

**MÉTIS NATION OF ALBERTA**

**POLICY GUIDELINES**  
**REGARDING THE DUTY TO CONSULT AND**  
**ACCOMMODATE MÉTIS ABORIGINAL RIGHTS**  
**AND INTERESTS IN ALBERTA**

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## A. INTRODUCTION

This Policy responds to the need to clarify the process for consulting with Métis regarding Crown actions that could impact Métis Aboriginal rights and interests in the Province of Alberta. It creates a framework by which industry can engage with Alberta's Métis community in situations where the duty to consult and accommodate may be invoked. It seeks to provide certainty and confidence to the consultation and accommodation process; to ensure appropriate coordination within the Métis Nation; and to align consultation processes with the regulatory regime and legal framework, such as they exist today.

### *Duty to Consult and Accommodate*

The Crown has a constitutionally recognized common-law duty to consult and accommodate Aboriginal peoples in regard to any actions on its part that could infringe Aboriginal rights or interests. The Crown's duty to consult and accommodate Aboriginal peoples flows from the honour of the Crown and section 35 of the *Constitution Act 1982*. The duty does not find its source, nor can it be limited, constrained or confined, by government legislation, regulations or policies. It demands that the Crown consult with Aboriginal peoples prior to undertaking or authorizing activities that have the potential to affect Aboriginal rights, interests and way of life and to try to mitigate adverse impacts on Aboriginal peoples and/or to seek an accommodation that reconciles Aboriginal and general public interests.

This Crown duty applies to the Métis Nation as well as to the First Nations of this province. Métis are a rights-bearing people, whose Aboriginal rights are protected by section 35 of the *Constitution Act 1982*. There is no hierarchy of rights in section 35 and Métis must be treated fairly and equitably relative to other Aboriginal peoples in relation to the Crown's duty to consult and accommodate. It would be unacceptable for the Crown to discriminate against Métis in Alberta by consulting only with First Nations.

The obligation to fulfill the duty to consult and accommodate rests with the Crown and the Crown alone. However, the Crown may delegate procedural matters to industry, and in Alberta, responsibility for carrying out consultations with Aboriginal peoples has in most cases been delegated to industry and incorporated into the environmental assessment process. As a consequence, industry has a major role in ensuring that proper consultation and accommodation takes place with Alberta's Métis community and in discharging the Crown's duty to consult and accommodate.

The Crown cannot abrogate its responsibility to ensure that meaningful consultations take place and that reasonable efforts are made to reconcile Aboriginal and Non-Aboriginal interests in a manner that minimizes adverse effects on the Aboriginal people concerned. The duty to consult will, for the most part, be implemented through provincial and federal regulatory processes, which are generally project-specific, with assessments usually carried out and funded by project proponents. However, the Crown has ultimate responsibility not only to review and approve the results of these assessments but also to ensure that they are properly carried out in the first place. The MNA contends that the responsibility of the Crown in this regard applies equally to Crown agencies (such as the Energy Resources Conservation Board) as to Crown Ministries.

### Métis Aboriginal Rights and Interests

The purpose of this Policy is to protect Métis Aboriginal rights and interests in the development of lands, water, air and natural resources within the province of Alberta.

Although the scope and nature of Métis Aboriginal rights remains to be further defined, the Supreme Court in the *Powley* decision made it clear that persons who self-identify as Métis and whose ancestors were members of a Métis community that existed before the date of effective control by Canada and who are members of this same Métis community today have an Aboriginal right to hunt for food. Métis are therefore a rights-bearing people, whose Aboriginal rights are protected by section 35 of the *Constitution Act 1982*.

The MNA takes the position that in Alberta and in all the territory of the Old Northwest, the Métis rights-bearing community is the Métis Nation, that is, the collectivity made up of the descendants of the historic Métis Nation that emerged in the Old Northwest prior to its take over by Canada, who continue to identify as Métis and who are accepted as such by the community, and not some dots on a map (individual villages, settlements, towns, cities or localized areas). Consequently, the rights-bearing Métis community in Alberta is the Métis Nation, collectively represented by the Métis Nation of Alberta. Métis rights co-exist with First Nations rights throughout all of Alberta.

Aboriginal rights are collective rights that individuals may exercise through their belonging to a rights-bearing community. Aboriginal rights cannot be voluntarily alienated by actions of individuals or entities that are not legitimate representatives of the community concerned. Nor may the Crown infringe Aboriginal rights without due process or in a manner inconsistent with maintaining the honour of the Crown.

The Métis Nation has an inherent right to self-government and has established governance structures to which it elects its leaders through regular elections on a democratic basis. In Alberta, the governing authorities of the Métis Nation are the Métis Nation of Alberta Provincial Council, the Regional Councils of each of six MNA Regions into which the Province of Alberta is divided, and the elected executive of recognized MNA Locals. Each of these authorities is accountable to their membership through annual general assemblies held at the provincial, regional and local levels and through regular ballot-box elections. The MNA is mandated to represent, promote and defend the interests of all self-identifying descendants of the historic Métis Nation who reside in Alberta. The legitimate interlocutors for dealing with government and industry on all matters pertaining to Métis Aboriginal rights and interests on behalf of the Métis Nation in Alberta are the governing authorities of the Métis Nation of Alberta.

## **B. CONSULTATION GUIDELINES**

In discharging the duty to consult and accommodate, the following guidelines should be applied by all parties in dealing with Métis in the Province of Alberta:

- 1) Métis Aboriginal rights, interests, social and cultural well-being and way of life must be recognized, protected and promoted
- 2) Aboriginal rights are collective rights and consultation respecting their potential infringement must take place with the community, not particular individuals or groups of individuals
- 3) Métis consultation processes must provide all Métis citizens the opportunity to participate and be heard
- 4) Consultation must seek to assess the actual and potential affects of a proposed development or policy on Métis Aboriginal rights, interest and way of life and the exercise of Métis Aboriginal rights by present and future generations
- 5) Accommodation must seek to reconcile asserted Métis Aboriginal rights and interests with the interests of other stakeholders and the general public interest in such a way as to minimize adverse effects on Alberta's Métis people
- 6) Consultation must be meaningful and carried out in good faith by all parties involved

- 7) Consultation and accommodation must be inclusive of all rights-bearing Métis who may be affected by a development project or the Crown's actions
- 8) Consultation and accommodation must be based on full disclosure of all relevant information by all parties involved
- 9) Timelines must be reasonable
- 10) The governance structures of the Métis Nation must be respected by governments and private industry in discharging the duty to consult and accommodate in Alberta
- 11) Mitigation and accommodation measures must be reasonable and must reflect a genuine effort to substantively address concerns raised by Métis in the consultation process
- 12) The honour of the Crown is at stake in all dealings between the Crown and Aboriginal peoples: the Crown has a responsibility to promote reconciliation between Aboriginal and Non-Aboriginal interests and to ensure that meaningful consultation takes place, with results that are responsive to Aboriginal rights and concerns and that minimize adverse effects on Aboriginal people
- 13) The Crown must provide the necessary funding/capacity to Métis governing authorities or ensure the necessary funding/capacity is provided to Métis governing authorities to engage with government and/or industry as well as Métis citizens
- 14) The Métis Nation of Alberta is responsible for the internal management of the consultation process for Métis people it represents and has a duty to provide a clear, stable, consistent, timely and effective process by which governments and industry can engage with Métis in discharging the Crown's duty to consult and accommodate

### **C. FRAMEWORK FOR CONSULTING WITH MÉTIS IN ALBERTA**

The MNA recognizes that a clearly articulated framework for dealing with Métis rights and interests in the context of the duty to consult and accommodate would greatly assist the development and extension of the duty to consult to Métis throughout Alberta. The duty to consult and accommodate Métis rights and interests has to date been implemented in an uneven and ad hoc manner in Alberta and far less extensively than it has for First Nations. There have been

several instances where accommodation measures are presented by project proponents before any assessments of impacts on the Métis community are carried out, and where such accommodations have been accepted at the local level without due regard for the interests of the Métis Nation as a whole.

This Policy Framework is intended to ensure that:

- a) all parties are aware of the tasks involved in consulting with the Métis Nation
- b) a proper level of internal coordination and communication takes place between the local, regional and provincial levels of the MNA;
- c) industry and governments know whom to approach to engage with Métis and the process to be followed in carrying out consultations; and
- d) results of the consultations can be properly ratified and implemented in a manner that provides confidence and certainty to all parties involved

*Tasks Involved in Consultation and Accommodation Process*

The duty to consult is triggered whenever the Crown makes public its intention to embark upon a course of action or to take a decision that could potentially affect the rights and interests of the Métis Nation or any portion thereof. This includes a wide range of actions relating to the Crown's authority over land use and economic development initiatives. In such cases, the MNA would expect the Crown or project proponent, as the case may be:

- To provide the MNA with notification of the impending action or decision in a timely manner
- To provide the MNA with a detailed description of the project or initiative
- To include provisions to consult specifically with Métis as part of the project development or approval process (e.g. in Terms of Reference for Environmental Impact Assessments)
- To provide the MNA with sufficient resources to carry out discussions with the project proponent (whether private industry or government); to undertake community-based consultations in respect of the project, including where appropriate production of a Traditional Land Use study; and to produce an assessment report of the impact of the project or initiative on Métis rights, interests and way of life

- Assessments should include assessment of impact on exercise of Métis Aboriginal rights, both present and future; assessment of impact of proposed development on the cultural, economic and social well-being of the Métis community; and impact the proposed project will have on the environment, including potential future health effects on the Métis population of the region.
- Where appropriate and based on the assessment report, to negotiate mutually acceptable mitigation and accommodation measures with the MNA

#### Internal Management and Coordination

The MNA assumes responsibility for the internal management and coordination of the consultation and accommodation process. It is recognized that all MNA governance authorities (Provincial Council, Regional Councils and Local Executives) have a role to play in protecting Métis rights and interests, but that the roles and responsibilities of Provincial Office, MNA Regions and MNA Locals will vary from region to region and even from project to project.

To ensure appropriate coordination within the MNA, a **Métis Industrial Relations Committee (MIRC)** will be established at the provincial level, to be jointly chaired by the MNA Minister of Environment and Resource Development, the MNA Minister of Métis Rights and Registry and the MNA Minister of Training and Economic Development, and upon which will sit two members from each of the six Regional Councils within the MNA, one of whom shall be a President of an MNA Local within the Region.

The MIRC will have overall responsibility to coordinate and manage the MNA's engagement with government and industry in relation to the duty to consult and accommodate and will:

- Maintain a database on proposed development projects and initiatives within the Province of Alberta
- Allocate on a case-by-case basis responsibilities for engaging with project proponents
- Review any assessment reports that may be produced from the assessment process

- Review any mitigation and accommodation agreements that may be generated from discussions with project proponents
- Draft any statements of concern, comments of environmental assessments or policy positions to be submitted on behalf of the MNA
- Provide advice and assistance as required to MNA Regions and MNA Locals in their dealings with industry on the duty to consult
- Monitor on a continuing basis the results and agreements reached in the consultation and accommodation process
- Advise MNA Provincial Council on any legal action that may be required to defend Métis rights and interests in the event that consultation with the Métis community fails to occur or is blatantly unsatisfactory

*Determination of With Whom to Consult*

Alberta is unique among the provinces by virtue of the sheer number and size of the economic development projects that are being undertaken in the province. The MNA recognizes that a one-size-fits-all approach to allocating responsibilities for dealing with project proponents is unlikely to succeed. At the same time, industry needs to know with whom within the MNA's governance structure it should be dealing on any particular project.

The following procedures will apply:

- *Notification:* The Crown and/or Project Proponents should notify the President of the MNA, the President(s) of the MNA Region(s) in which the project or initiative is located, and the President of any MNA Locals within the Region of the proposed policy initiative or development project.
- *Response:* Within 60 days of receiving notification, the MNA Minister of Environment and Resource Development will, following deliberations of the MIRC, provide a written response to the Crown or Project Proponent, as the case may be, which will, among other things, designate the persons who will represent the Métis Nation to fulfill the duty to consult with Métis in respect of the project or initiative.

In allocating responsibilities, the MIRC will take the following factors into consideration:



- The size and potential intrusiveness of the proposed project or initiative
- The need to ensure that all rights-bearing Métis who could be potentially affected by the project are included in the consultation and accommodation process
- The capacity of local, regional and provincial levels of the MNA to deal with project proponents

As a general rule, the lead role in dealing with project proponents will be assigned based principally on the scope of the proposed project or initiative:

- a) for projects having only local impacts, the lead role will be assigned to an MNA Local or a combination of MNA Locals within the immediate area, and if no Local exists, to the MNA Region concerned;
- b) for projects affecting an entire Region, the lead role will be assigned to the Region concerned;
- c) for projects affecting two or more MNA Regions, the lead role will be assigned to MNA Provincial Office

Regional Councils will have the option of entering into **Consultation Protocol Agreements** with MNA Provincial Office to outline in more detail the roles and responsibilities to be assumed by each party in fulfilling the duty to consult and accommodate. The MIRC will take the provisions of any Protocol Agreement into consideration in assigning internal responsibilities for carrying out the duty to consult.

#### ***Ratification Procedures***

The Policy seeks to clarify the procedures to be used within the MNA to accept and ratify the results of the consultations and accommodation process.

The process will produce two basic kinds of results: assessment reports, which will be a product of consultations, and which could include recommendations for mitigation and accommodation measures; and agreements between the project proponent and various instances of Métis government, relating to such matters as funding arrangements for consultations and negotiations, acceptance of mitigation measures and terms and conditions of compensation for infringement of Métis Aboriginal rights and/or accommodation of Métis interests in the project.

***Assessment Reports:*** All assessment reports are to be submitted for the review of the MIRC.

*Agreements:* As with assessment reports, all agreements between the project proponent and Métis governing institutions must be submitted for the review of the MIRC. However, since agreements can only be signed by incorporate bodies (which this committee is not), as a matter of policy, all agreements will have to be signed by the President of the MNA Region or Regions concerned and as well as by any other parties to the agreement

Depending on the nature and importance of the reports and agreement in question, the MNA will endeavor to consult with all affected rights-bearing Métis prior to entering into any agreements with project proponents.

#### **D. CAPACITY DEVELOPMENT**

The MNA recognizes that the lack of funding remains a major obstacle to implementation of a Métis Consultations Policy.

As part of the implementation process for this Policy, the MNA will therefore endeavor:

- a) To secure a reasonable level of “core” funding from the Crown, both federal and provincial, to enable MNA consultation processes to function effectively. This is in keeping with the Crown’s responsibility to ensure meaningful consultations.
- b) To have project proponents assume the full cost of all the tasks to be performed to complete an assessment of potential project impacts on Métis Aboriginal rights and interests. This work should be considered part of the EIA, the costs of which are normally borne entirely by the project proponent.
- c) To engage with Alberta industry to explore the possibility of having industry partners contribute to the costs of the MIRC.

#### **E. EFFECTIVE DATE AND AMENDMENT PROCESS**

This Policy will come into force on the date it is approved by the MNA General Assembly.

MNA Provincial Council will monitor the implementation of the Policy and will assess on a continuing basis whether any changes are required. Any amendments to this Policy must be approved by motion of MNA Provincial Council and ratified at an MNA Annual General Assembly.