
STANDING SENATE COMMITTEE ON INDIGENOUS PEOPLES

In the Matter of:

Examine and report on any matters related to the duty to consult and accommodate Indigenous Peoples, which flows from the honour of the Crown derived from section 35 of the Constitution Act, 1982

“The Duty to Consult in Northern Manitoba and Distinctions-Based Consultations”

Submission of Grand Chief Garrison Settee, Manitoba Keewatinowi Okimakanak, Inc.

Odawa Territory, Senate of Canada, Parliament Buildings, Ottawa, Ontario – June 2, 2026

Tansi, Boozhoo, Edlane'te, hello. On behalf of the 63,000 First Nation citizens of the 26 northern Manitoba First Nations affiliated with the Manitoba Keewatinowi Okimakanak, Inc. and which have entered into Treaty No. 4, Treaty No. 5, Treaty No. 6 and Treaty No. 10, I am pleased to share MKO's views on the Duty to Consult and accommodate and the Honour of the Crown.

MKO has thirty-six years of real-world experience in pursuing the conduct of the Duty to Consult consistent with the Honour of the Crown. As just one example, between August, 2007 and June, 2009, MKO directly participated in the intensive and successful negotiation and execution of the very first Consultation Protocol between the Province of Manitoba and ANY First Nation in Manitoba. This is the June 3, 2009 Consultation Protocol between the Province of Manitoba and the Northlands Denesuline First Nation.

The MKO Chiefs in Assembly has passed Resolution 2022-08-14, *Endorsement of Northlands Consultation Protocol as Principles and Process of the Duty to Consult* which endorses the core principles and processes of the Northlands Consultation Protocol as THE principles and processes to be applied to ALL Duty to Consult processes in the MKO region.

As another example, on June 18, 2025, MKO wrote to the Prime Minister, the President of the Privy Council, the Minister of Crown-Indigenous Relations and to all Honourable Senators and to all Members of the House of Commons to urge that Bill C-5, the *Building Canada Act*, be amended to include a definition of “Duty to Consult”. Specifically, MKO proposed that the *Building Canada Act* be amended by adopting the definition of Duty to Consult at Annex A of the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, March 2011, being:

“The duty to consult is an obligation of the government as a whole. In Haida, Taku River and Mikisew Cree, the Supreme Court of Canada held that provincial and federal governments have a legal obligation to consult when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.”

Every potential Major Project, energy corridor or critical minerals development in northern Manitoba will be subject to the Crown’s legal obligation to carry out the Duty to Consult in a manner consistent with the Honour of the Crown.

Every Crown-First nation consultation process in the MKO Region must first determine whether the infringements of the twice-constitutionalized right to hunt, fish, trap and gather for food, support and subsistence and for social and ceremonial purposes can be constitutionally justified further to the tests in *R. v. Sparrow*.

It is MKO’s experience that Canada and Manitoba largely “skip over” the justification step of a Duty to Consult process. It is also MKO’s assessment that governments and developers assume, incorrectly, that any infringements of acknowledged and constitutionally protected rights are “pre-justified” and that consultations are really about mitigation and accommodation measures. MKO describes this constitutionally flawed approach to the Crown’s Duty to Consult consistent with the Honour of the Crown as “let’s make a deal.”

It is not widely understood and appreciated by Canada and Manitoba or by proponents of Major Projects and critical mineral developments that paragraph 13 of the Schedule to the *Manitoba Natural Resources Act*, 1930 gives constitutional protection to the Treaty promises of the Crown. That is, the Treaty livelihood promise to First Nations was given constitutional protection for the first time fifty-two years before section 35 of the *Constitution Act*, 1982:

13. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access. [emphasis added]

The *Manitoba Natural Resources Act*, including paragraph 13 of the Schedule to the Act, forms a part of the *British North America Act*, 1930, which is the *Constitution Act*, 1930. Identical provisions appear at paragraph 12 of the Schedule to each of the Saskatchewan NRTA and the Alberta NRTA, all of which form a part of the *Constitution Act*, 1930.

The words, “***(i)n order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence (...) the said Indians shall have the right***” is the **only** expressly articulated right of First Nations set out in the Constitution of Canada. MKO asks the Committee to carefully reflect on this fact.

Through these provisions in 1930, Canada imposed a constitutionally-enforceable obligation upon Manitoba, Saskatchewan and Alberta to uphold the

Treaty promise of the Crown that Treaty First Nations will exercise a right to our traditional economies in perpetuity.

The constitutional obligation imposed by Canada upon Manitoba, Saskatchewan and Alberta “to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence” **was constitutionalized for a second time** through s. 35 (1) of the *Constitution Act, 1982*.

The Supreme Court’s 2003 decision in *R. v. Blais* affirms that this right is exclusively held by “the Indians of the Province”. In *R. v. Blais*, the Supreme Court ruled that Metis persons are not “Indians of the province” in the context of paragraph 13 of the NRTA.

That is, no “pan-Indigenous” Crown-First Nation consultation process can be applied in the prairie provinces to any Duty to Consult process addressing the right to hunt, fish and harvest for food. The conduct of the Duty to Consult as part of any “One Project-One Review” process must reflect a distinctions-based approach that will explicitly and distinctly address – and justify – any potential infringements of the right of top priority of the “Indians of the Province” to hunt for food, support and subsistence, as well as for social and ceremonial purposes.

On May 26, 2026, Manitoba Premier Wab Kinew publicly endorsed the conclusion of the Honourable Justice Leonard of the Court of King’s Bench of Alberta about when the Duty to Consult is triggered, as set out in Justice Leonard’s decision in *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*. Premier Kinew implicitly, if not explicitly, concurred with the conclusion of Justice Leonard that the elements of the three tests from *Haida Nation* were satisfied and that the proposed Alberta referendum question triggered the Duty to Consult. MKO also agrees with Justice Leonard’s conclusion and with Premier Kinew’s endorsement of when the Duty to Consult is triggered.

However, despite these public statements by Premier Kinew, the Government of Manitoba **does not** engage in the Duty to Consult even where the elements of the three tests in *Haida Nation* are satisfied and the Duty to Consult is triggered.

As just two recent examples, in 2025 and again in 2026, Manitoba unilaterally enacted the *Hunting Seasons and Bag Limits Regulation* and proceeded to allocate more than 100% of the annual allowable harvest of moose to the licenced hunters through a Licence Draw program. Since December, 2021, MKO First Nations and MKO have repeatedly called for zero licences to be issued under the Licence Draw in order to secure the meaningful exercise of the twice-constitutionalized right of top priority to hunt for food, support and subsistence and to address declining moose populations.

In conclusion, the conduct of the Duty to Consult consistent with the Honour of the Crown is an unquestioned legal obligation of the provincial and federal governments “*when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights*”.

There is a requirement for a distinctive First Nation-specific consultation process in the three prairie provinces to reflect the distinct and twice-constitutionalized right of top priority of First Nations to hunt, fish and harvest. When taken together with the persistent failure of Manitoba to actually engage in the Duty to Consult even when the Duty to Consult is plainly triggered, Canada must assume a senior and oversight role in collaboration with First Nations to ensure that Canada’s constitutional rule of law is upheld in any “One Project-One Review” process.

Mr. Carlson and I would be pleased to answer any questions the Committee may have.

Ekosani, Miigwech, Masi Cho.