



2024 Engagement on the Renewal of the Federal Consultation and Accommodation Guidelines

Companion Interim What We Learned Report



Crown-Indigenous Relations
and Northern Affairs Canada



Naut'sa mawt
EVENT MANAGEMENT



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Context

What?

Over the past year, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) met with Indigenous communities and organizations to inform the development of new federal guidelines for federal officials to fulfill the Crown's duty to consult with Indigenous Peoples and accommodate for impacts on their rights. To better understand the perspectives, ideas, and concerns that Indigenous Peoples have about the current approach to consultation and accommodation processes, CIRNAC's Consultation and Accommodation Unit undertook a series of 18 in-person engagement sessions across nine regions, as well as two virtual sessions.

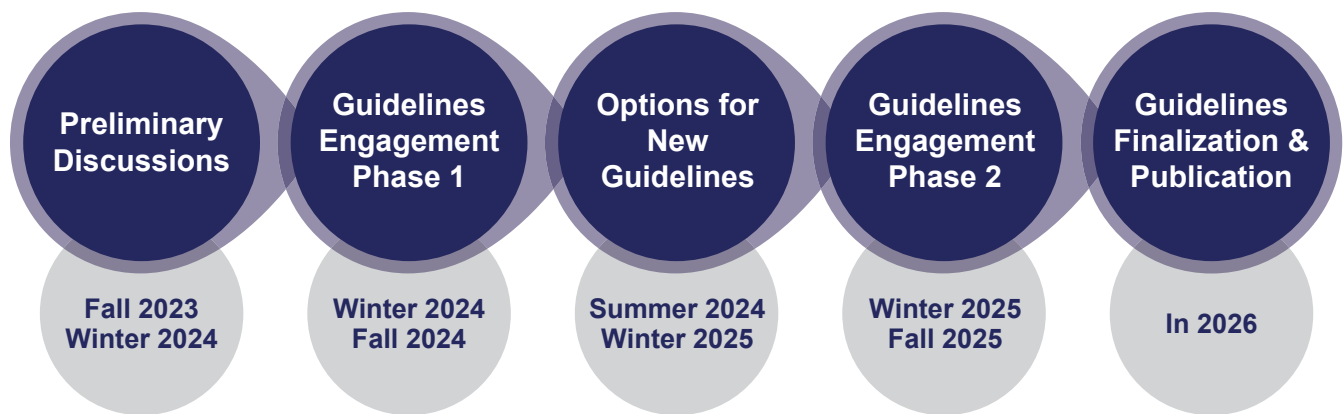
Why?

Since the publication of the 2011 guidelines, numerous court challenges have underscored the ongoing struggles faced by Indigenous communities in protecting their rights from the impacts of land and resource development. These challenges reflect the need for renewed guidelines to strengthen the relationship between the federal government and Indigenous communities – including through the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)* – and the importance of giving federal officials all the necessary information and guidance to adequately consult with Indigenous Peoples. In 2023, the federal budget earmarked \$11.4 million over three years for CIRNAC to engage with Indigenous communities to explore the development of renewed guidelines to reflect this changing landscape.

How?

From the Spring to Fall of 2024, CIRNAC brought together Indigenous leaders, consultation professionals, and other key voices involved in the consultation and accommodation processes within Indigenous communities to discuss their experiences when it comes to consultation. Feedback from these engagements will inform the development of new federal guidelines for federal officials to fulfill the Crown's duty to consult Indigenous peoples and accommodate impacts on their rights.

Process Flow



What are the Consultation and Accommodation Guidelines?

The [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#) outline the overarching approach to consultation and accommodation for the Government of Canada.

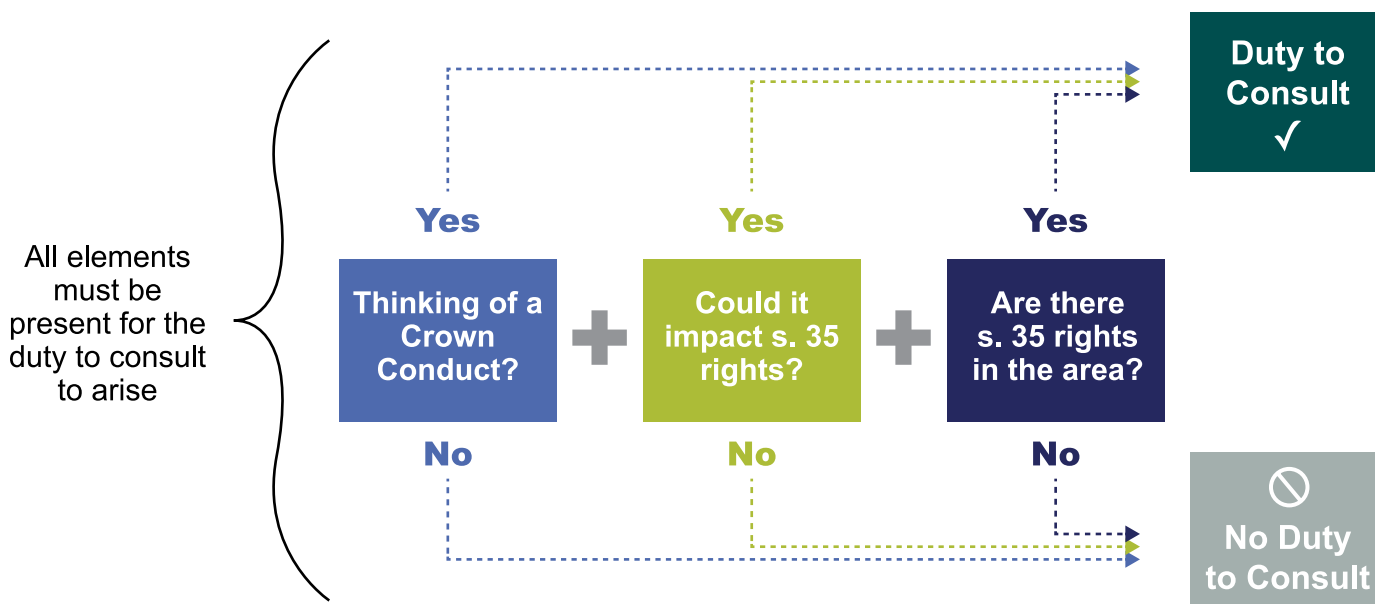
Government of Canada departments and agencies are responsible for understanding how and when their respective conduct may have adverse impacts on section 35 rights. The Consultation and Accommodation Guidelines offers guidance and steps for federal officials to follow when contemplating actions that may impact on section 35 Aboriginal and/or Treaty rights.

What is the Duty to Consult?

Canada's duty to consult is rooted in common law. In 2004, through the Haida and Taku River decisions, followed by the Mikisew Cree decision in 2005, the Supreme Court of Canada established that the Crown has a legal duty to consult and, where necessary, accommodate Indigenous Peoples when considering actions that might adversely impact their rights.

The duty to consult provides an opportunity for the government to make informed and appropriate decisions, create and improve working relationships with Indigenous Peoples, and ensure the protection of section 35 rights of Indigenous Peoples.

The duty to consult and accommodate is a crucial part of federal government conduct. Conduct means projects or activities, including for example, regulatory project approvals, licensing, authorization of permits, and operational decisions. Consultation must occur prior to a decision and implementation of a project or activity.



Who is Involved?

CIRNAC's Consultation and Accommodation Unit (CAU)

Comprised of members from across the country, CIRNAC's Consultation and Accommodation Unit (CAU) helps provide information, direction, and support to federal officials consulting with Indigenous communities. The CAU is responsible for supporting federal departments and officials in meeting their consultation obligations with Indigenous Peoples. To support this work CAU has been tasked with leading this series of engagements, and it is responsible for the development and implementation of new federal consultation and accommodation guidelines.

Indigenous-Crown Steering Committee

The Indigenous-Crown Steering Committee is a focused group of consultation experts from Indigenous communities and organizations, and from CIRNAC. Members were invited by CIRNAC through Indigenous partners implementing consultation protocols, consultation resource centres stewards, and Indigenous modern treaty and self-government agreement holders. Members were also identified during regional engagement sessions. The Steering Committee plays an advisory role on the renewal of the guidelines by leading on the development of new content with a strong focus on partnerships and Indigenous perspectives; supporting the approach to engagement on new Guidelines; and making recommendations that support effective, meaningful and adaptable processes.

Naut'sa mawt Event Management

In an effort to engage Indigenous communities in a culturally sensitive and respectful manner, CIRNAC has partnered with Naut'sa mawt Resources Group. Naut'sa mawt Resources Group, which includes Naut'sa mawt Event Management and Indigenous Marketing Solutions, is a subsidiary of the Naut'sa mawt Tribal Council, a non-profit society comprised of 10 Coast Salish member Nations. Naut'sa mawt Event Management frequently engages with Indigenous communities across Canada, navigating the unique distinctions between First Nations, Métis, and Inuit groups. It is committed to fostering meaningful, respectful, and culturally informed collaborations to ensure that every event it manages is aligned with the values, traditions, and Protocols of the Indigenous communities it serves. In doing so, Naut'sa mawt Event Management embodies the phrase from which it draws its name: Naut'sa mawt is Hul'q'umin'um' for "Working Together as One."

Participants

To support this work, CIRNAC invited First Nations, Indigenous Organizations, and Métis communities to 20 engagement sessions held in nine regions across the country and virtually to learn about consultation and accommodation processes from the perspective of Indigenous communities. Throughout the engagement series, CIRNAC met with 347 individuals from coast-to-coast-to-coast, representing 229 Indigenous communities and organizations.

Who Participated

The following map outlines the location of in-person engagement events and the location of participating communities and organizations from Phase 1, including both in-person and virtual sessions.



CIRNAC and Naut'sa mawt Event Management would like to extend their sincere appreciation to everyone who participated in Phase 1 of the Engagement on the Renewal of the Federal Consultation and Accommodation Guidelines—from Nations, communities, and organizations from coast-to-coast-to-coast. We acknowledge the experience and expertise that everyone brought to the table and want to thank each and every participant for their time, their input, and for the important feedback that they shared.

Preparing for Consultation

Participants were asked how new consultation and accommodation guidelines could help federal officials better prepare for consultation. In particular, participants were asked how the government can support the development of respectful and effective working relationships in a way that could improve future consultation processes.

What We Learned

- New guidelines should outline the importance of ensuring that federal officials receive appropriate cultural competency training, ideally through a grassroots model that prioritizes lived experience over standardized training courses.
- Supports for traditional language speakers and for integrating specialized Indigenous Knowledge into the preparatory stage of consultation is needed to better assess impacts of a development project on the land.
- Increasing Indigenous representation within federal departments and forming a group of experienced federal consultation experts would be useful to support federal officials in preparing for consultation and navigating the government's relationships with communities.
- Consultation processes should favour an early and more partnership-based approach that prioritizes transparency and a government-to-government approach. Indigenous communities must be involved before a project enters the preparatory phase and consultation is required.
- Flexible, multi-year funding agreements with fewer administrative requirements that cover consultation activities more generally and allow for leftover funds to roll over to subsequent years would improve Indigenous People's participation. Participants recommended keeping funding dollars in community to grow citizens' professional and technical capacities, instead of relying on outside consultants.

Consultation Process

Participants were invited to share feedback around the level of consistency across various consultations, the level of information shared with these consultations, as well as the clarity of the process in general. Participants were also asked what particular challenges they may have had to face in assessing impacts to their rights, how to further integrate considerations for cumulative impacts into the assessment stage, and how to clearly establish a community's informed consent.

What We Learned

- Communities must have the flexibility to participate in the assessment of impacts to their rights in a way that accurately captures and reflects their rights, regardless of whether they might be considered “established” or “potential.”
- Renewed guidelines need to provide greater clarity with regards to the roles and responsibilities of proponents and government – both federal and provincial/territorial government – while ensuring accountability via official enforcement mechanisms, such as an Indigenous regulatory body.
- Giving Indigenous communities access to the same experts, consultants, researchers, and lawyers as government can help level the power imbalance that exists between the federal government and Indigenous communities.
- Timelines need to allow ample time for Indigenous communities to engage with their members in a way that respects their specific protocols and processes. Timelines must also account for any follow-up assessments that may be required throughout a given project's lifecycle.
- Consultation and accommodation processes need to consider cumulative impacts to rights by considering a project within its broader context, including the environmental, historical, legal, and cultural context of the community in which the project is taking place.
- Indigenous communities must be given all the information required for them to provide informed consent, maintain informed consent, and they must have the ability to withdraw consent at any time.
- New guidelines should emphasize that neither consultation nor silence equals consent, and that communities shall not be coerced into providing consent.

Determining Accommodation Measures

Participants were asked for recommendations on how to improve the accommodation measures process, including the determination, implementation, and monitoring of accommodation measures.

What We Learned

- In consultation and accommodation processes, efforts must first aim to avoid impacts to Indigenous rights altogether, before considering efforts to reduce or mitigate impacts on rights.
- Consultation and accommodation go hand in hand, and undertaking consultation does not in and of itself represent an accommodation measure.
- Consultation and accommodation should be approached through a government-to-government lens, giving Indigenous communities real power to influence the outcome, while ensuring that Indigenous communities are supported in implementing accommodation measures that involve them, and in monitoring these measures' effectiveness.
- Indigenous communities must always be provided enough clarity with regard to governments and proponents' roles and responsibilities in matters of accommodation to allow for coordination and to ensure accountability.
- New guidelines should consider enforcement or appeal mechanisms for instances where responsibilities are not upheld.

Adequate and Meaningful Consultation

Participants were asked to explore what adequate and meaningful consultation means to them, and what “acting in good faith” means in the context of consultation. Participants were also invited to share examples of best practices in the current Indigenous-Crown relationship that could inform the development of new guidelines.

What We Learned

- Time and resources must always be invested to ensure that Indigenous communities have real influence on a project through the consultations and accommodation processes. Consultation is not meaningful if questions, concerns, ideas, and suggestions that communities want to talk about are unaddressed.
- Timelines need to be flexible and allow ample time for Indigenous communities to engage with their members in a way that respects community protocols and governance processes. A community’s failure to respond to a consultation request within a certain timeframe must never be interpreted as consent.
- Everyone involved in the consultation process, including Indigenous governments, federal and provincial/territorial governments, and project proponents, need to be at the table to ensure a coordinated approach and to reduce redundancies.
- New guidelines need to better advocate for respect and for the protection of Indigenous rights, with all levels of government.
- Government should consider creating a body or mechanism to ensure accountability throughout the consultation and accommodation process and adherence to guidelines and community-based protocols.

Key Takeaways

Funding, Capacity and Timelines

Greatly expand funding so that communities can grow the in-house capacity needed to meaningfully participate in the consultation process from an early stage and throughout the process in order to protect their rights.

Cultural Competency

Improve federal officials' cultural competencies through on-the-ground learning, moving beyond broad distinctions to more accurately cater to each community's unique history, culture, governance, and protocols.

Nation-to-Nation Collaboration

Consultation and accommodation processes need to better reflect the essence of nation-to-nation collaboration which recognizes that Indigenous Peoples are foundational to Canada's constitutional framework and are involved in effective governance and decision-making.

Transparency and Accountability

Increase transparency around the federal government's assessment of which Indigenous communities to involve in consultation and what rights that may be impacted. This will lay the foundation for a collaborative approach to determining accommodation measures, with a clear understanding of who is accountable for implementation.

How can I stay involved?

CIRNAC is committed to continuing the discussion on consultation and accommodation guidelines through information sharing and dialogue. Please visit the website for more information about the renewed Federal Consultation and Accommodation Guidelines, updates on the process, and other relevant information. If you would like to connect with the Consultation and Accommodation Unit, please reach out using the following email address.

Email: indigenous.consultations.autochtones@rcaanc-cirnac.gc.ca

Website: <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>



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