

B I L L

No. 609

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

(Assented to)

Preamble

WHEREAS the Duty to Consult with 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*;

WHEREAS the Duty to Consult is recognized and affirmed by decisions of the Supreme Court of Canada;

WHEREAS the Crown's Duty to Consult is recognized at common law and ought to be codified in provincial legislation; and

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

Short title

1 *The Meaningful Duty to Consult Act.*

Interpretation

2 In this Act:

“**Consultation**” means a procedurally fair process undertaken in good faith with the intention of substantially addressing 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 Treaty and Inherent 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 to water vested in the Crown pursuant to section 6 of *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 Treaty and Inherent rights;
- (e) the issuance of any license or permit required by legislation.

“duty to consult” means the provincial government’s legal obligation to consult with First Nations and Métis people;

“Treaty and Inherent rights” means, 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 a First Nation or Métis 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;
- (e) the rights recognized pursuant to sections 10, 11 and 19 of *The United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) concerning free, prior and informed consent.
- (f) all other rights held by First Nations and Métis people in Saskatchewan.

Duty to Consult Engaged

3 The Crown shall engage in Consultation whenever it engages in Crown Conduct, or whenever it is otherwise constitutionally required to do so.

Application to Consultations

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

- (a) provide notice to First Nations and Métis Communities whose Treaty and Inherent Rights may be affected by the Crown Conduct with sufficient detail, including the Crown's 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 First Nations and Métis Communities to identify adverse impacts and potential adverse impacts on their Treaty and Inherent Rights;
- (b) provide a meaningful opportunity for First Nations and Métis communities to consult with their members to identify adverse impacts and potential adverse impacts on their Treaty and Inherent Rights;
- (c) provide sufficient time to permit First Nations and Métis communities to meaningfully engage in the Consultation process;
- (d) develop a Consultation process which takes into account First Nation and Métis 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 Treaty and Inherent rights of First Nations and Métis communities; and
- (g) upon completion of the Consultation process, provide First Nations and Métis communities with an explanation of the Crown's decision, including an explanation as to how the First Nations and Métis communities' concerns were taken into consideration and, where relevant, the particulars of any accommodation measures implemented to avoid or minimize impacts to Treaty and Inherent 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.

SECOND SESSION

Twenty-ninth Legislature

SASKATCHEWAN

BILL

No. 609

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

Received and read the

First time

Second time

Third time

And Passed

Ms. Betty Nippi-Albright

REGINA SASKATCHEWAN
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of Saskatchewan
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