

Dispute Resolution Policy and Procedures

MAY 12, 2026



EAO

Environmental
Assessment Office

DISPUTE RESOLUTION POLICY AND PROCEDURES

INTRODUCTION

Dispute resolution under the *Environmental Assessment Act, 2018* (the Act) is a formal, non-binding process available to participating Indigenous nations at specified points in the environmental assessment process where there are unresolved matters from previous consensus-seeking efforts with the EAO, and it is agreed that a third-party facilitated process could assist in resolving the matters.

The regulatory framework for dispute resolution includes:

- [Environmental Assessment Act, 2018](#) – establishes the framework for environmental assessments of major projects in B.C.
- [Environmental Assessment Amendment Act, 2026](#) – establishes the legal requirements for dispute resolution
- [Dispute Resolution Facilitator Regulation \(Regulation\)](#) – guides the facilitator and establishes requirements and procedures during the facilitation
- Dispute Resolution Policy and Procedures (this policy) – describes the steps and decisions that lead up to the start of dispute resolution, and the procedures during the facilitation

This policy describes:

- Eligible matters for dispute resolution;
- How dispute resolution can be initiated;
- Reaching agreement on terms respecting dispute resolution; and
- The procedures for a dispute resolution process.

A flow diagram of the dispute resolution process is included in **Appendix A**.

Relationship between Issue Resolution and Dispute Resolution

The Issue Resolution Protocol supports consensus-seeking at any stage of the EA process. If issues remain unresolved, dispute resolution is available as a separate, facilitated mechanism at defined phases. **See Appendix B.**

See [Issue Resolution Policy and Procedures](#).

APPLICABLE MATTERS UNDER THE ACT

*Dispute resolution is intended to be used for applicable matters in the earlier phases of an environmental assessment where it can be most effective*¹. Dispute resolution is available prior to the following environmental assessment milestones and decisions:

- Which Indigenous nations will participate in an environmental assessment (section 14(2));
- Readiness decision (section 16(2), not including section 16(2)(a) requiring the proponent to submit a revised detailed project description); and
- Process order (section 19(2)).

¹ *Italicized* text in this document denotes policy intent to support the implementation of Dispute Resolution under the Act and provides contextual guidance for the procedures set out in this document.

A participating Indigenous nation can initiate dispute resolution in respect of a notice under section 14(1) unless a determination has been made by the CEAO that an Indigenous nation is not considered a participating Indigenous nation under section 14(2). The parties to the dispute resolution would be that nation and the participating Indigenous nation that provided the notice under section 14(1). Note that in order for dispute resolution to proceed, both participating Indigenous nations need to agree to the dispute resolution under section 14(1).

In this policy document, **matter** refers generally to an issue, concern, or topic raised during an environmental assessment. Only an **applicable matter** is explicitly linked to a pending decision under section 18.4(1).

DISPUTE RESOLUTION INITIATION

Section 18.4 enables a participating Indigenous nation or the chief executive assessment officer to provide a notice indicating an interest in initiating a process of dispute resolution. To indicate an interest in initiating dispute resolution, the participating Indigenous nation must provide written notice to the CEAO, that specifies, at minimum, the following:

- a) the name of the reviewable project;
- b) the applicable matter under the Act is in relation to; and
- c) the substance of the dispute.

Dispute resolution may not be initiated if:

- the substance of the dispute does not relate to the reviewable project;
- the substance of the dispute was previously the subject of a process of dispute resolution between the same parties;
- the substance of the dispute was not brought to the attention of the chief executive assessment officer by the participating Indigenous nation during attempts to achieve consensus with the participating Indigenous nation respecting the matter; or
- the decision regarding the applicable matter under the Act has already been made by the CEAO or delegate.

If the notice to initiate dispute resolution meets the criteria outlined above, the CEAO will enter into discussions regarding the terms respecting dispute resolution.

If the parties to a dispute agree on terms respecting the resolution of the dispute, the EAO can continue activities related to the relevant pending decision while dispute resolution proceeds, including consulting with other participating Indigenous nations on matters pending decision, which may include matters related to the substance of the dispute. The CEAO cannot make the pending decision until the dispute resolution facilitator has provided a written report, as set out in section 18.8 of the Act.

The notice to initiate dispute resolution will be posted to the EAO's public website when received.

Parties to a dispute means the chief executive assessment officer and a participating Indigenous nation, or two participating Indigenous nations in dispute regarding a notice provided under section 14 (1).

Dispute Resolution Initiation on Changes Resulting from a Dispute Resolution Process

Section 18.4(5)(b) and 18.4(6) states that a process of dispute resolution may not be initiated if the pending decision was changed as the result of a previous process of dispute resolution initiated by any participating Indigenous nation.

To consider the interests of other participating Indigenous nations, the EAO will seek consensus with participating Indigenous nations not involved in the dispute resolution on any relevant, proposed changes to the pending decision that results from dispute resolution, during or following the dispute resolution.

TERMS RESPECTING DISPUTE RESOLUTION

Agreement between a participating Indigenous nation and the CEAO (or between two participating Indigenous nations) is required for dispute resolution to proceed. *Mutual agreement at the start supports a more effective process and greater likelihood of reaching resolution.*

If the notice to initiate dispute resolution meets the criteria of section 18.4(4) and (5), as described above, section 18.5 of the Act requires that where notice is provided, parties “must, as soon as practicable, attempt to agree on terms respecting the resolution of the dispute”. The EAO expects agreement to be reached within 14 days of initiation, with consideration of the circumstances for each dispute resolution.

As outlined in section 18.5 of the Act, the terms must at a minimum include:

- (a) Substance of the dispute
- (b) Other participants
- (c) Name of the dispute resolution facilitator

If agreement is achieved on the terms respecting the resolution of the dispute, the terms will be referred to the agreed-upon facilitator by the CEAO. This information will be publicly posted, in accordance with Section 18.9. **Appendix C** provides a template for referring the dispute resolution to a facilitator.

Substance of the Dispute

The parties must agree on the issue(s) that are appropriate for dispute resolution, which will form the substance of the dispute. The issue(s) must be germane to the environmental assessment and the matter pending decision.

The **substance of the dispute** refers to the specific unresolved issue between the parties in relation to an applicable matter under section 18.4(1), rather than the broader context or history of discussions.

Other Participants

The parties must agree on other participants that will be invited to participate in the dispute resolution. Either party can identify other participants that they believe would add value and support resolution of the dispute. Considerations for inclusion of other participants include:

- The proponent – where involvement of the proponent would support resolution of the issues, such as information and analysis on technical aspects of the issues, or on discussion of proposed mitigation that may have implications for the proponent;
- Other participating Indigenous nations – if the issue has ramifications on other Indigenous nations, such as on rights recognized and affirmed in section 35 of the *Constitution Act, 1982*, and inclusion would support better outcomes;
- Other regulators – if the issue has implications for subsequent permitting processes or requirements;
- Provincial ministries and federal departments – if the issue can benefit technical expertise or is related to matters within federal jurisdiction; and
- Subject matter experts – if the dispute can benefit having technical expertise.

Selecting Facilitator

The parties must agree on the individual who will serve as the dispute resolution facilitator, provided the facilitator meets the qualifications set out in section 2 of the Regulation². The participating Indigenous nation and the CEAO could agree an appropriate facilitator from a pre-qualified list or could agree on another facilitator not included in the list.

The EAO may create a pre-qualified list of facilitators prior to the parties selecting a facilitator to support reaching an agreement on the facilitator. The parties may agree on a facilitator not included in the list.

Agreement on Terms

If the parties to the dispute do not reach agreement, dispute resolution will not proceed. Section 18.5(2) states that the CEAO may discontinue attempts to agree on terms respecting the resolution of a dispute. Section 18.5(3) sets out that the CEAO must consider the views of the participating Indigenous nation before making a decision to discontinue attempts to agree on terms respecting the resolution of a dispute. Other factors the CEAO could consider include the following:

- If the substance of the dispute is germane to the environmental assessment and the decision point in question;
- Whether the substance of the dispute is within the EAO's statutory authority or ability to resolve;
- Other mechanisms that exist to support the resolution of dispute (e.g., existing agreements, other tables);
- The efforts made by both parties to reach agreement, including communication and opportunities for discussions;
- The progress the parties have made in reaching agreement within a reasonable time after initiating negotiations, and if continuing attempts would likely result in agreement; and
- The timely conduct and procedural fairness of the environmental assessment.

If the CEAO decides to discontinue attempts to agree on terms respecting dispute resolute, they must provide reasons for that decision, including their considerations and the views of the participating Indigenous nation. In accordance with Section 18.9, the CEAO's reasons for discontinuing attempts to agree must be provided to the other party and published on a publicly accessible website, namely the [project information centre](#) referred to in section 40.

If the parties cannot reach agreement on terms, dispute resolution will not proceed. The EAO's consensus seeking obligations remain under the Act.

² These qualifications support the facilitator's understanding of First Nations' distinct rights and interests, including of Treaty Nations.

DISPUTE RESOLUTION PROCEDURES

Subject to the agreement between the parties to a dispute resolution, the following are procedures to be followed for dispute resolution. They are based on the principle that consensus on the relevant pending decision will be sought by the parties throughout dispute resolution.

Administration

The EAO is responsible for administering the dispute resolution process, including contracting the facilitator and administering the facilitator's contract.

The EAO may assist the facilitator with administrative tasks such as scheduling meetings, finding meeting spaces, and taking meeting notes. If the EAO is tasked with meeting notes, drafts will be provided to the facilitator to review who will then share them with the parties to review before finalizing.

Meetings may be audio or video recorded to ensure accurate notes, subject to consent by the parties. Any recordings will be confidential and not used for any other purposes and deleted after dispute resolution is complete. A party may request that some portions of the process not be recorded due to disclosure of sensitive information, including Indigenous knowledge.

The EAO may provide periodic public updates on the status of dispute resolution, which the parties will be made aware of prior to the EAO providing any updates.

Objective

The objective of the dispute resolution process is to resolve the dispute set out in the referral to the facilitator.

Timelines

1. The *Environmental Assessment Dispute Resolution Facilitator Regulation* sets out a 90-day timeline before which the facilitator must provide a report to the parties. If either party intends to seek an extension, the parties would discuss it no later than 15 calendar days prior to the end of the dispute resolution timeline.
2. The facilitator will lead the development of a meeting schedule for the dispute resolution process to ensure the process can be managed within the time prescribed in the Regulation.
3. Dispute resolution ends when the facilitator provides a final facilitator's report to the parties. The EAO will publicly post the final report provided by the dispute resolution facilitator.

Role of the Facilitator

The role of the facilitator is to:

- Guide the conversations between the parties and support the parties through the process;
- Provide parties with the best possible tools and a safe, collaborative environment to meet the objective;

- Give due consideration to the customs, traditions legal systems and approaches to conflict resolution of each Indigenous nation that is a party to the dispute resolution process;
- Use their discretion to end the facilitation as set out in the Regulation;
- Draft and share a report with the parties for review and feedback before finalizing;
- Manage the use of time;
- Conduct the facilitation in an impartial manner and avoid conduct that gives the appearance of partiality.
- Disclose to the parties if circumstances arise that put into question the facilitator's impartiality. After disclosure, if the parties agree, the facilitator may proceed with the facilitation, but otherwise the facilitator should withdraw.
- Ensure all parties act in a professional manner and in a respectful and collaborative manner, and if required, may remove a representative if necessary.

If one of the parties or the facilitator wants to speak without the other party present, the facilitator will notify the other party. It will be up to the facilitator to determine what information to share with the other party on the substance of this conversation.

It is not the facilitator's role to make decision(s) for the parties.

Other Participants

1. The referral to the facilitator may identify other participants that will be invited to participate in the dispute resolution.
2. Participants not named in the referral to the facilitator may also be invited to participate, upon request and agreement of the parties.
3. Other participants will follow the following conditions of participation:
 - a. Participants will not become parties to the dispute;
 - b. Participants may be invited, but not compelled, to participate or provide written submissions; and
 - c. Both parties must agree on how and when other participants are invited to participate in the facilitation.

Confidentiality

Most of the information shared during the dispute resolution process is not confidential and may be made public at the end of the process, either through the facilitator report, or pursuant to the *Freedom of Information and Protection of Privacy Act*, or otherwise. However, the following are some exceptions:

- *Confidential Indigenous knowledge*: If an Indigenous nation shares knowledge in confidence with the facilitator, section 75 of the Act will apply to that information;
- *Other confidential information*: If a party reasonably marks information as confidential, the parties and the facilitator will take all reasonable steps to keep it private, unless required by law to disclose it;
- *Without prejudice discussions*: If the parties agree that certain discussions or information are without prejudice, this information may not be disclosed or relied upon by either party in court or other proceedings.

To encourage open and honest discussion, the parties agree to not publicly name or attribute specific concerns, proposals, or comments to a party or its representatives.

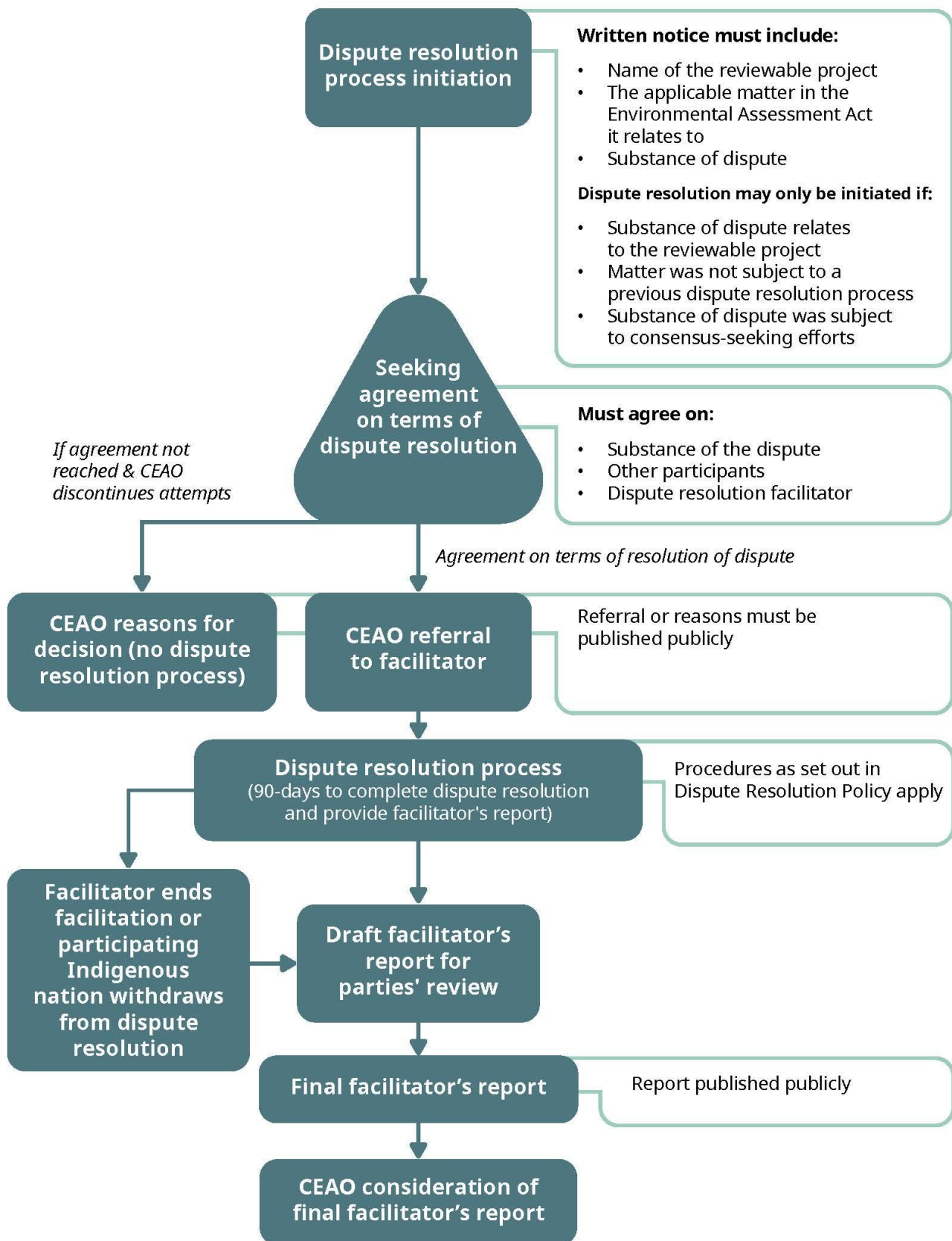
Ending Facilitation

The facilitator may end a facilitation in certain circumstances, as set out in the Regulation. If they are considering doing so, they will notify the parties and allow time for a response.

Non-Binding

The process and outcomes of dispute resolution are non-binding. Participation does not limit any party's ability to pursue legal action related to the dispute.

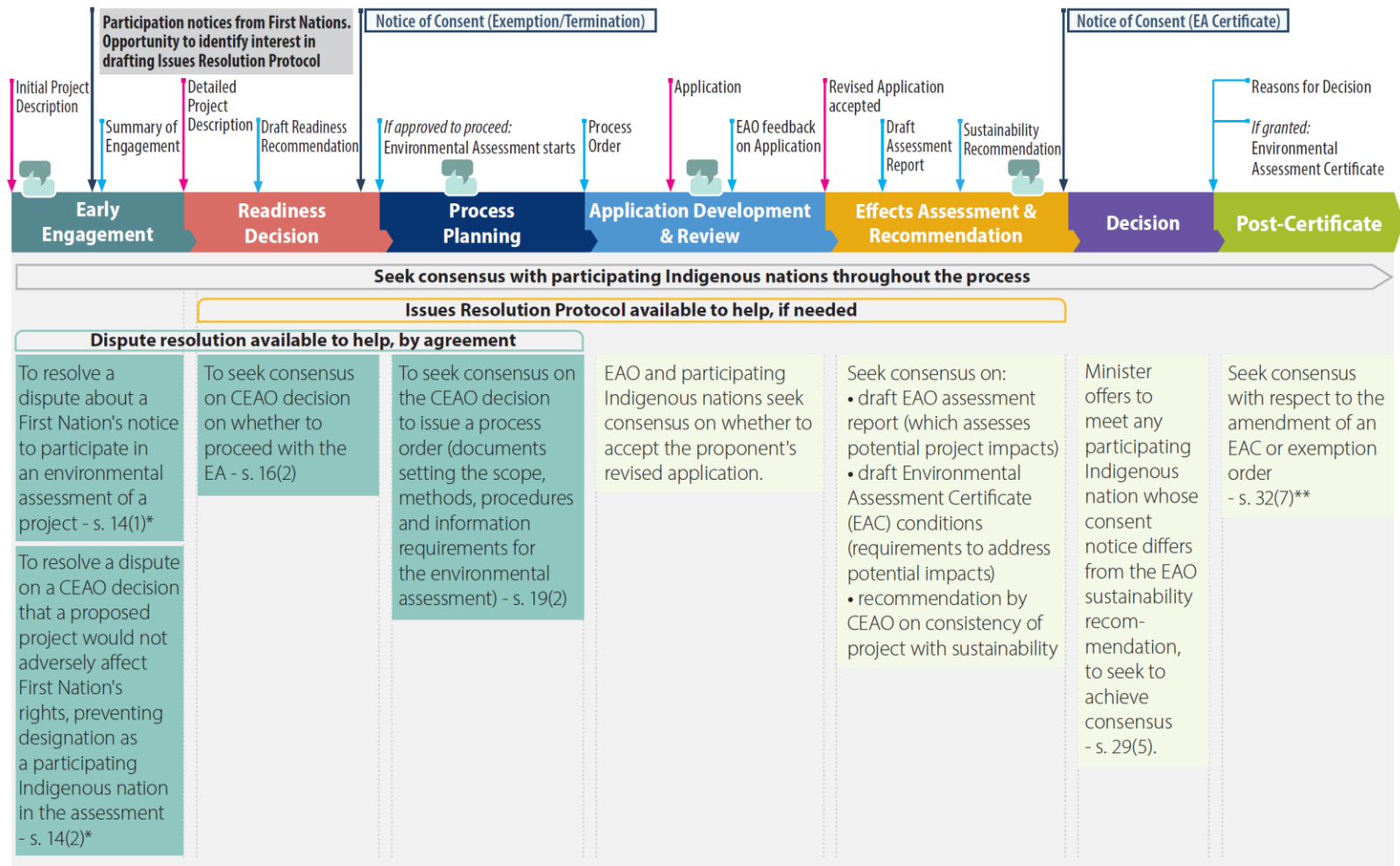
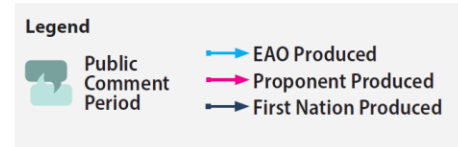
APPENDIX A: DISPUTE RESOLUTION PROCESS STEPS



APPENDIX B: ISSUE RESOLUTION AND DISPUTE RESOLUTION AVAILABILITY DURING THE ENVIRONMENTAL ASSESSMENT PROCESS

Issue Resolution Protocol and Dispute Resolution

Issues Resolution Protocol and Dispute Resolution are available tools to support consensus seeking.



*Dispute resolution over this matter is also available to any participating 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 sections of the Act, dispute resolution is available only to participating Indigenous nations or the Chief Executive Assessment Officer (CEAO).

**Dispute resolution is available related to the participating Indigenous nation designation, per s. 14

APPENDIX C: TEMPLATE FOR REFERRAL TO FACILITATOR

The [name parties] have agreed, pursuant to section 18.5(6) of the *Environmental Assessment Act*, on terms respecting the resolution of a dispute.

The parties agree that you will serve as the dispute resolution facilitator following the Dispute Resolution Facilitators Regulation and the Dispute Resolution Procedures contained in the Dispute Resolution Policy.

The following is the substance of the dispute:

- [Topic 1]
- [Topic 2]
- [Topic 3]

The parties agree that the other participants that will be invited to the process are:

- [Participant 1]
- [Participant 2]
- [Participant 3]

[Closure]

[CEAO signature block]