Dispute Resolution – Interim Approach

DRAFT VERSION 1.3

JUNE 2023

NOTE: The "Dispute Resolution – Interim Approach" (Interim Approach) evolved from an early version of a 2019 Intentions Paper drafted for external engagement on a dispute resolution regulation under the *Environmental Assessment Act*(2018). In response to delays in the development of the regulation, the Intentions Paper was adapted into the Interim Approach in the spring of 2020 to support implementation of dispute resolution before a regulation and supporting policy is in place. If dispute resolution is initiated under these circumstances, the EAO works with First Nations to adapt this approach on a project specific basis. Since the time of its publication, dispute resolution under the Interim Approach has been used twice. As the EAO gathers learnings from applying the Interim Approach, this document will be updated accordingly. Following consultation and cooperation with First Nations, and engagement with industry representatives and dispute resolution experts and practitioners to occur throughout 2023, the Interim Approach will be replaced by the future regulation and policy.

For information about the overall dispute resolution engagement plan, including consultation and cooperation with B.C. First Nations, see the *EAO's website* and the *Dispute Resolution Regulation Discussion Paper*.

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Version #	Date (YYYY-MM-DD)	Modification	Approved by
Version 1.0	2020-05	Original Interim Version	n/a
Version 1.1	2021-09	Updated interim approach – added Appendix 1 regarding Section 14 disputes, including for amendments and extensions	n/a
Version 1.2	2021-12	Plain(er) language update, new graphics, and formatting. Updated confidentiality section based on FOIPPA amendments.	n/a
Version 1.2.1	2022-10	Added the disclaimer below in the event of a conflict between this document and the Act. Removed screening step in Sections 4.2. Updated termination criteria in Section 4.4. Figure 2 updated to remove timelines. Updated time limit in Section 4.1. Further clarified the role of the proponent in Section 4.8	n/a
Version 1.3	2023-06	Split out 'facilitator appointment' from 'pre-facilitation' steps in Section 4.3. Updated appointment process and engagement protocol to reflect current practice and learnings. Clarified when termination criteria are considered by the facilitator in Section 4.5. Updates to Confidentiality section to reflect current practice and learnings. Clarified who a 'party' to dispute resolution is and who is a 'participant'. Replaced Figure 1 and 2. Replaced DR and EA acronyms with dispute resolution and environmental assessment.	n/a

Disclaimer

This document is not advice and does not replace requirements of the *Environmental Assessment Act* (EA Act) or its regulations or bind any decision-maker. In the event of conflict between the Interim Approach and the EA Act or its regulations, the EA Act and its regulations will prevail to the extent of the conflict.

Dispute Resolution Interim Approach

1.0 Introduction

The Environmental Assessment Office (EAO) is developing a formal, non-binding dispute resolution process for the first time as part of the Province of British Columbia's initiative to revitalize the environmental assessment process to ensure meaningful collaboration with Indigenous nations and to meet the public's expectation of a robust and transparent process. The *Environmental Assessment Act* (2018) (the EA Act) states that one of the purposes of the EAO is to support reconciliation with Indigenous peoples. One way the EA Act supports reconciliation is through a facilitated dispute resolution process under *Section 5*.

1.1. Purpose

The EA Act enables a regulation to be established respecting the powers and obligations of dispute resolution facilitators. In the absence of a regulation, dispute resolution can be established through policy.

The purpose of this document is to provide a framework to support an interim approach to dispute resolution that the EAO develops with Indigenous nations on a project-specific basis before a regulation is enacted. Experience and learnings from using the interim approach, along with future engagement, will be applied to inform the development of the dispute resolution regulation and supporting policy and guidance.

The EAO worked with the Indigenous Implementation Committee (IIC) in late 2019 to develop draft guiding principles for the operation of interim dispute resolution processes. This document and the principles also incorporate feedback received from Indigenous nations during EAO's direct engagements with Indigenous nations on EA Revitalization and from the Stakeholder Implementation Committee (SIC) in the fall of 2019.

2.0 Goals and Principles

In the context of the B.C. environmental assessment process, dispute resolution intends to help resolve substantial disagreements between eligible participants (see *Participants*) at key stages of the assessment process. Participants may use the services of a qualified facilitator when they are unable to reach agreement or consensus on their own (see the *Guide to Consensus-Seeking under the Environmental Assessment Act, 2018* for more on the approach to consensus-seeking throughout the assessment process).

For dispute resolution to be effective, the EAO recognizes the importance of processes that:

- Are flexible to allow for co-development and customization;
- Reflect the unique legal traditions and customs of Indigenous nations and communities; and
- Are predictable and timely.

2.1. Guiding Principles

The following guiding principles underpin the interim approach and aim to support project-specific approaches to dispute resolution:

- The process can be customized for individual disputes, within the parameters of an overarching framework;

- Dispute resolution must be a funded process to ensure Indigenous nations can effectively participate;
- Building trust is foundational to effective dispute resolution;
- Facilitation is without prejudice to processes or activities outside of that particular environmental assessment;
- Participating in dispute resolution will not affect the rights of Indigenous nations or limit Indigenous nation(s) from seeking a remedy from a court in relation to any issues that may arise during an environmental assessment;
- Facilitators will incorporate Indigenous laws and practices into the process, where possible; and,
- Facilitators and participants must adhere to ethical and behavioural standards.

3.0 LEGISLATIVE OVERVIEW

The EA Act includes opportunities for time-bound, non-binding dispute resolution to support consensus seeking in the environmental assessment process. Find the full text of *Section 5 – Dispute resolution facilitators* of the EA Act on B.C. Laws. The following provides an overview of the dispute resolution provisions under the EA Act.

3.1. Participants

Only certain participants in an assessment can refer a dispute to a facilitator. At the Early Engagement phase, eligible participants include:

- Any Indigenous nation who has provided notice of its intent to participate as a participating Indigenous nation under the EA Act (see box on right); and,
- The Chief Executive Assessment Officer (CEAO).

During other phases of the environmental assessment, dispute resolution is available to:

- Participating Indigenous nations; and,
- The CEAO.

Participation by Indigenous nations in dispute resolution is **voluntary**. Only the CEAO is required to participate if requested by a participating Indigenous nation. How and when the CEAO participates is determined by the participants on a case-by-case basis.

This document uses the term 'parties' to refer to the participating Indigenous nation(s) and/or the EAO who are engaged in dispute resolutions. 'Participants' refers to other individuals or groups who may be invited by the parties to take part in dispute resolution but are not eligible parties under the EA Act or are participants in the assessment process more generally. Examples of participants include proponents, other First Nations, and other government agencies.

Proponents cannot initiate dispute resolution under the EA Act. However, participants may agree to request the proponent's participation during a facilitation. The EAO has procedural fairness obligations to the proponent that must be met, given that dispute resolution takes place within a regulatory process for reviewable projects and that the subsequent decision affects the proponent of the project (see *Role of Proponent*).

Participating Indigenous nations are afforded procedural rights under the EA Act.

In addition to access to dispute resolution, these rights include:

- Consensus seeking processes;
- A procedure to communicate consent or withhold consent at specific decision points;
- Provisions for the Nation to carry out the components of the effects assessment that pertain to their Nation and its rights;
- Representation on the Technical Advisory Committee; and,
- Authority to apply for a time limit extension.

Indigenous nations can indicate their intention to participate in an assessment as a participating Indigenous nation during Early Engagement (find more information in the *Early Engagement Policy*).

3.2. Matters

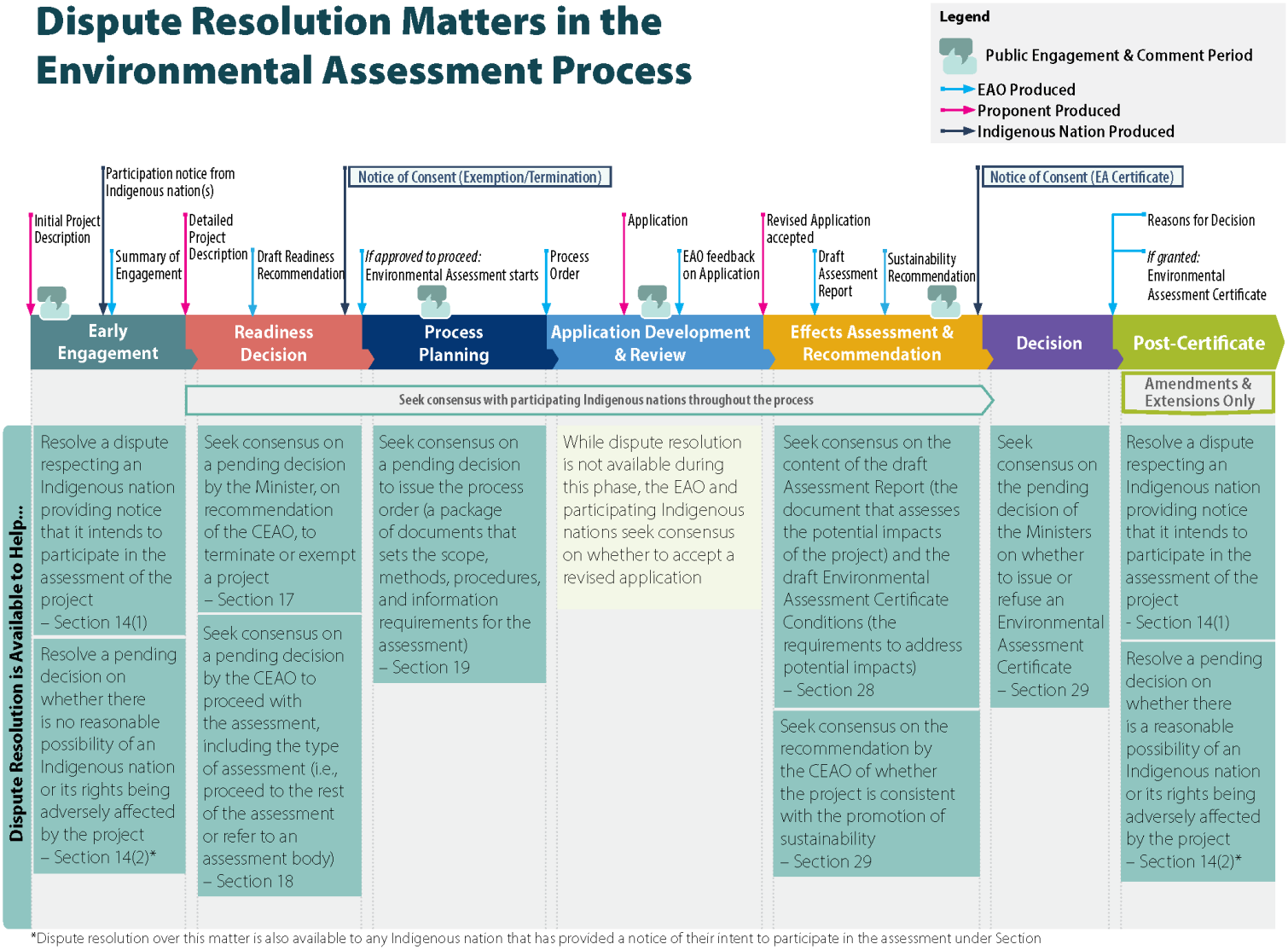
Dispute resolution is available to support consensus seeking at certain points or decisions throughout the assessment process. Parties may use the services of a qualified facilitator when they are unable to reach consensus on a matter on their own. The EAO and participating Indigenous nations should make reasonable efforts to reach an agreement on issues before initiating dispute resolution.

Only the matters listed in *Section 5(2)* are eligible for dispute resolution. Issues in dispute should be:

- Within the scope of the EA Act;
- Part of consensus-seeking activities prior to dispute resolution being initiated;
- About the project undergoing an environmental assessment; and,
- Raised at the appropriate phase of the environmental assessment.

Figure 1 sets out those matters within each phase of the environmental assessment. Table 1 provides more details on the matters, potential participants, and descriptions of the dispute.

Table 1 Dispute resolution matters under Section 5(2) of the Environmental Assessment Act (2018).



*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).

Figure 1 Dispute Resolution matters in the environmental assessment process.

s 5(2)	Participants		
Section 14(1)	Indigenous nations who provided notice under Section 14(1) and CEAO if requested	Between Indigenous nations about participation as "participating Indigenous nations" in the assessment.	• Disputes between Indigenous nations as to who should be a participating Indigenous nation for certificate amendments (Section 32(7)) and certificate extensions (Section 31(5)).
Section 14(2)	Indigenous nation* who provided notice	Between an Indigenous nation* and the CEAO about a pending potential CEAO determination that there is no reasonable	

Matter: s 5(2)	Potential Participants	Description of Dispute	Potential Related Matters for Discussion
	under Section 14(1) and CEAO	possibility of an Indigenous nation, or its rights, being adversely affected by a project.	
Section 17	Participating Indigenous nation(s) and CEAO	Between participating Indigenous nation(s) and the CEAO with respect to the pending decision by the minister, on recommendation by the CEAO, to terminate a project or exempt a project from assessment.	• Issues that arose while EAO was seeking consensus with participating Indigenous nations with respect to the recommendation of the CEAO under Section 16 to terminate a project or exempt a project from assessment. • The report prepared by the CEAO with respect to the recommendation to terminate or exempt.
Section 18	Participating Indigenous nation(s) and CEAO	Between participating Indigenous nation(s) and the CEAO with respect to the pending decision of the CEAO to proceed with an assessment of the project	• Whether the project should be assessed as a standard process (Section 19) or under an alternative process determined by the Minister (Section 24), including an assessment by an assessment body.
Section 19	Participating Indigenous nation(s) and CEAO	Between participating Indigenous nation(s) and the CEAO about the pending decision to issue a Process Order	• Whether or not the Process Order meets the procedural and information requirements of the participating Indigenous nation, including the timing and scope of any Section 19(4) assessments.
Section 28	Participating Indigenous nation(s) and CEAO	Between participating Indigenous nation(s) and the CEAO about the content of the draft Assessment Report and draft certificate	• Disagreement concerning conclusions in the Assessment Report about project effects on Indigenous nations and their rights, draft certificate conditions and the draft project description. • For assessments in which an Indigenous nation carried out a part of the assessment, disagreement between the EAO and a participating Indigenous nation on the outcomes of 19(4) assessment or the conclusions.
Section 29	Participating Indigenous nation(s) and CEAO	Between participating Indigenous nation(s) and the CEAO with respect to the pending decision of the Ministers on whether the project is consistent with the promotion of sustainability – recommendation phase	• The recommendations of the CEAO to Ministers and the reasons for recommendations.
		Between participating Indigenous nation(s) and the Ministers with respect to the pending decision of the Ministers on whether to issue an Environmental Assessment Certificate – decision phase	• In some circumstances, dispute resolution may be appropriate following referral to the Ministers but prior to the Ministers' decision under Section 29(4) of the Act, to address issues not captured in the final Assessment Report or Environmental Assessment Certificate. • Dispute resolution during the decision phase could support the consensus seeking process under Section 29(5).

*Provided for under Section 5(6).

3.2.1. Timing of Dispute Resolution in the EA Process

Dispute resolution is available on a 'matter pending decision' listed under Section 5(2); thus, dispute resolution is available before the decision. Once a decision has been made, dispute resolution is no longer available for any outstanding dispute on that matter. For example, once the decision-maker issues the process order under Section 19(2) at the end of the Process Planning phase, disputes related to the contents of the process order are no longer eligible for dispute resolution.

Disputes between Indigenous nations related to Section 14(1), about a Nation's participation in the environmental assessment, are not matters pending decision (see *Appendix 1*). There may be circumstances where new information at a

later phase of the environmental assessment results in a new Section 14(1) notice from a Nation to participate. This could happen, for example, if the study area expands or project design changes. It is possible that dispute resolution may be initiated in relation to Section 14 disputes in this circumstance.

The EAO will proactively work with Indigenous nations and encourage Nations who have indicated to EAO that they may have concerns about other Nations being a participating Indigenous nation to try to resolve such concerns on their own or by initiating dispute resolution as early as possible following receipt of Section 14(1) notices, to mitigate any potential impacts to timelines.

3.3. Dispute Resolution Report & Outcomes

Dispute resolution ends when the facilitator provides a report to the parties and decision makers. The statutory decision maker may be the CEAO or the Minister, depending on the matter. The facilitator does not make a decision and the report is non-binding on the decision maker. The role of the facilitator is to help the parties reach consensus. The report describes the outcomes of the dispute resolution (whether agreement or consensus was reached or not reached) and may include recommendations on further process (see *Report*).

Under Section 5(5) of the Act, if a matter pending decision is referred to dispute resolution, the statutory decision maker cannot make the decision until after the facilitator has provided a report. The decision maker considers the report and may explain how they considered the report in their reasons for decision, if they provide reasons.

The facilitator's report only pertains to the project that is subject to dispute resolution. The report is not to be taken as guiding the CEAO or Minister respecting a project not addressed in the report or a provincial decision maker under another enactment. Facilitation is without prejudice to processes or activities outside of that particular environmental assessment.

3.4. Dispute Resolution Effects on Indigenous Nation Rights

For clarity, participation in dispute resolution under the EA Act will not:

- Abrogate or derogate from the rights of Indigenous nations recognized and affirmed by Section 35 of the *Constitution Act, 1982*; and,
- Limit an Indigenous nation from seeking a remedy from a court in relation to any issues that may arise during an environmental assessment.

3.5. Pre-qualified List of Facilitators

Section 5(1) of the EA Act allows the Minister of Environment and Climate Change Strategy (Minister) to appoint facilitators and in doing so must consider any recommendation made by an Indigenous nation. The appointment process may establish a list of pre-qualified facilitators. The roles and responsibilities for the creation and maintenance of the list will be developed when the regulation is enacted. In the absence of a regulation, dispute resolution will function without a list of pre-qualified facilitators. See *Facilitator Selection* for the process under the interim approach.

4.0 Interim Approach to Dispute Resolution

The goal of dispute resolution is to help the parties reach consensus. For dispute resolution to be effective, the process must be both predictable and flexible to meet the needs of parties. The interim framework for dispute resolution intends

to allow for a customized process within a recommended time limit. The dispute resolution process under the Interim Approach consists of following steps:

Initiation:

1. A participating Indigenous nation or the Chief Executive Assessment Officer (together referred to as the parties) decide to refer a matter listed under Section 5(2) of the EA Act to a facilitator for dispute resolution;

Appointment:

2. The party making the referral submits an initiating document to begin the facilitator appointment process;
3. The parties work together to recommend a facilitator;
4. The Minister, or delegate, appoints a facilitator (and must consider the recommendation of First Nations in doing so) and the Province completes a contract with the selected facilitator;

Pre-facilitation:

5. The facilitator helps the parties to develop a custom dispute resolution process, resulting in an *Engagement Protocol*, that outlines, for example:
    a. The issues, objectives, and 'ground rules' for the facilitation;
    b. How other participants may take part in the facilitation; and
    c. Any limitations on confidentiality and how information is shared with outside participants;

Facilitation:

6. The facilitator guides the parties through the co-developed process, and in some circumstances, the facilitator may use their discretion to *end the facilitation*; and lastly,

Report:

7. The facilitator prepares and submits a *report* to the parties and decision-makers.

The timing of each phase will vary for individual disputes. The facilitator will be responsible for managing time during the process. Figure 2 presents an overview of the interim framework.

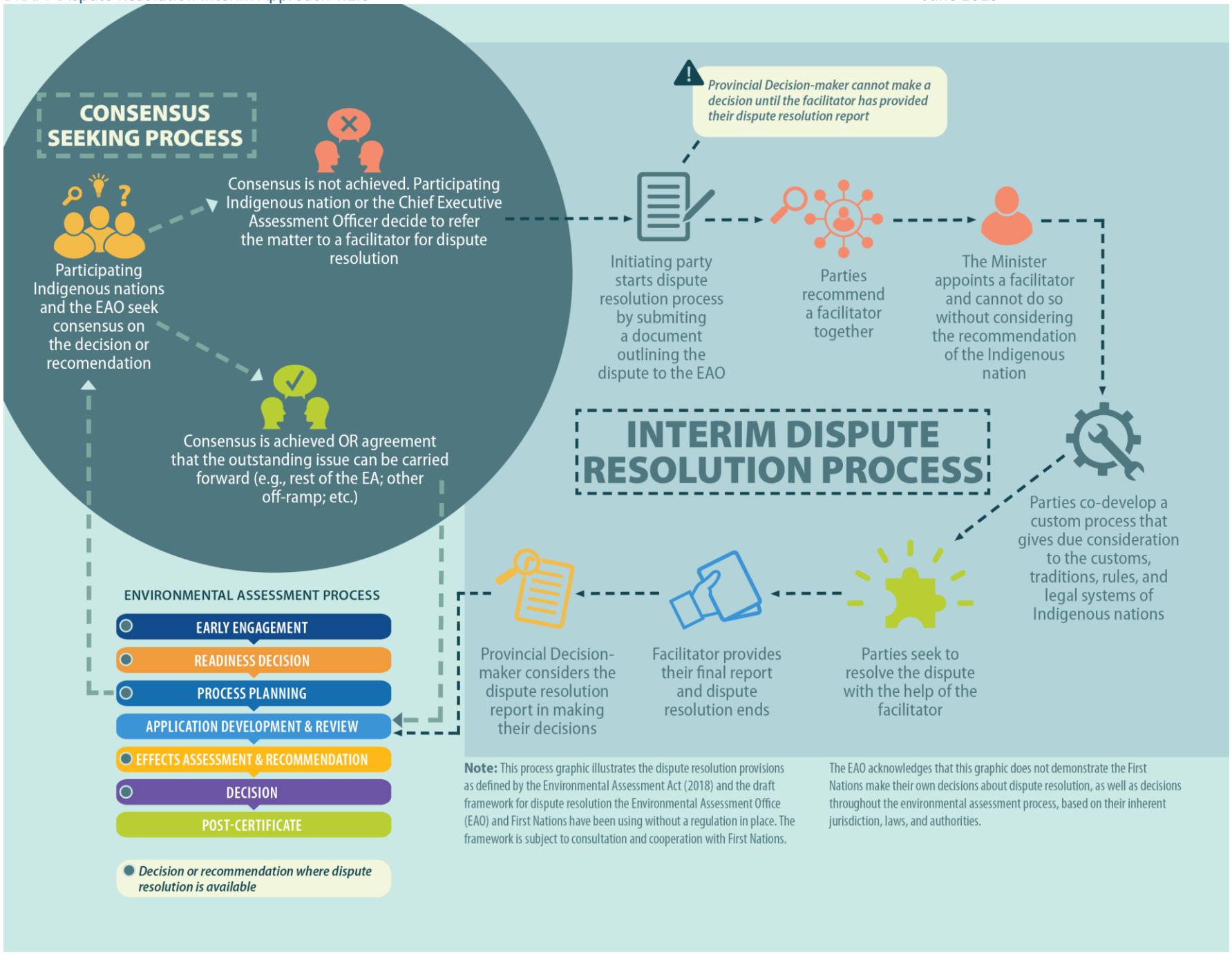


Figure 2 Interim framework for dispute resolution

4.1. Time Limit

The EAO recognizes the importance of a dispute resolution process that is culturally sensitive, timely and fair. As one part of consensus-seeking in the environmental assessment process, it is important that dispute resolutions be conducted in a timely manner. The EAO is of the view that dispute resolutions should generally be completed within 60 days. However, there may be circumstances where participants need more time for dispute resolution. The targeted 60-day period may be extended by the facilitator if necessary to complete the process.

4.1.1. Time Limit Extensions to EA Phases

A decision on a matter cannot be made until the facilitator provides their report. But work on the environmental assessment may continue concurrent to dispute resolution processes. For example, if a dispute is related to the process order, the EAO may continue to work on other sections of the process order that are not within the scope of the dispute.

Section 38 of the Act authorizes the CEAO to extend the time limits for doing anything under the EA Act. This may include, at the CEAO's discretion, extending a time limit of a phase to accommodate for a dispute resolution process. Time limit extensions for environmental assessment phases are discretionary and made on a case-by-case basis if it becomes clear that a decision cannot be completed within the time limit for that phase due to an ongoing facilitation.

If a time limit extension for the assessment process is likely in a particular case, the proponent will be notified.

Managing Time Limits

During the environmental assessment, the EAO will actively anticipate if, and when, dispute resolution may be initiated so that important preparatory or administrative work can begin, such as identifying possible facilitators. The EAO will work proactively with potential participants to prepare for dispute resolution in advance of the submission of an Initiating Document to manage timelines, aiming to resolve the dispute within the time limit and reduce the probability of time limit extensions to the dispute resolution process or environmental assessment phase.

4.2. Referrals to a Facilitator

To refer a matter to a dispute resolution facilitator, a participating Indigenous nation or the Chief Executive Assessment Officer (CEAO) submits an initiating document to the EAO to begin the referral process (NTD: administration of process to be determined). Parties may use a standard template to provide the facilitator with the necessary information to begin. The initiating document should include:

- Contact information;
- Matter being disputed (see *Table 1*);
- A description of the dispute from the initiating party's perspective;
- A description of the initiating party's interests;
- The remedy the initiating party is seeking; and,
- The option to recommend a facilitator(s).

All parties named in the document will receive a copy and will have an opportunity to indicate their willingness to participate. Participation by Indigenous nations in dispute resolution is voluntary; the CEAO must participate, if requested. Within 10 days of parties receiving the initiating document, the EAO will confirm a list of parties. Parties now recommend a facilitator (see *Facilitator Selection*).

4.3. Facilitator Appointment

As soon as the possibility of dispute resolution is discussed or once dispute resolution is initiated, ideally the parties work together to recommend a facilitator to the Minister, or delegate, for appointment. In making the appointment, the Minister is required by the EA Act to consider any recommendation from a First Nation.

The EAO will be responsible for the general administration of the dispute resolution process, including:

- The related procurement to appoint a facilitator, including paying for the services of the facilitator;
- Logistical support in scheduling meetings and booking venues for in-person meetings; and,
- Administer funding to Indigenous nations.

Without a regulation in place, the facilitator selection process may be different from the one available under the regulation and will be determined on a case-by-case basis. The appointment process must operate within provincial procurement policy and trade agreements.

(NTD: EAO policy is actively working to identify a procurement process in the medium term in the absence of the regulation, and in the long term for the future regulation-model. This section is therefore subject to change.)

4.3.1. Facilitator Qualifications

The EAO recognizes the importance of setting qualifications that ensure facilitators have the necessary skills and experience, while not creating barriers. Facilitators should demonstrate dispute resolution experience and experience working with Indigenous peoples. Facilitators must also be able to bring a rights-based lens to dispute resolution processes. This includes having the skills to create and maintain a culturally safe, respectful, and trauma-informed process and to work with Indigenous nations to reflect their laws, traditions, customs, and legal systems into the customized process.

To qualify, facilitator candidates must be able to demonstrate the following minimum qualification:

Required:

- Dispute resolution experience;
  - A minimum of five years of experience facilitating disputes;
  - A minimum of five facilitations within the last five years as the sole or lead facilitator; and,
  - Preference will be given to dispute resolution experience involving Indigenous peoples and relating to resource development/land-use;
- Experience working with Indigenous nations;
  - May be demonstrated, for example, by providing a reference from communities in which they have worked.

(NTD: the number of facilitations/years of experience is subject to practical experience with facilitator selection process and feedback).

Preferred:

- Formal dispute resolution or mediation credentials, such as a mediation training certificate or a Qualified or Chartered Mediator designation;
- Demonstrated understanding of the environmental assessment process in British Columbia or other Canadian jurisdictions and/or familiarity with the natural resource sector. Process-centred experience will be prioritized over technical experience; and,
- Trauma-informed training.

Co-facilitation may be an appropriate option if agreed to by the parties. Two facilitators may co-facilitate a dispute as a team if together they meet the required qualifications for dispute resolution (both dispute resolution experience and experience working with Indigenous peoples).

The facilitator(s) will be required to abide by the Interim Standards of Conduct for Dispute Resolution Facilitators (see *Appendix 2*). If the facilitator does not adhere to the standards, the EAO may remove the facilitator from the facilitation. In this case, a time limit extension may be required to enable the parties to recommend a new facilitator.

4.3.2. Facilitator Ineligibilities

A facilitator will be ineligible to facilitate a dispute if the facilitator has a personal or financial interest in the outcome of the project undergoing an environmental assessment for which dispute resolution has been initiated.

Other factors resulting in actual of perceived conflicts of interest may also disqualify a facilitator. A conflict of interest, whether real or perceived, results from situations where the facilitator's ability to act in the interest of the parties could be impaired or where the parties' trust or confidence in the facilitator would be compromised.

4.4. Pre-facilitation

4.4.1. Customizing a Facilitation

During pre-facilitation, the facilitator and parties develop a customized process. Facilitators will work with the Indigenous nation to incorporate Indigenous laws, traditions, customs, and legal systems.

The facilitator will arrange a pre-facilitation meeting with the parties. In some cases, the facilitator may choose to meet with parties individually to understand each party's concerns. The meeting(s) will have the following objectives:

- Clarify the matter under dispute with the initiating party, including the remedy being sought;
- Develop a customized process for the facilitation that meets the needs of all parties;
- Determine the parties' views on whether other individuals or groups, such as e.g., the proponent, federal government, other Indigenous nations etc. can take part in the facilitation;
- Identify parties' assumptions and seek to find common ground or establish objective criteria for the dispute; and
- Assess the parties' readiness to talk (see box on right).

What does 'readiness to talk' mean?

The facilitator will assess the readiness of parties to take part in the process, not whether any participant is right or wrong. Considerations may include:

- Have the parties tried to achieve agreement on the issue prior to initiating dispute resolution?
- Is dispute resolution the right process to address the concerns raised?
- Is it the right time?
- What do the parties need to move the dispute resolution process forward?
- Is there a willingness to seek common ground?
- Are the parties' positions intractable?

The facilitator will seek to clarify the matter in dispute and ensure that everyone has a clear and common understanding of what the facilitation will aim to achieve. This discussion will inform the facilitator's recommendation for next steps, including a potential early termination of the facilitation, if appropriate (see *Termination by facilitator*).

4.4.1.1. Engagement Protocol

The facilitator will develop an engagement protocol. The term engagement protocol is the term that the EAO chose to use in the interim framework, but this type of document may have different terminologies associated with it in different alternative dispute resolution contexts (e.g., group/process agreement; agreement to mediate). The purpose of this type of document in alternative dispute resolution is to define the issues, objective, interests, and the desired outcomes of the parties. It will also summarize the procedural details agreed to by the participants.

It may cover topics such as:

- Principles for working together (i.e., the 'ground rules');
- The issues and objectives for the facilitation;
- How other participants may take part in the facilitation;
- Any limitations on confidentiality and how information is shared with outside participants; and
- The process for the facilitation (e.g., meeting types, schedule, expected submissions, etc.).

Typically, this protocol is signed by the parties. This document signals the end of the pre-facilitation and that parties are ready to proceed with dispute resolution.

4.5. Termination by Facilitator

There may be circumstances where a facilitator may choose to end the dispute resolution process early.

The facilitator may end the process during pre-facilitation if:

- The substance of the dispute is unrelated to the project undergoing an assessment (i.e., about another project; about a project or activity that is not regulated by the EAO);
- The substance of the dispute would be better considered during another phase in the assessment;
- The dispute has been considered in dispute resolution previously in relation to the same project and there has been no change in the parties' positions;
- The parties have not made attempts to reach agreement on the issue prior to initiating dispute resolution; or
- The participants are not prepared to participate meaningfully in the facilitation (i.e., not "ready to talk").

The facilitator may choose to end the process at other points if:

- The parties are not prepared to meaningfully participate to such an extent that reaching consensus is highly unlikely (e.g., party or parties are too entrenched in their position; a party is acting in bad faith);
- The Indigenous nation participating in dispute resolution wishes to end the process, as Indigenous nations' participation is voluntary; or
- The project undergoing the assessment withdraws from the assessment process.

The termination criteria apply equally to all parties. If the facilitator decides to terminate the dispute resolution process, the facilitator must provide notice to all parties. The facilitator must complete a report describing the steps taken and outline the reasons for early termination.

4.6. Facilitation

Facilitation is the phase of dispute resolution where the parties discuss the matter in dispute under the guidance of the facilitator(s). The engagement protocol will determine the procedural details. Facilitations should proceed in a way that supports two key objectives:

1. Provide the parties with the best possible tools and most supportive environment to reach consensus on the matter; and,
2. Explore tools for implementing commitments made during the facilitation to 'put talk into action.'

While each facilitation should strive to meet these high-level objectives, the process of each facilitation may be unique. The goal is to create an environment that is conducive to frank discussions, collaboration, trust and relationship building for the long-term.

The facilitation will end either:

- When the participants reach consensus or agreement; or,
- If the process is terminated.

4.7. Report

The facilitator is required by the EA Act to provide a report to the parties and decision-makers. The dispute-resolution process ends when the facilitator provides their report.

While the dispute resolution process itself may be confidential (see *Confidentiality* below), the outcome of dispute resolution (whether the parties reach consensus on a decision or recommendation) is generally not confidential. The facilitator and the parties have the flexibility to develop a report format that is appropriate for the individual dispute. The facilitator may use co-drafting as a tool to jointly problem-solve together. This can also help create a report agreed to by the participants. Generally, the report may include:

- A statement of facts;
- A description of the facilitation; and
- A conclusion on whether consensus was reached or not reached;
    - If consensus was reached on the entire matter, a summary of what conclusions the parties reached;
    - If consensus was reached in part, a clear explanation of what issues were resolved and where the parties continue to disagree; or,
    - If consensus was not reached, a summary of the efforts made and where the parties continue to disagree.

The facilitator does not make a decision on the matter and the report is non-binding. The facilitator may choose to include a recommendation on further process. A recommendation for further process will not delay the decision maker from proceeding with a decision. Participants may choose to pursue the recommendation during the rest of the environment assessment (e.g., during consensus seeking on subsequent decisions) or outside of the environmental assessment process for the benefits of relationship building.

Dispute resolution on most matters is followed by a decision by either the CEAO or the Minister(s). The exception is for disputes under Section 14 about the participation of an Indigenous nation in the assessment – there may not be a decision (see *Appendix 1*). The decision maker considers the report and may explain in their reasons for decision how the report was considered, if reasons are provided. The facilitator's report only pertains to the project that is subject to dispute resolution. The report is not to be taken as guiding the CEAO or Minister respecting a project not addressed in the report or a provincial decision maker under another enactment. Facilitation is without prejudice to processes or activities outside of that particular environment assessment.

In most cases, the dispute resolution report would be posted on the project's page of the *EAO Project Information Centre* (EPIC) (where all public assessment documents can be found) following a decision by the provincial decision-maker. An exception may be made for disputes about an Indigenous nation's participation in the assessment under Section 14 of the EA Act.

Given that the report is typically made public, the report may include a confidential memo that includes confidential information for the decision-maker to consider, such as confidential Indigenous knowledge.

4.8. Confidentiality

Confidentiality is an important component of alternative dispute-resolution processes in general. Confidentiality supports frankness, openness, fairness, and helps to maintain the clear neutrality of the facilitator. It enables the parties to openly share their thoughts, opinions, and lived experiences without the fear of disclosure while the process is ongoing.

The context of environmental assessment adds two nuances to the discussion around confidentiality and dispute resolution: procedural fairness obligations and a transparent public decision-making process. The parties to dispute resolution determine how other participants may be involved, including the proponent. Proponent participation may range from active participant to silent observer or being informed of outcomes from but not present at meetings. However, they take part, the EAO must meet procedural fairness obligations to the proponent, as the subsequent decision affects them. How this obligation is met by the EAO will depend on the facts of each dispute-resolution process and will be determined on a case-by-case basis.

Parties to the dispute will have an opportunity to review the facilitator's report, make requests for amendments, and agree to what is shared or not shared. If commitments or solutions are proposed during dispute resolution, the EAO may need to engage with other participants (such as the proponent or provincial agencies) who may be necessary for implementation. Proponents may have an opportunity to review the report and other submissions made during the process as a matter of a procedural fairness obligation, which is determined on a case-by-case basis. The report may include a confidential memo that includes confidential information for the decision-maker (e.g., confidential Indigenous knowledge).

The approach to confidentiality taken by the EAO to date under the interim framework has been that the parties define what information provided in a facilitation is confidential. The parties may also develop guidelines for themselves to determine whether discussions are with prejudice or without prejudice (i.e., able to be used in future litigation). How information is shared or not shared should be defined in the engagement protocol.

4.8.1.1. Indigenous Knowledge

The confidentiality provisions of the *Environmental Assessment Act* (the EA Act) and the *Freedom of Information and Protection of Privacy Act* (FOIPPA) provide protection for confidential Indigenous knowledge. Indigenous nations may provide Indigenous knowledge to the Minister(s), the CEAO, or a dispute resolution facilitator in confidence under *Section 75(1)* of the EA Act. Subject to Section 75(2), this knowledge must not knowingly be, or be permitted to be, disclosed to any other party without written consent.

Under Section 75(2)(c), if the CEAO determines that it is necessary to disclose information, the decision to disclose information would be made following engagement with the Indigenous nation. Each disclosure would be handled on a case-by-case basis. The CEAO will notify the Indigenous nation of the potential disclosure requirement and will engage the Indigenous nation regarding the scope of the information to be disclosed, the format of the information to be disclosed, and the conditions attached to the disclosure.

A request for disclosure may also be made under FOIPPA and decisions on the release of information are the responsibility of the head of the relevant public body. If a freedom of information request is made in relation to Indigenous knowledge part of an environmental assessment process, including dispute resolution, the head of the relevant public body must refuse to disclose this information unless the Indigenous nation has consented in writing to the disclosure (FOIPPA, *Section 18.1*).

If Indigenous knowledge is not captured under section 18.1 of FOIPPA, FOIPPA provides discretionary protection from disclosure in freedom of information requests for other reasons, including if public disclosure of the information could reasonably be expected to:

- Harm the conduct by the Province and relations between the Province and Indigenous governments (*FOIPPA, Section 16*). Section 16(3)(b) disapplies the 15-year-old information limitation in Section 16(3) if it is information provided by an Indigenous governing entity; or,
- Result in damage to or interfere with the conservation of natural sites or sites that have an anthropological or heritage value (*FOIPPA, Section 18*).

For more information on confidentiality and Indigenous knowledge, see the *Guide to Indigenous Knowledge in Environmental Assessments.*

4.9. Role of Proponent

Only participating Indigenous nations or the CEAO may refer a matter to a dispute resolution facilitator. Proponents, however, may be invited to participate in dispute resolution on a case-by-case basis, with their participation ranging range from being an active participant to a silent observer or it may be decided that the proponent is absent from the dispute resolution proceedings. The EAO is of the view that it will typically be beneficial to have the proponent involved in the dispute resolution process. Proponent participation can support more efficient discussions, provide project-specific information, and ensure that proponents have an opportunity to comment on anything that arises that may materially affect their interests.

Regardless of whether the proponent is invited to participate in the dispute resolution or not, the EAO has procedural fairness obligations to the proponent that must be met, given that dispute resolution takes place within a regulatory process for reviewable projects and that the subsequent decision affects the proponent of the project. If commitments or solutions are proposed during dispute resolution, the EAO may need to engage with other participants (such as the proponent or provincial agencies) who may be necessary for implementation. How these procedural fairness obligations are met by the EAO will depend on the facts of each dispute resolution process and will be determined on a case-by-case basis.

Ultimately, it will be up the Indigenous nation and the EAO, with help from the facilitator, to determine how other parties may be involved. Whatever the level of involvement, proponents will:

- Be informed that dispute resolution has been initiated;
- Be informed on the outcome of dispute resolution;
- Receive the facilitator's report (except for Section 14 disputes);
- Be notified of any impacts to environmental assessment time limits and process;
- Be engaged on any commitments or resolutions that are tabled that may affect them; and
- Be given an opportunity to be heard in relation to the dispute resolution report and any relevant submission made during the dispute resolution process.

5.0 VARIATIONS TO THE INTERIM PROCESS

The dispute resolution framework may be further amended by an Indigenous nation through:

1. A government-to-government agreement, or,
2. A standing Memorandum of Understanding between EAO and an Indigenous nation.

A process set out in a government-to-government agreement may supersede the entire statutory dispute resolution process. A standing Memorandum of Understanding may establish procedures and principles should that Indigenous nation initiate dispute resolution during an environmental assessment. In either case, the EAO would not discuss procedural details until a matter is referred for dispute resolution.

APPENDIX 1: DISPUTE RESOLUTION PROCEDURES FOR SECTION 14

NOTE: These procedures were developed specifically for Section 14 of the Act, which applies to early engagement, environmental assessments, amendments, and extensions as all of these processes allow for the identification of participating Indigenous nations. Outstanding policy areas are highlighted in red below.

Any Indigenous nation that is aware of a project may provide notice to the EAO of its intention to participate in the environmental assessment, certificate or exemption order amendment (amendment), or certificate extension (extension) as a participating Indigenous nation. The notice is made under *Section 14(1)* of the Act. The EAO posts the Section 14(1) notices on the *EAO Project Information Centre (EPIC)* to the project's page as they are received. Once the EAO posts the Section 14(1) notices on EPIC, three possible scenarios may occur.

1.0 EARLY ENGAGEMENT

Early Engagement Policy

During the Early Engagement phase, Indigenous nations may provide their Section 14(1) notice within 80 days of the acceptance of the Initial Project Description. By day 90, the EAO must provide a list of participating Indigenous nations (the list) to the proponent. Dispute resolution cannot be initiated after the list is provided for notices received by day 80. If there are dispute resolution processes in progress that were started before day 90, the list may be updated depending on the outcome of dispute resolution. In exceptional circumstances, where new dispute resolution processes begin for Section 14(1) notices issued after day 80 (see atypical scenario below), procedures for these delayed dispute resolution processes will be determined on a case-by-case basis.

1.1. Scenario 1: One Nation disagrees with another Nation's Section 14(1) notice

Nations may either seek to resolve the disagreement on their own or may pursue facilitated dispute resolution to assist in resolving the disagreement.

Dispute resolution is initiated by one Nation about the Section 14(1) notice of another Nation.

- Dispute resolution can be initiated about a Section 14(1) notice as soon as the notice has been submitted to the EAO. To mitigate potential impacts to timelines the EAO will proactively work with Indigenous nations who have indicated that they may have concerns about another Nation being a participating Indigenous nation, to try to resolve such concerns directly with the other Nation or by the Nation initiating dispute resolution as early as possible following receipt of Section 14(1) notices.
- Dispute resolution must be initiated before the list of participating Indigenous nations is provided to the proponent.
- The EAO is not a party in the dispute resolution process by default but may be asked by either Nation to participate. If the CEAO's participation is requested, the CEAO must participate.
- Participation by Indigenous nations is voluntary. If the Nation whose Section14(1) notice is being challenged does not wish to participate in the dispute resolution process, the EAO cannot compel the Nation to participate. In this case, dispute resolution will not proceed. Both Nations that provided notice would be participating Indigenous nations unless the CEAO pursues a Section 14(2) process (see *Scenario 2*).

Dispute resolution process and engagement during dispute resolution

- Disputes between Nations over Section 14(1) notices are not a 'matter pending decision' (see possible outcomes below). The list of participating Indigenous nations is still provided to the proponent along with the Summary of Engagement on day 90.
- All Section 14(1) notices will be posted to EPIC but any Nation whose Section14(1) notice is being challenged is not included on the list of participating Indigenous nations provided to the proponent. The list may be updated pending the outcome of the dispute resolution process.
- The EAO will continue to engage with all the Nations that have provided a Section 14(1) notice, including those engaged in the dispute resolution process, as though they are participating Indigenous nations. During Early Engagement this will include consensus seeking as required under the EA Act (e.g., Readiness Decision) and providing information on the project.
- The EAO strongly encourages proponents to engage with all Indigenous nations that have provided a Section 14(1) notice (as shown on EPIC) as though they are participating Indigenous nations, including those engaged in the dispute resolution process.

Possible outcomes of dispute resolution

1. The parties reach consensus that the Nation whose Section14(1) notice was challenged should participate as a participating Indigenous nation:

- CEAO provides an updated list confirming participating Indigenous nations to the proponent; and,
- There is no further opportunity for another Nation or the CEAO to initiate a dispute resolution process in relation to the Section14(1) notice.

2. The parties reach consensus that the Nation whose Section14(1) notice was challenged should not participate as a participating Indigenous nation:

- The Nation whose Section14(1) notice was challenged withdraws their notice; and,
- The EAO may consult with the Nation that withdrew its Section14(1) notice, if any consultation obligations exist.

3. The parties do not reach consensus:

- CEAO pursues Section 14(2) process (scenario 2 below): The CEAO, after considering the dispute resolution report, may indicate an intention to provide notice under Section14(2) to the Nation whose Section14(1) notice was challenged. The CEAO must provide the Nation with an opportunity to be heard. Where appropriate, the dispute resolution process and further engagement on the dispute resolution report for disputes about Section14(1) notice may fulfill this requirement. If the CEAO participates in a dispute resolution process in relation to Section 14(1) matters between Nations, that dispute resolution process may also fulfill this requirement.
- CEAO does not pursue Section 14(2) process: The CEAO does not pursue a Section 14(2) notice for the Nation whose Section 14(1) notice was challenged. An updated list confirming participating Indigenous nations is provided to the proponent. The Nation whose notice was challenged will be a participating Indigenous nation.

If either Nation does not agree with the above outcomes, this does not limit the right of a Nation to seek a remedy from a court as noted in Section 5(8) of the EA Act.

1.2. Scenario 2: The CEAO does not consider that an Indigenous nation that has provided a Section 14(1) notice, or its Section 35 rights, could reasonably be expected to be adversely affected by the proposed project

The CEAO initiates a Section 14(2) process

The CEAO provides the Nation whose Section14(1) notice is being considered for exclusion under *Section 14(2)* with an opportunity to be heard. The Nation or CEAO may choose to initiate a dispute resolution process if, after providing the opportunity to be heard, the CEAO is still considering a Section 14(2) notice.

Dispute resolution process and engagement during dispute resolution

- The matter pending decision in this scenario is the decision that there is no reasonable possibility the Indigenous nation or its Section 35 rights will be adversely affected by the project under Section 14(2). This decision cannot be made until dispute resolution is concluded. The list of participating Indigenous nations is still provided to the proponent along with the Summary of Engagement on day 90.
- The Nation whose Section14(1) notice is being considered under a Section14(2) process is not included on the list if the process is not yet complete. The list may be updated pending the outcome of the dispute resolution process.
- The EAO will continue to engage with all the Nations that have provided a Section 14(1) notice, including those engaged in the dispute resolution process, as though they are participating Indigenous Nations. During Early Engagement this will include consensus seeking as required under the EA Act (e.g., Readiness Decision) and providing information on the project.
- The EAO strongly encourages proponents to engage with all Indigenous nations that have provided a Section 14(1) notice (as shown on EPIC) as though they are participating Indigenous nations, including those engaged in the dispute resolution process.

CEAO decision

The CEAO will consider the dispute resolution report and may result in the following outcomes:

A. CEAO pursues Section 14(2) notice: The CEAO provides notice under Section 14(2) and explains how the dispute resolution report was considered in their reasons for decision. If a Nation does not agree with the CEAO's notice under Section 14(2), this does not limit the ability of the Nation to seek remedy from a court (Section 5(8)). No update to the list of participating Indigenous nations is made.
B. CEAO does not pursue Section 14(2) notice: The CEAO agrees that the Nation should participate as a participating Indigenous nation and the EAO provides an updated list confirming participating Indigenous nations to the proponent.

1.3. Providing the list of particiapting Indigenous nations to the proponent

If dispute resolution has been initiated, a cover letter to the Proponent will accompany the list and will state that:

- Some Nations have initiated a dispute resolution process or are engaged in a Section 14(2) process;
- The EAO will continue to engage with those Nations as participating Indigenous nations until the process is complete and their status as a participating Indigenous nation is decided; and,
- The proponent is strongly encouraged to continue to engage with all Nations who have provided a Section 14(1) notice (as shown on EPIC) as though they are participating Indigenous nations until the process is complete and their status as a participating Indigenous nation is decided.

Note that these bullets are only required where dispute resolution or a Section 14(2) process is initiated.

1.4. Atypical scenario: Late Section 14(1) notice

It is possible that at some point later in the EA process (e.g., during Application Review), new information may become available that indicates that the proposed project could have broader impacts than what were initially anticipated. For example, project design could change, or a study area expands.

An additional Nation or Nations may self-identify and provide notice of their intention to participate as a participating Indigenous nation. These new Section 14(1) notices are posted on EPIC and either Scenario 1 or 2 noted above, may occur. A retroactive Section 38 extension of the 90-day time limit may be necessary.

It is possible that there may be other atypical scenarios that warrant adjustments to the list of participating Indigenous nations and how the EAO and proponent will engage with Indigenous nations. These scenarios will be dealt with on a case-by-case basis.

2.0 Certificate and Exemption Order Amendments

The process for notifying Indigenous nations of an amendment to an Environmental Assessment Certificate (EAC) or Exemption Order is outlined in the amendment policy (see box on right).

Environmental Assessment Certificate and Exemption Order Amendment Policy

Amendment types

Simple: administrative in nature with no physical change to project (less than three months); E.g., holder/ project name change; Certified Project Description error correction.

Typical: material but limited change to project (3-6 months); E.g., any physical change (land area changes, expanding footprint of a dump, process changes).

Complex: material change to location, processes, outputs, etc. with likely potential for effects on Section 25 matters (six months and longer); E.g., functional change to project that leads to a full reassessment.

Certificate Extensions

Note: For the purpose of the interim approach to dispute resolution, only extensions to certificates issued under the former Act are considered.

Certificate Extension Policy

2.1. Dispute Resolution Process for Amendments and Extensions

Table 2 Key differences in dispute resolution process for early engagement, amendments, and extensions

dispute resolution component	Early Engagement	Amendment	EAC Extension
Confirm participants	Up to 10 days	Simple: Up to 5 days Typical and Complex: Up to 10 days	Up to 10 days
Targeted Facilitation Time limit	60 days	Simple: 10 days Typical and Complex: 60 days	10 days
Late Section 14(1) Notice	Dispute resolution may be initiated after the EAO issues the list at 90-day but will require a retroactive Section 38 extension of the 90-day time limit under Section 13(5)(b). The dispute resolution process will be determined on a case-by-case basis. EAO staff should be aware that any new participating Indigenous nations that are confirmed later in an EA process, will require additional support from the EAO and Proponent to get up to speed on the project and EA process. However, engagement and consensus seeking will not be retroactive and will begin once the Nation is confirmed as a participating Indigenous nation (i.e., any consensus seeking opportunities at key EA milestones that have passed will not be available to the new participating Indigenous nation).	Dispute resolution may be initiated later in the amendment process without time limit implications – no statutory time limit for amendments. The dispute resolution process will be determined on a case-by-case basis.	Late dispute resolution initiation may not be feasible given the timeframe of typical extensions and will need to be considered on a case-by-case basis, with no time limit implications – no statutory time limit for EAC extensions.
Deadline for dispute resolution initiation	Dispute resolution may not be initiated after day 90 for Section 14(1) notices provided by day 80.	Dispute resolution may not be initiated once the list of participating Indigenous nations is provided to the holder for Section 14(1) notices provided by the deadline set in policy.	Dispute resolution may not be initiated once the list of participating Indigenous nations is provided to the holder for Section 14(1) notices provided by the deadline set in policy.

APPENDIX 2 – INTERIM STANDARDS OF CONDUCT FOR DISPUTE RESOLUTION FACILITATORS

NOTE: This appendix was developed in spring 2020 by adapting the Standards of Conduct for Mediators by Mediate BC to fit the dispute resolution process under the EA Act. These standards will be subject to experience and learning from applying the interim approach, along with feedback during future engagement. Standards of conduct for dispute resolution participants may be developed, following engagement and collaboration with Indigenous nations.

These draft standards were developed based on the Standards of Conduct for Mediators by Mediate BC[1] but were revised to fit the context of environmental assessment and the dispute resolution process under the *Environmental Assessment Act* (2018).

1.0 GENERAL

1.1 These standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the standards appear.

1.2 The objectives of these standards are to define principles to guide facilitator conduct, enhance public protection and promote confidence in the dispute resolution facilitation process for those who chose to use it under the B.C. *Environmental Assessment Act* (2018).

1.3 The core principles of dispute resolution under the *Environmental Assessment Act* (2018) (the EA Act) are that each dispute resolution process should:

1.3.1 Be flexible, allowing for customization on a case-by-case basis;

1.3.2 Reflect the unique legal traditions and customs of Indigenous nations and communities; and,

1.3.3 Be predictable and timely.

1.4 These standards are not to be construed as a competing code of behaviour displacing other professional codes, but as additional standards for facilitators.

1.5 Where there is a conflict between these standards and a facilitator's professional code, the professional code prevails. However, a facilitator should make every effort to comply with the spirit and intent of these standards in resolving such conflicts. This effort should include honouring all remaining standards not in conflict with the other codes.

[1] Mediate BC is a not-for-profit organization that protects the public by managing roster of mediators and med-arb practitioners across B.C. To find out more, visit https://www.mediatebc.com/about-us. Mediate BC's Standards of Conduct for Mediators were developed and based, in part, upon the Model Standards of Conduct for Mediators prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution and the Association for Conflict Resolution, and revised and approved by their successor organization in 2005.

2.0 DEFINITIONS

2.1 CEAO: means the Chief Executive Assessment Officer of the Environmental Assessment Office.

2.2 Environmental Assessment Office (EAO): the office that administers the *Environmental Assessment Act* (2018), including the conduct of environmental assessments of major projects in British Columbia and providing provincial Ministers with advice to inform their decision on whether the project should proceed.

2.3 Dispute resolution: a process whereby eligible participants may refer matters under Section 5(2) of the *Environmental Assessment Act* (2018) to a qualified dispute resolution facilitator, who helps the parties reach consensus.

2.4 Parties: means those persons who are a party to the dispute which is the subject matter of a facilitation under Section 5 of the *Environmental Assessment Act* (2018).

2.5 Project: means the reviewable project that is undergoing an environmental assessment under the Act for which the dispute has been initiated by eligible participants under Section 5 of the *Environmental Assessment Act* (2018).

2.6 Statutory decision maker: means either the CEAO or the minister(s) depending on the matter under dispute.

3.0 VOLUNTARY PARTICIPATION

3.1 A facilitator must conduct a facilitation having regard to the fact that participation in a facilitation is voluntary (except in certain circumstances for the CEAO). Each party may make free and informed choices during the facilitation.

4.0 DUTY OF IMPARTIALITY

4.1 A facilitator must conduct a facilitation in an impartial manner and avoid conduct that gives the appearance of partiality. Impartiality means freedom from favoritism, bias, or prejudice.

4.2 If at any time a facilitator is unable to conduct a facilitation in an impartial manner, the facilitator must withdraw, and must notify the EAO.

4.3 If at any time a party perceives that the facilitator is unable to remain fully impartial, the party should bring this to the attention of the facilitator, who should seek to resolve the issue. If it cannot be resolved in the facilitation process the facilitator must withdraw and must notify the EAO.

4.4 A facilitator should neither give nor accept a gift, favour, loan, or anything of value that raises a question as to the facilitator's actual or perceived impartiality.

4.5 A facilitator may accept or give *de minimis* gifts or incidental items or services that are provided to facilitate a facilitation or respect cultural norms so long as such practices do not raise questions as to a facilitator's actual or perceived impartiality.

5.0 DUTY TO AVOID CONFLICT OF INTEREST

5.1 A facilitator must determine and disclose to the parties and the EAO any monetary, personal, professional, family, social or business relationship or affiliation which is likely to constitute, or reasonably be perceived to constitute, a conflict of interest.

5.2 A facilitator must disclose, as soon as practicable, all actual and potential conflicts of interest that are known to the facilitator and could reasonably be seen as raising a question about the facilitator's impartiality. After disclosure, if all parties agree, the facilitator may proceed with the facilitation, but otherwise must withdraw.

6.0 Facilitator Competency

6.1 A facilitator must acquire and maintain knowledge, skills, and abilities sufficient to provide competent facilitation services.

6.2 A facilitator must provide services only for cases where they are qualified by experience or training.

6.3 A facilitator should ensure that they have knowledge and procedural skills sufficient to properly identify and manage cases involving vulnerable parties, and the skills necessary to ensure the facilitation is free of abuse or the inappropriate use of power by any party.

6.4 If a facilitator, during the course of a facilitation, determines that the facilitator cannot conduct the facilitation competently, the facilitator must discuss that determination with the parties as soon as practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing, or requesting appropriate assistance.

6.5 If a facilitator's ability to conduct a facilitation is impaired by drugs, alcohol, medication or otherwise, the facilitator must not conduct the facilitation.

7.0 Facilitator Integrity

7.1 A facilitator must be honest and diligent, act in good faith and put the interests of parties above those of the facilitator.

7.2 A facilitator must not act in a way that puts into question the integrity of the facilitation process.

8.0 Conduct of the Facilitation

8.1 A facilitator should ensure that all parties understand the nature of the facilitation process, the procedures to be followed, the role of the facilitator and the relationship of the participants to the facilitator.

8.2 A facilitator should make information relevant to the facilitator's training, education, experience, and approach to conducting a facilitation available to the parties.

8.3 A facilitator must conduct a facilitation in a way which provides the parties with an opportunity to fully participate in the process and which encourages respect and civility among the parties.

8.4 A facilitator must ensure, to the extent that such matters are within the facilitator's control, that the facilitation process is conducted with integrity.

8.5 If a party appears to have difficulty comprehending the process or matters, or difficulty participating in a facilitation, the facilitator should explore the circumstances and potential accommodations, modifications or adjustments that may increase the party's capacity to comprehend and participate.

8.6 If a facilitator believes that a party's conduct jeopardizes the conduct of a facilitation consistent with these standards, a facilitator must take appropriate steps including, if necessary, postponing or terminating the facilitation.

9.0 Safety and Appropriateness of Facilitation

9.1 A facilitator must identify things that could affect the safety of any party and make appropriate accommodations to ensure safety.

10.0 Confidentiality

10.1 Under Section 75(1) of the *Environmental Assessment Act* (2018), any Indigenous knowledge of an Indigenous nation that is provided to the dispute resolution facilitator, the Chief Executive Assessment Officer (CEAO), or the minister(s) under the Act is confidential and must not knowingly be, or be permitted to be, disclosed without written consent[2].

10.2 Indigenous knowledge provided under Section 75(1) may be disclosed under Section 75(2):

10.2.1 If the knowledge is publicly available,

10.2.2 By court order,

10.2.3 By the CEAO, if the officer considers that the disclosure is necessary for the purposes of procedural fairness, or

10.2.4 In the prescribed circumstances.

10.3 If Indigenous knowledge is disclosed under Section 75(2), conditions may be imposed under Section 75(3) by:

10.3.1 The court, if the Indigenous knowledge is disclosed under Section 75(2)(b),

10.3.2 The CEAO, if the Indigenous knowledge is disclosed under Section 75(2)(c), and

10.3.3 By the prescribed person if the Indigenous knowledge is disclosed under Section 75(2)(d).

10.4 The person to whom Indigenous knowledge is disclosed under Section 75(3) must comply with any conditions imposed under that subsection.

10.5 A facilitator must ensure that the parties agree on what information provided in a facilitation is confidential.

10.6 Unless required by law, a facilitator must not disclose to anyone who is not a party to the facilitation any oral or written information received during the facilitation from the time they are retained, except with the consent of all parties.

10.7 A facilitator who participates in teaching, research or evaluation of facilitation must protect the anonymity of the parties and maintain the confidentiality of the facilitation.

10.8 If required to disclose confidential information by a court, tribunal or similar body, a facilitator must provide as much notice as possible to the parties in a facilitation to enable them to seek an order protecting the confidentiality of the information.

11.0 Termination of the Facilitation

11.1 A facilitator must not withdraw the facilitator's services except for good cause and upon reasonable notice to the parties.

11.2 A facilitator may terminate the facilitation when the facilitator concludes that:

[2] Find more information in the *Guide to Indigenous Knowledge in Environmental Assessments*.

11.2.1 The substance of the dispute is unrelated to the project undergoing an assessment (i.e., about another project; about a project or activity that is not regulated by the EAO); or

11.2.2 The substance of the dispute would be better considered during another phase in the assessment ;

11.2.3 The dispute has been considered in dispute resolution previously in relation to the same project and there has been no change in the parties' positions;

11.2.4 The parties have not made attempts to reach agreement on the issue prior to initiating dispute resolution;

11.2.5 The participants are not prepared to participate meaningfully in the facilitation (i.e., not "ready to talk");

11.2.6 The parties are not prepared to meaningfully participate to such an extent that reaching consensus is highly unlikely (e.g., party or parties are too entrenched in their position; a party is acting in bad faith);

11.3.7 The Indigenous nation participating dispute resolution wishes to end the process, as Indigenous nations' participation is voluntary; or,

11.3.8 The project undergoing the assessment withdraws from the assessment process.

11.4 A facilitator must communicate clearly and promptly to the parties and to EAO that facilitation has terminated and provide reasons for termination.

11.5 The facilitator must complete a report for the statutory decision maker describing the steps taken leading up to termination and outlining the reasons for it.

11.6 When a facilitation terminates in circumstances of potential harm to a party, the facilitator must take whatever steps are reasonable to ensure the safety of all participants.