

2024 Engagement on the Guidelines for Federal Officials to Fulfill the Duty to Consult

Interim What We Learned Report



Crown-Indigenous Relations
and Northern Affairs Canada



Naut'sa mawt
EVENT MANAGEMENT



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“

My name is Bayja Morgan-Banke, (traditional name Petqua) and I am a Nuuchahnulth and Secwepemc artist living in Lekwungen territory.

I designed these images to have an overarching theme of friendship and teamwork. The hand as a symbol, inspired by the colours of the Northern lights, was chosen to represent respect and communication, touch, and collaboration. We use our hands to hug and hold one another, to offer assistance, and to raise them in respect of one another.

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Executive Summary

The [Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult](#), last updated in 2011, no longer reflect the evolving relationship between Indigenous Peoples and the federal government. Rooted in legal precedents, the Guidelines have served to outline how federal officials are expected to fulfill the Crown's duty to consult. However, the Guidelines do not go far enough in outlining how to adequately and meaningfully consult with Indigenous Peoples, develop a collaborative approach rooted in Indigenous worldviews and governance structures, and ultimately strengthen relationships between Indigenous communities and the federal government.

As the federal government seeks to strengthen its relationship with Indigenous communities, including through the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA), it is important to review and update the federal guidelines to ensure that federal officials have all of the necessary tools and information to consult with Indigenous Peoples in a good way. Starting in 2023-24, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is undertaking engagements 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.

Throughout 2024, the CIRNAC Consultation and Accommodation Unit brought together Indigenous leaders, consultation professionals, and other key voices involved in the consultation and accommodation process to discuss their experiences when it comes to consultation – including some of the challenges and concerns they've experienced in their roles, examples of strong or successful consultation processes, and how these can all be incorporated into renewed guidelines for federal officials going forward.

Participants discussed the consultation process in its entirety. They focused on the importance of relationship building, the critical role of cultural competency and learning, and the steps required to ensure that communities are prepared, informed, and ready to consult with federal officials when a project is proposed. Preparing for consultation can be as important as the consultation process itself, but it requires adequate investment and capacity to ensure that communities are properly set up to collaborate with the proponent throughout the lifecycle of a project.

Participants also focused on the consultation process itself, including the capacity required to consult with the federal government, the process through which impacted rights are assessed and measured, and the importance of considering the impacts of various projects and of other consultation processes when consulting with Indigenous communities. Participants explored the idea of free, prior, and informed consent (FPIC), and expressed several key

considerations to ensure that the consent of a community is sought in the right way, in line with a community's protocols, governance structures, and expectations rooted in their relationship with the Crown.

In the sessions, participants shared how their rights are impacted across various projects, and how government can ensure that impacts to their rights are adequately assessed and meaningfully accommodated for. They discussed the importance of recognizing and measuring for the cumulative impacts that communities have experienced to understand the impacts that a particular project may have on a community or their rights. They also discussed approaches to accurately assess potential impacts and to create accommodation measures that are collaboratively designed, reflective of traditional practices and Indigenous worldviews, and that are monitored and evaluated throughout the consultation process and the entire lifecycle of a project.

Finally, participants talked about what it means to ensure that a consultation process is seen as “adequate” and “meaningful.” They explored the idea of increased accountability and enforcement, the streamlining of government processes, increased collaborative decision-making, and the importance of respecting and upholding Indigenous laws and governance as key parts of consulting with Indigenous communities in the right way.

While participants did highlight several essential challenges and important concerns around the development of updated federal guidelines on consultation and accommodation, they expressed a deep interest in the process currently undertaken by the CIRNAC Consultation and Accommodation Unit, and a desire to collaborate on the updated guidelines in a way that can strengthen the relationship between Indigenous Peoples and the federal government. While the 2011 guidelines focused heavily on the legal interpretation of the duty to consult, participants expressed hope that the renewed guidelines will lay the foundation for stronger, more respectful, and more collaborative relationships between Indigenous Peoples and the Crown rooted in cultural competency, trust, respect, and a shared desire to work together. Participants were thankful for the opportunity to participate in these engagements and were hopeful that this process might represent an important step in a renewed relationship between Indigenous communities and the Crown.

Acknowledgement

We respectfully acknowledge those who participated in these important conversations, travelled from communities from coast-to-coast-to-coast, and took the time to share their valuable perspectives and ideas to contribute to this process.

The conversations related through this report occurred on the Traditional Territories of the Ta'an Kwäch'än Council and the Kwanlin Dün First Nation; the shared and unceded Traditional Territories of the x̱wməθkʷəy̓əm (Musqueam), Sk̓wxwú7mesh (Squamish), and səliłwətał (Tsleil-Waututh) Nations; the Territories of the Nehiyaw (Cree), Denesuliné (Dene), Nakota Sioux (Stoney), Anishinaabe (Saulteaux), and Niitsitapi (Blackfoot) Peoples on Treaty 6 Territory, and of the Métis Nations; the Territories of the Anishinaabeg, Anishininewuk, Dakota Oyate, Denesuline and Nehethowuk Nations on Treaty 1 Territories, and the Homeland of the Red River Métis; the Traditional Territories of the Mississaugas of the Credit First Nation, the Anishinaabe, Haudenosaunee, and Wendat Peoples; the ancestral Territories of the Wendat, Innu, and Abenaki Peoples; Mi'kma'ki, the unceded Territories of the Mi'kmaq People; and on Chief Drygeese Territory, the Traditional Territories of the Yellowknives Dene First Nation.

The drafting of this report occurred on Ləkʷəŋən and W̱SÁNEĆ Territories, the unceded Territories of the x̱wməθkʷəy̓əm (Musqueam), Sk̓wxwú7mesh (Squamish), and səliłwətał (Tsleil-Waututh) Nations, the Traditional Territories of Tsawwassen First Nation, as well as on the unceded Territory of the Algonquin Anishinaabe Peoples.

NOTE TO READER

Content Warning

This product may contain information that could be upsetting or triggering for some individuals. Supports are available for Indigenous Peoples [here](#) and for federal government employees [here](#).

Language Used in this Report

The language in this Report has been anonymized to protect the personal data of participants and their communities. Throughout the report, "Indigenous communities" is used as a collective term for participants' various affiliations, including Indigenous governments and representative organizations of Indigenous Peoples. In some cases, language used in this report is reflective of how participants expressed themselves during the sessions.

Note on Provinces and Territories

The conversations that took place focused on the federal guidelines for consultation and accommodation. However, participants took the opportunity presented through these sessions to share feedback that included reflections on both federal consultation processes and those consultation processes implemented by provincial and territorial governments.

Introduction

Throughout 2024, the CIRNAC Consultation and Accommodation Unit undertook a series of 18 in-person engagement sessions across nine regions, as well as two virtual sessions, to better understand the perspectives, ideas, and concerns that Indigenous Peoples may have in relation to consultation and accommodation processes. These engagements aim to create a space for collaboration between the federal government and Indigenous communities in updating the federal guidelines. This report seeks to provide an overview of what we learned, including the ideas and perspectives that were shared, and the direction that participants hope to see the updated federal guidelines take. This Interim What We Learned Report serves as a summary of these discussions and aims to compile the feedback shared by participants as it was shared in their voices, in order to better position CIRNAC and the Indigenous-Crown Steering Committee on the Consultation and Accommodation Guidelines Renewal in their work to renew the federal guidelines for federal officials to fulfil the duty to consult. This work is ongoing: CIRNAC will continue to engage with Indigenous Peoples in the coming years, including through a Phase Two engagement process that will see elements proposed for new guidelines content brought back for validation by participants throughout 2025. This interim report does not reflect bilateral engagement discussions held directly with CIRNAC, nor does it reflect written submissions received by CIRNAC.

Developing New Federal Guidelines

Overview

Budget 2023 provided \$11.4 million over three years, starting in 2023–2024, to CIRNAC to engage with Indigenous groups to renew the [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#).

Renewing the guidelines is essential to support federal officials in meaningfully meeting the duty to consult by providing more clarity on how the government will proceed to ensure an effective and efficient whole-of-government approach to consultation and accommodation.

The new guidelines will aim to strengthen Indigenous–Crown relationships; promote partnerships; contribute to Government of Canada priorities relating to economic development, clean growth, and to the United Nations Declaration on the Rights of Indigenous Peoples Act; advance reconciliation; and support Indigenous Peoples’ self-determination.

The Duty to Consult

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 duty to consult and, where necessary, accommodate Indigenous Peoples when considering actions that might adversely impact their rights. This duty stems from the Honour of the Crown and is derived from Section 35 of the [Constitution Act, 1982](#), which recognizes and affirms Aboriginal and Treaty rights. The Court interpreted that this obligation is grounded in the Honour of the Crown and linked with the Crown's distinct relationship with Indigenous Peoples.

The duty to consult is an important part of the federal government's activities, including for regulatory project approvals, licensing and authorization of permits, and operational decisions.

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 Crown conduct could have an adverse impact on Aboriginal and Treaty rights. Crown conduct refers to actions by the provincial, territorial and federal governments. The Government of Canada has responsibility for its actions undertaken either directly or by a third party through issuing an authorization, permit or financing for enabling an activity. Consultation must occur prior to a decision and implementation of a project or activity.



The Need for New Guidelines

Since the publication of the 2011 guidelines, numerous court challenges around large projects have underscored the ongoing struggles faced by Indigenous communities in protecting their rights from the impacts of federal land and resource development. Litigation continues at great monetary cost to both the Crown and Indigenous communities, and to the detriment of a positive and productive Crown-Indigenous relationship.

In 2016, these ongoing issues were highlighted in a special Report to the Minister of Aboriginal and Northern Development Canada entitled [Building Relationships and Advancing Reconciliation through Meaningful Consultation](#). The Report outlines several areas for improvement – including the need for earlier and more collaborative engagement; the need to clarify roles and improve coordination between the different levels of government; and the need for increased resources and oversight. The Report concludes that many Indigenous communities often found that federal consultation was lacking, noting that these groups “overwhelmingly felt that the federal government [...] often does not engage in meaningful consultation and that Canada’s approach is largely a one-size-fits-all box-ticking exercise that fails to meaningfully address their concerns.”

The Report also stresses that “the government needs to shift its mindset to view consultation as an opportunity for relationship-building and reconciliation rather than simply a legal obligation to be met.”

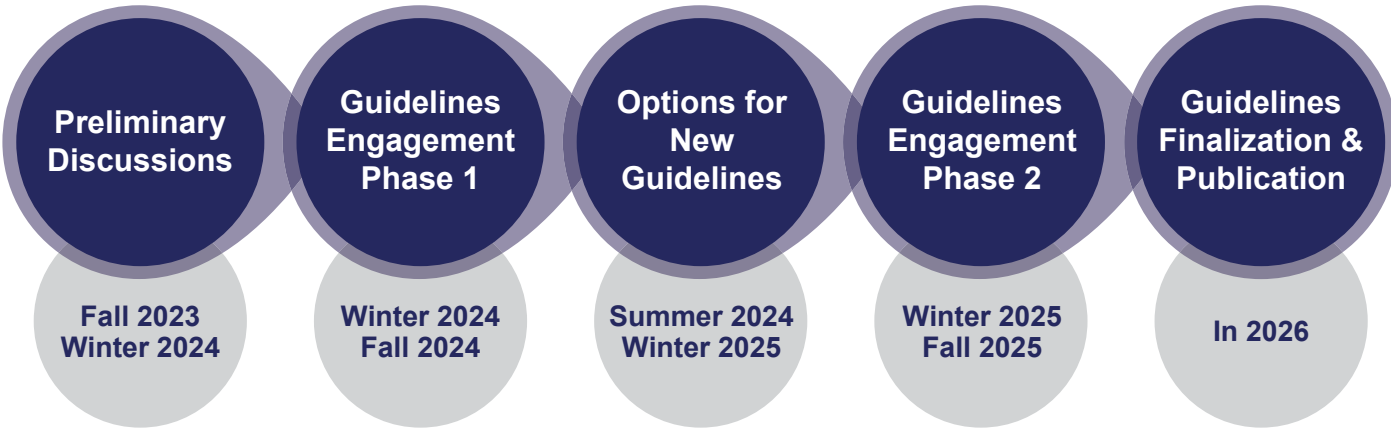
Engagement Strategy

The learnings from the 2024 engagement series will inform the drafting of new guidelines, to be developed with the support of an Indigenous-Crown Steering Committee. This Steering Committee consists of a focused group of consultation experts from Indigenous communities and organizations, and from CIRNAC’s Consultation and Accommodation Unit. Members were invited by CIRNAC through Indigenous partners implementing consultation protocols, consultation resource centre stewards, and Indigenous modern treaty and self-government 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;
- Making recommendations that support effective, meaningful and adaptable processes.

Suggestions for new guidelines content based on what was learned in 2024 will be brought to participants for validation and feedback through subsequent engagement in 2025, with new guidelines being finalized in 2026.

In an effort to engage Indigenous communities in a culturally sensitive and respectful manner, CIRNAC has partnered with Naut’sa mawt Event Management to hold meetings in most major Canadian regions.



Naut’sa mawt Event Management 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.”

Phase One Overview

With support from Naut'sa mawt Event Management, CIRNAC has devised a phased approach that will seek multiple rounds of feedback on the information shared during the engagement series, as well as on the new guideline content that will emerge from those engagements.

From February to September 2024, CIRNAC representatives met with First Nations, Indigenous Organizations, and Métis communities and organizations in 18 separate engagement sessions held in nine regions across the country to discuss the Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011, and learn about consultation and accommodation processes from the perspective of all involved. Two virtual sessions were also held in September 2024.

Participants of Phase 1 Regional Engagements 2024

The following map outlines the location of in-person engagement events and the location of participating communities and organizations across in-person and virtual sessions. In all, 347 individuals from 228 communities or organizations participated.



Participant List

British Columbia		Alberta	
Ahousaht	Penticton Indian Band	Athabasca Chipewyan First Nation	
Alliance of BC Modern Treaty Nations	People of the River Referrals Office	Beaver First Nation	
British Columbia Assembly of First Nations	Peters First Nation	Bigstone Cree Nation	
British Columbia Métis Federation	Saik'uz First Nation	Blood Tribe First Nation	
British Columbia Native Women's Association	Saulteau First Nations	Buffalo Lake Métis Settlement	
Ditidaht	Semiahmoo First Nation	Cadotte Lake Métis Nation	
Doig River First Nation	Sik-e-dahk Band	Ermieskin Cree Nation	
Douglas First Nation	Simpcw First Nation	Frog Lake First Nation	
First Nations Summit	Skeetchestn	Heart Lake First Nation	
Gitanmaax Band	Skidegate	Kapawe'no First Nation	
Halalt First Nation	T'it'q'et First Nation	Lac Ste. Anne Métis Community Association	
Huu-ay-aht First Nation	T'Sou-ke First Nation	Little Red River Cree Nation	
Kanaka Bar Indian Band	Takla First Nation	Métis Nation of Alberta - Otipemisiwak Métis Government	
Lyackson First Nation	Tk'emlúps te Secwépemc	Métis Settlements General Council	
Maa-nulth Treaty Society	Tla'amin Nation	Montana First Nation	
Musqueam Indian Band	Toquaht Nation	Paul First Nation	
Namgis First Nation	Tsawout First Nation	Swan River First Nation	
Native Women's Association of Canada	Tsawwassen First Nation	Tallcree Tribal First Nation	
Old Massett Village Council	Uchucklesaht Tribe Government	Tsuut'ina Nation	
	Union of British Columbia Indian Chiefs		
	Westbank First Nation		
	Xaxli'p		
Atlantic		Manitoba	
Aboriginal Women's Association of PEI	Native Council of Prince Edward Island	Assembly of Manitoba Chiefs	
Atlantic Policy Congress of First Nations Chiefs Secretariat	Natoaganeg First Nation	Interlake Reserves Tribal Council	
Confederacy of Mainland Mi'kmaq	Pictou Landing First Nation	Jackhead First Nation	
Membertou First Nation	Wolastoqey Nation in New Brunswick	Lake Manitoba First Nation	
Miawpukek First Nation		Little Grand Rapids First Nation	
		Norway House Cree Nation	
		St. Theresa Point Anisininew Nation	
		Swan Lake First Nation	
		War Lake First Nation	
		Wuskwi Sipi'k First Nation	

Northwest Territories

Aklavik Indian Band

Charter Community of K'asho
Got'ine

Déljine Gotine Government

Dene Nation

Fort Good Hope Dene Community
Council

Fort Good Hope Métis Land
Corporation

Fort Norman Métis Community

Fort Resolution Métis Government

Fort Smith Métis Council

Gwich'in Tribal Council

Gwichya Gwichin Band

Hay River Métis Government
Council

K'asho Got'ine (Yamoga Land
Corporation)

Kátł'odeeche First Nation

Liidlíi Kue First Nation

North Slave Métis Alliance

Northwest Territory Métis Nation

Sahtu Dene Council

Sahtu Secretariat

Tulita Dene Band

Yamoga Land Corporation

Quebec

Algonquin Anishinabeg Nation
Tribal Council

Assembly of Seven Generations

First Nations of Quebec and
Labrador Sustainable Development
Institute

First Nations of Quebec Economic
Development Commission

Micmacs of Gesgapegiag

Huron-Wendat Nation

Innu Takuaikan Uashat mak
Mani-utenam

Innus of Essipit

Innus of Natashquan

Long Point First Nation

Mi'gmawei Mawio'mi Secretariat

Pekuakamilnuatsh Takuhikan

W8banaki

Saskatchewan

Cote First Nation

Federation of Sovereign Indigenous
Nations

File Hills Qu'Appelle Tribal Council
(Treaty 4 Territory)

First Nations Capital and
Infrastructure Agency of
Saskatchewan

Indigenous Advisory & Monitoring
Committee

Moosomin First Nation

Nekaneet First Nation

Onion Lake Cree Nation

Pheasant Rump Nakota First Nation

Thunderchild First Nation

Whitecap Dakota Nation

Zagime Anishnabek First Nation

Ontario

Aamjiwnaang First Nation

Alderville First Nation

Animakee Wa Zhing #37

Anishinabek Nation Government

B'Maakonigan

Beaverhouse First Nation

Brunswick House

Chiefs of Ontario

Chiefs of Ontario / First Peoples
Law

Chippewas of Nawash Unceded
First Nation

Chippewas of the Thames First
Nation

Curve Lake First Nation

Garden River First Nation

Kijicho Manito Madaouskarini

Mississaugas of the Credit First
Nation

Neskantaga First Nation

Nibinamik First Nation

Niisaachewan Anishinaabe Nation

Nishnawbe Aski Nation

Ontario Native Women's
Association

Six Nations of the Grand River

Snimikobi Algonquin First Nation

Three Fires Group / Kettle and
Stony Point First Nation

Walpole Island First Nation /
Independent Electricity System
Operator

Yukon

Carcross/Tagish First Nation

Kwanlin Dün First Nation

Liard First Nation

Na-cho Nyäk Dun First Nation

Taku River Tlingit First Nation

Vuntut Gwitchin First Nation

Whitehorse Aboriginal Women's
Circle

Yukon Aboriginal Women's Council

Virtual Sessions		
Alexander First Nation	Kát'odeeche First Nation	Peguis First Nation
Anishinabek Nation	Kebaowek First Nation	Sagkeeng First Nation
Blood Tribe First Nation	Little Black River First Nation	Salt River First Nation
Burchell Wickwire Bryson LLP	L'nuey - Epekwitk Assembly of Councils - Mi'kmaq Nation	Sambaa K'e First Nation
Cadotte Lake Métis Nation	Mackenzie Valley Environmental Impact Review Board	Sawridge First Nation
Conseil de la Première Nation Innu Essipit	Mackenzie Valley Lands and Water Board	Semiahmoo First Nation
Dechinta Centre for Research and Learning	Mamalilikulla First Nation (Consultant on behalf of)	Stoney Nakoda Nations (MNP)
Dehcho First Nations Association	Manitoba Keewatinowi Okimakanak	S'ólh Téméxw Stewardship Alliance
Elsipogtog	Mi'gmawei Mawio'mi Secretariat	Sucker Creek First Nation
Esk'etemc	Mi'gmawe'l Tplu'taqnn Incorporated	Teslin Tlingit Council
First Nations Summit	Misipawistik Cree Nation	Tilcho Government
Fox LLP	MNP LPP (for Stoney Nakoda Nations)	Tla'amin Nation
Frog Lake First Nation	Mohawk Council of Kahnawake	Tsawwassen First Nation
Gitlaxt'aamiks Village Government	Newfoundland Native Women's Association	Tseshaht First Nation
Gwich'in Renewable Resources Board	North Slave Métis Alliance	Tsq'escen First Nation
Hagwilget Village	Nunavik Marine Region Planning Commission	Vuntut Gwitchin First Nation
Heart Lake First Nation	Nunavut Water Board	Wek'eezhii Land and Water Board
Homalco First Nation	O'Chiese First Nation Consultation Office	West Point First Nation
Horse Lake First Nation IRC	Office of the Regional Chief for Prince Edward Island	Westbank First Nation
Indigenous Youth Roots	Opaskwayak Cree Nation	Whitecap Dakota Nation
Innu Takuaikan Uashat mak Mani-utenam		Whitefish Lake First Nation 459
Inuvik Native Band		Wolastoqey
Kanaka Bar Indian Band		Woodland Cree First Nation
Kapawe'no First Nation		Yellowknives Dene First Nation
		Yukon Environmental and Socio-economic Assessment Board
		Yukon Heritage Resources Board
		Yukon Land Use Planning Board



The same set of consultation related themes for discussion were raised throughout all engagement sessions, accompanied by a slide deck to structure the engagements throughout according to four “key themes” for discussion.

However, the process was an iterative one that allowed those participating in the meetings to raise issues they thought relevant to the conversation. As the series progressed, CIRNAC made additions to their presentation, including an overview on the “What We Learned to Date” slide.

Registered participants received the following four documents to provide context, as well as the presentation that was used to guide the discussion:

- Link to CIRNAC website: [Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#)
- PDF document: Engagement Guide - Renewal of the Federal Consultation and Accommodation Guidelines
- Slides: Engagement on the Renewal of the Federal Consultation and Accommodation Guidelines
- PDF document: Agenda

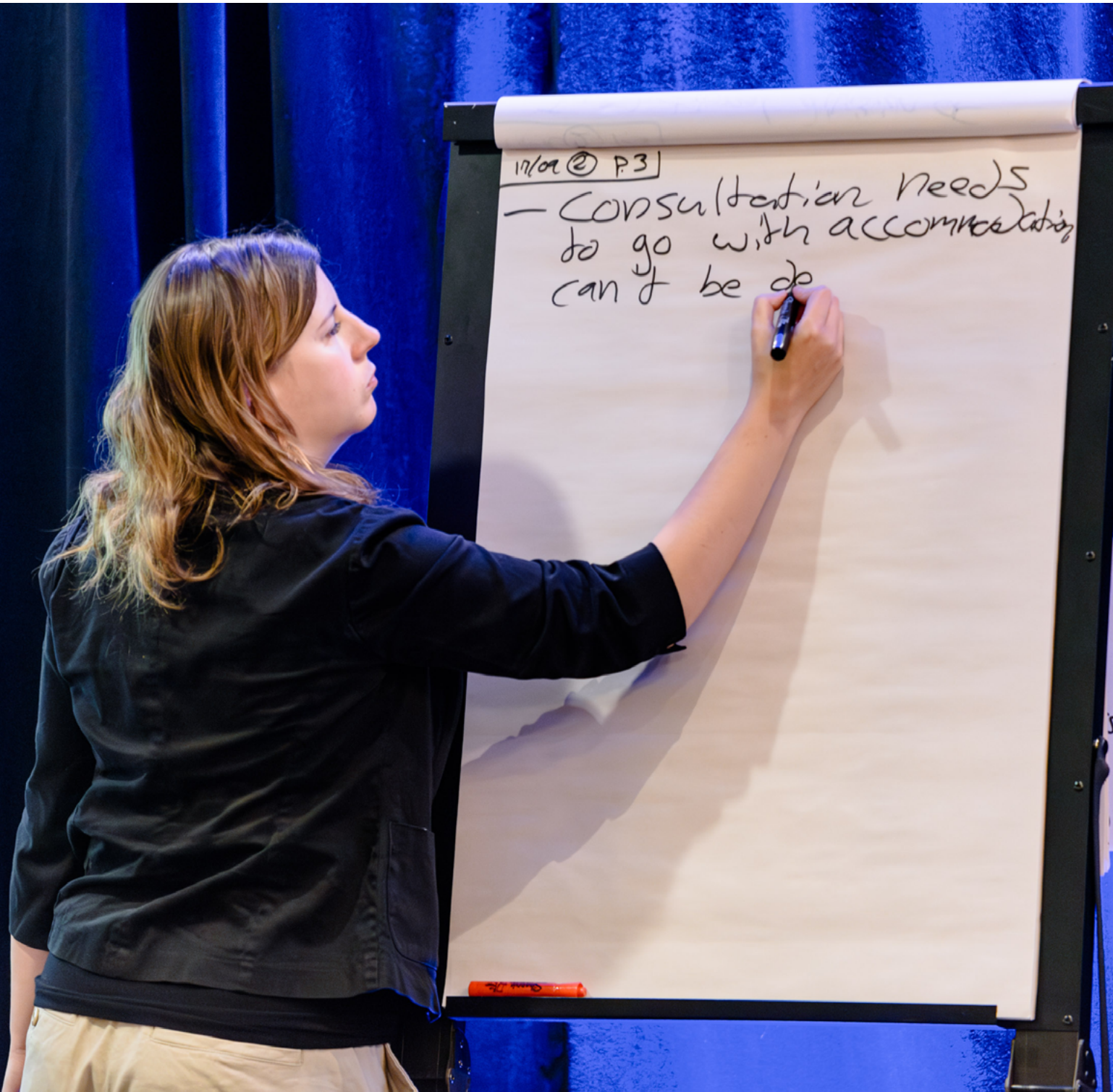
The majority of the discussions were facilitated by Steven Vanloffeld, Anishnaabek from Saugeen First Nation, and the owner and principal facilitator of [INDsight Consulting](#). The two in-person sessions held in Quebec City in French were facilitated by Luc Lainé, Huron Wendat Nation, who also facilitated one of the two virtual sessions.

Report Design and Methodology

After each session, Naut’sa mawt Event Management’s detailed meeting notes were shared with CIRNAC, who used the notes to compile summaries, and then circulated these summaries to participants for validation.

The following Interim What We Learned Report, authored by Naut’sa mawt Event Management in collaboration with CIRNAC, collects the key information captured in Naut’sa mawt Event Management’s meeting notes and in CIRNAC’s summaries from Phase One, and organizes it thematically for the reader. The Report inherits its overarching structure from the structure of the engagement sessions, as designed by CIRNAC: Preparing for Consultation, the Consultation Process, Determining Accommodation Measures, and Meaningful and Adequate Consultation.

This report has been designed to foreground participant feedback as it was heard, and avoids applying an analytical lens to this feedback, opting instead for a descriptive approach. The Interim Report will inform the publication of a Final Report, to be released after the conclusion of Phase Two, in 2025.



Preparing for Consultation

The first step in the federal consultation process for federal officials is preparation, whereby the groundwork is conducted for the submission of a consultation request to Indigenous communities. This initial step sets the foundation for the consultation process, and thus it is paramount that it be conducted in an environment of cultural sensitivity based in mutual respect and understanding, and that Indigenous communities have the necessary funding to handle these requests appropriately and participate collaboratively in the preparatory stage. In theory, this allows the federal government to generate more equitable and effective consultation processes that promote more sustainable developments and that respect the diverse rights and interests of Indigenous Peoples.

Cultural Competency and Learning

Many participants agreed that the most foundational step towards improving the consultation process from the outset involves government officials improving their basic cultural competencies. Feedback often stated that historically, government's lack of knowledge around issues as simple as their Indigenous partners' identity, and their past discussions, have tended to undermine the consultation process before it has even begun.

"For me, a lot of it comes back to the cultural competency and learning component [...]. [T]here are many public servants I meet with who don't understand the difference between status and non-status, or they use the terms 'Indigenous' and 'First Nations' interchangeably. There is almost this need to start at the beginning every time [...]. Why are we introducing ourselves at the beginning of all these meetings?"

Moreover, participants stressed the importance of government officials improving their understanding of the community they plan to consult with – including that community's distinct culture, rights, histories, and procedures – by being more amenable to learning from that community.

This immense diversity means that "the cultural awareness education should be set by the community being consulted in," with that education varying "from community to community."

Participants went on to highlight that this "process of educating, and re-educating, and re-educating" often falls on communities, and this creates more work for already overextended Indigenous leadership.

Some participants voiced apprehension around the concept of a distinctions-based approach, as defined by the Government of Canada. In developing cultural competency, participants urged the government to go beyond these broad distinctions to consider the needs, realities, and resources available to each particular community.

“Distinctions, as a term, sets off so many red alarms for me. I do not like that word at all. The government is currently on a distinctions-based approach to reconciliation, and they use a very limited version of that, which recognizes the distinct needs of Inuit, First Nations, and Métis. And that’s where distinctions end. That basically means that at the highest level, it’s [the Assembly of First Nations], [Inuit Tapiriit Kanatami], and [the Métis National Council]. Those are the three partners.”

“When we talk about consultation, we have to be more specific as to the area concerned [...] [I] don’t want [people in another region] making decisions for me. A blanket approach is never going to work. It has to be specific to the area, according to the resources available to us. And it should be inclusive and specific of the stuff that’s here.”

In avoiding a “blanket approach” to consultation, government can also ensure that funding is going to the appropriate communities.

“Part of the issue is that the Government needs to understand the way they define us is not how we define ourselves. I am a [proud member of my Nation]. The constitution says I’m Aboriginal, the government says I’m First Nations, Indigenous, and an ‘Indian’. Those things matter, because we found out, for instance, that this big envelope of funding for climate initiatives is for ‘Indigenous’ applicants. The government collected data on who gets this money and who doesn’t. But who is ‘Indigenous’?”

Participants reminded CIRNAC that cultural competency must also comprise different communities’ various traditional protocols and governance systems, which sometimes involve Treaty Rights, both historic and modern, for those Nations who have treaties with the government.

“Different rights in different places. First Nations have different rights, different ecosystems, different beliefs [...]. When it comes to consultation, the rights, and the impacts on those rights really need to be considered. What is a right to me, someone else may view differently. It comes down to education: the government needs to be educated on what kinds of rights exist. We have a lot of the same rights, but in different places, those could change. So, when it comes to a process, you really need to sit down and look at which rights could be impacted among which First Nations.”

“Know who you’re talking to, with that distinctions-based approach. Know what the Treaty is, and what it might say about the topic in question. Know who the community is, where it’s located, etc. Do some research. Those kinds of little things will help conversation. People will ask less questions inappropriate to our Nation, or what we’re trying to discuss [...]. I know a lot about the government, for instance, but I may not know about your specific processes. That reciprocal process goes both ways, and it’s about starting from a place of curiosity and learning.”

With regard to Modern Treaty Nations in particular, it was expressed that the government’s updated language around “Indigenous groups” might not reflect the need for direct consultation with the First Nation’s government, and not just Indigenous “organizations.”

Too often, according to participants, government will come into discussions unprepared, which suggests a lack of sincere engagement, and reflects a tokenistic, “checkbox” system that does not lead to adequate and meaningful consultation and accommodation.

This sentiment was particularly apparent in the Métis sessions, during which participants describe feeling excluded from the process.

“I think part of the problem we experience as a Métis community is that [...] there’s no second-class Section 35 rights, but in practice there are [...] there should be no second-class people here, but it does feel that way with Métis – this is something that needs to be grappled with as a part of this [...]. There is no one size fits all.”

Métis participants suggested that a historic lack of Métis inclusion has also led to their communities being wholly unfamiliar with the process, further reinforcing their exclusion.

Some participants suggested that the government’s misidentification of their rights and their Nations can cause the government to “separate” community members from their collective rights, be it consciously or subconsciously.

“The Crown interacts with a community and assumes it represents the Nation. But where I am from, our community is just part of the larger Nation. The Crown keeps misidentifying us, and we continually correct them. This is a form of conditioning [...]. [The Crown] tries to divide me from my Nation and our collective rights. Much of this comes down to cultural competency and learning, because I keep having to educate them over and over.”

Feedback also often emphasized the fact that cultural learning must strive to understand the unique culture and traditions of each Indigenous community through a process of lived experience, rather than standardized training courses, which are far too general and impersonal.

“If we want real answers, about geographically sensitive or informed ways of knowing, as government, you need to go out to the people, to the Nations and their territories, their ancestral lands. You can’t do this work from behind desks.”

“I don’t feel there is cultural awareness when it comes to the consultation process or within the consulting professionals. Most do not have the lived experience needed to understand our cultural practices. Taking a course on Indigenous culture does not translate into reality.”

Too often, participants shared that when government staff do visit community, it is to fulfill their responsibilities around a specific development project, rather than to lay the groundwork for a larger relationship.

Participants added that improved cultural education should follow a grassroots model and come from community members, rather than from senior government officials in a top-down approach that forces community members to fit within a preconceived government framework.

“You should be learning on our terms, not yours [...]. Government will often draw a circle and say, ‘You need to fit in there.’ Instead of allowing the community to create that circle [around] our needs, our interests, and how it looks to our community, we’re being told: ‘Here’s the government framework. Make it work.’ But creating that system is not going to work for a lot of the communities, because you’re not hearing it from the grassroots. You’re talking down, instead of listening up.”

On the other hand, increased Indigenous representation at a senior management level within federal departments can also ensure more cultural competency. One participant recalled that this used to be the case more than it is today.

Another participant proposed establishing an Indigenous regulatory body to carry out consultation and accommodation.

“As we move forward, if you want to talk about reconciliation at its finest, there it is: having our own First Nations regulatory body at the federal level. Mind you, they would probably be the biggest office, because they would have to deal with multiple projects on multiple fronts. But at least it would get done.”

Another participant proposed that identifying central resources of seasoned consultation practitioners or Indigenous consultation experts to support federal officials in navigating their relationships with communities would be helpful for federal officials.

“Good people – people who folks like us know are good people – need to get scooped up and be a central resource, so that when someone in the federal system does not know how to [do consultation] ... they know to pick up the phone and talk to a real human being who has done this before – and done it well.”

Next, participants reminded officials that cultural education and awareness extends to understanding traditional Indigenous territorial boundaries.

Having an accurate understanding of territorial boundaries is especially important in the preparatory phase of consultation because communities must take the time to comb through referrals, and the process of identifying irrelevant referrals eats away at precious capacity.

While government must be aware of different Nations having different rights and varying consultation protocols, participants also explained that government must likewise be aware of the interconnectedness of separate Nations through adjacent lands and resources, which communities may share.

Many participants also shared that cultural learning must strive to include Traditional Knowledge, which might not fit into standardized Western concepts of scientific knowledge.

“Many of our traditional ways were not written down but are passed through story [...]. Traditional land use studies and other ways of engaging with Traditional Knowledge may be part of the necessary education piece when dealing with different First Nations.”

[Translation] “Regarding the integration of traditional knowledge – could we ask for ‘two-eyed seeing’ at all levels? This could help bridge Indigenous and scientific knowledge to ensure involvement from the very beginning of a project.”

According to feedback across multiple sessions, integrating specialized Indigenous Knowledge around land and water into the preparatory stage of consultation would also improve both communities’ and government’s ability to predict the impacts of development projects on the land further into the process.

“We need support to be able to resource our Hunting Council and the Water Council. They’re the ones who have the knowledge of what those impacts look like. They are the ones you should be talking to about impacts, our Traditional land users at the community level.”

Likewise, multiple participants highlighted the importance of including supports for traditional language speakers in ensuring adequate consultation.

“Our people, they think in our Indigenous language first. English is their second language, and a lot of the time, what they interpret from English is quite different than the mainstream understanding. We need to clarify this when you come here to talk to First Nations people about their land. That is very important. Go to their home. Talk about their lands. That way proper, meaningful conversation can happen. But we will need to provide translators because often, our Elders back home think in our Indigenous language.”

[Translation] “It’s not just a matter of opening and closing ceremonies. It’s even at the level of language – often in Quebec, Indigenous people speak their language first, then French, and finally English. The choice of words is important, and the rhythm of the questions as well. Everything changes from one community to another.”

It was also expressed that improved cultural competency through the inclusion of Traditional Knowledge and Indigenous languages would ensure that the preparatory stage for consultation is a more inclusive one, allowing all relevant Indigenous voices and perspectives, including those of women, youth, and Elders, to be part of the process.

Another participant stressed the importance of making sure that government is reaching everyone in communities by taking a Gender-Based Analysis Plus lens to ensure that women, gender-diverse, and Two-Spirit folks, in particular, are included.

Historically, the consultation and accommodation process has been negative for Indigenous communities. While most feedback in this section centred on the importance of improving cultural competency and learning for government officials, some participants also addressed the importance of improving education around consultation and accommodation processes in community. They explained that community members must also be equipped with the knowledge required to identify the government’s responsibilities in order to hold government accountable, and with the capacity to participate in these conversations in order to set the stage for successful and meaningful consultation.

“We have people who are not educated. We have people who have addictions. We are poor. Until we have equality, we will not be able have meaningful conversations [...]. The playing field must be leveled before these processes will succeed.”

One participant even suggested expanding education around the consultation process by teaching children about it at a young age in school.

Learning about different communities’ preferences for engagement helps in developing effective and culturally appropriate consultation strategies. Moreover, government officials’ ability to retain and apply this information to future engagement with each community contributes to the development of a mutually respectful and productive long-term relationship.

Laying the Foundation for Respectful Nation-to-Nation Relationships

Developing a relationship between government and community founded in respect and mutual understanding transforms the consultation and accommodation process from mere procedure into meaningful dialogue. It ensures that Indigenous communities are not just

heard but are made active partners in decisions that impact their community members' lives, their Traditional Territories, and their resources.

Across all sessions, participants expressed frustration at the historic lack of effort and accountability demonstrated by the government regarding relationship building with Indigenous communities. Regarding the consultation and accommodation process in particular, participants across all sessions expressed a sense of frustration with the guideline renewal process, making clear to CIRNAC that they have had these same conversations for decades, often without seeing any tangible change in how their communities are treated by both government and industry.

Participants explained that this inability to understand is seen as a lack of respect on behalf of the government, which undermines trust, and becomes a barrier to adequate and meaningful consultation.

“The biggest thing is honesty. Honesty and respect. Many of our First Nation communities have been burned so many times, there is no trust. You have to build that relationship.”

In order to break this cycle of stagnation and work towards reconciliation, participants shared that government must first and foremost exhibit a sincere desire to change by developing collaborative relationships that prioritize honest communication and accountability.

“To me, reconciliation is about sincerity. It’s about meaningfulness, honesty, and transparency; doing things right, the way they should be done. It’s about recognizing those impacted by government and industry, and a willingness to change.”

In doing so, government must make a serious and sustained effort to ask the right questions and to eventually incorporate feedback from communities into a more meaningful consultation process.

Participants expressed that an essential part of applying cultural competency and forging nation-to-nation relationships lies in consulting with leaders first, before turning to Tribal Councils or other representative organizations.

These participants noted that making Chiefs the first point of contact in matters of consultation will also ensure that government is aware and respectful of the cultural protocols and practices at the community level.

Participants were clear that neither representative organizations nor Tribal Councils are negotiators in matters of consultation and should only be considered initial points of contact for more in-depth communication with specific Nations and their leadership.

Participants also explained that government needs to accept that developing respectful relationships will take time and patience, and that government must be willing to put in the effort needed to mend relationships. In particular, participants pointed to an increasingly high turnover rate within federal staff, explaining that this hampers the accumulation of an effective knowledge base in matters of local protocol and issues.

“We’ve been educating people for how long? 30 years? That’s what it always comes down to. [...] We lose [our contact person], and then they bring in a new person to deal with, and we have to educate them, because they don’t know who we are. And that happens constantly. Aside from being demeaning, it’s also tedious – it’s the same thing over and over and over again. And what happens is you get [the new person] to the point where you were with the last person, and then they leave, and you have to start all over again. When is this going to end?”

For a collaborative relationship to flourish, communities expressed that they also need to feel like they are being heard by officials with “the mandate and power to make decisions and implement changes.” Many participants expressed frustration at the lack of federal decision-makers involved in the consultation process, which often leads to stagnant relationships, disillusionment and anger in community, and reflects a lack of respect and recognition from the federal government.

“We’ve had well-meaning people such as yourselves come here and talk to us about making changes to the system, but it always ends up that you people can’t make those changes. We wonder when change will happen, and I’d really like to know my granddaughter is not going to be wondering the same [thing].”

Furthermore, according to participant feedback, understanding the specific needs, values, and concerns of the Indigenous community with whom the government is developing a relationship leads to more respectful and productive consultations. In addition to opening avenues for more productive conversations, incorporating Indigenous values and Traditional Knowledge into the consultation and accommodation process to a greater degree yields holistic solutions that are both environmentally sensitive, and culturally protective.

“Before anyone else was here, we had pre-existing agreements with each other, the animals, plants, and water. Under those agreements, we have responsibilities toward our relations. The Crown is interfering with our responsibilities to carry out these agreements we have. This impedes the exercise of our rights, and it changes who we are, as the agreements we have with our other relations are fading away.”

One participant went further yet, expressing the potential need to rethink the conceptualization of consultation altogether, so as to realign the process with Indigenous worldview that understands the land as something that humans belong to, and that must be protected.

Likewise, the importance of culturally appropriate communication extends to relationship building, as participants often expressed that communication around the consultation and accommodation process is often too complex and exclusionary, and too rooted in the written word, for it to allow for the growth of respectful and productive relationships.

[Translation] “The language of consultation is too bureaucratic... We need to speak the same language [...]. The Elders don’t understand and tend to leave in such cases. Even the documents sent by email pose problems [...] it comes down to the difference between oral and written tradition [...] it’s very different.”

Finally, feedback from multiple sessions expressed a need for greater inclusivity in the preparatory relationship building phase of consultation, with government needing to work harder to develop equally respectful relationships with both organizations and communities who may not have pre-existing treaties or agreements with the government.

“The government has created a tiered system of relationships [...] in order for this to be fair for every Indigenous organization, we all have to start off on the same footing. We can’t have [...] government choosing one group over another. That’s what further creates the divide. That’s what causes the arguments, and it’s why we keep coming here, saying the exact same thing over and over again, and then being asked the same questions at the next meeting [...]. Include everyone from the very first phase. Let us all start on equal footing, and maybe we can work together.”

Addressing Historical Injustices

Central to the process of government improving its relationships with Indigenous partners is its need to improve staff awareness of the historical injustices and the ongoing socio-economic challenges Indigenous communities face in Canada.

“Deal with your past issues, before you move forward.”

Education around historical injustices – including colonization, cultural genocide, and the horrors of residential schools in particular – should help government officials contextualize current issues and foster a more empathetic approach.

Some participants expressed the need for these historical impacts to be more explicitly addressed in the guidelines themselves, in order to foster reconciliation, rather than simply facilitate project development.

“Do you feel that through this process – through the guidelines or the conversations we are having – that we can start to address the historical impacts of past policy? Is that something that can fit within this process?”

Moreover, as the government works towards rebuilding trust, it must also respect and understand Indigenous communities’ current priorities, which include implementing Treaties and developing independent governance structures and capacity. The federal government must be careful not to assume that their offices should automatically command the time or energy of Indigenous governments with consultation, when many communities’ capacity is tied up working towards self-government.

In fact, participants across all sessions expressed the often-severe effects of “consultation fatigue,” which can paralyze communities, both mentally and physically, by overwhelming what little capacity is available.

“I’m standing at the bottom of a mountain, and I don’t know what my first step is. I don’t have space to think because there is always ringing and asking for something. I feel really tired and frustrated.”

While many participants expressed this frustration, they were careful to add that consultation fatigue doesn’t mean communities are receiving too many requests, but rather that the capacity to respond to each request is not always available.

“We all understand we should be consulting early; we shouldn’t be waiting. I’m starting to see consultation fatigue. People who are very involved in the process, and there’s so much activity that to go to a consultation meeting for every project means they won’t have a time to exercise their rights. Aggregating projects in certain areas for consultation would be very helpful. We should be looking at finding solutions for consultation.”

With Indigenous governments often overrun by consultation requests, organization-oriented participants were quick to remind government that the status quo that sees Chief and Council answer to every consultation and accommodation request is itself a product of colonialism. Contrary to comments relayed earlier in this report, some participants suggested moving away from the overburdened Chief and Council system, and towards a more inclusive framework that sees government work directly with grassroots organizations and offices of Indigenous governments, many of whom have a more direct relationship with communities.

“You need to ‘cc’ the appropriate staff in your emails, not only send them to the Chief, who gets hundreds of emails. I’ve heard through the grapevine that this is done on purpose to lower attendance. I encourage you to send these out to the appropriate folks, and alert them to these sessions.”

Finally, participants reminded CIRNAC that the very concept of consultation and accommodation is a settler-based construct that is designed to allow the colonial practice of resource extraction to continue. Some participants questioned the capitalistic values underpinning development and wondered if simply renewing the federal guidelines is enough to spark real change for communities.

“My grandfather said to me a long time ago: ‘We don’t own the land. We belong to it, and our responsibility is to protect it.’ We need to remember those teachings from the Elders, and fight for that. Maybe it’s not about consultation. Maybe it’s bigger than that, and this is just the start of the process.”

Honour of the Crown

The duty to consult and accommodate, as articulated by the Supreme Court, is derived from the legal concept of the honour of the Crown: In [Haida](#), the Supreme Court held that “the government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the principle of the honour of the Crown, which must be understood generously.”

Participants expressed that the honour of the Crown is a murky theoretical concept that fails to clearly identify government responsibilities in practice.

This is especially true, said participants, when the federal government relies on regulatory bodies and provincial and territorial governments to fulfill its duty, as well as delegating aspects to project proponents, who are not bound by the same legal obligations.

“We need clear definitions. We need to know what is expected from one process versus another. Who is the Crown? Is it the [federal] government, or province, or municipality? We need to clarify who is who and who does what.”

As a result of this ambiguity, there is a “huge discrepancy between federal and provincial consultation.”

“The federal government never protects us, even though that’s who we have Treaty with.”

Consequently, for the federal government to truly honour its duty towards Indigenous communities, participants insisted that it must do more to regulate the provinces’ and territories’ approach to consultation by forcing them to comply with the concepts upheld in UN Declaration on the rights of Indigenous Peoples.

“The Federal Government should be helping the provinces understand that the days of avoiding the [UN Declaration on the Rights of Indigenous Peoples (UNDRIP)] is long gone.”

What is more, participants in many provinces expressed that the provincial government often acts as the proponent, with no oversight from the federal government.

Participants insisted that the Crown's obligation to protect Section 35 rights rests exclusively with the federal government, and that as a result, Indigenous communities and organizations should only have to deal with the federal government in matters of consultation.

"The Crown is the Crown. We do not want to have to deal with the province. Canada is delegated by the Crown to be our partner under Treaty. Canada should honour their obligation to maintain that relationship and not offload anything to the province."

Participants across all sessions expressed that the Crown should, above all else, uphold Indigenous governance systems, which play a vital role in setting the stage for a strong consultation process.

"I think one good faith mechanism is for the federal government to uphold the sacrifice of my ancestors when we were forced into signing Treaty, and make sure that those Treaty promises, and the spirit and intent of Treaty are upheld for time immemorial. From there, we can start talking about project-specific things, and government process."

Honouring existing obligations also includes allowing Nations to prioritize developing self-governance and to focus on their cultural healing.

Towards Collaborative Processes

If developing respectful relationships sets the stage for productive partnerships between government and Indigenous communities in general, working collaboratively towards a clearer shared understanding of the process enables more legitimate consultation in particular. This includes a better understanding of the actors involved, the potential impact on rights and the accommodation measures designed to address these impacts, as well as the communities with which to consult before beginning to carry out this work – all of which must be done collaboratively with Nations through the pre-established relationship.

"What we are aiming for is to be a tripartite country, with Indigenous people at the table and being part of the solution."

Transparency

Participants across all sessions expressed that government must shift the process by which it defines consultation parameters to incorporate a more transparent and collaborative approach to decision-making in consultation with Indigenous communities. From the very

outset of the consultation and accommodation process, many participants describe a sense of confusion and exclusion, explaining that it is often difficult for communities to grasp what process the government is following, including what their objectives might be, what the associated timelines might look like, and how the information that the government gathers in the preparatory stage will ultimately be used.

“If there is already a private assessment done around the strength of Indigenous claims, this needs to stop. I have no idea who creates these assessments for the government, but they’re not created in consultation with First Nations. That’s another thing that needs to change in the guidelines: Information is often brought to us, and we have no idea where it came from. Predetermined factors around the strength of the claim, using information that might not even be true, and we don’t know [...] the predetermined formulas with regard to accommodation. These factors aren’t meeting the proper accommodation that is needed.”

This confusion is often exacerbated by questions around departmental jurisdiction on the government side, where, as one participant put it, communities do not know “who is who in the zoo,” i.e., they have trouble identifying which federal department is responsible for consulting or accommodating for issues on particular matters.

“[Environment and Climate Change Canada] is at the table, [Fisheries and Oceans Canada] is at the table [...] for us in our systems, measures come out after an assessment. Measures are to accommodate First Nations on the impacts raised in the process, but, at the beginning of the process, no one knows what federal or territorial department should be involved. On the Nation’s end, once measures are taken, it’s a random process to figure out what department implements those measures.”

Participants expressed confusion and concern around how governments conduct their initial determinations of whom to consult, what rights exist, and to what extent these will be impacted. Participants reminded government that if these initial decisions, which effectively install the framework for the entirety of the consultation and accommodation process, are made without consultation, the process is inherently and fundamentally flawed.

“On scoping, there needs to be an increase in transparency on the pre-consultation analysis that CIRNAC completed. Nations should be aware of where determinations come from regarding the consultation process. In the pre-identification stage, there is an information deficit that communities operate under. The agency has information regarding the potential impacts, but Nations don’t have the capacity to identify those impacts [...].”

As it stands, Indigenous involvement is often restricted to impact assessment and environmental monitoring, which occur much later in the process, thereby limiting communities’ ability to shape the overall approach. In addition, some participants reminded government

that this disconnect is sometimes exacerbated by the fact that government is not dealing with Nations' actual leadership, but instead with "regional entities, economic arms, or corporations that may have moved their way into being front and centre of a lot of First Nations."

Moving forward, participants want to see Indigenous involvement from the get-go, with structured conversations happening between communities, proponents, and government being consistently "led by the Nation, in a government-to-government relationship." Such integrated Indigenous participation, with "the Nation directing how that conversation unfolds in the context of a proposed activity," would support a more inclusive and sustainable process overall.

"This process should be built together, from the beginning. With major projects, we're sometimes only looking at a project description after it's completed. You make a comment or suggest an adjustment but are told that it's already done. This conception needs to change and recognize the process as an opportunity to implement existing Treaties, existing sovereignties, and to build projects together."

Moreover, participants demanded full access to the notes, records, and other data used in the government's determination of communities' particular rights and their "strength of claim." This would allow communities to vet the scoping process, while also allowing them to identify instances where their input is being ignored, thereby leveling some of that power imbalance currently defining the system.

"It's not about the wording changing really, but the process behind it. The Government of Canada should not be making an independent decision on whether we should be consulted. That should happen collaboratively."

"Most of what we get consulted on doesn't make it into reports and recommendations. There's another power imbalance. It's not based on this equitable relationship we're talking about. We need shared evaluations, based on co-developed metrics."

Building on this, while communities are excluded from the scoping process, some participants describe government and industry passing key responsibilities off to one another in a back and forth that often ends in even more confusion, impacting the meaningfulness of the consultation and accommodation process.

[Translation] "Even though the government still holds the responsibility of the Crown, many of the issues regarding accommodation are being discussed with the proponent. I'm not sure who is responsible... Sometimes it's the government telling us to manage these issues with the proponent, as a commercial matter, and other times it's the proponent saying to manage these issues with the government, as a legal matter. We want to mitigate the impacts, accommodate, and directly address the real issues related to the projects. Stop passing the buck, there are things to resolve, we need to find solutions."

According to participants, this type of muddled government-proponent relationship sometimes leads to situations where government “acts as though they are a part of the proponent’s team,” or even “comes across as the proponent.” In participants’ view, this represents a type of “conflict of interest,” and has to change in favour of a more neutral process that provides guidance to Indigenous parties, not just proponents.

Finally, this feeling of uncertainty with regards to government’s responsibilities also pertains to the consultation and accommodation guidelines in particular, which, according to participants, government fails to share with Indigenous communities, keeping them in the dark as to what exactly is required from federal officials at every step of the consultation and accommodation process.

“If we don’t get the guidelines, how can we understand what the roles and responsibilities of government are when it comes to consultation, engagement, and accommodation?”

Timelines

In preparing for consultation, participants across all sessions expressed that the government and proponents must communicate with communities with whom they wish to eventually develop a project from a much earlier stage, i.e., long before the project is underway.

“Consultation needs to start right from the beginning. A lot of times, the project is already underway, the planning is done, and then they try to consult and engage with Indigenous communities when they’re months or even years in. Proper consultation and engagement should be done from the beginning. Then they can learn from Indigenous people, and learn about our rights and beliefs, so they can tread lightly. Just consult us from the beginning, and not when the project is already up and moving.”

“[Often], the Government of Canada is looking to consult on a project that they have already decided will proceed, and then start consultation because they find it will impact Treaty rights. But they need to start the consultation earlier, before project approval.”

Communicating with communities earlier would allow for a more collaborative and less reactive relationship between communities and government or proponents.

“In terms of starting early, we need to move away from a model based on the duty to consult, and toward an honourable commitment to collaborate.”

Participants repeatedly expressed that current practices undermine Indigenous communities’ ability to properly prepare for consultation by failing to provide them with adequate time to do so.

“Notices are often way too late [...]. There needs to be input much earlier, from the outset. We have a process where we engage the whole community, but we’re often left behind.”

“If government says, ‘We need to get this done quick, so you have to tell us what the impacts to your rights are in 15 days,’ you’re going to get garbage results. Take the time and do it right. That has to be the principle.”

Participants called for a more generous timeframe for notification, with minimum “standards for notification,” which, if not met, should reset the associated timeline.

Beyond simply being made longer and more flexible, participants reminded CIRNAC that timelines must also be mindful of Indigenous Peoples’ on-the-ground realities and capacities at certain times of year. For parts of the calendar during which Nations may be engaged in traditional practices, for example, engagement is simply impossible.

One participant shared their experience dealing with consultation letters that were “strategically timed” to align with significant community events, such as elections, resulting in limited participation from the community. The participant said that in this particular case, the letters that “slipped through the cracks” due to the strategically triggered 30-day consultation policy ultimately led to land being “stolen from underneath” them.

Another participant suggested the possibility of establishing a standardized preliminary notice system, whereby a community would receive a notice declaring the government or proponent’s intent to consult around a proposed project and outlining the implications of this potential project further in advance. This system would then allow that community more flexibility in the preparation and planning phase.

[Translation] “It could be broken down into several steps... maybe there could be a way to have a ‘preliminary notice’ to give advance warning of a discussion on a topic, to avoid conflicts of issues, especially if there are more urgent matters... a preliminary notice would address a request for flexibility.”

[Translation] “The preparation for the consultation should really be a stage where we have a clear vision of the entire process – with a preliminary consultation date, a consultation, and a return to the community, to provide an overall view of the process.”

All in all, participants across all sessions stressed that involving communities from the conceptualization phase of projects greatly improves the overall consultation and accommodation process by allowing all parties involved to identify potential issues and resolve conflicts before they escalate. When communities feel they are being heard and their input is valued, it reduces the likelihood of opposition or legal disputes, leading to smoother project implementation, and the levelling of the power imbalance present within the existing system.

“How do you take the colonialism out of it, when it’s a colonial process that is happening? [...] [D]id they go to communities from the very beginning and ask, ‘What are your needs? What does this look like to you? What discussions can we have to actually come out with a meaningful outcome?’ Instead, you’re brought in halfway through a meeting. Usually others are consulted first, and you find out after the fact you were consulted last. And they basically tell you, ‘We are going ahead with this. It’s not a matter of ‘yes’ or ‘no’, but of whether you want to have input or not.’”

Capacity and Funding

While improved cultural competencies and relationship building play an important role in setting the foundation for successful consultation, participants expressed that issues of funding and capacity building are far and away the most critical components to ensuring meaningful participation in consultation at a community level.

Across all sessions, participants pointed to the staggering number of consultation requests that Indigenous governments receive every year, which, in some cases, stretches well into the thousands. The sheer number of requests makes it incredibly difficult for communities to adequately respond to each one, let alone engage in an internal consultation process to ensure adequate community involvement.

“[One] challenge we face is the immense amount of work due to the enormous number of referrals we receive. This overwhelms larger Nations, let alone small communities. Just keeping up with Crown relations is a major challenge.”

Across all sessions, participants expressed that consultation cannot be seen as legitimate nor meaningful if there is not enough capacity in-house, nor enough funding to support building additional capacity in community to meet the growing demands of consultation.

“If our capacity is so limited, our participation is basically meaningless.”

Participants highlighted that the lack of appropriate resources is causing the erosion of their rights over time, as they are forced to manage multiple projects with limited capacity, hampering their ability to engage meaningfully in these processes. Despite having some funding, it is often insufficient to cover the full scope of administrative and operational costs required for effective participation and negotiations.

Participants also pointed to the significant imbalance between government capacity and capacity in community, which, in matters of consultation, often only involves one staff member. Participants expressed a desire to see this reality explicitly acknowledged in the guidelines.

“Our capacity to respond is not the same capacity that the feds come to us with. Even if timelines line up right with hunting season or other things, we’re a one-person-shop. I don’t know if we can consider that somewhere in the guidelines, to say that it has to be appropriate, and to acknowledge the realities on the ground [...] help federal officials understand the disparity between their capacity and their partners’ capacity to do this work.”

The result of over-consultation and under-staffing, many participants said, is “consultation burnout.” Participants stressed under current conditions, the amount of work required to engage in consultation is not sustainable, and this results in flawed consultation processes that fail to meet the community’s expectations of adequate and meaningful consultation.

“It is a lot. So much is on us. People get burnt out, because they give their heart and soul.”

“It’s very difficult already, especially for a Chief, to be the Minister of Health, Transportation, and everything else. This is our team: it’s me and [my colleague]. It has become very difficult to keep up with all the wants and asks of government [...]. It’s becoming increasingly difficult to do a thorough job and be a part of all these conversations.”

Next, participants highlighted that the current funding model is broken, as it prioritizes a case-by-case method for funding allocation that exhausts an already overburdened Indigenous leadership.

“I think it’s the same for every Indigenous organization, government, and band. You’re cobbling together the funds to stay involved in these processes to the level you need to be, from wherever you can within your community.”

Participants stressed that improved communication and transparency from the federal government regarding funding terms and conditions is necessary to enable communities to better plan and manage their resources.

Participants explained that project-specific funding also dictates which communities can participate in the consultation process, and that this funding model often excludes certain affected communities from having a voice, especially smaller communities who don’t have the ability to compete for funding packages.

“If CIRNAC has a role, it is making sure there is capacity across the board for Nations to have consultation offices, to have resources in place to participate in calls like this one [...]. It is hard to get funding and often funding envelopes are competitive and hard to get. Being able to meaningfully participate is one hundred percent tied to funding to participate. Without that, we will spin our wheels on consultation for another fifteen years.”

“We need to build a consultation office, establish a group of trained staff. Capacity is needed for all of this, it needs to be long-term, ongoing, and start early. Otherwise, Nations are left out all together, and the duty to consult cannot be filled.”

Participants also drew attention to the fact that funding for smaller projects is often overlooked, with the funds available and readily flowing for large scale projects such as a diamond mine, while restrictions hamper funding for participation in smaller projects. One participant pointed out the fact that sometimes, projects closer to home will be more important to a community than a large mine 300 kilometers away.

“The information flow in government must understand that things closer to home, in your own backyard, have a whole lot more importance than a diamond mine that is in someone else’s region.”

Even when communities have demonstrated a repeated need for increased funding to participate in the consultation process, participants said these requests are often ignored.

“I need more people and can’t hire them because we don’t have the funding, even though we have demonstrated the need for it.”

Not only does this level of funding actively hinder the ability for communities to expand their consultation departments to keep pace with an ever-growing number of consultation requests, but participants expressed that most Indigenous governments and organizations don’t even receive enough regular funding to cover the cost of one salaried consultation coordinator. Consequently, communities are forced to pour their own resources into the administrative burdens associated with consultation, detracting funds and capacity away from other critical needs.

“[A] lot of the time it’s taking away from the social programs, emergency response potential, and then also the programming you should be doing for your people, like bringing the youth on the land and learning the language. So, the responsive nature of participating in consultation is oftentimes taking away from the things we should be doing: helping our people, and engaging in Nation building.”

“If we need to use money for technical support, for instance, it may be coming out of citizens’ mouths, quite literally.”

Many participants also felt that current funding levels seem to be based on an assumption that their communities would hire external consultants, instead of keeping dollars in community and relying on growing their citizens’ professional and technical capacities, which in turn, would develop a more sustainable approach to consultation that benefits communities

in the long-term. As it stands, consultants are profiting off of Indigenous communities, with one participant recalling when a consultant took 90% of the \$5 million of funding that accompanied a consultation process in their community in 2017.

Moreover, several participants expressed that existing capacity funding is usually tied to a specific project, requiring additional administrative investment on the part of the community to be able to access it.

“There’s no central funding provided for consultation capacity to every First Nation. It’s usually [piecemealing] for each project, and that’s a lot of work.”

Participants suggested moving towards multi-year funding agreements as one way to ease the burden of having to apply for core funding on a case-by-case or yearly basis, as well as exploring options for consolidating smaller funding opportunities, particularly when multiple consultation projects are happening in a certain area.

“Canada needs to move beyond a model of case-by-case basis for capacity funding. Long-term, reliable, predictable funding with low administrative burden is an absolute minimum to help build our governments. Systemic colonialism isn’t stopping, and if Canada isn’t willing to change their ways, nothing will change.”

Participants also suggested moving towards a flexible funding agreement that could cover consultation activities more generally and allow for leftover funds to roll over to subsequent years. This would help navigate the inevitable fluctuations in development activity.

It is important to note here that while participants called for increased funding terms, they were careful to add that longer terms should also account for inflation.

“[Consistent funding] does not mean ‘sign us up for a ten-year funding agreement with no provisions for inflation.’ We’re seeing that a lot, and it’s leading to a lot more mistrust, because you’re basically saying: ‘We want to lock you in at a low rate and make you suffer here for five years.’”

Moreover, participants explained that community consultation departments are often required to engage with many different federal agencies at the same time, not to mention the province and proponents. In such cases, funding should be consolidated into a bigger pot and budgeted accordingly, with centralized funding for all federal departments.

What is more, it was also noted here that, often, each of these actors will approach consultation differently, which runs the risk of engaging in inappropriate consultation practices.

“A big thing for me would be the consistency of the approach, for all consultation and engagement, directly with the First Nations. Not with regional entities, economic arms, or corporations that may have moved their way into being front and centre of a lot of First Nations. It needs to go to the proper people, and it needs to have enough funding to be able to properly engage our people.”

Sometimes, when the federal government opts to delegate its duty to consult to the proponent or relies on the provincial or territorial government to carry out aspects of consultation and accommodation, communities are required to conduct the analyses, research, or community engagements related to these projects themselves.

“I feel like sometimes we’re doing their work for them. We have all these reports, and everything else we have to do.”

Consequently, communities are required in these cases to apply for funding to complete this delegated work. Participants said that this effectively amounts to Indigenous governments working to secure funding from the federal government to do the government’s own work. Several participants criticized this approach as “backwards” and stressed that it requires significant adjustments in future guidelines.

Participants also pointed to a specific lack of funding on the provincial level, explaining that while a majority of consultation happens with the province, provincial funding is often more difficult to secure.

“[Funding] is only provided if there are enough projects in the area [...]. Most communities are only left with project-specific funding, and only with major projects designated through the [Impact Assessment Agency of Canada].

On the other hand, projects not falling under the Impact Assessment Agency of Canada – for which communities do not receive funding – move very quickly, often leaving no time for conversations, let alone meaningful duty to consult processes, and approvals are often made with standard mitigations. One participant described their Nation receiving \$300,000 for a seven-year study, and when the amount only lasted one year, the Nation had to cover additional costs out of pocket.

While the above reflects the provincial context, similar experiences with funding shortfalls were also shared in the territories, where much of the consultation occurs within a different legislative framework than that of the Impact Assessment Act.

In addition to increased funding for capacity, several participants noted that leveling the field also requires an “access to information by default approach,” which would see information collected by governments and proponents proactively shared with Indigenous communities to strengthen and empower their internal consultation processes.

“Expectations around how information is shared bilaterally, between the Nation and government or proponent, needs to be really defined at the outset.”

Too often, participants said that information appeared to be withheld from communities, forcing their consultation staff to respond without being able to see the whole picture, ultimately leaving them underprepared. According to participants, this sometimes comes across as a deliberate attempt on behalf of government and proponents to undermine community consultation efforts.

“Proponents will not disclose information, especially voluntarily. Even if specifically requested, information may be masked under intellectual property laws. There is no transparency. Canada should take a leading role in holding proponents accountable and ensuring the proper rules are in place and followed.”

Instead, participants said Canada must equip communities with all the relevant information, and provide them access to the same consultants, experts, lawyers, and others involved in planning the project that the government or project proponents have access to as a part of their internal processes.

“When you’re on an equal playing field with government and industry, you have your experts, they have theirs, and you’re at the same table. I guess that would be adequate. But not if the First Nations [have] to fund their own consultation process. It’s very difficult for them to do so.”

“We didn’t negotiate our Treaty agreements to have to hire a lawyer every step of the way when the government is approving projects that have impacts on our lands. We don’t have the funding or capacity available to always litigate in court.”

To further level the playing field, participants stressed that investments in capacity need to occur before a consultation is proposed, ensuring that the community has the resources in place to mobilize a response to projects that impact their territories or communities. As it stands, communities are often scraping together what resources they can on short notice in order to respond.

Participants shared that conversations deemed as “consultation” must include the rights holders, i.e., the community members themselves. In fact, several participants reiterated that consulting exclusively with leadership – i.e., without providing that leadership with the time and monetary resources required to consult with their members – does not represent meaningful consultation.

“We have a process where we engage the whole community, but we’re often left behind.”

“The community decides what will happen on our land. It’s not our Chief and Council, it’s the community. The consultation we request has never happened, with community, on the land, to decide what’s going to happen.”

Finally, participants highlighted the connection between funding and capacity issues and Nations’ ability to develop self-government: if funding doesn’t fulfill Treaty obligations, comes with strings attached, and requires as much work to secure as it currently does for communities, it eats away at the capacity and the independence needed for communities to develop their governance structures. This, in turn, negatively affects communities’ ability to meaningfully participate in consultation.

“We are supposed to be self-governing, but the federal government continues to tell us what we can and can not do with regards to our funding.”

“That old business of not funding our Treaty hits us everyday. We don’t have the funding. We didn’t negotiate self-government agreements to have to sit in a courthouse to litigate everything we want to make progress on.”

While participants called for government to support increased capacity at a community level, they also reminded governments that their current limitations should not discourage government and proponents from continuing to reach out for consultation.

“Capacity ebbs and flows within our organizations. When staff changes occur, we may not be able to participate in your discussions. This doesn’t mean we won’t be able to in the future. You must ensure we keep being invited to these sessions. Do not allow our offices to fall off your invitation lists. You must keep reaching out no matter how much participation you are getting. You should have as many touchstones as you can. We have our networks and maybe they know people who should be here. Keep reaching out even if you are not getting results.”

Participants added that although communities do not have adequate capacity to respond to all consultation requests, they continue to show up whenever possible.

“We participate because we are developing historical evidence of our attempts to meaningfully participate. We are giving our best efforts to participate, but the process is not meaningful. This is a liability for the Crown.”

Moving forward, many participants suggested a viable solution in consultation offices – dedicated resources within communities aimed at facilitating appropriate engagement with community members, fostering ongoing government-to-government relationships, and increasing transparency to support Indigenous governance in matters of consultation.

“Why can’t Canada provide interim funding to have a more robust consultation and referrals office, to provide a means for the Nation to participate? It’s beyond consultation, really. It’s part of the implementation of UN Declaration on the Rights of Indigenous Peoples; it’s honouring the government-to-government relationship.”

“[W]e need to have our own consultation units, within our own First Nations entities – whether at the community level, or within Tribal Councils and other organizations.”

Properly funded consultation offices with adequate capacity would lead to improved relationships, fostering more productive consultation that in turn would avoid future conflicts that often lead to costly litigation.



The Consultation Process

At the centre of the duty to consult is the consultation process itself, which currently begins when a community receives the initial consultation notification. The process then involves, at least in theory, the proponent or government and community convening to discuss the project, assess potential impacts to the community's rights, and propose potential accommodation measures. Ultimately, this process should allow the consulted party or parties to provide or withhold its consent. In determining impacts to rights and in agreeing to a project, participants stressed that free, prior, and informed consent (FPIC), as well as considerations for cumulative effects related to a proposed project, must be central to the new guidelines, as they are too often overlooked in the current process. Participants also stressed these considerations must be accompanied by expanded community capacity.

Assessing Impacts to Rights

One key aspect of a collaborative and productive consultation process is the accurate assessment of potential project impacts to Indigenous rights. Indeed, participants reminded CIRNAC that it is impossible for a government or project proponent to unilaterally identify impacts to rights, or to assume that a rights assessment completed in one community can be repeated in the same “cookie cutter” way in another. Thus, participants expressed that renewed guidelines must include the flexibility for communities to assess or participate in the assessment of impacts to their rights in a way that accurately captures and reflects their rights.

Participants across all sessions shared that, in too many cases, governments and industry come to the table with a predetermined perspective on existing rights and consequently, on potential impacts to rights.

“Predetermined factors around the strength of the claim, using information that might not even be true, and we don’t know [...] the predetermined formulas with regard to accommodation. These factors aren’t meeting the proper accommodation that is needed [...]. [T]o have predetermined Crown accommodation decisions, there has to be a better way of doing this.”

Participants stressed that these pre-existing interpretations are often incomplete, ignoring the existence of many overlapping rights – be they “potential” or “established” according to the Government of Canada. Many participants rejected the concept of potential rights, noting that their rights are inherent and exist irrespective of proof.

Participants expressed frustration at the government's ability to unilaterally decide on the existence and/or types of Indigenous rights that can be impacted in the context of consultation.

"[I]t's the government, in informal processes, determining what may or may not be our 'potential' rights. We don't get to self-determine that and assess it. You almost need a consultation around the right, before you then have a consultation around how it's impacted."

As is the case with defining parameters and capacity, participants added that assessing impacts to rights requires having all the relevant information related to the project, including all the information available to project proponents or other governments.

"First Nations [are the ones] who define what their rights are. And First Nations need access to the data. They are forced to rely on industry and government partners to provide that data, which often doesn't happen. Having access to the notes, records, and other data – transparency and accountability must be a shared responsibility among the partners at the table."

Likewise, communities also require access to the same experts, consultants, researchers, and lawyers that project proponents hire in order to have a complete understanding of the project and the potential impacts that it might have. Governments and proponents must also be prepared to involve communities from the outset.

"The purpose [of consultation] is to have Indigenous Peoples involved as early as possible when government is making decisions, to avoid impacts to our rights. When we're being consulted, we're trying to answer that question: what is the impact for our rights, how do we assess that, and how do we communicate it back to Canada?"

Next, participants highlighted the need for greater incorporation of Indigenous Knowledge in assessing impacts to rights. Participants expressed a desire to see western science and Traditional Knowledge being treated equally. In British Columbia, participants noted that western science is catching up to Indigenous knowledge systems, recognizing that objective scientific observations fail to include the broader context, and the relationships that exist between communities, the land, waters, and other living beings.

"Science is now realizing what Indigenous Peoples have always known. It is amazing how, as we go through life, our understanding of its interconnectedness expands."

Indigenous communities know their rights and can identify how they will be impacted, if provided enough information on the project, as well as adequate funding and time.

“They just want to get the process done, so they don’t take the time to sit down and be educated on different rights. Understanding the rights is a big thing, too. Some people just don’t want to be educated in it, and again it comes back to the checkbox. You need to be educated on what different rights [exist] among all First Nations, because what may be true on the West Coast may be different on the East Coast.”

Participants were also careful to add that as they are the ones being impacted on their lands, it shouldn’t be their responsibility to prove impacts. Instead, these impacts should be assessed via an adequate consultation process.

Moreover, participants pointed to the persistent mislabelling of rights, which some believed amounts to wilful ignorance on the part of the government. Indeed, in the context of Modern Treaties, participants noted that the existing federal consultation and accommodation guidelines fail to mention the distinction between potential and established rights altogether, leading to proponent confusion, and ultimately, to improper consultation.

“If you’re consulting wherever there is a potential right, that has to be on absolutely everything. But when the rights have been established [i.e. through Modern Treaty], there needs to be a distinction. I know the principle here is respect, but let’s tease that out a bit. Here are my questions: Are you still using the word ‘potential’ to talk about rights that are asserted and not proven? Do you make a distinction where the rights are already established, and if so, how?”

“A lot of the time, we have a different understanding and definition of the word ‘rights’ than Canada does. And I think that causes a lot of confusion and a lack of consensus. Canada is going to follow a very formal, legal assessment of what rights are: either established or [‘potential’] Aboriginal and Treaty rights, according to Canadian law. And that’s very different from the perspective a lot of people in our communities have in terms of what our rights are.”

Other participants expressed that their communities must resort to performative acts on Traditional Territories in order to “prove” the existence of rights to proponents or to provincial or territorial governments.

As was touched on in “Preparing for Consultation,” participants stressed that renewed guidelines must allow ample time for these assessments to occur in a way that respects each community’s practices and protocols, even if this does not align with the proposed timelines for project implementation.

“[W]e should be able to say: ‘Ok, we need 6 months to go through our own decision-making processes that must be respected within this engagement; we need access to the notes, etc.’ And this may not fit within your timeline.”

"The federal timeline, the territory's timeline, sometimes that doesn't mesh well. Fishing out how it all fits into the bigger picture, [with] more flexibility on timelines from both parties, not just federal timelines and territorial timelines, but also community timelines, [which are] linked to harvesting and fishing seasons, caribou hunting. The timelines are different in each community, and federal timelines often conflict with those."

Timelines must also account for follow-up assessments. Across all engagement sessions, participants talked about the importance of "circling back", especially when projects change.

"A lot of times, they'll change [the project plan]. You may be consulted on something, but then halfway through they'll change the plan, and act as if they'd already consulted on it, even though there is something different coming up."

One participant discussed the importance of ensuring that the assessment of rights continues throughout the entire life of a project, especially as new information becomes available.

"The scope is always said to be for the lifetime of the project, but assessment of impacts to rights and accommodation measures to address those impacts should be for the lifetime of the project as well. When we think about the process, oftentimes we're trying to assess impacts of the project before it gets approved. [...] Mitigation [and] accommodation measures are discussed, [and the] project goes forward. But there needs to be special consideration for realized impacts after the fact. Sometimes funding isn't there in the moment, things get missed, or there isn't a full understanding of the impacts at the time [...]. There needs to be verbiage that speaks to [adjusting accordingly] when new info comes up, rather than a 'one-shot' estimation at the outset."

Participants added that in some cases, communities will choose to complete these impact assessments with the federal government, using a government-to-government lens, while others will choose to do these assessments with project proponents, given their knowledge and proximity to the actual work on the ground; and others, yet, may choose to do their own independent impact assessment. Ultimately, the consultation and accommodation guidelines should not forcibly define the parameters of impact assessments, as each community should have the ability to define these for themselves and in an ongoing manner.

"We need meaningful time, within your timeline, for Nations to receive your drafts, contribute along the way, and have a last look before it goes [for approval]. That's the best we can do before it goes, right? To keep circling back."

In terms of timelines, participants also noted that impact assessment processes and the consultation process proper, which is aimed at obtaining consent, must be separate. Both are critical to seeking support from Indigenous communities, but one must occur before the other is possible: the potential impacts to rights need to be identified and accommodation measures proposed before a community can meaningfully consent to a project that is occurring in their territory or that might impact their rights.

Cumulative Effects

Participants across all sessions stressed that consultation processes cannot approach a single project in isolation. Rather, each project must be considered within the broader context in which it exists, including the environmental, historical, legal, and cultural context of that community, the context of other projects that have occurred or that are still occurring, as well as the community's capacity to manage these ongoing projects concurrently. Together, these constitute 'cumulative effects.' According to the [Government of Canada](#), cumulative effects generally refer to effects that may be "individually minor, but collectively significant." Specifically, cumulative effects can result in cumulative impacts to Indigenous rights and interests. These impacts on Indigenous rights are generally considered in the context of cumulative effects on the environment. However, consideration of cumulative effects may also need to account for the interconnected socio-cultural and psycho-social impacts of development.

In the context of consultation and accommodation, participants explained that while proponents have the luxury of looking at their project through a narrow economic and environmental lens, communities do not. Instead, communities must consider the project alongside all other projects and their associated impacts, both historical and contemporary, that have occurred within that interconnected ecosystem. They must also consider the community's own development priorities, and weigh these against their interpretation of the proposed project's potential future impacts.

"It's death by a thousand cuts. You're looking at this project in isolation, but [...] there needs to be recognition of what's already happened."

"I had a discussion with a [proponent]; so, I brought up the idea of taking fresh water from the river to use for industry. They [say], 'This is all we do: we only take a day of diversion, and that will be our water for the year.' But what about the next plant, and the next plant? They just say, 'This is all we do. We have a small footprint.' But what about the next guy? And the next guy? Next thing you know, you have a bunch of footprints."

Participants widely noted that it can be challenging to discuss the idea of improving consultation or strengthening relationships with the federal government without considering the ongoing effects of hundreds of years of resource extraction on the continent. Indeed, Canada's colonial history is defined by the unlawful and forceful seizure of Indigenous lands, on which development has occurred without regard for impacts to Indigenous peoples and their way of life.

While the obligation to consult represents a step forward in the Indigenous-Crown relationship, this has mostly occurred over the past thirty years, and little has been done to address historic impacts to rights. Participants underscored the importance of acknowledging and

addressing these impacts in consultation processes, so that future impacts to rights can be considered in context before development is approved.

“We need to go back and fix things that weren’t done right in the first place. Our ancestors did not see this happening when they touched those pens [signed the treaties]. They would have gone to war if they saw how these treaties are being disrespected today.”

Participants expressed just how overwhelming the combination of historic and current impacts have become for many of their Nations, with environmental and socio-cultural effects compounding negatively at a drastic rate.

“We are in the midst of our Residential School cleanup. We have mining companies staking claims in our Traditional Territories even while we are in the midst of doing mining cleanup from pre-existing mines. We [are dealing with another Nation’s] claims on our lands, and the encroachment of our Traditional Territories by [other Nations]. There are water claims, flood clean-up, forest fire threats [...]. We have so many critical issues that we aren’t getting help with.”

While consultation has marked an improvement in Canadian governments’ approaches to development, participants maintained that contemporary governments do not adequately account for the cumulative effects of various projects on Indigenous territories and their cumulative impacts on Indigenous rights. Instead, the federal, provincial, and territorial governments continue to fuel ongoing challenges around cumulative effects by maintaining an underfunded and siloed approach to consultation.

“It’s important to look at the whole scope of the landscape. [There’s a tendency] for the consultation process to put [a given project] in a silo, and not take into account the cumulative impacts. How are they interacting with other impacts? The discussion we had earlier regarding having as much data access as possible is a huge piece of the puzzle to understand this. And it’s not like [if] we have the data [...] we’re going to magically understand all of the impacts. It’s complex. But having the data and resources available is really important to address those cumulative impacts, and to develop meaningful accommodation measures.”

Moreover, participants pointed to a specific tactic whereby proponents and governments avoid addressing cumulative effects on the grounds that these are “out of scope.”

“We hear a lot in consultation processes that things are ‘out of scope’. I have seen a lot of correspondence over the years concerning consultation where our Nations are requesting that existing cumulative impacts be addressed in consultation, and the answers have often been that those requests are out of scope with this specific project, so that is a conversation for later. Our Nations desire to have those hard conversation during the consultation process. I believe those conversations will lead to furthering the relationship and trust we are attempting to build.”

Participants explained that another tactic employed is the artificial division of a single, large project into multiple, smaller “phases.” This allows proponents and governments to sidestep the more stringent obligations and regulations that apply to major projects.

“In Saskatchewan, right now, there are three phases of this Lake Diefenbaker Irrigation project. We’re Phase 3 down south, but they’re already moving ahead with Phase 1, [further north].”

Here, issues around provincial jurisdiction and the delegation of the duty to consult further frustrates Indigenous People’s efforts to address cumulative impacts. Several participants from communities near urban centres noted that cumulative effects are exacerbated by municipal projects. They explained that municipalities rarely consider the impacts of these projects on Indigenous communities or engage in consultation. Some municipalities deny they have any duty to consult whatsoever, instead referring the issue back to the government.

“Our Nation is a very unique place, right next to a large metropolitan area. We are surrounded by different municipalities, and they don’t know how to consult us. There are developers working on our borders and some of them never come to us and now their activities are bothering us. This is especially alarming when one project leads to a bunch of others.”

Cumulative effects tend to be understood first and foremost as physical impacts to the environment. Participants across all sessions described the devastating impacts of development on their environment, and, in turn, on the exercise of their rights, such as hunting, and access to clean water. Environmental impacts can also lead to other safety concerns through issues such as increased risk of climate change related weather events, industrial contamination, and wildlife displacement.

“I was raised traditionally, eating off the land, raised by my grandparents [...]. On the duty to consult and cumulative effects, one of the main things I’ve seen over the past 33 years, is that there are hardly any bush chicken or rabbits left. They’ve already damaged the environment and destroyed a lot of pristine wildernesses.”

“When I grew up you could go drink from any stream, now you can’t do that and how is that going to keep getting affected. I don’t drink from streams anymore or eat from the bush. If you go out now, you have to take water with you.”

Participants stressed that jurisdictional conflicts, including questions around whose responsibility it is to approve projects, track effects, and implement mitigation measures, can make it impossible for communities to address these effects. One participant noted that environmental impacts on fish as an example, with the province loosening regulations to protect a fish species, while the federal government are tightening them.

“We’re getting mixed messages, and the feds saying they’re not touching the provincial decisions. We cannot address cumulative effects when we’re not working together.”

In addition to severe environmental impacts, cumulative impacts also include impacts to community members themselves through effects on community wellness, culture, and traditional practices. This includes impacts related to distrust stemming from communities meaningfully participating in consultation processes that were ultimately disregarded, leaving community members feeling purposefully ignored. This also includes impacts related to how projects affect community members, including through experiences working on projects, instances of racism or violence by the proponent and its employees, and experiences of sexual violence towards women perpetrated by workers on those projects being brought into Indigenous territories.

“We talk about harm to mother earth with resource extraction. But this also does harms to Indigenous women: gender-based violence increases, human trafficking increases. So, we can’t have this conversation without Indigenous women – they have the solutions to address safety concerns.”

These are deep, traumatic impacts that cannot simply be ignored in consultation processes going forward. When communities are traumatized by the impacts of projects over generations, it is difficult for them to move forward trusting government’s “good intentions.”

There is a need for trust – trust that communities are expressing concerns in good faith while working alongside proponents to see projects succeed, and trust that when those concerns are identified, project proponents and the Crown are willing partners in addressing those concerns. However, when proponents and government are not acting in good faith, participants stressed that there is a need for stronger enforcement measures in the guidelines, with participants identifying “[several] missing gaps in terms of capacity and enforcement.”

“We need penalties. It should be on the government to codify something when consultation is not met, and when protocols from First Nations aren’t followed. This should translate to industry as well. I know they’re responding to some calls for Indigenous participation, but we need a more structured way to enforce penalties around lack of monitoring.”

“It would seem like a good add-on to the updated guidelines for CIRNAC to have the capacity to force reluctant departments towards a minimum standard.”

Participants added that it will never be possible for governments or project proponents to accurately understand what impacts their projects might have without the development of strengthened relationships between Indigenous governments, project proponents, and the Crown. In many cases, these cumulative effects are measured in community through stories and the passing of Traditional Knowledge between generations.

“The ecosystem that we live on is slowly depleting, everything that is our livelihood is being taken from us. This is a great concern for us and for all of Canada. This is the big thing that is happening now, slowly taking things away, taking commercial fishing licences from our fisherman, no moose, no muskrat, no waterfowl. [...] it’s important to listen to us now. Traditional Knowledge is rich; why do we have to keep fighting for it? Listen to us.”

Some participants shared an idea that could be implemented alongside the renewed guidelines to help ensure that cumulative effects are adequately tracked and addressed as new projects are proposed in the form of a map-based application. This application could include information on Indigenous communities, their Traditional Territories, consultation protocols, and information on existing projects on the land base to help visualize the various processes that communities are involved in – and the various impacts that have occurred and have been accommodated for in previous cases.

“One short and simple thing that would really help responsiveness: Including geospatial files in notification. The picture map is great, but it would be very helpful to have the data and location to plug into geospatial software like GIS, for which consultation departments have already developed their own internal data sets. There should be an expectation that these files are passed on to communities who need to be consulted.”

This tool would also be conducive to project proponents and governments developing a better understanding what communities are working on, what rights have been previously identified, and what accommodation measures were implemented to mitigate impacts to those rights. Participants shared that there is a similar project currently being implemented in Alberta, but that a map at a national scale could be incredibly valuable for Indigenous governments, project proponents, provincial territorial governments, and the federal government.

“There should be a program where proponents are required to input their information and it is displayed on a map, which Indigenous communities can use to remain informed about whom they need to speak to, which departments, and so on. Why is it only for industry to tell us, ‘You say what your Traditional lands are, and we’ll call that consultation?’”

Free, Prior, and Informed Consent

Across all engagement sessions, participants reminded CIRNAC that the principles of free, prior, and informed consent (FPIC) must be integrated into the guidelines, in line with Canada’s endorsement of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) through the UN Declaration on the Rights of Indigenous Peoples Act (UNDA) and the associated Action Plan.

Free, prior, and informed consent (FPIC) is an internationally defined concept. For example, in a [2016 report from the Food and Agriculture Organization of the United Nations](#), it is defined as “a specific right that pertains to Indigenous Peoples and is recognized in the UNDRIP. It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. Furthermore, free, prior, and informed consent (FPIC) enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.”

More specifically, the Report goes on to explain that “[f]ree refers to a consent given voluntarily and without coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.”

Next, the Report expresses that prior consent requires that “consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community,” while informed consent “refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.”

Lastly, consent, as defined in the Report, refers to the “collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities.”

Participants across nearly all of the engagement sessions expressed doubts that free, prior, and informed consent (FPIC) can, or will, be adequately sought in the context of projects that are already planned. One participant in Ontario shared:

“What do we mean by free, prior, and informed consent (FPIC)? Prior is not really happening. We need more time. Free? we are systemically oppressed. How can we give free consent if so many of the decisions are happening in different ways that aren’t being considered? It’s a ripple effect across all types of institutions. We don’t have the tools to communicate what we need. This plays into ‘informed’: the importance of language. English is difficult. We have an entirely different worldview from the Western system.”

Participants stressed that one of the biggest gaps in the existing consultation and accommodation guidelines is the lack of consideration for free, prior, and informed consent (FPIC), both in theory and practice. Proponents often see consent as a hindrance to project development. Thus, unless free, prior, and informed consent (FPIC) is integrated into the guidelines alongside potential changes in legislation to ensure that these principles are enforceable, Indigenous communities feel their consent will remain irrelevant.

“Right from the get-go, the conversation that happens among Indigenous people is happening from the premise that this [project] is going to get approved whether we like it or not. So immediately the process and the nature of the duty to consult is coercive, because we know that we don’t have a decision-making role. Our ultimate opinion doesn’t matter, and people feel that it doesn’t matter. Our whole conversation happens from the perspective that Canada and industry will do whatever they want, regardless of our perspective, and we just have to roll with it. That’s not really a free decision. It doesn’t check the box of free, prior and informed consent, because it’s not free of coercion.”

Participants shared that coercion often begins right away, when proponents and government put pressure on communities to blanket consent through agreements that are created much too early in the project’s lifecycle.

Here, several participants brought up impact benefit agreements and other capacity agreements, highlighting how these are sometimes seen as a means of manufacturing community consent. If the Nations need the benefits or funding promised in the agreement, “they have no choice but to agree.”

According to participants, the whole concept of tying consent to the negotiation of benefits is backwards, as benefits should be determined only after resources to increase capacity and conduct analyses to determine potential impacts to rights have been provided.

Proponents who seek to determine benefits too early ensure, either intentionally or unintentionally, that communities do not have all the required information to make an informed decision on the project. However, because the communities are at the table, the proponents “check-off the box next to consultation” on their lists and move ahead regardless of any future feedback from communities. Simply put, “consultation does not equal consent.”

Next, participants claimed that some proponents will hide information from communities or make important information incredibly difficult to access, making it impossible for communities to provide ongoing consent by conducting the necessary analyses or further engagements with community members, or to engage in meaningful negotiations around evolving impacts to rights and updated accommodation measures:

“[Is there] ongoing consent? No. And a lot of times, they’ll change [the project]. You may be consulted on something, but then halfway through they’ll change the plan, and act as if they’d already consulted on it, even though there is something different coming up. [...] We had a socioeconomic agreement done up for a mine that was starting. Once the paper was signed, all of a sudden, there was something new coming up. But [they said they] did not need to consult us on it, because it was already done. That gets challenging, where we should be re-consulted.”

Moreover, participants shared that proponents sometimes consider silence, i.e., a non-response, as consent.

“If you say nothing, they will just go ahead. These guidelines put me in a conflict of interest with our natural laws because if I don’t speak, our concerns will never be documented. That is an unfair part of consultation – we have to give up our ethics just to participate.”

Silence being interpreted as consent is especially problematic because, in many cases, proponents and governments make little effort to reach the appropriate contacts, instead sending messages that announce consent will be assumed after a certain time elapses to general information email inboxes or via social media.

“We often get notifications and letters that ‘If we don’t hear back by a certain date, we will proceed.’ That’s a capacity issue, and that leads to nonconsensual situations [...]. Once, a Facebook message that went unanswered [was] included as part of [the proponent’s] record. This is unacceptable.”

Instead of proponents and government requiring active consent, the current system places the onus on Indigenous communities:

[Translation] “It is often up to the Nation to demonstrate that they did not consent: there needs to be a reversal at this level.”

Finally, throughout all the sessions, participants emphasized that consent, once given, can always be taken away. Consent is an ongoing exercise that requires continued communication and information sharing, collaboration, and progress assessments. When concerns arise during the lifecycle of a project, communities expect governments and proponents to continue to act as collaborative partners to address and accommodate for those concerns. However, if communities deem this is not happening, they must be able to withdraw consent.

“Even after all this engagement, capacity building, co-development, etc., First Nations governments must still reserve the right to say ‘no.’”

Participants did discuss the idea of a sort of veto on a project, but some added the nuance that this is not meant to act as an additional risk – the possibility of consent being revoked if communities are wronged. Rather, it is meant to serve as a mechanism that ensures that all parties, including project proponents, Indigenous governments, and the Crown are accountable to one another and the commitments that each has made.

Finally, participants expressed that the definition of free, prior, and informed consent is something that lies with each community, and must involve rights holders from the beginning, creating opportunity for full their full involvement.

“Free, prior, and informed consent (FPIC) is about involvement. That’s what I see in consent.”

Indeed, participants across many sessions stressed that while the guidelines must be strict in seeking consent, they cannot be strict on defining consent, as free, prior, and informed consent (FPIC) will mean different things to different communities. Defining consent at a community level, participants added, represents a complex and multifaceted exercise that, when done in the right way, takes time.

“It was not easy. We had tears, and trauma-informed processes. We needed strong leadership, to step up and drive that process. But because of that hard work we did, and based on our consultation agreements with both governments, which included accommodation measures and monitoring, we were able to say that we could consent. We could now live with the consequences of the decision, based on what was done.”

Participants felt that federal departments and agencies should be making more of an effort to define free, prior, and informed consent (FPIC) alongside each community and to unambiguously integrate it into both the community’s consultation policies and the federal guidelines.

“On the consent piece, Canada has to give more structure to all of these words. We want their opinion on what [consent] means, so that we can look at it, and [respond with] what does not work, and has not worked.”

As it stands, participants describe a feeling of powerlessness in regard to the consent process, with projects often going ahead regardless of the level of consent reached through consultation.

[Translation] “[We] understand ‘free’ and ‘informed’ well [...] but this consent, is it consent to consult, or in relation to the implementation of the project? Rare are the examples of communities that oppose a project and where the project is then rejected.”

Ultimately, participants agreed that best practices around free, prior, and informed consent (FPIC), like consultation in general, are rooted in strong relationships that prioritize collaboration and respect between Indigenous communities, project proponents, and the government.

“I would say that free, prior, and informed consent (FPIC) creates a duty of collaboration – a duty of relationship, so that you can manage the consent process. If government officials come to understand that [...] there is now a law of Canada that says that Indigenous Peoples have the right to grant or withhold [free, prior, and informed] consent, you now suddenly have a legal obligation, not only to consult, but to make all necessary or appropriate efforts to secure consent. That creates a relationship model, and that changes the work.”

Determining Accommodation Measures

Participants expressed that consultation and accommodation do go hand in hand, but that they must not be conflated. As with consultation, and seeking free, prior, and informed consent (FPIC) for a project, the determination of impacts to rights and establishment of accommodation measures must also be rooted in collaborative relationships between Indigenous communities and the Crown and must be led by Indigenous communities themselves. As one participant put it, “accommodation might be needed, but that’s also [something] defined by the First Nation.”

While accommodation often focuses on mitigating or compensating for impacts to rights, participants highlighted that the process should aim to eliminate impacts to rights altogether, especially when a community is opposed to a project. Too often, according to participants, the federal government prioritizes the interests of industry and the perceived interests of Canadian society as a whole over those of affected Indigenous communities, automatically approving development projects without consideration for the impacts on Indigenous rights.

“That’s why it’s frustrating: we know what the answer will be in the end. We know it’s going to be approved. The interests of First Nations will be seen as lesser to interests of society as a whole.”

In many engagement sessions, participants expressed that it can be challenging to talk about accommodating impacts to rights, because it is often not clear what governments or proponents mean when they talk about impacted rights and what is meant by an “accommodation”.

“That could be clarified if you just say it, if you don’t give us that jargon. Just say it – tell us what’s an accommodation measure. As long as we have a conversation. [...] I know this is going to increase your workload, but you guys have the capacity, and we certainly don’t have it [...]. Those things should be brought up front and centre and in plain language – be concise and pointed.”

In Quebec, a participant questioned the validity of the term accommodation altogether:

“Even if you look at the definition of accommodation, it means a ‘convenient agreement’ or ‘compromise.’ It shouldn’t be a compromise; it should be a bare minimum standard that who we are as a people is respected. The wording itself is off-putting. It also shouldn’t be temporary.”

While accommodation remains ambiguous, participants across multiple sessions highlighted that what should be abundantly clear is the important difference between accommodation and cultural competency: accommodation means things that governments or project proponents change, include, or exclude from a project in order to address potential impacts to rights, while cultural competency refers to things that governments or project proponents must do in order to build collaborative relationships and engage with Indigenous communities in a good way. Participants stressed that acting in good faith with Indigenous communities and Indigenous governments does not, under any circumstance, represent an accommodation, just as it cannot be interpreted as consultation or consent.

“A meaningful consultation process, as [previously outlined], does not necessarily make for meaningful accommodation measures or opportunities.”

As is the case with every other step in the process, participants identified that one of the biggest hurdles to determining accommodation measures is the incredible power imbalance that exists between proponents and governments, and those communities whose rights are being impacted. In several cases, participants shared that although they have expressed serious concerns around rights impacts, the government decides that the project proponent can proceed regardless, without consideration for associated accommodation measures.

“Predetermined factors around the strength of the claim, using information that might not even be true, and we don’t know [...] the predetermined formulas with regard to accommodation. These factors aren’t meeting the proper accommodation that is needed. We have a food scarcity issue, and to have predetermined Crown accommodation decisions – there has to be a better way of doing this.”

It was noted that the development of accommodation measures requires more coordination between all levels of government, and the enforcement of said measures needs strengthening through the inclusion of UN Declaration on the Rights of Indigenous People’s principles.

Participants emphasized that future guidelines must approach accommodation through a government-to-government lens, giving Indigenous Nations real power to influence the outcome.

“Canada has these Treaties and needs to acknowledge what they are: Nation-to-Nation agreements. Canada wouldn’t sign a Treaty with the City of Vancouver, for instance. First Nations need to be recognized as Nations, such that they have a real voice. Take today, for instance: everything we share is ‘for consideration.’ I really feel the power disparity [...].”

Participants discussed the importance of including Traditional Knowledge and Indigenous worldviews in the development of accommodation measures. In light of thousands of years

of Traditional Knowledge, participants explained that they should be the ones to “hold the pen,” not least because proponents have tended to be untrustworthy in the production of reliable data.

“People are not going to trust the scientific and technical data that comes from industry proponents. And right now, that’s where most of the information comes from: from industry, or from research, studies, and monitoring that’s sponsored by industry as part of their project.”

Indeed, participants reminded CIRNAC if the accommodation process is too rigid and too rooted in non-Indigenous worldviews, it will fail to ask the right questions of communities, leading to a failure to adequately identify impacts to rights, and ultimately, to an inability to meaningfully accommodate. Here, participants noted that Indigenous worldviews offer a more inclusive perspective of identity, and by extension, of impacts to rights.

“Whenever we talk about accommodation from our perspective, we really try to make sure we’re capturing all the demographics in our community: age, gender, sexuality, those in vulnerable positions, those going through schooling. There are a lot of demographics out there.”

Overall, participants highlighted that in order to adequately and meaningfully accommodate for impacts to rights, governments and project proponents must be willing to trust community perspectives.

“Accommodation itself is meant to be a means of removing barriers to achieving the goals of the consultation process itself. My problem is your problem; your problem is my problem. If you truly respect this process, you will understand the government participants within the consultation process have to trust [that] what the First Nation people are saying are priorities for our Nations. We don’t have time to fight you. What we say is truth.”

Indeed, participants noted that without the appropriate cultural context or on-the-ground experience, proponents and federal officials are simply not equipped to understand how a certain activity would impact a right. One participant cautioned CIRNAC that “[t]here is a lot of jeopardy in developing these systems without having knowledge on the ground.”

“Your ministers, and you as bureaucrats, have a responsibility to ensure you have that on-the-ground intelligence.”

Participants stressed that renewed guidelines must do more to define the federal government’s and project proponents’ responsibilities around accommodation. Some participants added that the guidelines must also include enforcement or appeal mechanisms for instances

where these responsibilities are not upheld, beyond the often-unrealistic option for communities to seek recourse through the courts.

“I just want to be clear that in my experience, the federal government has more money than the First Nations [...] for litigation. We believe that these issues should not have to be fought in court. The First Nations in the Yukon can be a leading example for the rest of Canada on how we can be built in a healthy way together, but there is too much resistance from the Governments.”

“[W]hy are they only guidelines? That means they are voluntary and not mandatory, even though it’s supposed to be law... We [should] move from a guideline to a policy conversation... If this is all we’re going to be doing and continuing this way, is this the best thing Nations can be doing?”

Developing and Implementing Accommodation Measures

After discussing how best to approach communities to discuss potential impacts to rights and appropriate measures to accommodate for those impacted rights, participants explored some key considerations around what those accommodation measures should look like and how they should be implemented in the context of a project on their territory. They noted that the development of accommodation measures should represent an ongoing conversation rooted in collaborative relationships, and that the federal guidelines should outline a process through which Indigenous communities can bring partners back to the table to continue conversations as impacts change or new impacts are discovered over time.

“My biggest concern about this is that we don’t have funding on an ongoing basis to be monitoring what’s happening on the land, which we are supposed to be doing to participate in the co-management process, but which we absolutely need to do in order to answer that question of how [something] impact[s] our rights. [...] We need to have that legal support ongoing. And we need to be doing that environmental monitoring on an ongoing basis, if we’re really going to be accurately answering those questions.”

Participants noted that developing and implementing accommodation measures requires that proponents, governments, and Indigenous communities be clear with one another about what exactly is considered an accommodation measure, and what is not.

“We come at you in different ways. All of our objectives towards reconciliation – communities like connecting all of these. [...] Sometimes it’s very black and white: [...] communities will say ‘no’, and that’s fair, because communities might have different objectives. Other times, they may say, ‘Well, the community agreed to fix the road that takes us to our hunting grounds because it’s on the way to the project, and we’re seeing that as part of the accommodation.’ And they would say ‘no’, and that’s part of their IBA. [...] What is the accommodation and who decides these things here? It could be a full circle depending on the communities’ view of the world.”

Participants proposed measures to expedite agreements and enhance transparency and equality in the process. Key suggestions included setting time limits for developing and finalizing impact benefit agreements and establishing base rates applicable to all Indigenous communities. This could help ensure that all groups have a clear understanding of the minimum expectations and can work from a known reference point to receive fair compensation for impacts on their Traditional Territories. Participants emphasized that offers such as 0.005% of the profits are insufficient for meaningful agreements.

Participants also talked about how the language around accommodating for impacts to rights is highly legalistic, making these processes harder to navigate for the staff of Indigenous governments that may not have as much experience as highly paid consultants or lawyers that project proponents employ. Participants emphasized that renewed guidelines should focus on better communicating roles, responsibilities, and expectations around accommodation measures in clear language – eliminating the risk that proponents and government do the bare legal minimum to the detriment of an adequate and meaningful consultation process.

Participants stressed that accommodation measures cannot be meaningfully developed and implemented by a single agency nor by the project proponent alone, but rather require the ongoing collaboration of all relevant parties to ensure that accommodations have the desired effect on impacted rights. They added that meaningful accommodation measures are only possible if the right people with the right authority are involved in determining and implementing those measures.

As previously discussed, participants shared examples of project proponents, provincial and territorial governments, and the federal government passing responsibility back and forth, and this extends to the development and implementation of accommodation measures. In too many cases, Indigenous communities identify a very real impact to their rights, only to hear from whomever is at the table that the people with authority over that issue are not involved in the process.

Participants noted that this also occurs between federal departments. They explained that in some of the projects they have been involved in, all federal involvement is delegated through one agency or department, even if there are accommodation measures that might fit under

the jurisdiction of another agency. In these cases, participants said that their communities were often told that the agencies at the table are not able to influence activities related to those impacts, but that they are also not able to invite the other agencies to the table to ensure that those impacts are adequately accommodated for.

“We can talk until we’re blue. But the people sitting around the table don’t have the authority to make a decision. And the people who make a decision don’t know [...] about us as a People [...]. That’s the problem. And we’ve brought it up how many times?”

In addition to ensuring that the right people are at the table to make appropriate decisions around accommodation measures, participants emphasized that the intention behind having each of those people at the table must also be sincere. Participants shared that, in too many cases, when a community is expressing that their rights will be impacted by a project and that accommodation measures are necessary, the proponent will simply move the project onto the territories of another community. Participants noted that this, in essence, represents “buying out” other communities to avoid meaningfully engaging with communities and identifying appropriate accommodation measures.

“If accommodation looks like moving a pipeline a bit over here, onto someone else’s territory, and offering \$10,000 to Chief and Council, it’s ridiculous.”

Participants also noted that industry proponents are not properly incentivized to adequately and meaningfully consult with Indigenous communities and accommodate for impacts to their rights and will, in most cases, make decisions that avoid any potential liability for impacts that their projects might cause. They stress that renewed guidelines must include language that specifies the roles and responsibilities that proponents have towards accommodation, and that the guidelines will likely need to include enforcement measures in order to ensure that they are respected.

“[In British Columbia], there are many First Nations located close together. Their Nation has a land claim, and one of their neighbours claimed the same area. The Crown entered into [consultation] with the other Nation before even coming to them.”

In addition to ensuring that the right people are at the table with the right intentions, participants expressed that project proponents and governments must do more to ensure that Indigenous knowledge is centred in conversations around developing and implementing accommodation measures. Participants emphasised that Western science rooted in a laboratory will never be able to replicate what is on the land, but that implemented measures must be able to accommodate for the actual impacts to rights that occur on the land.

“The right knowledge of lands, waters, ecosystems – I would like to see that as equal to western science. They hold up that science, but not ours.”

The development and implementation of accommodation measures must be rooted in land-based and community-based processes. It is not possible for proponents to identify all the potential impacts to rights from their offices or laboratories outside of the community.

Participants emphasize that any accommodation measures must be rooted in Indigenous Knowledge and ways of being, and that the implementation of these measures must be collaborative and inclusive of on-the-ground research and community involvement.

“We said [there are] burial sites and they want access to the area. Why do you want to access that site after we’ve noted it off?”

While participants discussed approaches to ensuring that accommodation measures are developed and implemented properly, they noted that it is challenging to identify best practices, as each accommodation measure is unique to the community, to the project, and to the legal contexts in which those measures were implemented. While it is possible to draw examples from other regions, it is not possible to transpose accommodation measures from one community to another and expect that impacted rights will be meaningfully accommodated for.

“That might be an example of something to put into the guidelines: to say you cannot rely on information gathered from previous consultation processes for future ones. You have to go back to each First Nation for each separate Crown conduct. Maybe that needs to be a specific piece to include in the new guidelines. Federal officials might find it a quick and easy way to do things, but it’s not respectful.”

“Are there things [in the guidelines] saying proponents can’t take info from one project and incorporate it in different places?”

However, participants did suggest developing a repository of previous examples of accommodation measures that have been implemented to help communities have a better idea of what is possible.

“I would suggest that an Indigenous-led capacity and resource centre that compiles data and learnings from across Canada could do that and could help a number of Nations learn from each other.”

This repository, similar to the database around rights and legal contexts discussed in previous sections, could outline what rights were impacted and how project proponents, governments, and Indigenous communities co-developed accommodation measures to account for those impacts. These examples could equip other communities when considering impacts to their rights, giving them a model to mimic or to edit to better reflect their realities, and demonstrating to other project proponents what communities have considered adequate and meaningful accommodation measures.

“As we move forward, if you want to talk about reconciliation at its finest, there it is: having our own First Nations regulatory body at the federal level. Mind you, they would probably be the biggest office, because they would have to deal with multiple projects on multiple fronts. But at least it would get done.”

Guidelines should not enforce what impact assessments look like, when they will happen, nor how often they need to happen, as each community should have the ability to define this for themselves. However, participants stressed that the guidelines must ensure that communities have the time, resources, and information required to complete these assessments adequately.

“It would be great for the government to say, ‘Hey, did we do right by you, Nation X?’. Much of the time, it’s drive-by consultation, where you go to the Elders and land users and grab that information, and then you never come back.”

Working with Proponents and Government

Participants across all sessions expressed that working with proponents and government is challenging. Participants expressed that consultation often feels adversarial rather than cooperative, fuelling the perception that development represents a mere “resource grab.”

Very often, it is unclear who is responsible for addressing which impacts, or who is responsible for implementing or overseeing accommodation measures. Amid confusion and ambiguity, participants explained that the various parties involved in a project tend to pass the buck to one another in an attempt to avoid their respective responsibilities.

As was covered when discussing the honour of the Crown, many participants expressed that when the federal government relies on provinces, territories, or project proponents to carry out aspects of consultation and accommodation, there is a lack of accountability and oversight to ensure that those other parties are discharging their duty responsibly.

It was stressed that renewed guidelines must include direct language for industry proponents and provincial and territorial governments to better understand their roles and responsibilities, as well as measures to enforce the guidelines, should they be ignored or improperly followed.

Participants added that, in most cases, conversations around potential impacts and accommodation measures, conversations around financial benefits or other investments, and conversations addressing free, prior, and informed consent must not be conflated. These are separate discussions, and the participation of a community in any of these discussions

does not negate the requirement for the others. They noted that, while some of these conversations can occur at or around the same time, it must be up to the community to define when each of these conversations have occurred and that the results are satisfactory to its members.

“There needs to be separate process, outside of impact assessment and the regulatory process, for those government-to-government conversations and relationships. Sometimes conversations with proponents are necessary, or proponents need to be brought in on specific components, but that must ultimately be directed by the Nation, within the government-to-government relationship.”

Participants emphasized that accommodation discussions present an excellent opportunity for relationship building between Indigenous governments, project proponents, and other jurisdictions. They noted that the work required to assess for impacts to rights creates opportunities for project proponents and governments to invest in capacity at the community level to conduct these analyses, and if done correctly, to create space for the formation of collaborative partnerships.

“So [we need to be] looking at all the different potentials for accommodation: beyond just the usual money, and also including land, royalty sharing, training opportunities, funding for training, and so on. [...] And it should be part of the guidelines; it should be mandatory. Impact benefit agreements should be mandatory, and accommodation agreements between the Crown and the [Indigenous governments] should be mandatory.”

Participants shared that proponents often come to the table with predetermined accommodation agreements that are not flexible, and that are often rooted in their experience engaging with other communities on previous projects. As mentioned in previous sections, some proponents assume that it is appropriate to conflate their impact benefit agreements, which can include some preliminary accommodations for impacts identified prior to project commencement, with a community’s overall consent to a project.

While one participant noted that “to some extent, an impact benefit agreement is an acknowledgement of accommodation in some sense,” this approach cannot be perceived as a community being supportive of or consenting to a project, notably in cases where this impact benefit agreement includes critical capacity funding for communities to conduct adequate analyses on the potential impacts to their rights. This situation can put communities in a difficult position where they cannot access adequate resources to conduct meaningful impact to rights assessments without agreeing to the impact benefit agreement. Once they have agreed, though, the proponent might consider them to be consenting, and thus, will claim that no further accommodation is required. Participants expressed that this can feel coercive.

Participants stressed that non-negotiable impact benefit agreements, impact assessments, or accommodation measures imposed by project proponents, provincial and territorial governments, or the federal government are a non-starter.

However, other participants noted that, when these agreements are done in a way that is reflective of community voices, they can go a long way in building good relationships between communities, proponents, and governments.

“One of the best practices in the world when it comes to working with proponents and addressing accommodations is the [impact benefit agreement (IBA)]. [Impact benefit agreements] are not always looked upon positively in other countries, largely due to a lack of transparency – but in the ongoing development of mineral resources in the Northwest Territories, there are requirements about [impact benefit agreements] being put into legislation. These happen early in the pre-consultation stage and are themselves part of the negotiations with respect to access. The feedback from industry is that these are highly encouraged if done in the right way. It can be helpful to know how to deter impacts to rights, but also for industry to navigate things in a clearer way. If we make tools like these clearer, and if done in the right way, it can go a long way in addressing impacts.”

Building on this, participants shared examples of good consultation and accommodation processes experienced in community. In most of these cases, best practices were tied to individual people working for government or project proponents that went out of their way to build stronger relationships with Indigenous governments and community members directly.

“We need to make time to build those relationships in the right way, face to face, and not rely on the internet, actually sit down and have tea and bannock.”

These individuals were the ones that took the time to participate in community events and in ceremony, such as powwows, and to learn how to pronounce placenames and other key phrases in Indigenous languages. They also had clearly spent time learning about the modern and historical contexts in which the community operates. These practices created a foundation of “basic trust.” In one case, this integrative in-community approach allowed the project for which consultation had occurred to “happen under budget and on time.”

In most of these positive examples, those government and proponent employees went out of their way to build and maintain relationships with community members and with Indigenous governments – even when consultation processes were not actively happening. In one case, a participant shared that a single government staff person had been working collaboratively with Elders in community on a mapping system pinpointing gathering places, ceremonial places, and burial sites. After what ended up being five hour-long sessions with various groups in the community, hundreds of key points had been added to a live map that

the community could then use to demonstrate to other project proponents or government departments where exactly projects might impact their rights.

Participants stressed that equal partnerships require agreements between parties involved around how processes will unfold, what can be expected, and who will be responsible for implementing which parts of that process. This partnership approach cannot be defined by project proponents, provincial or territorial governments, or the federal government and then imposed unilaterally on Indigenous communities. Participants reiterated that these processes must be rooted in cultural safety and competency, ensuring that they are reflective of those communities involved, and that, where they do exist, these processes adhere to consultation policies and protocols developed by Indigenous communities.

Monitoring and Follow-Up

Across all the engagement sessions, participants noted that accommodation measures are largely ineffective if there is no process in place to monitor impacts or to follow-up if accommodation measures fail to adequately accommodate for impacts to rights. Existing guidelines do not outline a process for project proponents or governments to prove that accommodation measures have been effective, nor that they have been implemented whatsoever.

Moreover, when accommodation measures fail to meet expectations or agreed upon thresholds, there is no recourse for enforcement to ensure that industries and governments live up to their promises, unless a community is prepared to bring the issue to court.

“It often happens that someone will drop [into our community], extract information, and never be seen again. This fuels our distrust [...]. That’s why we say we’re ‘researched to death’. There’s no action or follow through.”

Participants added that there is a significant administrative burden on Indigenous communities related to monitoring and follow-up on accommodation measures.

“We’ve always said there should be a watchdog to oversee each department and make sure they’re adhering to the minimum standards. When we do get consultation, they have already pre-determined that it’s low impact. Where did that decision come from? Who is setting that minimum standard? And who is overseeing to make sure they’re adhering to it?”

Participants added that, in several cases, Indigenous communities are tasked with the work of monitoring and following up on accommodation measures – even in cases where the capacity to support that work is not made available. While participants broadly expressed that communities should play a key role in monitoring, they noted that communities are sometimes

required to apply for funding from the federal government or from a project proponent to have the capacity required to monitor the effectiveness of accommodation measures. They said that this approach is backwards: communities should not be required to apply for funding to do the work for which governments or project proponents should be responsible.

“We’re asked to apply for money to help Canada meet their own targets. We have to do the work to meet your targets, and we have to apply for the money to do your work. This is very backwards; those programs should have followed the guidelines.”

It is not right that Indigenous communities have to seek support from outside proponents to make sure that those proponents are adequately implementing accommodation measures for impacts to rights – especially in cases where those proponents have already minimized their roles and responsibilities to accommodate for those impacts in the first place.

“Why is [monitoring and follow-up] necessarily an internal process? When an accommodation is agreed upon, is there something to be said for providing capacity funding to the affected First Nations, so that they can do the ongoing monitoring, and do dual reporting – to their Chiefs and to the regulator? Why does it have to be internal [to government]?”

What is more, participants pointed out that government turnover often undermines the monitoring process, with knowledge transfer representing a key missing component on the government’s side of things.

“Take a look at your staffing. In the old days, people came up through the system, going from program to program, gaining a wealth of background intelligence and knowledge. 99% of the time, they came from a region, so they had on-the-ground knowledge. But now, every three years someone new is parachuted in from wherever. So, there is no long-term knowledge and ability.”

Participants expressed that communities themselves can play a critical role in monitoring, but only if there are the resources and training in place to ensure that capacity within the community exists to do this monitoring.

“My experience with monitoring is that community is always interested in monitoring and having them on the site and there are limited opportunities to have fulsome monitoring and limited capacity to train monitors. If monitoring is [going to be] in the toolbox, accommodation should increase [that] monitoring capacity. Whether this is the responsibility of the Crown or should be delegated to industry, building capacity needs to be part of this for the long term.”

Participants in one session highlighted a positive consultation experience with monitoring whereby, in response to concerns raised in consultation, the government developed a land

monitoring program in community through the Canada Energy Regulator that enabled that community to protect its sacred sites and shared sacred territories.

“You can get your band members trained to be land monitors on the right-of-way for this pipeline. We were trying to be good Treaty Partners and apprise the government of the importance of this monitoring.”

Next, participants across several of the engagement sessions discussed how accommodation measures must be tracked and adjusted throughout the life cycle of the project and beyond, into the clean-up and remediation phases of the project.

Participants added that sometimes impacts to rights are not identified until a project is well underway, or that the ideal accommodation measures for impacted rights might not be identifiable until sometime into the project’s implementation. In these cases, parties involved must be able to come back to the table to discuss newly identified or changing impacts to rights and work to determine updated accommodation measures to account for these changes.

“I like the idea of adaptive management in the consultation process. There shouldn’t just be a beginning, middle and an end. The relationships we form have to continue after the consultation process ends.”

Participants noted that renewed guidelines should mandate that consultation and accommodation processes remain in place throughout a project lifecycle, ensuring that partners remain at the table and fulfill all their obligations, from conceptualization all the way to site clean-up.

Ongoing collaborative relationships between Indigenous communities and governments, project proponents, provincial and territorial governments, and the federal government are necessary to ensure that projects are monitored in a way that respects accommodation.

“Meaningful accommodation is not about the monetary value – it is about understanding aspects such as shared land.”

Participants added that agreements like impact benefit agreements should really be called “relationship agreements”, outlining the roles and responsibilities of each party involved, and ensuring that all parties are accountable to one another throughout the entire life of the project, regardless of changes that may occur.

“Consultation and accommodation are a relationship and not an event.”

Adequate and Meaningful Consultation

At the end of each session, participants were invited to share general reflections on the concept of adequate and meaningful consultation. Here, participants most often stressed the importance of more clearly defining the various actors, their roles, and the relationships that exist between these parties. Participants also reiterated the importance of upholding Indigenous laws and governance structures.

Actors, Roles, and Relationships

Across the sessions, participants repeatedly expressed that one of the hurdles to adequate and meaningful consultation is a lack of accountability on the part of government and project proponents. Consultation is not meaningful if questions, concerns, ideas, and suggestions that communities express are ultimately left unanswered, and participants shared that this is often their experience.

“I want to reiterate that we are not saying that there are too many consultations. What we are saying is that we are being over-consulted and under-heard.”

Participants expressed that these processes are largely controlled by the federal government, which means that the ability to judge if a process is considered adequate rests with the federal government. They asserted that this approach cannot and will not ever be meaningful; the federal government cannot define what each Indigenous community deems to be adequate or meaningful consultation. They added that governments and authorities have demonstrated challenges in building meaningful relationships with communities, understanding the legal and cultural contexts of each community, and to adhering to community-based policies and protocols when consulting with Indigenous communities. These same entities that are not meaningfully consulting with communities should not have the authority to decide if their consultation processes are adequate.

“With respect to roles and responsibilities – when something arises in a First Nation, the government is judge and jury: they decide whether the duty is triggered, who will be impacted, and whom the government will consult. [...] Listen to the Nations, listen to their concerns and what they’re raising.”

“Adequacy means when a First Nation has reached an agreement and can provide a letter of support or conditional support, then the project’s consultation process has been done adequately.”

Participants shared that one of the biggest gaps in the existing guidelines is the lack of enforcement measures to ensure that federal departments, other governments, and project proponents adhere to the guidelines. They stressed that the only enforcement mechanism available to communities is the court system, and this wastes a significant amount of time and financial resources for everyone involved. If communities do not have the financial capacity nor the social willingness to take proponents or governments to court – both of which have much larger coffers than most Indigenous communities – there is simply no recourse available to communities that have been inadequately consulted or wrongfully impacted by projects on their territories.

Participants also expressed uncertainty around the actual role of the federal government with regards to consultation in general, and CIRNAC's ability to affect change and actually enforce adequate and respectful consultation practices, in particular.

"I think outlining what these guidelines impact needs to be detailed, [along with] what types of decisions are being made by the feds [...]. [The provincial regulator and accommodation office] are not here. Also, why are they only guidelines? That means they are voluntary and not mandatory, even though it's supposed to be law... We [should] move from a guideline to a policy conversation... If this is all we're going to be doing and continuing this way, is this the best thing Nations can be doing?"

As a result, Indigenous governments are required to police the federal, provincial and territorial governments, as well as proponents, throughout the project life cycle to defend their communities and their rights, despite not necessarily having the resources to adequately invest in that work.

Indigenous governments are also required to push for their voices to be heard in a meaningful way by governments and proponents. Adequate and meaningful accommodation should not involve as much work as it does for Indigenous communities; governments and project proponents should be investing the time and resources to do the work in the right way, to ensure that Indigenous voices have influence throughout a project's life cycle.

In discussing adequate and meaningful consultation, participants spoke at length about the various actors involved and the roles and responsibilities they each play in moving the consultation process forwards. Participants expressed that all the actors involved must be at the table together, including Indigenous governments, provincial and territorial governments, the federal government, and project proponents.

"This is where the importance of relationships is crucial – there needs to be good relationships going on between communities, proponents, and different levels of government, or else you will never get consensus to go forward, regardless of the project."

Next, participants stressed that the federal government could be more involved with provinces and territories. According to participants, the lack of federal oversight and enforcement means that provinces are acting independently, often allowing industry to police itself.

“If we develop a good model at the federal level, how can we use that if the province says they have full jurisdiction? We have full jurisdiction on our land through our inherent spiritual connection to the land. And it’s from time immemorial. Our ancestors had responsibilities around looking after the land and their children, and this was established through governance. If the province thinks that they’re above the law, how can we respect this? I don’t know if we can ever be equal partners if our treaties aren’t taken seriously by the provinces.”

“[A]t the end of the day it is industry that is making these decisions. We all know that. It is not the Government, it is industry. This needs to change. You need to give us the power to lead these processes.”

Participants also highlighted that the lack of involvement from municipalities in the duty to consult process is problematic, seeing as many development projects occur on municipal lands – usually just outside of reserve territory – with downstream effects impacting communities on their Traditional Territories.

Participants called for increased support from the federal government to municipalities in matters concerning consultation.

“Some municipalities use Infrastructure Canada grants – with that comes a duty to consult condition, and I think that the feds should be providing guidance to these municipalities on how to do that [...]. It’s not always possible for us to ‘teach’ [municipalities] the consultation process in these situations [...]. We need ways to provide support from feds to municipalities.”

Overall, participants highlighted that the delegation of Crown responsibilities to various levels of government and to proponents tends to diffuse responsibility, allowing each actor to point the finger of blame at one another and avoid accountability in ensuring adequate and meaningful consultation.

“One of our biggest issues is the lack of clarity around who is supposed to do consulting. The province delegates to the municipality, and the municipality to the proponent. They point fingers at each other, and by the time they reach out, it’s too late.”

Ultimately, this lack of clarity around roles and responsibilities causes confusion and uncertainty and creates challenges for enforcement. Often, communities’ only recourse is through the court system, which is prohibitively expensive and time-consuming for most. Participants expressed that the renewed federal guidelines must remedy this by including direct language

outlining all actors' responsibilities – whether these have been delegated or not. They added that it should not be up to communities to do the work of ensuring that consultations are adequate and meaningful – communities should define what is considered adequate and meaningful, but the responsibility to enforce this should remain with the federal government.

Moving forward, participants suggested that the federal government embrace the role of convener, bringing together all the relevant actors – including federal departments and agencies, provincial and territorial governments, municipalities, industry and project proponents, and Indigenous governments – to co-develop the consultation process in a truly collaborative way that allows Indigenous Peoples a real say in the outcome.

“For me, in terms of meaningful and adequate consultation – every time we say in a meeting, with our membership or otherwise, that the government wants to do [something], that’s a wrong statement from the get-go. Because every time that’s asked, it’s basically a yes or no question: do we agree with government, or do we not agree with them? It’s not open ended. It’s not allowing us to discuss or explore our own possible ways of doing things. [...] Don’t come to us with a yes or no question. Come to us with the problem and allow us to come up with some solutions that work for us.”

Participants in Manitoba suggested that, alongside the renewal of federal consultation and accommodation guidelines, the federal government should support the creation of sort of body or mechanism that can ensure accountability throughout the process and enforce adherence to guidelines and community-based protocols.

“We like to talk about the [idea of] an Indigenous Energy Regulator. Obviously, the provinces are not listening to you or us, but maybe the Indigenous Energy Regulator would get listened to.”

“When the Crown comes into a community, they often do not recognize the rights that exist. We’ve provided them our consultation policies, but they never seem to acknowledge or address them, despite the fact they have existed for a number of years.”

This entity could be responsible for maintaining a database of rights, community-based consultation offices and protocols, cultural protocols, and keeping a record of previous engagements, projects, impacts, and accommodations that have occurred. This body could also notify proponents, government agencies, and other actors when they have a responsibility to consult with communities – and help those actors navigate how to adequately and meaningfully meet those responsibilities. Lastly, it was suggested this monitoring entity could lead enforcement, when Indigenous communities believe actors are not adhering to the federal guidelines, their community-based protocols, or are not acting in good faith.

While participants recognized that CIRNAC currently plays some of these roles and has been developing tools to better equip actors to conduct consultation with Indigenous communities, they believe that a separate body might be better positioned to do so, as it could be solely dedicated to serving Indigenous communities in this capacity.

Respecting and Upholding Indigenous Laws and Governance

Across all the engagement sessions, participants emphasized that adequate and meaningful consultation and accommodation must align with community-based protocols and consultation policies, and respect and uphold Indigenous laws and governance structures. They expressed that community consultation protocols are often ignored by proponents and governments. Where community-based consultation offices or policies exist, it is imperative that the federal guidelines do not override these, but rather direct governments and project proponents towards them and ensure they are respected. Participants also noted that where such policies do not yet exist, the federal government should prioritize supporting Indigenous communities with adequate funding and capacity to create them.

“I don’t see anything up there on First Nations laws. And again, trying to think practically [...] – when we did that internal work with the Nations, we went back to the Indigenous laws. And our Elders would say, ‘We don’t have a choice. This is our law, and we have a responsibility.’ That was really grounding for us, and the work we did. But then, what does that mean to Canada, and what do they do with that?”

“The federal government should get those ceremonies prior to the process beginning. There are cultural protocols at the band level that must be respected, performed, and completed. Representatives should be there, participating in that, to make the whole process meaningful.”

Participants across several sessions shared that consultation, from the perspective of communities, cannot be boiled down to a handful of meetings with staff or leadership; it is often a process that involves the entire community. Participants added that, in many cases, Elders must be present and involved in order for a consultation to be adequate and meaningful.

“You need to take any protocols of the territories into account. The Elders need to be present. The meetings need to be on our timelines because the perspective you get from Elders provides lived experiences.”

As covered earlier in this Report, activities related to the consultation process should happen in community and on timelines that respect community needs and priorities. Communities make decisions in their own ways, according to their own laws, governance structures, cultures, languages, and traditions. The decision to consult on, participate in, or consent to a project is one that must be made according to the laws and practices of that community. As such, consultation that fails to respect these community-based decision-making processes or that excludes people who should be involved in these decisions, cannot be considered adequate nor meaningful.

Participants noted that in some cases, communities may prefer to consult with their members privately, requiring only sufficient time, funding, and capacity to do so. Others may ask governments and proponents to be involved throughout that process. This might require public officials or project proponents to travel to and spend time in communities, participate in community events, and build relationships with members to help build trust.

“Come visit. Put boots on the ground. People call and say, ‘Just go do X’, and I have to say, ‘It’s not that easy, with all the other people I need to talk to.’ And this is where the respect comes in from industry and the big city.”

Participants added that while such steps may go beyond the minimum legal standards set out in the federal guidelines, they are often small in proportion to the scope of a given project, and of great importance in building the trust required for adequate and meaningful consultation.

“Federal staff could go to larger events in communities, not necessarily project-based ones. Any opportunity to see the geography, visit the community and learn face-to-face would be huge for the department. But it has to be wanted on the part of the staff.”

While proponents, government officials, and other outsiders may not fully understand the impacts articulated by communities or share the same perspectives, participants stressed that they must come to the table with an open heart and mind so that they can work with communities to find adequate solutions.

“[I]f the proponent is sincere, I’ll invite them [to see the Nations’ process of dealing with projects and land use] and then sometimes, it changes their perception, and they become more empathetic and honest. It keeps them honest to see the connections too.”

Participants talked about two-eyed seeing: the idea that Indigenous people have come to move through the world with the ability to see things both ways – through the interconnected lenses of Indigenous worldviews, but also through the more narrow, western lens that governments and proponents use to interpret issues. They explained that consultation processes that uphold Indigenous laws and governance structures will consider the broad impacts

of a project – positive and negative – and reflect an appropriate balance of Indigenous and non-Indigenous worldviews. Participants encouraged those involved in consultation and engagement with Indigenous Peoples to learn more about two-eyed seeing, and to reflect on how their processes can be adjusted to ensure adequate co-development with Indigenous communities.

“When we say ‘land,’ we mean two different things, because two different peoples are talking [...]. In our language, we don’t have words for please and thank you. You can’t ask for something, but you can ask about something [...]. If I talk to someone across the table [from Canada], not only must I say please and thank you, but I also need to acknowledge that in your worldview, you own the land and water and feel entitled to receive benefits from it.”



Conclusion

Changes in case law and Canada's adoption of UN Declaration on the Rights of Indigenous Peoples and its Act have created the need for improved consultation guidelines for the federal government. These guidelines must move beyond the bare legal minimum, and towards more consistently collaborative and productive consultation and accommodation processes, as outlined by participants throughout this Report.

First, in preparing for consultation, participants stressed that new guidelines must ensure that federal officials learn about communities' unique cultures, histories, traditions, and protocols through relationship building on the ground. Participants also expressed that the renewed guidelines must ensure communities have access to adequate funding and capacity in order to fully engage in a consultation request, and that the process be flexible enough to ensure that communities are properly informed and prepared.

Next, with regard to the consultation process proper, participants expressed that the existing guidelines do not sufficiently account for cumulative effects, nor do they go far enough in requiring that proponents and government secure communities' free, prior, and informed consent (FPIC). Participants discussed how renewed guidelines could be structured to ensure that communities are able to consent to a project while understanding all of its potential implications and impacts.

Third, in determining accommodation measures, participants discussed the importance of ongoing communication and collaboration between the Crown, project proponents, and Indigenous communities to ensure that potential impacts to rights are properly assessed and accommodated. Participants stressed that accommodation measures must be developed collaboratively, with proper monitoring and follow-up to ensure that accommodations are indeed mitigating or eliminating impacts to rights in an ongoing manner.

Lastly, participants discussed the concept of adequate and meaningful consultation, expressing that this determination rests with the community whose rights may be impacted. Here, participants shared several key considerations for new guidelines, including mechanisms to ensure accountability and enforcement, streamlining of government processes, and respect for Indigenous laws and governance structures.

Overall, participants expressed hope that the changing relationship between Indigenous Peoples and the Crown will inspire a sincere willingness on behalf of CIRNAC to improve federal consultation processes. While many were skeptical that new guidelines alone will result in substantive change on the ground, participants nevertheless expressed appreciation for the opportunity to participate in this process, and to have their voices, ideas, and concerns heard. Participants also communicated a keen interest in seeing how their feedback has been received and interpreted, as well as enthusiasm to continue this collaboration through Phase Two, and ultimately, through the development and implementation of the renewed guidelines.

Appendix A: Regionally Specific Feedback

Yukon

First Nations in Yukon expressed a desire to develop a government-to-government relationship but added that the federal government must first foster the respect and dignity needed to rebuild trust with the First Nations of Yukon. One participant described being deeply disrespected by a federal government official, who told them they were “too stupid to participate in negotiations concerning taxation”.

Participants in Yukon sessions emphasized that new guidelines on consultation and accommodation must respect First Nations’ self-government and move away from the current system.

“Even when a recommending body recommends that the project not proceed, that body gets taken to court for a review.”

Another participant added that this predatory dynamic is facilitated by an imbalance of funding, as “the federal government has more money than the First Nations in the Yukon for litigation.”

“We believe that these issues should not have to be fought in court,” expressed the participant. “The First Nations in the Yukon can be a leading example for the rest of Canada on how we can be built in a healthy way together, but there is too much resistance from the governments.”

In particular, participants noted that the current “cede, release and surrender” provisions in their Treaties allows the territorial government to overlook the rights of Yukon First Nations, negatively impacting consultation.

According to participants, this disregard for Indigenous rights in Yukon is evidenced by the fact that mining projects continue to be approved within “environmentally sensitive areas,” which makes the consultation process feel like a rubber-stamping exercise. In fact, participants spoke of mining companies using the internet to remotely stake new claims in their Traditional Territories, without any regard for environmentally or culturally sensitive areas. Meanwhile, these same communities are hard at work cleaning up damage on their lands from pre-existing mines.

Additionally, First Nations in Yukon are working to manage emergencies within their communities, including flood clean up and forest fire monitoring, with little to no support from the territorial or federal governments. Participants expressed frustration that while the government is willing to approve extraction projects, their communities receive zero support when it comes to protecting these natural resources.

“There should be something stated in the updated guidelines that speaks to the needs to prepare for situations when emergencies arise. There should be guidance concerning the preparation for emergencies.”

All in all, Yukon participants felt that the decisions in Canada’s North, which are facilitated by government approval, seem to be solely based on driving economic development at the expense of considering impacts to Aboriginal rights. Government supports the development of project proposals, and bombards Nations with requests for consultation, while Nations are defending their Treaty rights, many of which are still being implemented.

British Columbia

Participants expressed that national policy does not accurately reflect provincial realities, while also lacking sensitivity to regional and local issues. Participants said this is especially evident when it comes to funding formulas, which don’t acknowledge regional nuances, such as the smaller size of many Bands in British Columbia.

Participants stressed that reflecting the Modern Treaty Implementation Policy in the new federal guidelines moving forward, along with some sort of oversight mechanism that defends the policy’s principles, would help to address this lack of sensitivity. Participants also highlighted the discrepancy between the federally used “potential” versus “established” when referring to rights, and the provincially used “proven” versus “asserted” rights, and that the federal government has an opportunity to clarify this discrepancy in the Treaty context; the duty to consult is owed to rights holders, not representative organizations.

Likewise, participants in the British Columbia engagement saw the drafting of the new federal guidelines as an opportunity to bolster the consent process, suggesting that the federal government look into agreements such as those outlined in Section 7 of British Columbia’s Declaration on the Rights of Indigenous Peoples Act, which enables governments to enter into agreements recognizing “joint or consent-based decision-making in the statutory decision-making framework.”

Participants raised another challenge in the disconnect between government and municipalities, with many participants expressing the view that municipalities deny the existence

of rights and take no responsibility for consultation whatsoever. Moreover, participants said federal officials in Ottawa are often unaware of the projects being developed by municipalities and proponents. Conversely, participants felt that municipalities and proponents are likewise unaware of the Crown's fiduciary obligations towards First Nations. Participants stressed that the government must push municipalities and regional districts to fulfill their consultation obligations.

Next, issues around territorial overlap were of major concern to British Columbia participants. One participant, for example, described how their community shares territorial claims with 10 other Nations, and that this overlap hinders their community's ability to grow, as their Nation requires permission from the surrounding Nations to build on their own lands.

One participant went on to describe how this overlap affects matters of consultation and accommodation, as in one instance, for example, the Crown went into consultation with a neighbouring Nation before even coming to them. According to the participant, this division is driving a wedge into the Nations' ability to work together, who added that "[i]t has always been the Crown's goal to make us fight against each other."

While the UN Declaration on the Rights of Indigenous Peoples is meant to facilitate the expression of treaties and self-government, another participant noted that there is nothing explicitly stated in the Declaration on the Rights of Indigenous Peoples Act about communities who do not have a treaty or self-government agreements. This results in Nations with Modern Treaties being able to make decisions and benefit from accommodation measures on the territories of other neighbouring Nations who may not be afforded the same rights due to their lack of Treaties.

"From our experience in the Treaty process, we felt that the policy was strategically aimed at making First Nations fight over the same lands, as others have said of the consultation process. Now, in two thirds of our territory, other Nations must be consulted."

Thirdly, First Nations in British Columbia highlighted tensions around Métis groups that are harvesting elk and obtaining funding for land stewardship initiatives on their Traditional Territories, without their involvement.

This tension is exacerbated by the fact that many First Nations in British Columbia are not yet recognized as title holders, while the Métis are often included on the province's rights-holders map, leading to Métis groups getting more funding and opportunities than these excluded First Nations. Participants felt that these Métis groups are aggressively staking claim over their territorial rights, and Canada is giving them ammunition and resources to stake these claims by adding them to the constitution and by giving them Section 35 rights throughout the Province.

“I am not against Métis, and I respect their culture and rights. But federally, we are lumped together with them. I really want to emphasize that when this [feedback] is brought forward, it should be clear that British Columbia wants a distinctions-based approach, because only First Nations have rights and title here.”

Another participant provided an example of a consultation that was successful due to the proponent taking the time to develop a strong relationship with the community.

“When we negotiated with Fortis on a line through our area, they came to us early, which we appreciated. Fostering relationships early on is better than reactionary relationships and will help with accommodation measures as well.”

Another example of successful consultation involved remuneration by the proponent from the outset.

“When Telus wanted to do come through our reserve, we asked them to pay to sit at our table. And they did – they paid money to our youth program, to say, ‘I want to come do business with you.’ You’d be surprised how few parties do this [...]. It’s about setting standards and also having accountability.”

This model aligned with another participant’s suggestion for ensuring accommodation measures are respected in British Columbia, whereby government might provide payments and permits to proponents through a “phased approach” that would only release payment after the affected First Nations confirms that measures and conditions have been implemented.

A final example of successful consultation saw one Nation develop its own impact assessment methodology, which they shared with provincial and federal Modern Treaty partners. The Nation also co-authored the Crown Consultation and Accommodation Report alongside Canada. Overall, this process resulted in a robust accommodation framework that will “last for generations to come,” representing a “huge accomplishment” for the Nation, its Treaty relationship, and relationships with proponents.

One participant noted that there are valuable lessons to be learned from the many failures, as well: They explained that most consultation only considers short-term gains, and not cumulative and longer-term impacts, as in the cases of development at Owikeno Lake and Mount Polley.

Participants shared another negative example where overlapping or adjacent territories meant that certain impacted Nations were not consulted nor accommodated:

“[A]long that corridor, many First Nations were – I hate to use this term – bought off. They were given X amount of money, impact benefit agreements, and whatnot,” they explained. “So suddenly you’ll get a briefing report at headquarters, saying ‘We consulted with 87 bands, and 50 said yes, so let’s proceed.’ But it was the 37 most impacted Nations that said no!”

In order to address these combined issues of overlapping territories, differing perspectives, and cumulative impacts, participants stressed that assessments must be co-developed and co-managed and must incorporate their Indigenous worldview – as was the case with a process involving marine protected areas in the Salish Sea.

While that particular marine initiative has proven successful in developing an efficiently co-managed framework, many participants mentioned ongoing challenges with Fisheries and Oceans Canada (DFO), which effectively regulates their food security via access to and availability of traditional foods. For example, one participant shared that they were “supposed to be co-managing rivers [...] to take action with regard to spring and chinook salmon, to limit openings, but the process is very slow. It’s very difficult to convince [Fisheries and Oceans Canada] and others to change their ways.”

Alberta

In Alberta, the first issue raised was the fact that, according to one participant, the Province of Alberta said they “only accept Treaty rights, not Aboriginal rights.” Another participant claimed that projects are never rejected.

What is more, participants expressed that the delegation of the duty to consult to industry proponents does not work. This is an enormous problem, as funding for participation is in part delegated to industry.

Furthermore, although the Canada Energy Regulator provides federal funding to support participation in the hearing process, it delegates the responsibility for funding traditional land use studies or impact assessments to proponents. This forces Indigenous groups to engage in a process that sees industry create and follow its own rules.

“Some proponents are easier to work, with while others are very adversarial. Regardless, forcing Indigenous parties to engage with proponents is not a good way to begin consultation.”

Overall, participants expressed deep concern and uncertainty as to how proponents under this system are being held accountable to Canada’s consultation guidelines and felt that Indigenous groups should have the option to work with the Crown to access that funding.

One participant also suggested that consultation funding could follow a similar model to the one that sees oil sand companies contribute to a shared fund to cover costs associated with spill response.

When there is consultation, said participants, it often happens well after the project has begun.

“In some situations, there’s a project, it’s provincially regulated, and Alberta Regulators don’t direct people to consult with the right people... This project gets 80% complete and they realize they need a fisheries consultation...” The participant went on to say they believe this “process sets proponents up for failure, because they need to know that they are going to get push back in that session [...]. Coaching from feds to proponents would be good here, to bring some sort of consultation plan to help them understand the situation that they’re walking into.”

Another example of challenges arising from delegation, according to participants, is when Nations know that work is underway but cannot receive a clear response from different levels of government about the work that is being conducted. Participants also claimed that existing pipelines are being used to circumvent consultation for activities related to a project unfolding on First Nations’ territory.

Perhaps the most famous example illustrating the need for improved delegation is the Transmountain Pipeline Expansion, which participants said was “pushed through,” with the consultation process representing a mere “complaint forum” that gave way to little or no accommodation – all of which participants said is particularly telling, considering that the government became the proponent.

Indeed, according to participants, jurisdictional and delegative issues underlie a system in which both the national and provincial regulators continue to act heavily in favour of industry proponents.

Participants also pointed to the fact that despite massive technological advancements in the energy industry, the Canada Energy Regulator and proponents eschew new technology by continuing to “grandfather in” operational models and procedures from the 1950s and ‘60s.

Moreover, participants claimed that although the terms of reference for licensees of the Canada Energy Regulator clearly state that licensees are to pay “taxes” to affected Nations, making the taxable licensee liable for all associated perils and risks, communities are not seeing any of these terms being respected on the ground. In fact, participants felt that in Alberta, industry can do “anything they want and then disappear,” leaving behind abandoned pipelines and orphaned wells. One participant noted that monitoring in the Province has suffered from parcellation and siloing, obscuring the bigger picture around cumulative impacts.

“When you piecemeal things, it’s done intentionally, cause when you look at the big picture it becomes too much [...]. Fragmentation doesn’t work.”

To address this, participants stressed the importance of implementing effective environmental monitoring and reclamation procedures.

“You need to look at the big picture when they’re doing accommodation [...]. [Proponents] go through all sorts of measures to cover up their tracks [...]. They’ll do little bits of clean up, and because it’s not open, we can’t do anything. And the government is tied up, because it belongs to Alberta, but Alberta isn’t doing enough [...]. If you had something that would allow us to say that if there’s damage – we should have a resource group to bring quick action.”

Participants noted that First Nations across the Province have serious issues accessing drinking water, housing, and average standards of living, while oil and gas companies generate staggering profits – a small portion of which could easily help lift Nations up out of poverty. Nevertheless, revenue generated from oil and gas coming from the Nations’ own lands is not going back to the communities.

“Who’s deciding if it’s adequate? There needs to be a partnership there. Currently, Alberta decides, not the community. Once they’ve decided, you can go home and call it a day.”

Despite an overwhelming sense that consultation in Alberta is failing, participants did share some examples of consultation gone right. In one successful case, Bruce Power went into community to discuss a proposed nuclear plant. The community ultimately rejected the proposal, and the proponent accepted this rejection and moved on. Participants involved felt this process worked well because the proponent did not present a “preapproved project,” and instead came in seeking true consent, which is rare.

Another good practice occurred when a cohesive group with representatives of the Province of Alberta and of Treaties 6, 7 and 8 met to share information and discuss issues. Unfortunately, though, the group was dissolved when the government changed.

Participants also shared best practices that resulted from work with Teck Mining, including: seven to eight years of relationship building with no timelines; the Nations’ considerations being taken seriously; the creation of an Elders advisory committee; and a general sense of cooperation.

Finally, participants sung the praises of one Alberta Energy Regulator employee, who, in discussion with community Elders, created a map to help identify gathering, ceremonial, and burial sites. Overall, participants felt the employee showed respect and understanding and this was greatly appreciated.

Saskatchewan

In Saskatchewan, the government often downloads many aspects of consultation to the proponent, and too often, participants said that proponents lack cultural competency, exhibiting difficulties understanding the perspective of the First Nation. This has been the case with a prominent company based in Canada, who participants claimed showed no respect to their community: “They just came onto our land and began to work, without the approval of the government.” Canada needs to ensure that the proponent and others involved in consultation processes aren’t just doing the “background work” required at the start but are engaging with community “throughout the whole process.”

In delegating consultation responsibilities to the proponents, participants said the federal government is failing to provide the necessary information to proponents. In particular, one participant highlighted the inefficiency of the federal government’s Aboriginal and Treaty Rights Information System (ATRIS), which they use to inform proponents with regard to their consultation and accommodation responsibilities:

“I looked at [the Aboriginal and Treaty Rights Information System (ATRIS)]. How is the federal government determining whom to consult with for whatever geographical area [proponents] are interested in? For instance, we were bidding on a power purchasing agreement in southern Saskatchewan. When we discussed impact benefit payments, the proponent said that according to the government’s guidelines, they should only be accommodating [one particular First Nation]. This is a problem. The project is in Treaty 4 territory. We told [the proponent] that they must provide impact benefits to Treaty 4 as a whole, because the territory belongs to everyone – not just [one] First Nation. There is a lot in jeopardy in developing these systems without having knowledge on the ground.”

Participants also demanded answers regarding a highway that was built over First Nations grave sites in North Battleford.

“Consultation never happened. That needs to be answered for by Canada and the province. Why did that occur? Why were First Nations not consulted?”

Next, participants in Saskatchewan described struggling with the issue of Provincial Crown land being sold to private owners, which is limiting First Nations’ ability to reclaim their territories through Specific Claims and other processes. This also impacts First Nations’ rights by eroding their ability to engage in traditional activities on said land.

Participants added that diminished access to territory is also being exacerbated by the multiple pipelines running through First Nations lands. One Nation pointed to the nine pipelines traversing their territory, many of which have been expanded through “grandfathering” to avoid consultation.

Large projects spanning multiple jurisdictions are impacting First Nations throughout the province, and participants pointed to the fact that often, these projects take a “piecemeal approach” to consultation.

Concerns were raised around the Lake Diefenbaker Irrigation Project with respect to the disregard for cumulative effects in Saskatchewan. Participants explained that the project has been divided into three phases, with phase one already underway in the North Battleford area, and phases two and three planned for the Saskatoon/Whitecap area and the South of the province, respectively.

“We begged the federal Minister to designate the entirety of the project as a major project, because it’s cumulative.”

Finally, participants mentioned a curious situation that had recently arisen in one community, whereby officials from Transport Canada told the First Nation they would have to consult a neighboring Nation, as well as the Métis Nation of Saskatchewan, in order to access funding for a new walking path. One participant declared “if we are ever asked to consult with the Métis Nation on lands, resources, environment, climate, air quality, allowances. It will never happen. That needs to be addressed.”

Participants shared one positive example of consultation that was successful in its approach, when Trans Canada Energy participated in the community engagement process, which involved going onto the territory, speaking with Elders, and attending community ceremony. Two of the proponent staff members who attended were Indigenous, and one participant explained that those employees were open and transparent about the process, adding that they “found some honesty there” and that “that was good.” In the end, the project didn’t go ahead, due to financial reasons, but the participant expressed that they appreciated those two employees’ genuine approach, nonetheless.

Manitoba

In Manitoba, participants echoed frustration in other regions over the disconnect between the provincial government and the federal government in terms of consultation processes. One participant stressed that the federal government must develop a stronger understanding of the challenges behind the jurisdiction of the Constitution Act and how it relates to the Natural Resources Transfer Agreements (NRTA) and to Treaty and inherent rights’ perspectives, as this represents the “crux of the issue” in consulting with the Provincial government.

The Province unilaterally implemented policies that would severely impact Nations outlined in the following example:

One participant explained the damage that can be caused by a generally lax Environmental Act in 2014-2015, recalling the provincial government's 1995 move to appropriate land to serve a rapidly expanding hog raising industry, which led to dangerously high nitrate levels in their community's water system, ultimately causing over one hundred stillbirths in their community. Although the government denied the connection, the community maintains that the Province's neglectful Environment Act is to blame.

Participants in Manitoba mentioned other instances when the consultation process broke down, including one community that has experienced artificial flooding since 2011 and as a result, had been forcibly relocated by the Province without consultation, ignoring their fiduciary obligations to Indigenous citizens.

Another community that has also experienced heavy flooding over the past two decades expressed frustration about the conditions their community has been forced to continue to live in.

"Since 2000, we've flooded 11 times... The impacts are severe and long-lasting. Yet there is policy and legislation being created all the time without coming to communities and asking what we think about it. You're putting a cap on things now, but you do not live [these realities]. You don't live in our Traditional Territories, or our communities. You don't know how we've been impacted, how many people we've lost, or how it is to be displaced and live in third world conditions."

The participant added that their community desperately needs up to 800 new homes, given that 400 homes have been flooded on multiple occasions, and have since been infested by mold.

Yet another community was excluded from the consultation process conducted around a mining project altogether because of a lack of funding for participation. When the community responded by blocking road access to miners, the Province allowed the mining proponent to build a new road circumventing the blockade, instead of opting to respect Indigenous rights by facilitating consultation.

In other cases, participants claimed that proponents and government feigned consultation by consulting after the fact.

"They consulted us after that nuclear waste was already buried. They got the Elders together, but it had already been done."

Another participant added that this was also the case with the Channel Project.

"The project is being done as we speak. All First Nations should be compensated. Give all the First Nations free hydro."

Several participants also brought attention to the racism that Indigenous people in Manitoba are still forced to deal with, and specific examples were provided where racism was perpetrated by employees of firms hired to provide services to Indigenous communities.

One participant shared an example of a consultation gone right, when, during an impact assessment process for a large mining project, a number of studies involving both Elders and academics were conducted, including an assessment of psychosocial community impacts that identified a need to invest in local Indigenous culture. While the project would displace people on the land, the identified programs and supports allowed the community to provide their informed consent in exchange for accommodations that would fairly mitigate the effects of the impacts.

“All of those [steps] become important. Only by doing all of this, such that we were able to live with the consequences, were we able to provide consent.”

Moreover, participants said that they should be allowed to work independently towards their Treaty goals, which includes establishing Treaties 1 and 11 through self-government, without paternalistic oversight from the provincial or federal governments, and without being advocated for by third party organizations.

Ontario

Participants in Ontario raised concerns about the distinction between potential and established rights, and the way these two separate rights categories are weighed in matters of consultation and accommodation. One participant expressed participants' distrust in the consultation process when it comes to Treaty rights in Ontario.

“When you're dealing with someone in a Treaty relationship, you should have someone in the department with expert knowledge of every Treaty. I reject the model that Ontario uses and am suspect that it's a proximity model. This doesn't work with the Treaty territory model.”

On the topic of the Ring of Fire Project, another participant added that the government is not being honest when it comes to First Nations to discuss building roads for the community, when those communities know full well that those roads are intended to aid in the development of the Ring of Fire.

In general, participants stressed the importance of building research capacity, especially to support Indigenous women and Traditional Knowledge. In an example provided by a participant, one community was able to protect itself by conducting its own research: The participant recalled that Grassy Narrows was assured their water was safe, even though they had doubts, so the community teamed up with the university to study local fish populations, and these studies exposed unsafe mercury levels. Grassy Narrows had to build this research capacity themselves, explained the participant, when really, government should be the one hiring the experts and providing support.

Participants reminded CIRNAC that traditional laws and protocols are also central to developing a strong consultation and accommodation process, especially in isolated communities. In fact, remote communities, especially in the North, place a lot of value on their traditional laws and protocols, which involve all of the people in their communities, and not just Chief and council. Several participants from these communities highlighted that the current duty to consult does not align with the community's processes, as it often excludes its community members.

One participant recalled how disregard for community protocol in the context of a specific consultation ended up harming the consultation process: After a funeral in their community hampered the Nation's efforts to prepare for an impending consultation, the proponent pushed for the consultation to proceed the day after the funeral, despite the community asking for more time.

“Disrespect is not forgotten, and it breeds distrust, which is not a great way to establish a relationship.”

One participant shared how in response to all of these concerns, their Nation took the initiative of implementing a system to help manage their community's consultation requests. Although this proposal management system has been successfully implemented in other regions, the participant said the Province refuses to adopt it, putting greater strain on the community's already limited capacity.

On the topic of representation, another participant expressed that while the Assembly of First Nations (AFN) can provide support to Nations in matters of consultation, First Nation rights holders must be directly involved when there is a potential for a project to impact rights.

Finally, one participant shared an example of a best practice that saw a proponent they worked with build the relationship and foundational trust required for the project to move ahead through meaningful consultation:

“Years before the project, [the proponent was] in community, going to ceremony, powwows [...]. There was a foundational basic trust and relationship with community. The project went on to happen under budget and on time.”

Quebec

Firstly, considering Quebec’s linguistic and cultural diversity, participants stressed that it is crucial that government and proponents take communities’ diverse needs into account via specific strategies, such as appropriate translations and cultural adaptations.

[Translation] “Knowing our realities and needs is key. For example, when French or English are not spoken, we need to prepare for it in advance.”

Next, participants expressed concern at the fact that several self-identifying groups are apparently approached and consulted the same way as the First Nations in the Province, despite their rights and statuses being very different. First Nations participants expressed that they would like to see government and proponents prioritize building relationships and consulting with recognized rights holders over consultation with other self-identified groups, highlighting that their interests are often very different.

Participants demanded better coordination between provincial and federal consultations to avoid redundancy and effort duplication around projects. Participants added that project sponsors must be involved earlier in the consultation process to clarify issues immediately and help avoid future complications. Many First Nations in Quebec do not have the capacity to respond to all Provincial and federal consultation requests they receive.

One participant shared an example of a consultation with the Province involving the development of a campground in a location where their Nation practices hunting and trapping, among other interests. Despite the site being of clear cultural importance to their community, the Province’s decision appeared to prioritize campers by only setting aside a limited area for the Nation’s traditional practices.

[Translation] “It doesn’t work for us, but they checked ‘consulted’. These are our family lands where we should have free movement. These are our ancestral rights, it comes down to that...”

Another participant brought up the government's lack of consideration for Traditional Knowledge, and how development practices might interfere with the environmental processes that communities rely on for their traditional activities.

"We have an Elder who knows the territory very well, and the river where the government breaks the ice every year [...]. But this practice increases flow and erosion, and changes the dynamics of the river [...]. It seems that even if we tell Transport Canada, they are not going to change anything [...] and there is not much room in those departments for that knowledge anyway."

Moving forward, participants expressed the need for ongoing support in consultation through strong relationships and adequate funding, suggesting a best practice for large projects that would establish a liaison officer with whom First Nations could connect regularly, and who would be aware of communities' specific needs.

"When there are liaison officers with whom we are always in contact, and who know our needs, our issues, and who know us well, it helps a lot[...]."

Atlantic

Participants in the Atlantic session brought attention to the ongoing tensions between Indigenous people in the region and both the Royal Canadian Mounted Police and Fisheries and Oceans Canada (DFO). One participant attributed these tensions to "racist employees" of both bodies who display "aggressive behaviors" towards Indigenous individuals. The participant went on to argue that lack of independent oversight in matters related to these bodies' treatment of Indigenous people in the Atlantic poses accountability concerns, especially in cases involving Missing and Murdered Indigenous Women and Girls, in particular.

Next, there was a call in the Atlantic sessions for improved transparency and communication between the government and the public in the region. This concern centred on the Marshall Decision with respect to the moderate livelihood: as participants pointed out, insufficient government communication around the implementation of "intermediary steps" involving, among other measures, the purchase of licenses, has left Indigenous people "on our own to try to communicate [this] to other people [...]. The government is the one implementing this plan, but they are not communicating this plan to the broad public, or to our communities. Again, they are leaving all the burden on us."

In the discussions with organizations, concerns around rights-based consultation excluding certain individuals and organizations were voiced. In matters such as fisheries, participants explained that Indigenous individuals, regardless of whether they are status or non-status,

or live on reserve or not, can be affected equally, and thus those consultations must take care to use more inclusive parameters.

Participants in the Atlantic sessions described a dysfunctional relationship with the provincial government, which, they claimed, is too often reluctant to consult. One participant cited the Alton Gas Project in Nova Scotia as an example.

“Unfortunately, it had to be pushed by the community, with all the capacity possible, to go after this issue. But [the court] did side with the First Nation, and recognized a very good principle about [what meaningful] consultation [requires].... It’s unfortunate that it always must be legal decisions that prompt government to do certain things. And even then, they continue to ignore them.”

Finally, participants mentioned examples of successful collaboration, including one participant whose community had a “pretty good experience dealing with the remediation of a toxic site [...] [in] the Sydney Tar Ponds.”

“I heard someone say that good experiences are largely dependent on good people, and we had a few key individuals in government who were exceptional in terms of listening to us and actually acting on our concerns. We were able to make sure there were [jobs reserved] for Mi’kmaq entrepreneurs to be involved in remediation work. There were quite a few opportunities, and our communities were able to take good advantage of it.”

The participant added that the proponent also agreed to work with them to screen for entrepreneurs “self-identifying as Mi’kmaq” by agreeing to request job applicants’ status cards for confirmation.

Another participant recalled that Health Canada’s approach to sensitive topics like medical assistance in dying (MAID) had yielded successful consultation.

“That was a pretty big thing for our community, and I felt they approached it with the proper respect [...]. Because they went in knowing that it would be a sensitive topic, there was almost an air of respect for it.... A lot of the time, when government employees go into consultation with Indigenous Peoples, it’s not with that same air of respect and sensitivity around the culture. It’s more, ‘We’ve got to get this done. Let’s move the consultation along.’ Whereas Health Canada made sure there was time available, Elder [support] available for people who may need to step out of the room.”

Northwest Territories

As was shared in other regional sessions, participants in Northwest Territories felt that the absence of some Northern Indigenous community members reflected a recurring issue,

whereby external planners fail to fully engage communities, resulting in a lack of genuine representation.

Participants described ongoing issues with cultural competency and learning, with their members having to constantly educate new government representatives who are unfamiliar with Indigenous People's rights, which they described as both tedious and demeaning. Furthermore, these participants emphasized that discussions seem to carry on endlessly without resolution because the people engaging lack decision-making authority, while the actual decision-makers have limited understanding of the Northwest Territories and its Indigenous Peoples.

Participants shared examples of the disastrous impacts on wildlife populations resulting from projects that do not prioritize the concerns of Elders and other Traditional Knowledge holders.

Participants also stressed how crucial improved access to internet and communication infrastructure is to the facilitation of greater participation in development in remote communities in their region. Nevertheless, the gap in internet infrastructure persists up North, exacerbated by challenges such as fire seasons, the pandemic and funding limitations.

"It's unrealistic ... for those from the South who've never been here in the North, to expect that you'll have a regular cell phone service or access to the internet [...]. Or that you'd have to sacrifice paying your mortgage or power bill so that you could go to work, or your child could attend school, over the internet."

Participants pushed for stronger representation of Indigenous languages and perspectives in matters of consultation and accommodation in Northwest Territories. One participant raised past issues with local consultation efforts tied to poor translation and interpretation.

Participants went on to explain that the current consultation process often involves multiple intermediaries between communities and decision-makers, leading to slow progress and miscommunication. Here, participants gave the example of ongoing communication issues around the Mackenzie Valley Highway and Bridge projects.

Participants further highlighted the confusion tied to consultation involving too many parties, pointing to their ongoing federal consultation processes. Out of three processes, said participants, two also involve Government of Northwest Territories. Indigenous communities have asked for a joint process, but this request was denied. As a result, participants said they are now required to complete two sets of work plans and consultation plans for the same project. In addition, in the wording of those documents, the federal government refers to

“asserted” rights, instead of “recognized” rights, and indicates that funding “may” be provided instead of “will” be provided, creating discrepancies and requiring ongoing negotiation over terminology.

Participants told CIRNAC that, usually, in Northwest Territories, Indigenous groups meet without separating according to distinctions.

“The government has to treat all the groups equally who have section 35 rights. Whether it’s a Treaty right or an Aboriginal right, it’s the same right. You have a right to hunt, and fish, and trap. So, it’s very important to be in the same room, to hear each other’s issues and concerns, and to foster that government-to-government relationship.”

Across all sessions, it was clear that too often, communities feel completely abandoned by the current system.

“It’s not just a breakdown in communication; it’s a breakdown in the whole system. There’s no capacity! ... And like I said, at the end of the day, these public boards are there to protect the public interest, not my inherent rights. They’re just there to get to ‘yes’.”

Referring to the United Declaration on the Rights of Indigenous Peoples Act (UNDA), participants in Northwest Territories stressed that the renewal of the guidelines will need to address free, prior and informed consent (FPIC), which is one of the most fundamental changes that has occurred in regard to consultation since 2011. This is especially significant given federal and Northwest Territory legislation in place for implementing the UN Declaration on the Rights of Indigenous Peoples, meaning that shift towards requiring actual consent rather than mere consultation is likely to become a legal requirement within the next decade.

Participants from the self-governing session stressed that this shift also needs to be reflected in the Land Claim Agreements in the Northwest Territories, to ensure that the treaty aligns with the minimum standards for rights set out in the UN Declaration, given some of the treaties were signed 40 years ago. Participants pointed out that Land Claim Agreements do not meet the minimum standard of free, prior and informed consent (FPIC) and CIRNAC should be aware of this when providing advice to other federal officials.

While participants hope United Declaration on the Rights of Indigenous Peoples Act (UNDA) will bring more clarity to the process, they explained that the Government of Northwest Territories is not actively engaged in the discussion around aligning consent in consultation with the principles set forth in the UN Declaration. Moreover, as it stands, participants said that managing interactions with multiple layers of government, regulatory boards and

agencies in Northwest Territories has become increasingly complex, especially since the 2016 Devolution Agreement. Participants said that their communities are faced with the significant challenge of engaging with both federal and territorial governments, as well as public boards established through Land Claim Agreements – all of which can “execute” the duty to consult. Moreover, many Indigenous communities feel they are not fully participating in those decision-making processes due to insufficient capacity, including a lack of funding, human resources, and technical or legal expertise.

Participants reminded CIRNAC that the best way for government to build relationships with Indigenous Peoples is through community capacity and learning about the community by having boots on the ground. Forty years ago, there was a lot more presence of federal officials in communities and regions and the federal government was the model.

Climate change was an especially important topic in Northwest Territories sessions. It has significantly accelerated environmental impacts, making it increasingly challenging to assess impacts on Indigenous rights related to land, such as hunting rights, and cultural rights related to spiritual sites and burial sites. Participants stressed that there is an urgent need for more cumulative impact assessments, continuous monitoring and better support for Indigenous organizations overall, in order to address these climate related challenges.

Participants in Northwest Territories expressed concerns about the lack of mechanisms to address disagreements in impact assessments and stressed the need for clear evaluative criteria to assess adverse effects. These participants added that addressing cumulative impacts tied to historical issues, as in the cases of Pine Point and Wood Buffalo National Park, is challenging. These projects left lasting contamination and created adverse effects on traditional practices. While there is a clear need for reconciliation and redress, uncertainties regarding how to effectively address compensation and displacement issues persist.

With regards to accommodation measures, participants explained that while impact benefit agreements are crucial for addressing project-specific impacts and benefits for Indigenous communities, they are not legally required in Northwest Territories unless stipulated in a land claim agreement. Even then, those require “a process”, but not necessarily a finalized agreement. Furthermore, accommodation agreements – a different type of agreement which fulfills the Crown’s broader legal obligations such as financial payments, monitoring, and land rights – are rarely seen in the North. Instead, the Government of Northwest Territories often requires socio-economic agreements with project proponents that do not involve Indigenous Governments.

Participants reminded CIRNAC that with respect to inadequate funding in the Northwest Territories, it is important to look at consultation in the context of the comprehensive land claim agreements and the broader co-management framework. The co-management frameworks of these agreements are designed to ensure that Indigenous communities are active

participants in decisions about land, water regulations, wildlife and habitat. Likewise, it is important to ensure that the land claim corporations also receive funding to participate in consultation and to ensure that their rights are not being impacted. Consistent and ongoing funding is required to allow Indigenous communities to respond effectively to consultation and to truly contribute to decision making.

Other comments about funding included criticisms of the current model whereby a proposal is often required before community can access the funding to participate, which means the initial work at the community level needs to be internally funded. Such was the case with one community being consulted around the Mackenzie Valley Highway: The Indigenous group submitted a proposal, but it only covered certain aspects aligned with the available funding and, as a result, the community was denied the chance to apply for funding to address health and wellness impacts. All in all, participants expressed that proposal funding needs to be able to cover all aspects to allow communities and proponents or government to be on equal footing.

In the Métis session, participants brought forth issues with an Interim Measures Agreement negotiated in 2001, which they said is underfunded and widely neglected by industry. One participant pointed to the fact that there is no federal mandate requiring developers to honour the Interim Measures Agreement, which directs proponents to cover costs for meetings and catering. As a result, industry proponents frequently disregard the Agreement, citing a lack of funding for engaging with Métis communities.

Participants explained that the right approach here would involve industry moving to honour the Interim Measures Agreement by at the very least meeting with Métis to discuss the project plans. Following initial discussions, developers could explore the area to then return to develop an exploration agreement with Métis People. This agreement must include a commitment to negotiate an impact benefit agreement before proceeding to development. Participants stressed that an impact benefit agreement should be mandatory for any development, allowing Indigenous People to provide their free, prior, and informed consent.

Participants shared how certain experiences have shown that when funding is available and properly managed, successful agreements can be achieved. This, they said, was the case with the Thaidene Nëné National Park negotiations: Over a five-year period, a participation agreement has been turned into an impact benefit agreement and communities are now involved in developing the legislation and rules. In contrast, lack of funding and bad faith negotiations led to issues in the case of Wood Buffalo National Park. Despite promises of full funding for a cooperation agreement, these commitments were not honoured.

Moreover, in that same session, a participant recalled how the involvement of an Indigenous manager at Parks Canada led to a more effective and conciliatory consultation process compared to other federal processes. However, inconsistencies remain between the heavily

replied upon consultation process outlined in the National Parks Canada Act, and the newly created co-management agreement for Thaidene Nënë National Park.

When asked for positive experiences in consultation, one participant recalled a process related to the Dene Nation Housing Strategy. They explained that the community felt respected and well-integrated throughout the process, and attributed this to the Dene Nation's role in leading it. Another factor was the consultant's experience with government processes and commitment to local knowledge and protocol. Participants in shared their positive experience in the case of Great Slave Lake, when they say the government listened to Traditional Knowledge, which successfully remedied the issue of waning fish populations caused by Japanese overfishing in the 1940s. The first fishing license for the lake was issued in 1944, and regulations were introduced to limit the number of fishing boats. However, these efforts were insufficient in recovering fish populations. A participant who was involved with the Great Slave Lake Advisory Committee used their knowledge of fish behavior and spawning to address the problem. The conservation efforts, based on Traditional Knowledge, took seven years, but eventually led to a successful recovery of the lake's fish population.

Other positive consultation experiences included in-person hearings organized by Canada Energy Regulator, where representatives listened directly to community concerns for a three-day period, and Government of Northwest Territories working with the community on an action plan to implement the UN Declaration legislation. Though challenges remain, according to one participant, this last effort represent a step "in the right direction", as it looks to ensure that Indigenous people have the opportunity to sit at the table, helping to prevent unilateral government actions that could impact Indigenous rights in Northwest Territories.



Appendix B: Feedback on Phase One Regional Engagements

Participants drew parallels with experiences they have had in consultation processes with this engagement process and highlighted feedback in the aim of helping to improve the federal government's approach moving forward. Thus, while the following feedback was aimed at this engagement series in particular, it can also be understood as applying to consultation as a whole.

A common piece of feedback received across regional sessions during Phase One of this engagement revolved around CIRNAC inviting the right participants to the table.

"When I look around this room at the participants here today, I am looking for the Chiefs. Where are the Chiefs? If this is true consultation on how to write these guidelines this room should be full of the Chiefs."

"[W]e're here, but I know there are other communities in Alberta who are rights holders who are not here today. As Canada goes down this path, you will come to know who they are and will include them. There's nobody out there that's been authorized to speak for our community [...] or their community either."

Other participants highlighted a lack of consultation experts from community present for some of the discussions, in particular.

"I don't see enough of my consultation colleagues. The invitation was only sent to our Chiefs, and that information only came to me last week. You need to 'cc' the appropriate staff in your emails, not only send them to the Chief, who gets hundreds of emails."

In this case, the participant went on to speculate about CIRNAC's possible motive in failing to reach the right consultation experts, alleging that they had "heard through the grapevine" that this was done on purpose to lower attendance.

"I encourage you to send these out to the appropriate folks, and alert them to these sessions. I'm missing my counterparts who deal with consultation every day."

In Northwest Territories, participants remarked on CIRNAC's lack of appropriate communication with certain communities, with one participant saying they had found out about the event on Facebook, and that it was unclear how participants should prepare and whether travel would be covered.

The same participant went on to express similar feelings around the fact that a British Columbia-based events company had organized the event in their territory, which they felt set back the process before it had begun.

“If you get the first part right – how to do the engagements in a good way, by giving it back to the people – you’d have a different result [...]. You’ve already limited yourself in this meeting, by opening it up in a way that does not represent the [...] People from this area.”

This challenge related to communication was also evident in one of the Atlantic engagements, when a participant shared that they had heard about the session through “word of mouth.” In one session in the Atlantic region, short notice and a “rushed” process led to a sense of exclusion, with one participant describing feeling “like an afterthought.”

Perceived shortfalls of the invitation and registration processes extended to invitation timelines. In Quebec, for example, a participant began the session by explaining that they had received their email invitation much too late, which limited their ability to consult with their Council and arrive prepared to speak on behalf of their community.

One participant noted that they were unable to prepare for the session, due to a lack of time.

“I need to be honest: I never reviewed the federal guidelines. I didn’t have time. We just don’t have enough staff or hours in the day to do that.”

Participants reminded CIRNAC that relationship-building is a crucial component of holding productive engagements. Participants across all sessions expressed a desire to continue to collaborate with the federal government on the development of the new guidelines. Many participants expressed feeling thankful for being invited to the table to do so and hoped that this series represented an opportunity to develop a more positive relationship between the federal government and Indigenous communities.

“We want to be involved. There’s a huge amount of expertise in our communities, and a huge willingness to share that knowledge to transform these guidelines into something that works for the Canadian government, for Nations, and for industry [...]. Continue to evolve and collaborate on this process with us. Continue this dialogue, continue the relationship building.”

“I’m hoping, with fingers crossed, that this is a real attempt to reach out to us, the Métis People here, to have a meaningful process developed, and have meaningful discussions as we move forward together in meaningful reconciliation with Canada. That is where I want to see us going here.”

This being said, participants also highlighted concerns with regard to how Phase One of the series was delivered. One participant in Alberta expressed that the speed of this phase felt representative of a missed opportunity to develop these respectful relationships.

“When I went to Ottawa for a rail safety meeting with Transport Canada, I asked ‘why did you bring us here?’ They said, we just want to start a relationship. That’s what was missing here. This doesn’t feel like it happened, we just dove right in... You put the cart before the horse here. The relationship building for each department also has to come to us. Communities generally don’t have trust when it comes to government, but that conversation needs to happen. We need to get into rooms first, then we can talk about projects.”

Another participant expressed that the way their organization had been separated out into a different engagement session without their knowledge raised concerns.

“Because yesterday you had a big meeting, and I’m really upset. I’m thinking, ‘This is a really important conversation. How come no one is here?’ Even the organizers, this morning, said there were a few cancellations. But they didn’t say there was a session yesterday.... I want to know, does this count? And I want this on record.”

Across many sessions, participants expressed some concern around the terminology being used to describe these meetings, including confusion around the use of “engagement” versus “consultation.”

Concerns about the fairness and inclusivity for consultation processes emphasized the need for equal footing among Indigenous organizations, highlighting the need to include everyone from the start with preliminary discussions.

“Calling it a ‘preliminary discussion’ is really downplaying what it was [...]. That was a decision-making process. And in that decision-making process, which we were not part of, you allowed and consented for them to speak on our behalf ... If they made decisions on our behalf, and the government endorsed that, why are we here?”

Next, participants across many sessions expressed frustration around clarity and transparency in the government’s process. Participants often noted that communication around the subject of the engagements was too limited, leading to confusion and feelings of exclusion.

“We have no understanding of what you are going to be doing with this information when you go back. We do not know or understand the process.” “The language needs to be clearer about who you are looking for in these engagements. Exactly who do you want to participate in these sessions? I was not sure I should have even come today. It seems like you are working in an exclusive framework. Indigenous people work in an inclusive framework. It is essential that you don’t exclude any people in your consultation processes.”

Moreover, participants added that the information they did receive prior to the meetings was often too high-level to allow for productive and inclusive conversations.

“When you get the registration package and open it, it has a very broad outline, and the communication was quite limited [...]. Even bringing us the guidelines, of what was already in it – I don’t see that, so we’re kind of walking into your meeting blind. There’s no preparation for us. You’re presenting all this, but it’s meaningless for me, because I don’t see the guidelines.”

One participant in Northwest Territories suggested CIRNAC use more informative graphics in their preparatory communication, explaining they are “often more helpful than a lot of text,” especially for Nations that are already overextended in their capacity to read and respond to this type of briefing.

Another participant pointed out what they perceived as gaps in the discussion regarding regional and local considerations and concerns around consultation.

“In the ‘60s and ‘70s, the Indian Agent [or] District Manager walked around with a thick black book, that had answers for everything—even health. Likewise, here, you now have a book [referring to the paper copy of the 2011 guidelines]. And that book is made up of a national policy. It has zero input about provincial realities, and it definitely has no sensitivity to regional and local issues, which is the biggest missing element in policy these days.”

Some participants felt that gaps in focus on the actual mechanisms of the process might reflect an intention on the part of government to find answers that fit their preconceived worldviews and narratives, while avoiding conversations that might identify more “problematic” feedback.

“One thing I hear from a lot of Chiefs is that governments come in with only the questions they want answered.”

“When we get a What We Heard Report back, it doesn’t reflect what [the government] heard, but only what they wanted to hear [...]. A very important part of consultation is coming in without preconceived notions about what you want to hear, and just let the people there talk about what they want you know.”

In an Alberta session, one participant noted that the way the CIRNAC’s engagement process was designed reinforced this sense of preconception and minimized Indigenous communities’ sense of agency in the process.

However, when participants in a British Columbia session suggested modifying the approach to the session by focusing first on a review of the 2011 Guidelines’ “Guiding Principles and Objectives,” CIRNAC agreed, and participants expressed appreciation for this flexibility.

Another issue raised many times throughout Phase One was the absence of provincial and territorial representatives, and the perceived lack of power of CIRNAC in affecting real change in the consultation and accommodation process on the ground.

Participants across all sessions wondered why provincial and territorial representatives were absent, even though, on a day-to-day basis, most communities' experience with the consultation and accommodation process involves the provincial government, not the federal government.

"I'm trying to understand what this meeting is all about [...]. Regarding federal consultation – to my knowledge, the feds don't give funding. We have to deal with the provincial government, but the Alberta government isn't even in the room. So, what are we doing here?"

"It's interesting that we talk about consultation and very high-level things, but really this needs to filter down to the programs and different levels of government, where decisions are made, and decisions are signed."

Finally, participants raised concerns around the costs associated with sending the right members from their communities to these engagements, as many organizations and Nations do not have the necessary capacity nor funding to cover these costs.

"If you want us to help guide [these discussions], and be a partner, you have to accommodate those costs. I don't know who's in charge of your finances, but I'd like them to get in touch with my office and work out covering those costs. Because I don't have a budget for this. As you know we're all non-profit organizations – again, another failure of Canada to recognize our inherent rights, treat us like a government, and settle our land claims. When you want to meet with us, you need to pay for it."

"We need legal representation when we're talking about important issues like this. You should've asked us – not [told] us – 'How many people do you need to come to have this meeting, so that we can talk to you about consultation and accommodation?' ... Instead, we're begging to get more seats. This is going to be Canada-wide. [Our people] want to see it; they want to be part of it, and they should be."

All in all, participants stressed the need to improve communication and inclusion by reaching more participants in general, and more consultation leaders via more appropriate channels in particular, as well as the need to address gaps in provincial representation.