August 25, 2023

BC Environmental Assessment Office
Government of British Columbia

Attention: **Ruby Sarkar, Senior Policy Analyst**

Re: **Discussion Paper: Environment Act Dispute Resolution Regulation**

The BC Environmental Assessment Office ("**EAO**") has requested input from First Nations on the development of a regulation regarding dispute resolution (the "**Regulation**") under the *Environmental Assessment Act,* S.B.C. 2018, c. 51 (the "**Act**").

I write to provide Halalt First Nation's ("**Halalt**")'s comments and feedback related to the proposed Regulation and in response to the Dispute Resolution Regulation Discussion Paper (the "**Discussion Paper**").[1] I have generally followed the outline of the Discussion Paper, as well as providing introductory comments on what Halalt sees as the appropriate scope of dispute resolution under the Act and Regulation.

1. Introductory Comments

As a preliminary matter, it is worth noting that section 1 of the Act states that a "project" means any activity that has or may have adverse effects, or any construction, operation, modification, dismantling or abandonment of a physical work.

"Adverse effects" are not defined, yet form the important practical and theoretical foundation for the processes established by the Act and the eventual Regulation.

What is considered an "adverse effect" must take into account the right of Indigenous peoples to self-government and governance over their traditional territories and resources; the approval of any project on the lands or using the resources of Indigenous Nations without their consent is an adverse impact on the right of Indigenous peoples of self-government, and in many cases, the unextinguished Aboriginal title of Nations in what is now British Columbia – regardless of whether adverse environmental effects are anticipated.

[1] Environmental Assessment Office, "Environmental Assessment Act: Dispute Resolution Regulation Discussion Paper" (May 2023), Government of British Columbia, accessed August 25, 2023, online: https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/the-environmental-assessment-process/dispute_resolution_regulation_development_discussion_paper_webupdate.pdf

A) The Right of Self-Government

As acknowledged by the preamble to the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**"), which has now been incorporated into British Columbia law through the enactment of the *Declaration on the Rights of Indigenous Peoples Act,* S.B.C. 2019, c. 44 (the "**Declaration Act**"),

> "control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs."

This recognizes that control over traditional territories and resources is integral to our traditions and ways of being, is foundational to the preservation and strengthening of our unique cultures, and that we have the right to determine the development of those lands and resources as befits our own needs and priorities.

That is explicitly recognized in the body of UNDRIP itself. Article 26 of UNDRIP recognizes that:

1. Indigenous peoples have the right to the lands, territories and resources which they traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Many Nations across what is now Canada, and particularly in British Columbia, are the holders of unextinguished Aboriginal title to their traditional territories. The Supreme Court of Canada recognized in *Tsilhqot'in* that Aboriginal title includes the rights to exclusively use and occupy the land, to profit from its development, and to exercise decision-making authority and management over those lands and the resources thereon.[2]

Similarly, Article 28 recognizes the right of Indigenous peoples to redress for lands and resources used or damaged without our consent, and Article 29 recognizes the right of

[2] *Tsilhqot'in Nation v. British Columbia,* 2014 SCC 44, paras. 70 - 74.

Indigenous peoples to conserve and protect our lands, territories and resources, including their future productive capacity.

Finally, and most importantly, Article 32 recognizes that:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

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. (emphasis added)

Article 32, and the other Articles in which the principle is incorporated, enunciate a substantive obligation to obtain free, prior and informed consent before taking actions on or affecting Indigenous lands, territories and resources. This acknowledges the substantive right of Indigenous peoples to determination over the use of their lands and other resources, not merely a procedural right to consult and cooperate in good faith.

Adjudication of Rights

The Discussion Paper makes explicit reference to Article 27 of UNDRIP which states:

> 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.

While we agree that the Province must give due recognition to the laws, traditions and systems of indigenous peoples in assessments and dispute resolution under the Act and the Regulation, we do not agree that dispute resolution facilitators are qualified to adjudicate or make findings related to the rights of indigenous peoples in the Province, nor do they have jurisdiction to do so.

While the default position should be recognition of the rights of Indigenous peoples based on their prior occupation and use of their traditional territories and resources, it would be deeply concerning if decision makers under the Act, or dispute resolution facilitators, purported to make findings about Aboriginal rights and title without the extensive oral history, documentary, and witness evidence that is necessary to do so.

Further, it is critical that processes under the Act and dispute resolution under the Regulation are without prejudice to the Aboriginal rights and title of the Indigenous Nations participating. Otherwise, Nations will be unable to safely seek facilitated resolution of disputes under the Act due to the potential for adverse impacts on the future recognition of their Aboriginal rights and title, whether through future litigation, negotiations toward final agreements or with proponents for accommodations for projects in their territories, in future consultation referrals or environmental assessment processes.

When Consent is Required

It is clear that British Columbia is committed to consulting with Indigenous peoples and cooperating in good faith to obtain their consent, as is demonstrated by the enactment of the Act in its current form, the enactment of the Declaration Act, and other initiatives like the cooperative development of this Regulation.

Currently, section 7 of the Act requires the consent of Indigenous Nations for reviewable projects if the Nation is has a treaty or other agreement that requires such consent. This ignores the fact that every Indigenous Nation in British Columbia is entitled to exercise or withhold consent for development affecting their territories, rights and resources. In fact, it is only with a treaty or other reconciliation agreement that designates what projects do not require the consent of the affected Nation that British Columbia can safely authorize development in Indigenous territories without infringing the right of self-government of the affected Indigenous Nations.

Section 7 of the Act gets this backwards, and is somewhat coercive in nature in giving preference to Treaty Nations. Indigenous Nations have many valid reasons not to pursue a final agreement, including the limited quantum of lands the provincial Crown is typically willing to recognize as Aboriginal title lands through such agreements. The Act and Regulations should not contribute to a coercive dynamic; rather, they should respect the constitutionally protected rights of all Indigenous Nations, regardless of whether they view entering a final agreement as in their best interests.

Conclusion

While the Act and Regulation recognize the procedural aspect of the principle of free, prior and informed consent enumerated in UNDRIP – and the domestic legislation implementing it – through the ability of Indigenous Nations to indicate their lack of consent, we urge the Province and the EAO to recognize that these rights create a substantive obligation to obtain consent, not merely to consult and collaborate before making an ultimately unilateral decision.

We hope that, in implementing the Act, the Regulation, and dispute resolution thereunder, the EAO and the Province will carry forward this understanding, which begins with the recognition

that <u>any</u> decision-making affecting the lands or resources of Indigenous peoples without their consent constitutes an "adverse effect" within the meaning of the Act. This should inform all disputes being facilitated, but in particular should inform the facilitation of disputes under section 14 of the Act regarding what Indigenous Nations should participate in the assessment process for a particular decision. Indigenous Nations are best placed to determine if they are impacted by a particular project; respect must be given to their determination.

We propose the addition of a definition reflecting this foundational understanding within the Regulation to guide dispute resolution facilitators in their work with the Province and Indigenous Nations.

<u>B) Decisions Subject to Dispute Resolution</u>

Similarly, we are concerned that certain pending decisions under the Act are not currently subject to dispute resolution, and propose they be added to the Regulation as "prescribed matter[s]" within the meaning of section 5(2) of the Act.

Namely, we are concerned that decisions made by the Minister under section 11 of the Act and by the Chief Executive Assessment Officer (the "**CEAO**") under section 12 of the Act are not currently matters that may be referred to dispute resolution facilitators.

Even where a project seems, to the Minister or the CEAO, not to have potential "adverse effects" within the (current) meaning of the Act, or for some other reason the Minister or CEAO determines that the project should not be designated as a reviewable project, Indigenous Nations whose constitutionally protected Aboriginal rights or title may have concerns regarding the project and oppose the Minister or CEAO's decision not to designate that project as reviewable.

For the same reasons, it is curious that decisions under section 24 of the Act, which describes process planning by the Minister, are not referrable to dispute resolution. The scoping of an assessment is a critical phase of the assessment process, regardless of what government decision-maker undertakes scoping, and Nations may have serious concerns that from their perspective are related to the project under review. Where disagreement arises over the assessment areas, valued components, or effects to be considered during an assessment process, dispute resolution should be available to the parties to reach a better understanding of the Nations' concerns, contemplate options to address those concerns, and seek consensus.

These are three areas where dispute resolution may assist the Province and the affected Indigenous Nation in coming to a better understanding of concerns and how they may be addressed, as well as address the impact on that Nation's right of self-government discussed above.

2. Response to the Discussion Paper

The above sets out Halalt's primary concerns in relation to the proposed Regulation: dispute resolution must be grounded in the rights of Indigenous peoples, and particular the rights of self-government and to exercise control over our traditional territories and resources.

In this section, we briefly respond to the specific questions posed in the Discussion Paper.

A) Principles for Successful Dispute Resolution

What principles should guide dispute resolution? Respecting disputes between First Nations about participation in the assessment, are there specific principles that are needed for this type of dispute?

- Successful dispute resolution requires the explicit recognition of Aboriginal and treaty rights, Aboriginal title, the right of self-government, and those rights recognized by the Province through UNDRIP and the Declaration Act, all of which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982.*

- In particular, successful dispute resolution must be premised on the understanding that Indigenous Nations in the Province have the rights set out in Articles 26, 29 and 32 of UNDRIP that reflect their right to govern their lands and resources.

- The right of self-government necessarily means that provincial decision-making affecting Indigenous traditional territories and the resources thereon is an adverse impact on that Aboriginal right, separate from the existence and extent of environmental effects.

- Dispute resolution must recognize that Indigenous Nations – rather than the CEAO or other provincial staff – are best placed to determine whether and how a project will impact their lands, resources, rights and title, including their right of self-government, guided by their own laws, ways of knowing, experiences, and priorities for their territories and resources. The presumption should be that Indigenous Nations that assert they will be impacted are correct.

- Disputes under section 14(2) of the Act should be guided by the understanding that colonial and Eurocentric perspectives on land tenure, resource use and occupation of land more broadly, as well as the ongoing impacts of colonization, are at the heart of many such disputes over rights and connections to territory. Therefore, special sensitivity is required and when in doubt, an inclusive approach should be used. Direct engagement between Indigenous Nations guided by their own laws and decision-making processes should be encouraged in seeking consensus on such disputes.

B) Referrals to a Facilitator

How should initiation occur so that it is accessible? What information should be provided to initiate a referral to a facilitator?

- Initiation of dispute resolution must be a simple process that can be initiated by the Indigenous Nations themselves to be accessible, practically and financially. Although Nations may benefit from consulting with legal counsel in preparing an initiation, this should not be required either by policy or because the application to initiate dispute resolution is overly complex or detailed. A simple online form or fillable Word or PDF could be used and submitted by email, mail or in-person drop-off to an EAO office.

- We generally agree with the high-level information set out in the Dispute Resolution – Interim Approach draft of June 2023.

C) Qualifications

What knowledge do facilitators need to be able to facilitate disputes in the context of assessments? What qualifications or experience should be required? Are there any factors or circumstances where a facilitator should be ineligible to facilitate a dispute?

- We agree with the requirement that facilitators bring a rights-based lens – and specifically an UNDRIP-based lens – to dispute resolution, and the skills to maintain a culturally safe, respectful, and trauma-informed process. We also agree that the facilitators must be able to create a process, dialogue, and if applicable, facilitator's report that reflects Indigenous Nations' laws, traditions, customs and legal systems.

- In addition to training on trauma-informed approaches to dispute resolution, facilitators must be well-versed in Indigenous legal issues and realities. Non-Indigenous candidates need to demonstrate a strong understanding of cultural competency.

- Facilitators should have extensive familiarity with the ongoing process of colonization, and with important commission reports such as the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission's Final Report, the Report on the National Inquiry into Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+, particularly as they relate to the impacts of colonial occupation on Indigenous peoples' connection to lands, corresponding impacts on culture, and the impacts of natural resource developments on safety for Indigenous women and girls.

- Recognizing the importance of representation in creating a culturally safe facilitation environment and trust in the facilitation process, preference should be given to

Indigenous candidates and candidates with extensive experience working directly with Indigenous Nations.

- While five years of experience in mediating disputes is one way to demonstrate qualification, this may be a barrier to candidates with extensive experience in rights-based and interests-based dialogue, and particularly Indigenous candidates with experience in negotiating or facilitating discussions for reconciliations agreements, treaties, or other Nation to Nation discussions.

- In addition to ineligibility due to personal or financial conflicts of interest, facilitators should be ineligible for past or current employment with the proponent, including working for the proponent as a consultant, contractor or employee.

Are there specific contexts or criteria for the use of team facilitators?

- Team facilitation could be helpful in many scenarios.

- For example, team facilitation could be used to help two Indigenous Nations in a dispute resolution about participation in the assessment; a panel of facilitators could be used, with one from each of the Nations' cultural groups and a neutral third party facilitator.

- A team of facilitators could also be used where that aligns more closely with the Indigenous Nation's own laws and processes for dispute resolution.

- Finally, team facilitation could be used to ensure that the dispute resolution facilitators are both culturally safe and have the necessary experience, such as if a facilitator with extensive experience working for Indigenous communities was found, however they lacked significant mediation experience. Similarly, team facilitation could be used where the lead facilitator's background in Indigenous issues and realities is somewhat less, to bring in a second facilitator to ensure cultural competency and safety.

With regard to disputes between First Nations about participation in the assessment, what are the specific considerations about appointments for this type of dispute?

- Disputes between Indigenous Nations are best worked out at the Nation-to-Nation level between them.

- Where they have agreed to facilitation, specific consideration should be given to Indigenous processes for dispute resolution and how they could be accessed to resolve the dispute in a culturally informed way. This could take the form of a facilitator or facilitation team from the Nations' ethnocultural group, or the use of a facilitator who is an Elder, knowledge keeper or other leader respected by both Nations.

- As a first step, it is important to recognize and take steps to address that such disputes may arise as a result of perceived scarcity of resources for all affected Indigenous Nations; adequate consultation process funding should be provided, and the Province should ensure that accommodations – particularly those outside the environmental assessment process – are distributed among equally impacted Nations.

D) Facilitator Appointments

Halalt generally agrees with these considerations, and would add the comments from C above as considerations guiding facilitator appointments; cultural competency and safety should be the foremost consideration in the appointment of facilitators or facilitation teams.

E) Co-development of Dispute Resolution Processes

Is the co-development of the process foundational to successful dispute resolution? How should co-development work?

- Input into the process is key to building a culturally safe environment and an environment of some trust between parties to the dispute resolution.
- The process should include elements of cultural safety, and integrate Indigenous Nation-specific processes to the extent desired and considered appropriate by the Nation. Nations should be asked for input on the process from the start, with potential options presented and specific questions left open for the Nation to determine if they would like cultural protocols or processes integrated.
- The process must accommodate where scheduling may conflict with cultural activities, such as seasonal availability due to harvesting practices.

How can trust and constructive engagement be built into the process to support open, honest and frank discussions?

- First and foremost, communications need to be without prejudice to the Nation's other interests, including their Aboriginal rights and title as they may pursue them through litigation, negotiations, or accommodation agreements. It should be explicit that facilitator's reports are concluded on a without prejudice basis, to the extent they incorporate information about the Nation's Aboriginal rights and title, or concerns of a sensitive or political nature.
- Nations must be assured that they will have the ability to review the facilitator's report and request changes or the movement of certain information into the confidential memorandum before the report is disclosed to anyone beyond the parties to the

facilitation, and that requested changes will be generally accommodated with very few exceptions.

- It must be made clear from the outset that the Province is actually open to changing its decision – that the facilitation is not just another consultation to understand the Nation's concerns but be unwilling to address them.

- The Crown must demonstrate willingness to seek understanding about all of the Nation's concerns – even those that may seem unrelated to the environmental assessment and related decisions, but are connected from the perspective of the Indigenous Nation, such as seeking accommodations other than environmental mitigation measures or addressing other impacts on their Aboriginal rights and title to offset new potential impacts.

- Crown representatives participating in facilitations should have the actual decision-making authority necessary to achieve and implement a consensus-based outcome, otherwise this may demonstrate disrespect to the Nations' leadership or give the impression that the Province is not truly committed to addressing their concerns.

- Similarly, Crown representatives from all relevant ministries – as determined by the scope of the Indigenous Nations' concerns – should attend and participate, to demonstrate willingness to address those concerns and that they are being taken seriously, and to avoid siloed decision-making or perceived avoidance of responsibility.

With regard to dispute resolution between First Nations about participation in the assessment, are there other considerations for the co-development of this type of dispute?

- This will be highly context-specific, with the distinctive cultures of the Nations in dispute a key factor.

- Whether facilitators from the respective Nations' cultural groups, or Elders, knowledge keepers or other Nation-leaders, can be used should be considered, as well as to what extent the Nations' own culturally informed methods of resolving conflict can be used as desired by the Nations.

- The Province should consider whether a perceived scarcity of resources, such as capacity funding or accommodations, is at the heart of such disputes, or disputes over the recognition of Aboriginal rights and title. Having facilitations explicitly occur on a without prejudice basis may help alleviate some concerns.

How much time is needed to develop the process?

- This will depend on too many factors too opine on generally, and may vary greatly depending on the season and associated cultural or harvesting activities for each Indigenous Nation. It will also depend greatly on the capacity and availability of Nation staff and leadership, and the other capacity constraints being faced by the Nation such as natural disasters, on-reserve public health crises, etc.

- Generally however, establishing the process should occur reasonably promptly so that facilitation on the merits of the dispute can proceed, rather than spending protracted periods of time negotiating complex process agreements or other procedural matters.

F) Powers and Obligations of the Facilitator

What powers should the facilitator have to manage the dispute resolution process? What tools do facilitators need?

The facilitator should be permitted to:

- with the consent of the parties, engage proponents in the dispute resolution process;

- consider matters beyond the environmental assessment process that are raised by the Indigenous Nations as concerns, such as financial accommodation, cumulative impacts, and set-off lands for the exercise of Aboriginal and treaty rights, to the extent they are connected in the perspective of the participating Nation;

- alter timelines to accommodate the needs and capacities of the parties, or to address current events;

- alter the dispute resolution process in an ongoing way to ensure cultural safety and tailor the process to the parties to the facilitation; and

- require the participation of government actors with decision-making authority (i.e. the power to escalate the dispute and require higher authority levels to participate), or teams from all impacted or relevant ministries, to avoid siloed decision-making and ensure achievable outcomes.

Facilitators should be guided, to the extent wished by the Indigenous Nation, by their leaders, knowledge keeps and Elders to develop a fulsome understanding of the concerns and perspectives of the Indigenous Nation, and what solutions may address them.

What should the facilitator be obligated to do?

The facilitator should be obligated to:

- consider the needs and capacity of the participating Indigenous Nation, including current events affecting the Nation, in creating and extending timelines for dispute resolution processes;
- safeguard the confidentiality of information provided by the Indigenous Nation during dispute resolution, and respect the views of the Nation on what information they do or do not wish included in the facilitator's report with very limited exceptions;
- integrate Indigenous decision-making and dispute resolution practices of the Nations participating to the extent they desire and consider appropriate;
- escalate the dispute resolution to Provincial officers with higher levels of decision-making authority at the request of the Indigenous Nation; and
- discuss the possibility of ending the dispute facilitation to the parties before making that decision, and seeking and considering submissions from the parties before terminating the dispute resolution.

What demonstrates that the parties are entering and participating in dispute resolution in good faith with a willingness to meaningfully participate?

- Active listening and thoughtful questions seeking to understand the Indigenous Nation's concerns and perspectives, rather than seeking to convince them to allow the Province's intended decision, demonstrates good faith and a willingness to consider alternative decisions or options.
- Carefully proposing solutions that address the interests and concerns underlying the disagreement, and address the expressed priorities and concerns of the Indigenous Nation, demonstrate good faith.
- For Indigenous Nations, coming to the dispute resolution having considered with the Nation's leadership their concerns, goals, priorities, and acceptable outcomes enables the Nation to seek creative solutions in dispute resolution.

Under what circumstances should a facilitator consider ending a dispute resolution process?

- A facilitator should consider terminating the resolution when the Indigenous Nation no longer wishes to participate, or when consensus no longer seems like a likely outcome. However, in the case of the latter, the facilitator should discuss that possibility with the parties prior to that decision being made.

- We urge caution in facilitators ending a dispute resolution because the substance of the dispute would be better considered at a later stage of the assessment process. This is a subjective determination, and may be directly contrary to the interests of Indigenous Nations who may want to take a proactive approach, start necessary studies and work early, or identify potential solutions to reaching acceptable accommodation agreements with proponents.

- Similarly, we urge caution in terminating a dispute resolution because the concerns raised are "unrelated." This may discount or ignore the linkages and priorities identified by the Indigenous Nation, may prematurely disregard cumulative effects or impacts on Indigenous rights and title, or may unconstitutionally disregard a Nation's concerns regarding accommodations outside the environmental mitigation measures. Further, Nations may bring their concerns to the table as a government-to-government forum if there is a chance their concerns could be addressed through this process. Nations may have exhausted other attempts to have those concerns addressed, or be able to find creative solutions to existing problems in exchange for consent or other agreement in dispute resolution.

G) Time for Dispute Resolution

What should the time limit be? What are the challenges and benefits of having a time limit?

- In our view, 60 days is likely an unrealistic time limit in many situations, and a 90-day time limit may be more consistently achievable. This is due to the many capacity challenges faced by Indigenous Nations, including governance obligations, housing and infrastructure shortages, staff shortages, on-reserve health crises, other ongoing processes like consultation or litigation. Further, resolution may require many sessions to develop a process, reach an understanding of concerns, develop solutions, conduct any required research or options analyses, and negotiate a consensus decision.

- On the other hand, a timeline may assist with accountability for all parties.

Are there other mechanisms that could be built into the process to keep dispute resolution timely?

The following ideas may assist in building positive momentum during dispute resolution:

- intake meetings between the dispute resolution facilitator and each party to understand each party's process needs, substantive concerns, goals and interests, and barriers to active participation;

- active meeting facilitation, including detailed action item and follow ups after facilitation sessions; or
- provision of prompt capacity funding to Indigenous Nations to consult external advisors or legal counsel as needed.

H) Matters the Facilitator Must Consider in the Report

What should a facilitator be required to consider? What else should they consider?

- The facilitator should be obligated to consider what Indigenous laws apply to the project and value components at issue, rather than only considering the colonial legal framework. This can also help identify conflicts between legal systems, and spur ideas on how they may be addressed.
- The facilitator should be obligated to recognize the self-governance rights of the participating Indigenous Nation, and how that does or does not align with the decision in dispute.
- The facilitator should not make factual findings, particularly those touching on the Aboriginal rights and title or strategic priorities of the Indigenous Nation, to avoid prejudicing future rights and title recognition.
- The facilitator should consider what solutions or options were considered, whether they were stated to meet each party's needs and why or why not;
- The facilitator should consider what concerns were raised by the First Nation, and whether proposed solutions addressed those concerns directly.
- The facilitator should be obligated to consider where requests of or solutions proposed by the Indigenous Nation were rejected by the Province due to a lack of jurisdiction, lack of decision-making authority, or because they were considered not related by the Province, to identify potential jurisdictional gaps and guide the Indigenous Nation in future efforts relating to their concerns.

I) Confidentiality

Is confidentiality necessary? How can spaces be created that are conducive for the parties to openly share?

- Confidentiality is essential to the participation of Indigenous Nations in dispute resolution, which must also be without prejudice to the Nations' rights and title positions

given the potential that facilitation reports could be used in future to undermine Indigenous Nations' rights and title positions in litigation or negotiations.

Are there additional considerations in relation to Indigenous knowledge, beyond section 75 of the Act?

- In addition to the confidentiality protections of section 75(1), the CEAO should be required to give advance notice to an impacted Indigenous Nation of any disclosure they consider necessary under section 75(2), and provide an opportunity for the Indigenous Nation to make submissions and request redactions or exclusions.

Conclusion

Thank you for the opportunity to provide feedback on the proposed Regulation.

Chief James Thomas

Halalt First Nation