



Duty to Consult

The Constitution Act, 1982 outlines and commits to the protection of fundamental rights for all Canadians; it defines the principles that Canadians agree to uphold. Since 1982, Canada also agreed to protect a special set of rights for a distinct group of Canadians under Section 35 of the Act: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada...”

MNP provides advice to all parties involved in the Duty to Consult process, including public governments seeking to ensure meaningful consultation, private industry seeking to manage risk or build relationships and First Nation, Métis and Inuit governments seeking to protect their Section 35 rights.

What Is Duty to Consult?

The Duty to Consult is triggered when Crown conduct, such as the approval of a natural resource development project, has the potential to negatively affect the rights held by Indigenous peoples recognized and protected under Section 35 of the *Constitution Act, 1982*.

There are three parties involved in a Duty to Consult process including:

- Industry proponent(s) proposing a project
- Public regulatory authority or authorities considering a project approval
- Nation(s) with Section 35 rights potentially affected by the project

Virtually every square inch of Canada is subject to Section 35 rights, oftentimes with multiple Indigenous nations having overlapping Section 35 rights in the same area.

Indigenous nations (including First Nation, Métis and Inuit governments) in Canada can be involved in the Duty to Consult, often multiple times a year.

What Does a Meaningful Duty to Consult Process Look Like?

For a Duty to Consult process to be meaningful, a potentially affected Indigenous Nation requires comprehensive project information be provided directly — with sufficient time and expertise to review and provide commentary on that information.

Some important principles in a meaningful Duty to Consult process include:

- All concerns are collected and reflected in the decision-making process
- Potential impacts to Section 35 rights from the project are identified — including measures to offset, reduce and eliminate those impacts
- Each nation involved in the Duty to Consult process does not bear the costs of participating



MNP Services for Indigenous Nations

MNP offers a full suite of services to Indigenous nations involved in a Duty to Consult process, including:

- Review completed environmental assessment reports and applications
- Develop comments and responses for submission to Crown regulatory authorities
- Geographic information system (GIS) mapping
- Preparing budgets and work plans for submission to proponents and Crown to secure funding to participate in the Duty to Consult
- Conducting Indigenous rights studies to assist in the identification of negative effects to Section 35 rights
- Preparing other expert evidence for filing regulatory proceedings
- Appear as an expert witness for both federal and provincial regulatory hearings

- Acting as a bridge between legal support for Indigenous nations to provide cost-effective service support
- Development of mitigation options for use in accommodation discussions
- Duty to Consult 101 Training
- Environmental Assessment 101 Training

Benefits Of Working With MNP's Indigenous Services Experts

- Trusted advisor to more than 250 Indigenous nations and organizations across Canada
- Navigate the evolving legal and regulatory framework that impacts Indigenous nations and organizations
- Proven track record of representing Indigenous nations as expert witnesses

About MNP

MNP is a leading national accounting, tax and business consulting firm to more than 250 Indigenous nations and individuals in Canada. We have invested more time and resources into understanding our Indigenous clients than any other firm. With more than 300 dedicated professionals serving this unique client group, MNP has developed a diverse suite of services designed to support our client's path to success.

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