

# BILL

No. 616

An Act respecting the Crown's Duty to Consult in Saskatchewan

(Assented to )

## Preamble

WHEREAS the Duty to Consult with Indigenous Peoples and where applicable to accommodate Indigenous Peoples is a constitutional obligation which must be fulfilled by the Crown prior to decision-making which may adversely impact established or asserted Aboriginal or Treaty Rights articulated in section 35 of the *Constitution Act, 1982*; and

WHEREAS the Duty to Consult is recognized and affirmed by decisions of the Supreme Court of Canada and being recognized at Common Law ought to be codified in provincial legislation; and

WHEREAS this legislation would effectuate a substantive change on how Duty to Consult is implemented that satisfies Inherent and Treaty Rights holders; and

WHEREAS the Common Law imposes a Duty to Consult on the Crown requiring potential infringements on the rights of Indigenous Peoples to be evaluated as part of an impact assessment for each phase of a designated project; and

WHEREAS the Duty to Consult facilitates meaningful and active participation of Indigenous peoples in society with a view towards reconciliation.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

## Short title

1 *The Duty to Consult Act.*

## Interpretation

2 In this Act:

“**Consultation**” means a procedurally fair process undertaken in good faith to substantially address the concerns of Indigenous peoples whose rights may be impacted by Crown Conduct;

“**Crown**” means the Crown in right of Saskatchewan or the Crown in right of Canada as the case may require;

“**Crown Conduct**” means an action taken by the Crown or which is contemplated by the Crown which may adversely impact Inherent and Treaty Rights and without limiting the generality of the foregoing, includes:

(a) the disposition of Crown lands, minerals and leases;

(b) any acquisition, diversion, easement, or any other change which would have an environmental impact on water vested in the Crown pursuant to section 6 of

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*The Water Rights Act* and pursuant to section 38 of *The Water Security Agency Act*;

- (c) changes to regulations, policy or strategic plans;
- (d) changes to the allocation of quotas or licenses of fish and wildlife in Saskatchewan for recreational or commercial use or any change which may later affect the quality or quantity of fish and wildlife or the right of access to resources protected by Inherent and Treaty Rights;
- (e) the issuance of any license or permit required by legislation.

**“Duty to Consult”** means the Government of Saskatchewan’s legal obligation to consult with Indigenous Peoples;

**“Indigenous Peoples”** refers to First Nation, Metis and Inuit People who are the original inhabitants of the land that is now Canada;

**“Inherent and Treaty Rights”** includes, but is not limited to:

- (a) the rights recognized in the numbered Treaties between the Federal Crown and First Nations;
- (b) the rights recognized pursuant to *The Natural Resource Transfer Agreement, 1930*;
- (c) the Treaty and Aboriginal rights recognized pursuant to section 35 of the *Constitution Act, 1982* and includes any right which an Indigenous group asserts is protected by section 35 of the *Constitution Act, 1982*;
- (d) the rights recognized by the Crown pursuant to a Treaty Land Entitlement Agreement entered into between the Crown and a First Nation; and
- (e) all other rights held by Indigenous Peoples in Saskatchewan.

### **Duty to Consult Engaged**

**3** The Crown shall:

- (a) engage in Consultation prior to engaging in Crown Conduct, or whenever it is otherwise constitutionally required to do so;
- (b) consult Indigenous Peoples before taking action that may adversely affect their asserted or established rights under s. 35 of the *Constitution Act, 1982*; and
- (c) enable Indigenous Peoples to engage in negotiations to shape the design, implementation, monitoring, and evaluation of projects at each of their phases.

### **Application to Consultations**

**4** Where the Crown is required to engage in Consultation pursuant to section 3, the Crown shall:

- (a) provide notice to Indigenous Peoples whose Inherent and Treaty Rights may be affected by the Crown Conduct with sufficient detail, including the Crown’s

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preliminary assessment of potential impacts and the duration of the impact which may arise as a result of the Crown Conduct to permit the said Indigenous Peoples to identify adverse impacts and potential adverse impacts on their Inherent and Treaty Rights;

(b) provide a meaningful opportunity for Indigenous Peoples to consult with their members to identify adverse impacts and potential adverse impacts on their Inherent and Treaty Rights;

(c) provide sufficient time to permit Indigenous Peoples to meaningfully engage in the Consultation process;

(d) develop a Consultation process which takes into account Indigenous Peoples values and worldviews;

(e) fulfill its Consultation process before taking steps to implement or operationalize any Crown Conduct;

(f) adopt accommodation measures to undertake the Crown Conduct in a manner that minimally infringes on the Inherent and Treaty Rights of Indigenous Peoples; and

(g) upon completion of the Consultation process, provide Indigenous Peoples with an explanation of the Crown's decision, including an explanation as to how the Indigenous Peoples concerns were taken into consideration and, where relevant, the particulars of any accommodation measures implemented to avoid or minimize impacts to Inherent and Treaty Rights.

#### **Non-derogation**

**5** This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and nothing in this Act shall abrogate or derogate from such rights.

#### **Coming into force**

**6** This Act comes into force on Assent.

FOURTH SESSION

# Twenty-ninth Legislature

SASKATCHEWAN

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Received and read the

First time

Second time

Third time

And Passed

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Ms. Betty Nippi-Albright

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Printed under the authority of  
The Speaker of the Legislative Assembly  
of Saskatchewan  
2024