

GLOSSARY

These definitions are provided for guidance purposes only.

Appropriate Dispute Resolution (ADR) — "Appropriate" reflects the wide number of dispute resolution options now available. It reflects a process that provides an opportunity to develop local solutions to local issues, as appropriate, and to choose the right option for the right situation. The options include negotiations, facilitation, mediation, arbitration, regulatory proceedings and litigation. Parties do not lose any right they may have by entering into ADR discussions.

Arbitration—a dispute resolution process in which a dispute is submitted through formal presentation of evidence and arguments to a neutral adjudicator, who is empowered by the disputants to either recommend nonbinding terms of settlement or impose a binding decision or award. In the former process, called nonbinding arbitration, the parties must agree before the arbitrator's decision becomes binding. The latter process, called binding arbitration, could help resolve issues where the parties just need an answer (e.g., on compensation).

BATNA—Best Alternative to a Negotiated Agreement – Negotiations are usually entered to produce something of greater value than that available without negotiating. The BATNA becomes the standard against which a negotiated agreement should be measured. BATNA's require development and almost all cost factors will be associated with them.

C2C ADR Council—The C2C ADR Council was established early in 2004 and is comprised of the 13 organizations that supported and endorsed the C2C Handbook – Let's Talk, along with an advisory group of ADR experts. The Council will assist in implementing the C2C Handbook and support the use of C2C tools and techniques for issues within the Canadian energy industry. The Council will also provide a vehicle for industry liaison, ADR reporting and continuous improvement for conflict management.

C2C Task Force—As part of the continuing evolution of negotiation and ADR, the C2C Task Force was formed in April 2002 to increase awareness of the impact of disputes, foster ways to better manage, control and resolve conflict within the energy industry and "empower the negotiator". Over 70 volunteers from a range of disciplines contributed to the task force. In March 2004, the Task Force completed its mandate and the C2C Council was formed.

C2C Handbook—The C2C Handbook – Let's Talk is the product of the C2C Task Force and C2C Council. It was produced in March 2004 and provides an analysis of why conflicts occur and practical tools to avoid, manage and resolve conflict.

CAPL Operating Procedure—The CAPL Operating Procedure is the most widely used industry model agreement. The Operating Procedure is created, updated and published by Canadian Association of Petroleum Landmen in association with the Canadian oil and gas industry. The first Procedure was created in the 1970s; another in 1982 and 1990 and a new 2004 edition is currently being prepared. The purpose of the CAPL Operating Procedure is to establish and standardize contractual terms between parties owning an undivided interest in seismic, lands, wells, and small common interest production facilities. The Procedure details processes, rights, duties and obligations including joint operations, operatorship, costs, ownership and sale of production, independent operations, rights of first refusal, areas of mutual interest, assignment, confidentiality,

dispute resolution and other matters. The CAPL Operating Procedure is most often attached to a Joint Operating Agreement (JOA). The Petroleum Accountants Society of Canada (PASC) Accounting Procedure is also usually attached to the Operating Procedure. The JOA, along with the Operating and Accounting Procedures, is normally negotiated and executed soon after the joint lands are purchased. While parties establish working interests, ownership and other matters in the JOA, the vast majority of terms are contained in the Operating and Accounting Procedures. Parties always have the right to select any version of the Operating Procedure (i.e. 1990 or 2004) and to amend terms of the Operating Procedure to suit their specific needs and circumstances.

Cost-Benefit Analysis Tool—A tool which may be used to assess the costs associated with succeeding at litigation or a hearing on an issue-by-issue basis or to assess the relative merit of considering a different form of dispute resolution for the dispute as a whole.

Facilitation—a coordinated, informal problem-solving process involving a third party. The role of a facilitator is to encourage participation in this process by relevant parties, assist in their dialogue, and help the parties reach their own solutions.

Interests and Positions—interests consist of a collection of values, beliefs, fears, concerns, principles, hopes, and expectations that a person or group seeks to have met by an agreement. Once the interests of all parties are explored and understood, common interests are often discovered, providing the foundation for parties to build a solution that can satisfy interests they all share.

A party's position, on the other hand, is generally presented as what it wants, does not want, will do, or will not do. A party generally perceives this position as the solution that satisfies its own interests. Typically the parties have arrived at different positions because they have placed emphasis on differing interests.

To create interest-based solutions, it is necessary to explore the interests of each party in order to understand why they form their positions and to uncover and identify interests that they share.

Interest Based Process—Negotiation and mediation are examples of processes which can be interest based when parties attempt to resolve their dispute in a way that meets their mutual needs from a broad range of potential alternatives.

JP 90/ 95/ 04—Joint Industry Task Force Reports on Custom Fees – JP 90/95 is the common name for guidelines which were developed by the industry for the industry through the leadership of SEPAC, CAPP and the PJVA. They are recognized by the Alberta Energy and Utilities Board as the industry accepted fee guidelines for facility owners and potential or actual facility users. As a result of the C2C recommendations, the PJVA, SEPAC, CAPP, EUB and CGPA are currently reviewing the guidelines, updating the JP 90 and 95 Reports. A new and complete JP 04 Report is being developed.

Mediation—a collaborative dispute resolution process in which the negotiations of two or more parties are assisted by a neutral and impartial mediator who has no decision-

making authority and no “interest” in the outcome. It is the mediator's job to help the parties increase their understanding of the other’s perspective and reach a mutually acceptable settlement.

Mediator—assists the parties in their negotiations by ensuring complete, balanced, and respectful communication and by moving the parties through the mediation process toward reaching a fully informed, voluntary agreement. Mediators are not decision-makers, legal advisers, or solution providers.

Negotiation—any form of direct (person-to-person) or indirect (through agents) communication in which the parties discuss steps they could take to resolve a dispute between them.

Privacy and Confidentiality—Privacy relates to the information that someone discloses about themselves or something. Confidentiality is the component of privacy that deals with what people do with the information they know about others. As related to ADR, discussions are private and confidential based on the premise that for mediation to work effectively, parties should engage in collaborative discussions and disclose all relevant information so that full understanding of each other's objectives and interests can be achieved. This process should lead to solutions that will satisfy many of their important interests.

However, it is also recognized that information required by the regulatory process cannot be held confidential, such as that dealing with public safety, environmental protection, and resource conservation. Matters that the parties decide must remain confidential might include financial and contractual details, the conditions or circumstances under which a party would remove an objection, the mitigating measures an applicant would offer in order to have an objection removed, or individual health records.

Preliminary ADR Meeting or Situation Assessment Meeting (SAM)—Parties are likely to need an opportunity to talk about how to design their particular dispute resolution process. Many questions often need to be considered and answered before parties feel able to commit to mediation or other options. With the help of a mediator or facilitator, the parties meet to explore and reach agreement on issues such as timing and deadlines, confidentiality and privacy, costs, the role of advisers, and further steps. This Preliminary ADR Meeting or SAM is usually of limited duration and nominal cost.

Problem Solving Planner—The Planner is a tool which can provide a systematic approach to assess and analyze the current situation and help identify the best fit of available resolution choices.

Rights Based Process—Regulatory hearings and litigation are examples of rights based processes. They are typically more formal than interest based processes and involve a neutral third party who makes a decision based on the entitlements of the parties in the particular circumstances.

Tools—Tools are the ideas and strategies that will empower negotiators to more fully understand the issues in conflict, analyze potential risks and costs, prepare for negotiations, choose the most appropriate dispute resolution options and design a

strategic plan for solution. E.g. Cost-Benefit Analysis Tool, Problem Solving Planner. See Chapter 4.

Tool Box—The Tool Box is the collection of ideas and strategies that can be used by people dealing with conflict. There are choices for managing any conflict or dispute and people are encouraged to consider all the tools in the toolbox and select the most appropriate one for the situation. See Chapter 4.

WATNA—Worst Alternative to a Negotiated Agreement – The WATNA is not only the opposite of the BATNA, it also usually clearly identifies the value or motivation for negotiating. The WATNA often assists in establishing your walk away alternative.