



MUSQUEAM INDIAN BAND

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VIA EMAIL:

EAO.DisputeResolution@gov.bc.ca

Elenore Arend
Chief Executive Assessment Officer and
Associate Deputy Minister
Environmental Assessment Office

Dear Elenore Arend,

Re: Environmental Assessment Act – Dispute Resolution Regulation

Musqueam Indian Band (“Musqueam” or “xʷməθkʷəy̓əm”) is responding to and ʷi:wəsənəq (giving direction) to the BC Environmental Assessment Office’s (“EAO”) proposed approach to the Dispute Resolution Regulation. It is important that the Dispute Resolution process reflect Musqueam values, laws, and processes, as well as be interpreted in light of the *Declaration on the Rights of Indigenous Peoples Act* (“DRIPA”).

Issues and Concerns

1. *Legislated Time Limit*

For xʷməθkʷəy̓əm, this is a key issue of the entire proposed Dispute Resolution Regulation. Musqueam is extremely concerned that the proposed 60-day time limit will be problematic for our administration. Musqueam, like many other First Nations, has other competing issues, priorities, projects, and community-based events or practices that happen simultaneously. In addition, Musqueam has limited administrative capacity, making it challenging to engage in an intensive and burdensome dispute resolution process, on top of daily departmental needs. Overall, this constrained time limit would put a disproportionate administrative burden on Musqueam given the importance of settling these disputes in a good way. Musqueam recommends *at minimum* a **90-day** time limit, with additional opportunity



for extension, with written reasons. We further recommend the creation of a standardized template for the time extension form.

In addition, included in the proposed framework is the co-development of a custom process with the parties. If pursued meaningfully this co-development process could take a significant portion of this proposed 60-day timeline, taking away time from *q̓w̓al̓t̓əl̓* (putting aside our differences) and resolving the dispute within the already tight timeline suggested by EAO.

We note that prior to the implementation of this regulation, other dispute resolution processes have taken considerably longer in practice (e.g., 120+ days). The EAO should be considering this reality, and the flexibility required for unique circumstance of First Nations, yet is instead proposing constrained timelines that will likely place First Nations in a disadvantageous position. This fundamentally goes against the intention of DRIPA. Specifically, Section 3 of DRIPA requires that the Province implement supports to develop cross-government processes and practices to support the Declaration Act and Section 35 obligations, as well as engaging with First Nations to gather their input and working to ensure there is greater consistency and coherence of process in policy and legislative development.

2. *Facilitator Appointment*

x̓m̓əθk̓w̓əy̓əm agrees on the approach for recommendations of a facilitator to be made by First Nations, as this would help build trust and legitimacy, with the addition of looking at the dispute from an Indigenous lens. This is invaluable to the process. It is concerning that the Minister is only required to consider these recommendations by First Nations. Musqueam requests that the EAO monitors facilitator appointments, and compare the numbers based on those that align with First Nation recommendations vs. those who do not align, in order to find out if this regulation requires amendments or changes in the future. There is an inherent power imbalance present and this should be examined.

3. *Facilitator Powers*

Musqueam has no objection to the proposed circumstances when the facilitator is empowered to end a facilitation noted on page 22 of the Discussion Paper. However, for the circumstance "*The substance of the dispute would be better considered during another phase in the assessment*" a detailed list of reasons should be given as to why this determination is being made. Furthermore, if the matter is better considered during a later phase, it should be clear which subsequent phase of the EA process the dispute resolution process will be, and should be automatically re-triggered. One clarification is needed – what if the dispute resolution process is initiated in one of the last stages of the EA process, and it is decided that the matter should have instead been considered in an earlier stage? We recommend including a process for this scenario should it occur in the future.

Additionally, ample notice should be given to First Nations as to timing of this, so as to reduce administrative burden while ensuring consistent expectations for all parties when the dispute resolution resumes.

4. *Facilitator Qualifications*

x̓m̓əθk̓w̓əy̓əm is supportive of exploring the option of including more than one facilitator, or even a team of facilitators, to ensure that there is capacity for the understanding of both Indigenous and



western worldviews. It is necessary for the facilitator or team to at the bare minimum provide cultural competency and safety as well as knowledge and history of First Nations in BC. If the dispute includes Musqueam as a party, we request that the facilitator also has foundational knowledge of Musqueam history and culture and that Musqueam is included in the vetting process of this knowledge. We also support the facilitator having an UNDRIP and rights-based lens to bring to the process. Preference should also be given to those who are Indigenous and possess the qualifications needed to efficiently facilitate the dispute process.

5. *Framework Process and Referrals*

For the entire process, Musqueam recommends developing standardized templates for submission for any required information. Specifically, we recommend proactively creating a document for the submission of referrals that includes key information such as: names of parties, date, issue(s) described. This will save time as well as create a shared understanding of what is expected in submissions.

Musqueam recommends that it is necessary for all parties named to be copied on submissions for fairness and accountability in the process. In addition, if any amendments are made the other parties should be given time to review such amendments and make their own amendments if they choose to do so.

6. *Confidentiality*

It is significant that Section 75 of the EA Act in relation to Indigenous knowledge covers and requires written consent prior to disclosing this information. For 75(2)(a): “the Indigenous knowledge... may be disclosed... if the knowledge is publicly available”, it is important to note that at times in the past, confidential information has been made public without consent of a First Nation. Although the information may in fact be public, depending on the information, it may not be appropriate to highlight further.

Indigenous sovereignty of their own data gives First Nations the ability to steward and control any data that is created with or about the First Nation, community or peoples. To mitigate the overcollection of Musqueam’s Indigenous knowledge, the best practice is to implement measures to disclose only data that is specific to the issue(s), being mindful of confidentiality and protecting Musqueam’s Indigenous knowledge, with clear written consent from Musqueam. This provides Musqueam with more oversight, the ability to provide guidance on their data and to be formal decision-makers in how their data is used. This recognition of authority over First Nations’ own data creates more trust and accountability in the process as a whole and strengthens the ideals of a nation-to-nation relationship as meaningful partners.

In addition, in principle and in practice, the facilitator should be mindful of information shared by First Nations and to build and maintain trust, check in often or when there is uncertainty whether information may be sensitive.

Note

Absence of comments does not imply acceptance by x^wməθk^wəyəm.



Closure

We urge the EAO to address the above issues identified and implement Musqueam's recommendations. Please contact us if you have any questions or wish to arrange further discussions.

ᑖiyəθamə cən (thanking you),



Larissa Grant
Intergovernmental Affairs Manager
Musqueam Indian Band

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