

# Draft

Government of Saskatchewan

# First Nation and Métis Consultation Policy Framework

December 2008

## **Procedure for Providing Feedback**

Copies of this draft Consultation Policy Framework have been mailed to all those who were invited to attend the Roundtable on First Nations and Métis Consultation and Accommodation held May 12 - 13, 2008. They include more than 200 First Nations and Métis leaders and industry, municipal sector and other stakeholder representatives. The document is also available on the Ministry of First Nations and Métis Relations website at [www.fnmr.gov.sk.ca](http://www.fnmr.gov.sk.ca).

**We are asking to receive your written comments, suggestions and other feedback on this document no later than February 28, 2009.**

**Responses may be mailed to:**

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Draft

**Government of Saskatchewan**

# **First Nation and Métis Draft Consultation Policy Framework**

## **Objectives of Consultation**

There are three fundamental objectives for consulting with First Nations and Métis peoples:

1. To respect and protect Treaty and Aboriginal rights by ensuring, through the consultation process and subsequent decisions, that any negative impacts are avoided, minimized or mitigated;
2. To advance the process of reconciliation of Aboriginal and non-Aboriginal peoples and their respective claims, interests and ambitions. A key element of reconciliation is seeing that First Nations and Métis peoples of Saskatchewan are full participants in the provincial economy; and
3. To seek a balance between Aboriginal peoples' and society's interests as a whole, including the need for providing certainty, predictability and a stable and secure investment climate.

# Introduction

## The Need for a Consultation Policy Framework

There are several reasons why a new Consultation Policy Framework is required at this time:

- The “Government of Saskatchewan Guidelines for Consultation with First Nations and Métis People: A Guide for Decision Makers” released in May 2006 was rejected by First Nations and Métis people due to their lack of involvement in its development and the nature of some the content.
- The 2007 provincial election brought a change in government. The new Government committed to “work with First Nations and Métis peoples to develop a protocol that will protect their rights and interests and to ensure the provincial government fulfills its duty to consult and accommodate”. As of January 2008, the previous guidelines were used as an “Interim Guide for Consultation with First Nations and Métis People” until completion of a new consultation policy framework.
- All parties are seeking greater certainty and clarity in association with the provincial policy on the legal duty to consult.
- First Nations and Métis leaders are interested in broader-based consultation that takes into consideration not only their rights, but their interests and their strong desire to be meaningfully engaged in the development of Government policies, programs, plans and legislation that impact them.

As a result, the draft Consultation Policy Framework includes a number of policy areas related to engagement of First Nations and Métis communities. They are:

- Policy and Process for the Legal Duty to Consult
- Policy for Interest-Based Consultation
- Consultation Participation Capacity

It is envisioned that over time, the Framework will encompass other elements associated with consultation and engagement, such as a traditional use and territory mapping program.

## What We Heard

Substantial consultations have taken place to inform the development of Government’s new policy. The Roundtable on First Nations and Métis Consultation and Accommodation was held May 12 and 13, 2008 in Saskatoon. The purpose of the conference was to seek common ground among the diverse parties respecting their perspectives on consultation and accommodation. Opportunities were also provided to share concerns regarding economic interests. This conference, attended by more than 400 participants, engaged First Nation, Métis and industry leaders, provincial government officials, municipal sector representatives, federal observers and other stakeholders in two days of presentations and dialogue on rights and interests. A full report on the Roundtable is available on the Ministry of First Nation and Métis Relations’ website at <http://www.fnmr.gov.sk.ca/roundtable-conference-report>.

In addition to the Roundtable, the Government of Saskatchewan hosted, supported and/or attended several other meetings to receive further input. They include: the Northern Treaty Summit, September 2 - 3, 2008; Métis Nation – Saskatchewan (MNS) Assembly in September 2008, and subsequent meeting; Northern Leadership Summit, October 6, 2008; Northern Leaders and Premier meeting, October 28, 2008; Treaty 4 Treaty Days meeting, September 17, 2008; the Treaty 4 and 6 Summit, November 3 - 4, 2008; the Treaty 4 and 6 Political Summit, November 7, 2008; and the Saskatchewan Mining Association on November 19, 2008. In addition, Meadow Lake Tribal Council and Prince Albert Grand Council jointly, Treaty 6, the MNS, and the Saskatchewan Mining Association submitted position papers. The Minister and officials have also had the opportunity to meet with many other individual First Nations and Métis leaders throughout this process.

### **Common Ground**

While there is divergence in some of the parties' positions, significant common ground emerged from the Roundtable and subsequent meetings. All parties recognize the need to:

1. Ensure that Treaty and Aboriginal rights are respected during all phases of project development;
2. Exercise stewardship in protecting the environment;
3. Provide clear rules, timelines and procedures for industry, government and First Nations and Métis to guide respectful consultation, and explore ways to streamline government processes such as one-stop service delivery;
4. Provide First Nations and Métis with adequate capacity to participate in consultations;
5. Carry out traditional territory mapping and land-use planning as tools to identify, consider and protect traditional land use, cultural activities and sacred sites;
6. Ensure that First Nations and Métis benefit from the economic opportunities afforded by the province's rapidly growing economy; and
7. Ensure that all parties are engaged in this policy development process.

### **What the Draft Consultation Policy Framework Does Not Address**

A number of areas are not included within the scope of the draft Consultation Policy Framework. It is intended that these matters will be addressed at a future Exploratory Table involving Government, First Nations, Métis and industry representatives:

- Sharing in the Province's economic growth;
- Environmental stewardship and land use planning;
- Traditional use, sacred site, and traditional territory studies and mapping;
- Consultation participation funding and capacity delivery; and
- Dispute resolution.

# Policy and Process for the Legal Duty to Consult

## Introduction

### Treaty Context

Treaties are living, breathing documents that continue to bind us to promises made generations ago.<sup>1</sup> Unfortunately, different interpretations of the Treaty intent and of individual clauses have contributed to some fundamentally different interpretations of the duty to consult and accommodate. First Nations have said they do not accept the written text as being an accurate record of what was agreed to in the Treaties and that they did not agree to the blanket extinguishment of their Aboriginal title by entering into the Treaty relationship.

Treaty First Nations often assert that they intended to share the territory, and jurisdiction and management over it, as opposed to ceding the territory, even where the text of an historical Treaty makes reference to a blanket extinguishment of land rights. Frequently, First Nations will state that they agreed to share the land to the depth of a plough. Thus, in the First Nations' view, the mineral resources below the surface were not ceded to the Crown and therefore still belong to, or the very least, must be shared with First Nations. While this is a commonly held First Nation Perspective, it is not one that has been accepted by the courts or by governments.

### Government View on Treaty Rights Pertaining to the Duty to Consult

From Government's point of view, the purpose of the numbered Treaties entered into between First Nations and Canada was to create a new relationship between the Crown and First Nations. A key element of the Treaties was the extinguishment of Aboriginal title in order to open up the west for the peaceful settlement of Saskatchewan, and in return, First Nations received commitments that would provide for the continuation of their customs, lifestyles and traditions. As a result of the Treaties, any rights that First Nations had in the land, including the resources below the surface, were extinguished, subject to the rights set out in the Treaties. Therefore, the Crown has administration and control of both the surface and subsurface. In 1930, the Government of Canada transferred that administration and control over Crown land and resources to the Province through a constitutional document called the *Natural Resources Transfer Agreement* (NRTA). As a result, the Province has, since 1930, exercised administration and control over Crown lands and resources in the same fashion as other provincial jurisdictions for the benefit of all people of the province. While the Government acknowledges the First Nation perspective on Treaty rights, it will carry out its duty to consult in accordance with its understanding of Treaty rights, as set out in the relevant court decisions that articulate the nature and extent of those rights.

### Métis Aboriginal Rights Context

The Métis Nation - Saskatchewan (MNS) believes that, because of its historical and contemporary interests in asserted traditional lands and constitutionally protected section

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<sup>1</sup> *Speech from the Throne 2007*, Province of Saskatchewan, December 10, 2007

35 rights in the *Constitution Act, 1982*, the Government has a legal duty to consult with its elected leaders before allocating resources or taking actions that might negatively affect Métis Aboriginal rights. This legal duty applies to asserted and proven Métis Aboriginal rights. While court decisions provide the framework for identifying rights-bearing Métis communities, the MNS has expressed a broader “Métis Nation” view of Métis rights, interests and traditional lands that they feel can be accommodated within this emerging legal framework.

### **Government Views on Métis Aboriginal Rights Pertaining to the Duty to Consult**

The Government recognizes that it has legal obligations to consult with rights-bearing Métis communities. One of the challenges associated with meeting the duty to consult in the Métis context is the lack of consensus on the definition of a rights-bearing Métis community. To date, the courts suggest that these communities should be defined on a regional, as opposed to a provincial, basis. The Government will consult with Métis communities where Métis Aboriginal rights have already been recognized, such as in Northern Saskatchewan. Where Métis Aboriginal rights have not yet been recognized, the decision to consult will be made on a case-by-case basis. Government will take into account the strength of the claims supporting the asserted rights and the extent of the potential impact on the exercise of the asserted rights.

On September 10, 2008, the MNS Local Presidents adopted a Statement of Principles on Métis Consultation and Accommodation at the Métis Nation Legislative Assembly. The MNS and Government are discussing their respective positions and the implementation of the future Consultation Policy Framework.

### **Principles and Process Elements**

The principles and process elements noted below are derived from court decisions and form the legal foundation for Government’s responsible discharge of its duty to consult and accommodate.

#### **Key Principles**

- The duty to consult with First Nations and Métis rights-bearing communities is grounded in the honour of the Crown, meaning government must act with honour, integrity and good faith.
- The duty to consult arises prior to a Crown decision being made with respect to legislation, policy, program or action that has the potential to affect proven or asserted Treaty or Aboriginal rights. Consultation should begin as early in the decision-making process as possible.
- There is a reciprocal onus on the First Nation and Métis community to participate in the consultation process with good faith, to make their concerns known, to respond to the government’s attempts to meet their concerns and to try to reach some mutually satisfactory solutions on those concerns in a timely manner.

- The duty to consult lies with the Crown and not with industry or other third parties. Although government must maintain overall responsibility for consultation, the third party has a direct and important role to play in the process.
- The Crown has an obligation to assess the potential impact a proposed activity will have on hunting, fishing, trapping and gathering for food, as well as on spiritual and ceremonial sites, and to clearly communicate its findings to the First Nations or Métis community/ies being consulted.
- The duty to consult is not applicable to the Government of Saskatchewan's authorizations and approvals concerning mineral dispositions under *The Crown Mineral Resource Act*, or to First Nation and Métis commercial use of fish and wildlife resources, such as commercial fishing or trapping.
- The Province has administration and control of land and natural resources that were transferred from Canada to Saskatchewan under the *Natural Resources Transfer Agreement* of 1930, and will exercise its authority in the interests of all residents of Saskatchewan.
- Court decisions have confirmed that First Nations or Métis do not have a veto over government decisions that may adversely affect their Treaty or Aboriginal rights. Therefore consent or agreement by First Nations or Métis rights-bearing communities is not a required outcome of the duty to consult.
- Municipalities have a duty to consult whenever they exercise their legal authority in a way that might negatively impact on the exercise of an Aboriginal or Treaty right. However, in cases where the municipality is actually the proponent of a project which the Province is responsible for authorizing, it is the Provincial Government that has the duty.
- The court decisions recognize that an outcome of consultation could be actions to accommodate Treaty and Aboriginal rights. In this sense, accommodation means that government would use its better understanding found through consultation to avoid, change, or amend the action so as to minimize or avert negative impacts on any Treaty or Aboriginal right that might be at risk of infringement or impairment.
- In instances where an adverse impact on a Treaty or Aboriginal right currently being exercised cannot be avoided, payment of reasonable compensation may be required for loss of use or access to the right. Compensation associated with the duty will be assessed on a case-by-case basis and will not address past actions.
- In emergency situations, such as flooding and forest fires, etc., or where public health and safety are at imminent risk, consultation may not be feasible. In those cases, if circumstances allow, the First Nations or Métis community whose rights may be impacted will be notified.

## **Key Process Elements**

- Although the obligation can arise with respect to any Treaty or Aboriginal right, this policy focuses on the exercise of a right to hunt, fish and trap for food. The Crown has an obligation to assess the potential impact a proposed activity will have on Treaty and Aboriginal rights, and to clearly communicate its findings to the First Nation or Métis group/s being consulted.
- The nature, scope and intensity of the consultation required will vary along a spectrum according to the potential impact on rights arising from an activity, project or development. For example, where there is little potential for infringement of a Treaty or Aboriginal right, consultation would be at the low end of the spectrum. Where the potential infringement is significant and the risk of damage is high, deeper consultation aimed at finding a satisfactory solution is required.
- Consultation must take place with the individual First Nation or Métis Nation Local elected leadership. In certain circumstances, the First Nation Chief/s or Métis Nation Local President/s may delegate the consultation to a regional or provincial organization through their authorized decision-making processes. For the Government to consider consulting with a Tribal Council or MNS Region, written authorization from the elected leaders will be required.
- Reasonable time and resources for the community being consulted to prepare its response is necessary.
- First Nations and Métis groups being consulted should have a say in how they would like to be consulted, particularly where there is potential for occasional to intensive impacts on rights. They should be involved in the process design and ideally, there should be agreement on how consultation will take place, within reasonable timelines and resources.
- Consultations undertaken in accordance with legislative requirements may satisfy, in part or in whole, the duty to consult through an effective administration of the regulatory process which specifically requires consultation with affected First Nations and Métis rights-bearing communities.
- Government will report back to the specific First Nation Chiefs and Métis Nation Local Presidents being consulted on its decision, explaining how First Nation and Métis concerns were taken into consideration and what adjustments were made to avoid impacting Treaty and Aboriginal rights.

## **Matrix on Consultation Intensity**

This matrix illustrates how consultations intensify as the level of potential impact on rights intensifies. It will be used by Ministries to develop new operational guidelines or procedures, or to adjust existing ones, if necessary, to guide their employees in implementing the duty to consult and accommodate. The matrix goes hand in hand with Steps in the Consultation and Accommodation Process which follows.

**Table 1 – Matrix on Consultation Intensity**

Project or Government Action	First Nation and Métis Rights in Traditional Territories				
	No Demonstrated Impact	Low Impact on Rights	Occasional Impact on Rights	Moderate Impact on Rights	Intensive Impact on Rights and/or Culturally Significant Site/s
Major Project or Government Action	Notification	Moderate Consultation	Intensive Consultation	Intensive Consultation	Intensive Consultation
Moderate to Large Project or Government Action	Notification	Limited Consultation	Moderate Consultation	Intensive Consultation	Intensive Consultation
Minor Project or Government Action	No Notification	Notification	Limited Consultation	Moderate Consultation	Moderate Consultation

## **Definitions for Matrix Cells**

Note that definitions have not been provided for impact on rights since one of the objectives of consultation is to ascertain the nature of the potential impact.

### **Consultation Spectrum Definitions and Consultation Timelines:**

All parties will use best efforts to adhere to the timelines provided below:

#### **Notification: 30 Days**

- Government assesses impact of the action on First Nations and Métis rights
- Provides written notice of proposed project or action to the individual First Nations and/or Métis Locals whose rights may be potentially impacted
- Provide information sufficient to understand the nature of the impending decision, and its potential impacts on Treaty or Aboriginal rights, as assessed by Government
- The Government will consider any comments received during the notification period, although a response is not required prior to a decision to approve an action
- Further consultation may be required if a First Nation or Métis leader responds to the notification that there may be impacts of the project or action on Treaty or Aboriginal rights

#### **Limited Consultation: 30-60 Days**

- Implement steps for Notification
- Request specific comments on the proposed decision
- If the First Nation or Métis group does not respond, Government will follow up on notification
- Ensure all information is shared
- Further consultation may be required if a First Nation or Métis leader requests a meeting to discuss potential impacts on rights and build relationships

#### **Moderate Consultation: 60-90 Days**

- Implement steps for Limited Consultation
- Ensure all information is shared on an ongoing basis
- Establish meetings as required with proponent and First Nations or Métis representatives to share information, identify issues related to impacts on Treaty or Aboriginal rights, and discuss potential mitigation measures
- Examine the potential for establishing a formal consultation process including ensuring that there is adequate capacity for First Nations and Métis to participate in consultation

#### **Intensive Consultation: Up to and over 1 year**

- Implement steps for Moderate Consultation
- Planning the consultation process may take several weeks and may include negotiation of a consultation protocol with appropriate capacity funding
- Traditional use studies and or land use plans may be required

#### **Activity Definitions:**

#### **Major Development or Government Action:**

- Projects and activities or provincial policies and strategies with the potential to have significant and/or long-term disturbance to the immediate environment, or disturbance over a large geographic area

#### **Large to Moderate Project or Government Action:**

- Projects and activities or provincial policies and strategies with the potential for long-term impact to the immediate environment or disturbance over a large geographic area, including long-term, continuous and/or advanced activities

#### **Small Project or Government Action:**

- Projects and activities or government policies and strategies that are limited in scope and/or affect a relatively small geographic area

## **Steps in the Consultation Process**

The following are the steps for consultation. If consultation is truly to meet the objectives of protection of Treaty and Aboriginal rights, reconciliation, clarity and certainty, then the parties to the process need to work respectfully and seek mutually-acceptable solutions whenever possible. It is the Government however, that makes final decisions under its authorities.

### **Step 1 – Assessment of Impacts on Rights**

#### **Description**

- Government assesses who is to be consulted. In these circumstances consultation would be required with those First Nations and Métis rights-bearing communities whose traditional territories coincide with the geographic area where the impact would be felt.
- With information at hand, the Government assesses potential impact on First Nations and Métis rights and determines need for consultation. When in doubt, Government may communicate with the First Nation or Métis leadership to validate its determination.
- There may be instances where it is clear that consultation under the legal duty is not required. However, Aboriginal interests may still be at play, and Government may consult as a matter of good governance using guidance from the Interest-Based Consultation policy on page 15.

## **Step 2 – Consultations Concerning Potential Impacts on Rights**

### **Description**

- Based on its assessment, the Government consults with specific First Nations and rights-bearing Métis communities and provides a rationale for its assessment to the leadership.
- The level of consultation is determined by the Matrix on Consultation Intensity (Table 1).
- First Nations and Métis communities assess the potential impact on their rights based on information provided by the Government, as well as information supplied by the proponent.
- The Government may be required to reassess its decision regarding the required level of consultation based on what it learns at this stage.
- If insufficient information is provided for adequate assessment of impacts on rights, more information can be requested and will be provided by Government, if available and not considered confidential.
- Information gathered through the consultation process is used to determine the nature and scope of accommodation, if required.
- The more intense the impact of the project or action, the greater intensity of the consultation process as illustrated in the Matrix in Table 1.

## **Step 3 – Accommodation**

### **Description**

- When there is no demonstrated impact on First Nations and Métis rights, the project or activity proceeds to implementation and monitoring.
- If there is an impact on First Nations and Métis rights, it leads to discussions amongst the parties to determine whether the impacts can be mitigated.
- Impacts on rights that cannot be addressed by adjustments to the project or activity plan will be assessed on a case-by-case basis as to appropriate accommodation.
- All parties will be involved in discussions on accommodations, especially those that have an impact on project timing and cost.
- The timelines for these discussions will be guided by the Matrix of Consultation Intensity in Table 1.

## **Step 4 – Implementation and Monitoring**

### **Description**

- When the impacts on First Nations and Métis rights are identified, and, if necessary, impacts of the project are accommodated, the project or activity may proceed, subject to other regulatory considerations. The Government's decision may be made without agreement from First Nations and Métis rights-bearing communities.

- Government will report back to the appropriate First Nation and Métis Nation leaders being consulted, explaining how their concerns were taken into consideration and what adjustments were made to avoid impacting Treaty and Aboriginal rights.
- The project or action proceeds to implementation.
- The project or action is monitored on a periodic/regular basis as to its impact on First Nations and Métis rights. Further consultation might be required if there are changes to implementation.

## **Consultation and Accommodation Supports**

- Monitoring – The parties (government officials, industry, First Nations, Métis and others that may be agreed to as integral to the consultation) in the consultation process may agree to meet on a periodic basis to monitor the impact of the project on First Nations and Métis rights. On smaller projects this may be informal and on larger projects, it may be a more formal mechanism. For example, a committee might be established to monitor the impact of projects on the ability to exercise rights.
- Consultation Protocols – Using the Consultation Policy Framework as a guide, the Government may enter into consultation protocols with First Nations and/or Métis community/ies, related to a specific project or action that set out more specific consultation procedures and accommodation arrangements, where appropriate. Protocols may also include monitoring arrangements.

## **Roles and Responsibilities**

### **The Provincial Government:**

The Government of Saskatchewan has the duty to consult and does not delegate responsibility and administration for the consultation process to a third party, such as industry, although the third party is an integral participant in the process. The Government is an active participant in the consultation process. Ministries must ensure that the consultation process has been meaningful and genuine prior to any approvals. They must ensure that the First Nations and Métis communities are being consulted based on the direction set out in this document. They must also report back to the community being consulted on how the information provided during the consultation process was used in its decision-making.

The Saskatchewan Ministries and/or agencies responsible for authorizing activity on the surface of the land related to resource development and land management are also responsible for implementing the duty to consult. They are: Environment, Agriculture, Municipal Affairs, Saskatchewan Watershed Authority, First Nations and Métis Relations' Northern Affairs Division, and Tourism, Parks, Culture and Sport. Crown Corporations are usually proponents who secure authorizations from provincial Ministries; however, in instances where they do have a duty to consult, they will follow this policy framework.

### **The Federal Government:**

The federal government also has a legal duty to consult and accommodate triggered by a federal approval, license, permit or project or action that could infringe on Treaty or Aboriginal rights. In order to ensure effectiveness and efficiency where jurisdictions overlap or where there is a joint responsibility, provincial Ministries will endeavour to work with their federal counterparts to develop and implement joint processes.

### **First Nations and Métis Rights-Bearing Communities:**

As noted previously, Aboriginal groups being consulted must respond in good faith with respect to whether or not its rights will be impacted, and cannot avoid consultation engagement. Resources for capacity to participate in consultations are currently available under the Ministry of First Nations and Métis Relations' Consultation Participation Fund.

### **Industry and Other Proponents:**

While the duty to consult and accommodate when required lies with the Crown, the proponent is affected by both the consultation and accommodation process. Government expects that industry and other proponents must use industry best practices to engage and build relationships with First Nations and Métis early in the planning phase. Proponents need to contact the First Nation and/or Métis leader/s in a timely manner, provide clear, accurate project information, and discuss potential impacts of their projects with the affected parties. When necessary and appropriate, the proponent needs to work jointly with the parties to develop mitigation plans.

## **Engagement and Relationship Building**

Prior to the start of any consultation process it is in the best interests of all parties – Government Ministries, proponents and First Nations and/or Métis communities -- to meet well in advance, during the preliminary planning stages of the project or policy development. The purpose of this engagement is to provide a starting point for face-to-face meetings to begin a process of general information sharing and relationship-building.

The Government also has clear expectations that proponents will begin at an early stage and undertake on an ongoing basis development of relationships and exploration of mutually beneficial opportunities with First Nation and Métis leadership.

It is during this process that proponents have the opportunity to provide the First Nations and Métis communities with preliminary information on the nature and scope of potential impacts, employment and business development opportunities, and possible mitigation measures. Proponents should make allowances for different linguistic, cultural, geographic, or informational needs of the parties.

A number of industry associations and individual industries have developed best practices which guide proponents in fostering and sustaining effective working relations with First Nations and Métis communities. The Government strongly

encourages companies to adhere to best practices, and urges proponent groups without best practices to develop and use them for better relations and improved project outcomes.

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# **Policy for Interest-based Consultation**

## **Consultation “Beyond the Duty to Consult”**

The duty to consult is an obligation placed upon the Crown by the Constitution in order to protect Treaty and Aboriginal rights and effect reconciliation. However, for many years, governments have been engaging citizens, stakeholders, First Nations and Métis groups as a matter of choice, in order to understand and integrate their *interests* into their decisions.

Governments consult for many reasons, but the primary objective is to ensure that their policies, plans and actions will effectively meet their intended goals and objectives. This can best be done by working with the particular group/s to better understand the nature of the policy problem and how it should be resolved. Consultation comes in many forms, such as public hearings and meetings, advisory groups, surveys and polls and focus groups. In many cases, there is benefit in Government and the parties going beyond consultation to creating partnerships for joint action to solve a problem or take advantage of an opportunity.

Good consultation practice includes taking the time to develop and maintain positive relations with First Nations and Métis groups. Both public and private sectors have realized that engaging Aboriginal people early, well before making policies or decisions, can avoid problems, delays and ultimately resources required to manage conflict.

The Consultation Policy Framework is not limited to the duty to consult. It also directs all Ministries to make best efforts to engage First Nations and Métis groups in the decision-making processes related to policies, programs and legislation that have the potential to directly impact them, where they have an interest or where First Nations have jurisdiction on-reserve. However, there may be situations where either the sensitive nature of a proposed policy change or its broad-based, province-wide nature may prevent the Government from consulting with any group in advance.

Government will be examining this component of the Consultation Policy Framework more thoroughly over the next several weeks with the objective of providing more detail for Ministries and Aboriginal groups.

## **Consultation Participation Capacity**

Meaningful consultation requires the ability of the First Nations and Métis communities being consulted to be fully engaged in the process. This will ensure that their rights related to a government activity are fully explored and, through dialogue, are understood by government and proponents so that they might act to protect Treaty and Aboriginal rights.

A fundamental factor in consultations is the capacity of a First Nation or Métis community to fully understand and address government activities that may potentially impact the exercise of Treaty and Aboriginal rights within a particular area, and be engaged in constructive discussions with government and the proponent about their concerns.

To realize that goal, the government established the First Nations and Métis Consultation Participation Fund within the Ministry of First Nation and Métis Relations. The Fund's sole objective is to enable First Nations and Métis to participate in consultations where the Government of Saskatchewan has determined that a legal duty to consult exists.

Funding is provided through grants to eligible First Nations and Métis Nation organizations according to the First Nations and Métis Consultation Participation Fund Criteria. Reasonable funding can be requested by First Nations and Métis Nation entities on a project basis, according to the number, intensity and scope of government consultations. Eligible activities under the Fund include developing a First Nations' or a Métis Nation organization's human, financial, technological, traditional and institutional capabilities.

Future discussions will provide opportunities for representatives of the parties to review research, examine costs and benefits to the Province, and provide alternative options for consideration.