

RESOURCES AND FUNDING

DEFINITION:

The duty to consult and accommodate, carries with it the obligation to ensure adequate and sustained funding for First Nations to carry out the ongoing work of identifying and articulating their interests and to participate in decision-making processes.

IMPORTANCE:

A major stumbling block to meaningful and valid consultation and accommodation with First Nations is the lack of financial and human resources needed to enable them to analyze and respond to consultations requests.

DESCRIPTION:

A persistent practical problem is the lack of financial and resource capacity of First Nations when consulted on complex projects. In addition, most First Nations in Canada are small and do not have the capacity to handle the potentially huge numbers of requests from governments for consultation about projects

Who pays for the consultation costs of the aboriginal people?. The Court does not address this issue.

Some provincial governments, such as Quebec have made it clear that funding is necessary in order to facilitate the participation of Aboriginal communities in the consultation processes initiated by the Government of Québec. To this end a financial support program will be prepared by the Secrétariat aux affaires autochtones, in collaboration with the Conseil du trésor

More typical is the approach taken by Saskatchewan. Although the Saskatchewan Guidelines recognize that an Aboriginal group may need funding in order to obtain independent technical information, it leaves decisions with respect to the provision of funding in the consultation process to each department or agency on a case by case basis.

First Nations are unanimous in the position that if federal and provincial governments are bound to act honorably in consultation, this includes the obligation to ensure that First Nations are on a fair footing with regard to information, expertise and resources. Funding is also needed from project proponents to address First Nations capacity issues.

EXAMPLES:

Example Horse Lake First Nation Fee for Service Model

The Horse Lake First Nation Industry Relations Corporation (HLFN IRC) will serve as a one contact/one window to streamline the exchange of information, communication, interaction, and relationship-building requisite for adequate and appropriate consultation to occur. It will negotiate agreements mitigate adverse impacts to HLFN Traditional Territory, to identify and accommodate HLFN members' issues, and to ensure that HLFN benefits positively from capacity building, economic development, revenue sharing, and joint venture opportunities.

The role and functions of HLFN IRC are congruent with the Chipewyan Prairie Dene First Nation Industry Relations Corporation Fee-for-Service model, vis a vis interaction with proponents of proposed industrial development projects mandated by the Government of Alberta to consult with HLFN prior to commencing construction. The Fee-for-Service model encapsulates those activities required to complete resource development consultation in the manner approved by HLFN, such as:

- Fee-for-Service Assessment and Consultation Work Plan Development
- Public Disclosure Input/Review (if applicable)
- Terms of Reference Input/Review (if applicable)
- Application Review
- EIA Input/Review (including technical expertise, as required)
- Sites & Areas Assessment
- Coordination of Community Engagement and Participation
- Issues Report and Resolution
- Submission of Letter of Support or Objection

The HLFN IRC Director will make all arrangements, subject to adequate resources being made available by the developer, to engage Elders and Trappers, Chief and Council, and to have Band members participate in economic development and/or capacity building opportunities

The Crown or its appointed representative will provide resources to HLFN to allow it to meaningfully participate in the consultation process.

Example Walpole Island First Nation Approach to Funding

WIFN has found through experience that to thoroughly understand the implications of a project it is necessary for adequate resources to be provided to the First Nation to enable it to participate effectively in the consultation and review process. These resources required are related to both internal and external activities to the community that take

place, e.g., community consultation activities or retaining outside technical assistance. If extraordinary issues are encountered during the consultation process additional reasonable funding may also be requested.

Example
Hupacasath Position on Funding

Mutually acceptable arrangements should be made to compensate Hupacasath for their costs associated with participating in the consultation process (e.g. staff or legal resources, mapping, community input).

Capacity gaps should be discussed, with creative methods discussed to address any capacity requirements so full participation in the consultation process is achieved.

Example
Simpchw Approach to Funding and Capacity

The Simpchw Guidelines set out the First Nation's expectations on funding and capacity as follows:

The Crown is responsible for providing an immediate and on-going, agreed-upon share of resource revenue sufficient to enable the Simpchw People to meaningfully participate in land and resource decision-making as set out in these guidelines, including the following costs associated with both Activity-specific consultation and accommodation negotiations, and the development and implementation of new government-to-government decision-making institutions and structures:

- time and expenses of staff and other experts;
- travel and honoraria costs for elders and community resource people;
- costs for necessary Simpchw planning, assessments, studies and research, and
- training for Simpchw members

Third Parties will normally be required to contribute to Simpchw capacity and costs of a meaningful consultation process as set out in the terms of reference for particular consultation and accommodation negotiations.

Example
AFNQL Provision of Funding:

At various stages in the AFNQL consultation process, provision must be made by the federal and/or provincial governments to ensure adequate funding for First Nations. This would address:

- costs of internal coordination,
- consultation and scoping,
- remuneration of community and other experts,
- research budgets,
- professional fees and
- consultant services to ensure genuine participation in establishing a Consultation Plan and the Parameters of Consultation.

SOURCES:

Consultation Protocol of First Nations of Quebec and Labrador 2005

Bkejwanong Territory Environmental Policies, Guidelines and Information for External Project Proponents, February 2006

Horse Lake First Nation Consultation Policy, February 1, 2007

Hupacasath First Nation TERRITORY LAND USE PLAN – PHASE 2, 2004

Simpew First Nation Consultation and Accommodation Guidelines 2006

