intended to foster conversation and feedback during consultation and cooperation with First Nations and engagement with others involved in the environmental assessment process to help inform changes to the dispute resolution framework.

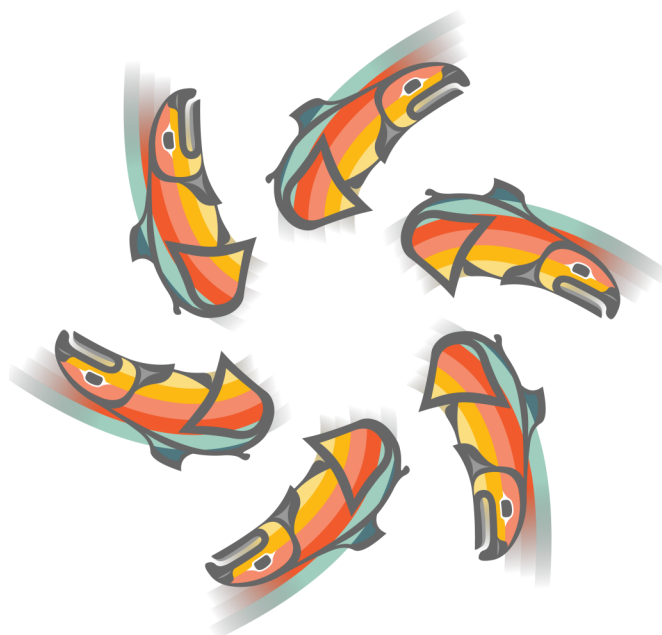
1. Describe your or your organization's experience with the British Columbia environmental assessment process (i.e., limited, some, significant), including any experience with dispute resolution under the *Environmental Assessment Act*. For participants who have been involved in an environmental assessment that underwent dispute resolution, consider:
 - a) What aspects of the dispute resolution process worked well?
 - b) What challenges did you experience?
 - c) What changes would make the dispute resolution framework more effective (i.e., finding resolution between parties)?

2. The EAO has identified five key desired outcomes in a revised dispute resolution regulatory framework. Please provide your feedback on how the framework could be improved to:
 - a) assist in reaching consensus;
 - b) respect First Nations governance;
 - c) provide process and timeline certainty;
 - d) be proportional to potential impact;
and,
 - e) support reconciliation.



3. Dispute resolution was included in the Act to assist the resolution of disputes where consensus is not reached at specific steps in the environmental process. These steps include the decision on environmental assessment readiness (decision to commence an environmental assessment for a given proposed project); issuance of a process order; and recommendation on whether to issue a proposed project an environmental assessment certificate. The original intent was that dispute resolution at each of these steps was available to address specific issues that may emerge at the related phase of the environmental assessment. Consider also that environmental assessments are multi-year processes with consensus-seeking occurring throughout.
 - a) How can a revised dispute resolution framework better support consensus at different phases of the environmental assessment process?

4. Dispute resolution under the *Environmental Assessment Act* is a facilitated process between two parties; however, the way it is currently set up affects everyone involved in the environmental assessment. Consider the potential impacts of dispute resolution on your organization, as a party to the dispute or an external but impacted observer (such as a proponent or other participating Indigenous nation).
 - a) How can dispute resolution be meaningful and respectful of the parties involved, and minimize unintended effects on others?
 - b) How can dispute resolution be respectful of the diversity of Indigenous laws and traditions and respect participants that are external to the dispute?
 - c) How can dispute resolution be structured to address the interests of parties with divergent or opposing interests?



How to Participate & Next Steps



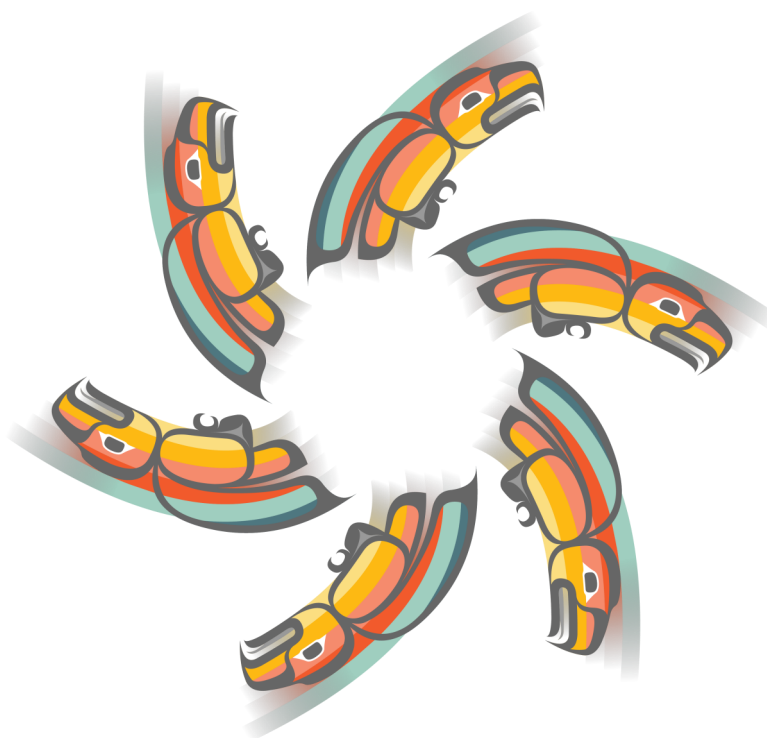
This discussion paper invites feedback on the dispute resolution framework under the *Environmental Assessment Act*. The EAO looks forward to continuing these conversations and developing a dispute resolution framework that considers the values and priorities of all partners and meets the outcomes it was intended to achieve.

The EAO plans to work closely with First Nations and engage with industry and government representatives to develop changes to the dispute resolution framework.

You can provide input into a revised dispute resolution framework by:

- participating in virtual engagement sessions;
- attending bilateral meetings; and/or
- providing written submissions.

For more information on engagement opportunities and upcoming timelines, please see the [EAO's website](#). To contact the EAO directly regarding this engagement, email EAO.ActReview@gov.bc.ca.



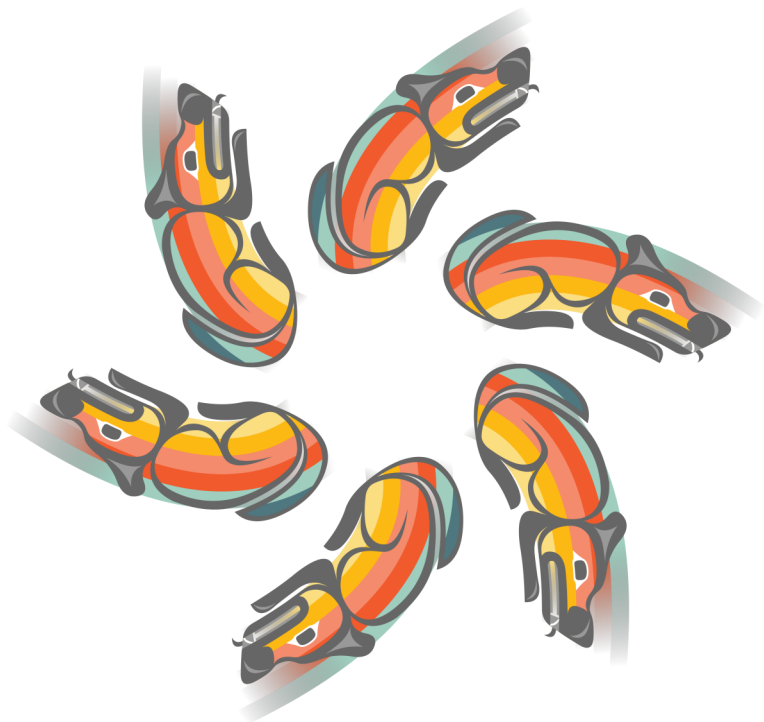
APPENDIX 1: LEGISLATED REVIEW OF THE ENVIRONMENTAL ASSESSMENT ACT



The *Environmental Assessment Act* includes a requirement for a review of the legislation within five years of it coming into force to determine what changes, if any, should be made. The Act Review was initiated in 2024 with a Review Preparation Phase to identify potential areas of focus and gather early input. During this phase, the EAO heard from 35 First Nations and Indigenous organizations, as well as industry associations and government representatives. This feedback has shaped the EAO's thinking on central issues that have emerged from the Act's implementation over the last five years.

With consideration of the activities and developments to date, the EAO is taking a sequenced approach to the Act Review. Starting in October 2025, consultation and cooperation on potential refinement of the dispute resolution framework will begin. In late 2025 or early 2026, consultation on an expedited environmental assessment process will also begin. This will be followed by consultation and cooperation on other proposed areas of focus, which is expected to include First Nations' decision-making under the Act, the reviewability of projects, and issues of environmental assessment process efficiency. By taking a sequenced approach, the EAO aims to support meaningful consultation on near-term priorities and longer-term issues.

See [Environmental Assessment Act Review - Province of British Columbia](#) for additional information on the Act Review.



APPENDIX 2: LEGISLATION AND REGULATION



Dispute Resolution under the Environmental Assessment Act

Legislation – Section 5

The opportunity for dispute resolution in the *Environmental Assessment Act* is provided for in Section 5 (below). The jade coloured text highlights the subsection that allows for the development of a supporting dispute resolution regulation.

5(1) Subject to regulations made under subsection (4) (a), the minister, after considering a recommendation, if any, of an Indigenous nation, may appoint individuals to facilitate the resolution of disputes in relation to a matter referred to in subsection (2)

(2) A participating Indigenous nation or the chief executive assessment officer may refer one or more of the following matters to a dispute resolution facilitator:

- (a) a matter pending decision under section 14 (2), 17, 18, 19, 28 or 29;
- (b) the provision of a notice under section 14 (1);
- (c) any other prescribed matter.

(3) On completion of a facilitation, a dispute resolution facilitator must provide a report to the participants and to the applicable of the chief executive assessment officer or the minister.

(4) The Lieutenant Governor in Council may make regulations respecting the powers and duties of dispute resolution facilitators under this Act, including, without limitation, regulations respecting the following:

- (a) qualifications of individuals who may be appointed under subsection (1);
- (b) the powers and obligations of a dispute resolution facilitator to manage a referral made to the facilitator;
- (c) matters that a dispute resolution facilitator must consider before making a report; (see Dispute Resolution Report)
- (d) referrals to a dispute resolution facilitator;
- (e) the time by which a dispute resolution facilitator must complete a facilitation and provide a report.



(5) If a matter pending decision is referred to a dispute resolution facilitator,

(a) a decision on the matter may not be made under the applicable section until after the facilitator has provided a report, and

(b) if the participating Indigenous nation requests that the chief executive assessment officer take part in the dispute resolution process, the chief executive assessment officer must take part in the process.

(6) Despite subsection (2), an Indigenous nation that has provided notice under section 14 (1) may refer to a dispute resolution facilitator a matter pending decision under section 14 (2).

(7) A report of a dispute resolution facilitator is not to be taken as guiding:

(a) the chief executive assessment officer or minister respecting a project not addressed in the report, or

(b) a decision maker under another enactment.

(8) This section is not to be taken as limiting any right a participating Indigenous nation may have to seek a remedy from a court.

(9) For certainty, nothing in this section, nor anything done under this section, abrogates or derogates from the rights recognized and affirmed by section 35 of the Constitution Act, 1982.

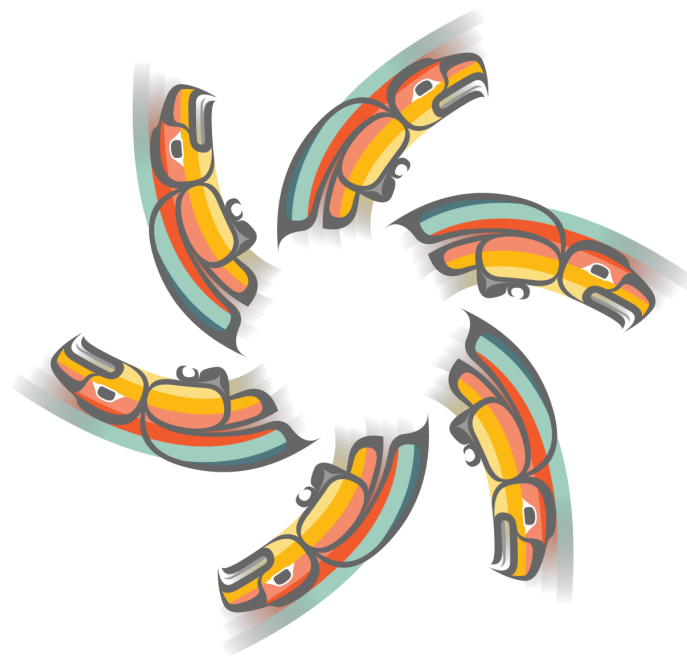


Overview of the Dispute Resolution Facilitators Regulation



Section 5(4) of the Act provides for regulations respecting the powers and duties of dispute resolution facilitators only. As such regulation provisions include:

- At a high level, the knowledge and experience an individual appointed as a facilitator must have;
- The obligations of the facilitator for the facilitation and their report, including, for example, to assist the parties involved to achieve consensus on terms of reference for the facilitation;
- The powers of the facilitator to end the facilitation in certain circumstances, such as if it is very unlikely that the facilitator will be able to assist the parties to reach consensus on the disputed matters or if the disputed matter is unrelated to the applicable reviewable project;
- Obligations of the facilitator when preparing their report, such as providing the parties an opportunity to review the draft report and prescribed matters that they must consider; and
- A 90-day legislated time limit for the facilitator to deliver their report after the referral date, with an opportunity to extend by up to 30 business days.



The assessment process and consensus-seeking

The environmental assessment process is made up of phases.

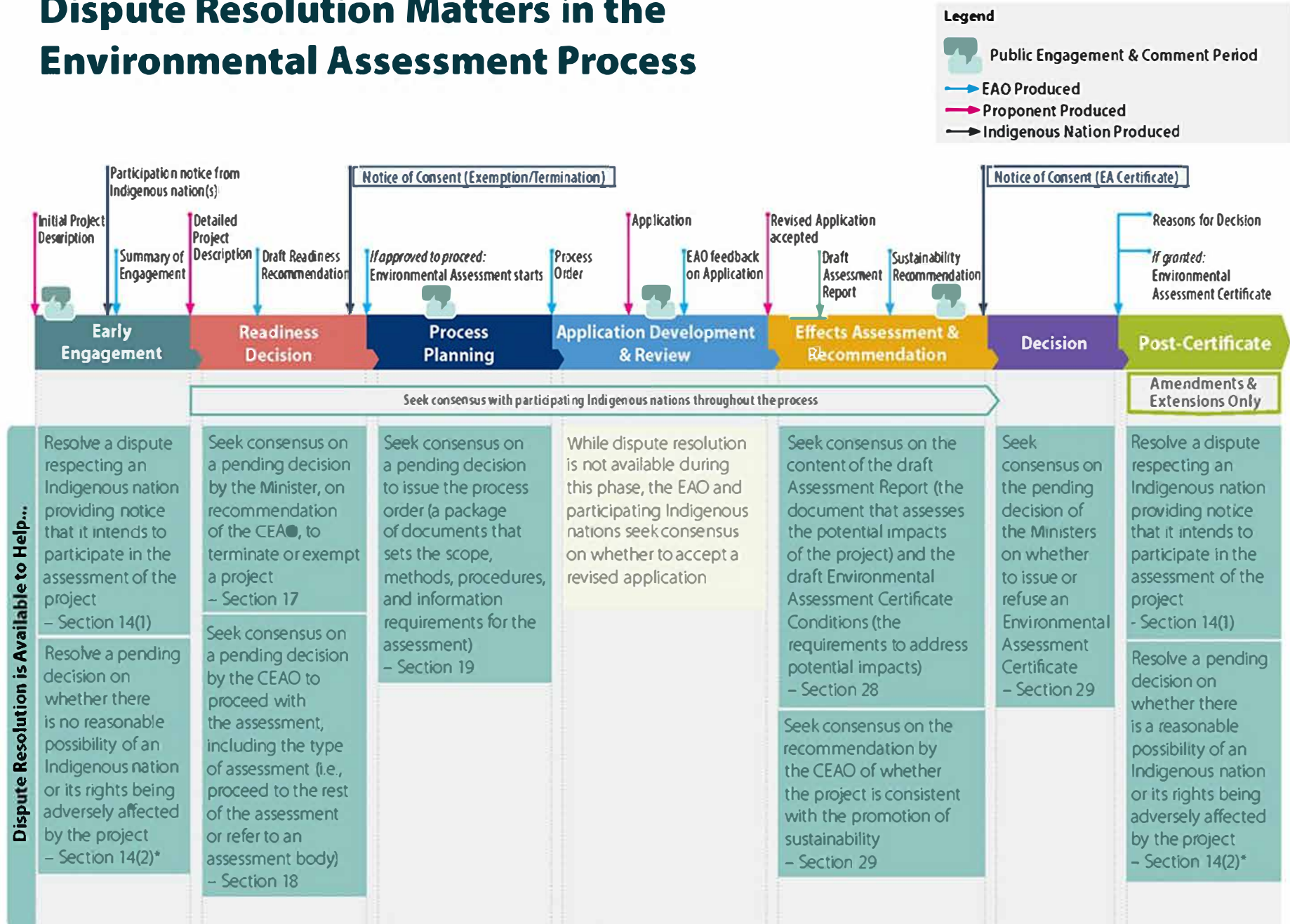
- **Early Engagement** establishes the foundation for the rest of the assessment by seeking early input on the project to identify interests, issues, and concerns.
- The **Readiness Decision*** refers to a decision on whether the project should, and is ready to, proceed to an assessment.
 - Participating Indigenous nations may provide a notice of consent or lack of consent if the project is being exempted from requiring an assessment or if the project will be terminated (i.e., cannot proceed as proposed).
- If proceeding to an assessment, during **Process Planning*** the scope, methods, procedures, and information requirements are set.
- Next, the proponent of the project develops and submits an **Application** for an Environmental Assessment Certificate, as directed in the previous phase.
- During **Application Review**, direction is provided to the proponent on any revisions that are required to meet the information requirements.
- If necessary, the proponent then prepares a **revised Application**, as directed. The revised Application is reviewed for its sufficiency*.
- An **Effects Assessment*** of the project is conducted to understand the effects to people, the environment, and First Nations and their rights. The assessment results in an **Assessment Report**, that summarizes the conclusions of the assessment, and a draft **Environmental Assessment Certificate** with proposed legally binding conditions that the proponent must follow for the life of the project, should a certificate be issued.
- The effects assessment informs **Recommendations*** to provincial decision-makers.
- The Assessment Report, Environmental Assessment Certificate, and Recommendations are referred to provincial decision-makers. The *Environmental Assessment Act* defines what the Ministers must consider when deciding whether to issue or refuse a certificate.
 - Participating Indigenous nations may provide a notice of consent or lack of consent to issuing a certificate.
 - If the EAO's recommendation does not match the consent notice, the Ministers must offer to meet with the participating Indigenous nation before making the decision.

* Phase where the EAO must seek consensus with participating Indigenous nations on a decision or recommendation.



FIGURE 1

Dispute Resolution Matters in the Environmental Assessment Process



*Dispute resolution over this matter is also available to any Indigenous nation that has provided a notice of their intent to participate in the assessment under Section 14(1) of the Act. In all other instances, dispute resolution is available only to participating Indigenous nations or the Chief Executive Assessment Officer (CEAO).

APPENDIX 3: REFERENCED ARTICLES OF UN DECLARATION



Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 32(2)

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective 27 remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.





Learn more about the Act Review or get in touch

Website:

<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-process/act-review>

Email:

EAO.ActReview@gov.bc.ca



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