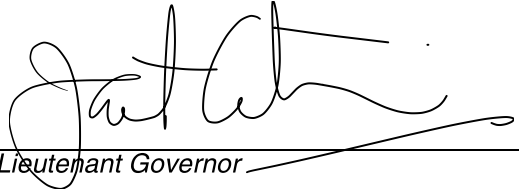


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 465

, Approved and Ordered July 9, 2024



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached Environmental Assessment Dispute Resolution Facilitator Regulation is made.



Minister of Environment and Climate Change Strategy



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Environmental Assessment Act*, S.B.C. 2018, c. 51, s. 5

Other: _____

R10760711

ENVIRONMENTAL ASSESSMENT DISPUTE RESOLUTION FACILITATOR REGULATION

Contents

- 1 Definitions
- 2 Qualifications respecting individuals who may be appointed
- 3 Chief executive assessment officer must give written notice
- 4 Obligations of dispute resolution facilitator
- 5 Dispute resolution facilitator may invite chief executive assessment officer to participate in facilitation
- 6 Power of dispute resolution facilitator to end facilitation
- 7 Circumstances in which facilitation must be ended
- 8 Chief executive assessment officer must offer to meet
- 9 Matters to be considered by dispute resolution facilitator
- 10 Dispute resolution facilitator obligations before completion of facilitator report
- 11 Report respecting confidential information
- 12 Time by which dispute resolution facilitator must complete facilitation and provide facilitator report

Definitions

- 1 In this regulation:

“**Act**” means the *Environmental Assessment Act*;

“**business day**” means a day on which the Environmental Assessment Office is open during regular business hours;

“**disputed matter**” means a matter that is referred to a dispute resolution facilitator under section 5 (2) or (6) [*dispute resolution facilitators*] of the Act;

“**facilitation**” means the process by which a dispute resolution facilitator provides support to parties in respect of the resolution of a disputed matter;

“**facilitator report**” means a report that a dispute resolution facilitator must provide in accordance with section 5 (3) of the Act;

“**notification referral**” means a referral to a dispute resolution facilitator in respect of a matter pending decision under section 17, 18, 19, 28 or 29 of the Act;

“**party**”, in relation to a facilitation, means the following:

- (a) as applicable, each participating Indigenous nation that
 - (i) made a referral under section 5 (2) of the Act respecting the applicable disputed matter, or
 - (ii) is named in a referral that was made under section 5 (2) of the Act by the chief executive assessment officer;
- (b) the chief executive assessment officer, if the chief executive assessment officer is participating in the facilitation;
- (c) if the disputed matter was referred to a dispute resolution facilitator by an Indigenous nation under section 5 (6) of the Act, that Indigenous nation.

Qualifications respecting individuals who may be appointed

- 2** An individual appointed under section 5 (1) [*dispute resolution facilitators*] of the Act must
- (a) have knowledge respecting
 - (i) the diversity of the Indigenous peoples in British Columbia, including their distinctive languages, cultures, customs, practices, rights, legal traditions, knowledge systems, institutions, governance structures, relationships to territories and relationships with government,
 - (ii) rights recognized and affirmed by section 35 of the *Constitution Act, 1982*,
 - (iii) treaties, and
 - (iv) the United Nations Declaration on the Rights of Indigenous Peoples, and
 - (b) have significant experience
 - (i) working with Indigenous peoples in British Columbia,
 - (ii) working with individuals and groups among whom differing cultural understandings and perspectives may exist, and
 - (iii) facilitating the resolution of disputes.

Chief executive assessment officer must give written notice

- 3** The chief executive assessment officer must give written notice of a notification referral as follows:
- (a) if the referral was made by a participating Indigenous nation, notice must be given to
 - (i) every other participating Indigenous nation, and
 - (ii) the applicable proponent;
 - (b) if the referral was made by the chief executive assessment officer, notice must be given to
 - (i) every participating Indigenous nation, and
 - (ii) the applicable proponent.

Obligations of dispute resolution facilitator

- 4** (1) A dispute resolution facilitator must
- (a) assist the parties to achieve consensus respecting terms of reference for the facilitation,
 - (b) discuss with the parties
 - (i) the distinctive customs, traditions, legal systems and approaches to conflict resolution of each Indigenous nation that is a party,
 - (ii) the potential role of the applicable proponent, if all of the parties agree that the proponent may participate in the facilitation,

- (iii) if applicable, the manner in which the chief executive assessment officer, or a delegate of the chief executive assessment officer, is to participate in the facilitation, and
 - (iv) confidentiality requirements respecting the facilitation, including confidentiality requirements respecting Indigenous knowledge as set out in section 75 [*confidentiality*] of the Act and any other confidentiality requirements the parties wish to discuss,
 - (c) incorporate the outcome of the discussions described in paragraph (b) of this subsection into the terms of reference, and
 - (d) ensure that all of the parties agree to the terms of reference before proceeding with the facilitation.
- (2) A dispute resolution facilitator must make reasonable efforts to carry out the requirements under subsection (1) of this section in a manner that will allow the dispute resolution facilitator to meet the time requirement set out in section 12.
 - (3) A dispute resolution facilitator must, when engaging in a facilitation, give due consideration to the customs, traditions and legal system of each Indigenous nation that is a party.
 - (4) A dispute resolution facilitator may, with the consent of the parties, provide periodic updates respecting the facilitation to the applicable proponent.
 - (5) If circumstances that are likely to give rise to justifiable doubts as to a dispute resolution facilitator's impartiality arise at any time during a facilitation, the dispute resolution facilitator must immediately
 - (a) disclose the circumstances to the parties, and
 - (b) refrain from any further involvement with the facilitation, unless the parties agree that the dispute resolution facilitator may continue to act despite those circumstances.

Dispute resolution facilitator may invite chief executive assessment officer to participate in facilitation

- 5 A dispute resolution facilitator may invite the chief executive assessment officer to take part in a facilitation as a party if
 - (a) the chief executive assessment officer is not a party to the facilitation, and
 - (b) each Indigenous nation that is a party consents to the invitation.

Power of dispute resolution facilitator to end facilitation

- 6 (1) Subject to subsections (2) and (3), a dispute resolution facilitator may end a facilitation if, in the opinion of the dispute resolution facilitator,
 - (a) the substance of the disputed matter is unrelated to the applicable reviewable project,
 - (b) the facilitation should be deferred until a later stage of the assessment of the applicable reviewable project because it would be more appropriate to make efforts to address the substance of the disputed matter at a later time,
 - (c) under a provision of the Act, the chief executive assessment officer is required to seek to achieve consensus with one or more participating

Indigenous nations in respect of the substance of the disputed matter, and the substance of the disputed matter was not the subject of reasonable efforts to achieve consensus prior to the referral of the disputed matter to the dispute resolution facilitator,

- (d) the substance of the disputed matter has already been the subject of a facilitation involving the same parties, and there has been no significant change in the positions of the parties,
 - (e) the parties are unable to agree to terms of reference for the facilitation, or
 - (f) despite having undertaken reasonable efforts, it is unlikely that the dispute resolution facilitator will be able to assist the parties to reach a consensus with respect to the disputed matter.
- (2) Before ending a facilitation under subsection (1), a dispute resolution facilitator
- (a) must notify the parties in person or in writing that the dispute resolution facilitator is considering doing so,
 - (b) must give the parties a reasonable period of time to respond, and
 - (c) must consider any responses provided to the dispute resolution facilitator under paragraph (b) of this subsection.
- (3) A dispute resolution facilitator must not end a facilitation under subsection (1) if it appears to the dispute resolution facilitator that all of the parties wish to continue with the facilitation.
- (4) If a dispute resolution facilitator ends a facilitation under this section, the dispute resolution facilitator must, in the facilitator report, set out the reasons for ending the facilitation.
- (5) For certainty, a facilitation that is ended under this section is a completed facilitation for the purposes of section 5 (3) [*dispute resolution facilitators*] of the Act.

Circumstances in which facilitation must be ended

- 7 (1) A dispute resolution facilitator must end a facilitation if
- (a) only one Indigenous nation or participating Indigenous nation is a party, and that Indigenous nation or participating Indigenous nation withdraws from the facilitation, or
 - (b) more than one Indigenous nation or participating Indigenous nation is a party, and all of them withdraw from the facilitation.
- (2) For certainty, a facilitation that is ended under this section is a completed facilitation for the purposes of section 5 (3) [*dispute resolution facilitators*] of the Act.

Chief executive assessment officer must offer to meet

- 8 If a dispute resolution facilitator ends a facilitation for the reason set out in section 6 (1) (b), the chief executive assessment officer must offer to meet with each Indigenous nation that was a party to discuss ways in which the substance of the disputed matter could be addressed in the future.

Matters to be considered by dispute resolution facilitator

- 9** A dispute resolution facilitator must, when preparing a facilitator report, give due consideration to the following:
- (a) whether consensus has been reached among the parties;
 - (b) the perspectives of each party;
 - (c) submissions made by the parties during the facilitation, including, in the case of an Indigenous nation that is a party, submissions made by that Indigenous nation respecting
 - (i) rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and
 - (ii) the United Nations Declaration on the Rights of Indigenous Peoples;
 - (d) materials developed jointly by the parties during the facilitation;
 - (e) the matters set out in section 2 (2) (b) [*Environmental Assessment Office*] of the Act;
 - (f) the requirements set out in section 75 [*confidentiality*] of the Act;
 - (g) any applicable requirements respecting confidentiality other than those set out in section 75 of the Act;
 - (h) any other matter the dispute resolution facilitator considers necessary.

Dispute resolution facilitator obligations before completion of facilitator report

- 10** (1) A dispute resolution facilitator must do the following before completing a facilitator report:
- (a) provide a copy of the report, in draft form, to the parties;
 - (b) give the parties a reasonable period of time to respond to the draft report;
 - (c) consider any responses under paragraph (b), including any requests respecting changes to the report.
- (2) A dispute resolution facilitator must, in respect of the requirements under subsection (1), make reasonable efforts to carry out those requirements in a manner that will allow the dispute resolution facilitator to comply with the time requirement set out in section 12 (1) or, if applicable, section 12 (2).

Report respecting confidential information

- 11** If any confidential information of a party, including Indigenous knowledge, is provided to a dispute resolution facilitator, and if the party that provided the confidential information consents to its disclosure, the dispute resolution facilitator may
- (a) prepare a confidential report respecting the confidential information, and
 - (b) include that report with the facilitator report when the facilitator report is completed.

Time by which dispute resolution facilitator must complete facilitation and provide facilitator report

- 12** (1) Subject to subsection (2), a dispute resolution facilitator must complete a facilitation and provide a facilitator report to the parties no later than 90 days after the

applicable referral date under section 5 (2) [*dispute resolution facilitators*] of the Act.

- (2) A dispute resolution facilitator may extend the time set out in subsection (1) as follows:
 - (a) with the agreement of the parties, the time may be extended by up to 30 business days;
 - (b) if the parties do not agree to an extension, the time may be extended by up to 15 business days;
 - (c) if, in the opinion of the facilitator, extenuating circumstances exist, the time may be extended by up to 30 business days.
- (3) For the purposes of subsection (2) (c), extenuating circumstances include, without limitation, natural disasters, public health emergencies and the death of one or more individuals who are part of a participating Indigenous nation or an Indigenous nation that is a party.
- (4) For certainty, the time period under subsection (1) may not be extended more than once.