

Chiefs of Ontario – Checklist for Consultation and Engagement¹

Disclaimer

The Chiefs of Ontario is not a holder of Aboriginal and Treaty Rights and is not a party to consultation unless otherwise mandated by the Chiefs-in-Assembly. The content of this document shall not hinder the autonomy and authority of First Nations as rights-holders. It is the prerogative of First Nations to determine their consultation processes and the Crown must adhere to the process requirements of First Nations. As such, this document is without prejudice to the ongoing and future processes of First Nations.

This checklist was put together by Chiefs of Ontario to provide guidance to Ontario ministries during consultation and engagement with First Nations² in Ontario. This list is non-exhaustive and leaves space for the inclusion of processes identified directly by First Nations. Each stage of the process cannot be rushed and must take the pace desired by the First Nation and as required by the rights-holder's internal governance structures and processes

The guidance in this checklist does not replace, nor should it be held above, the processes, guidance, and/or standards provided directly by a First Nation.³ Ministries are required to review and follow the consultation protocols developed by a First Nation, along with any obligations that flow through Treaty. This checklist is a supplemental aid, rather than a substitute or alternate, for processes designed by First Nations. The goal of this checklist is to provide ministries with a launching off point for improved processes that is further detailed and expanded upon through the guidance of specific First Nation Protocols, laws, and customary practices.

Every Ontario ministry has the paramount responsibility to ensure that they are consulting and engaging with the correct First Nations, to secure their free, prior, and informed consent on ministry proposed action which may impact First Nations and their rights, including their lands, territories, and resources.

Ontario ministries must be mindful and take careful consideration of their consultation and engagement obligations with rights-holders outside of Ontario when proposed

¹ This document and its contents are without prejudice to any rights, obligations, communications, initiatives, work, negotiations, and/or litigation undertaken by First Nations, Aboriginal rights-holders, and Treaty rights-holders, and First Nations organizations, and is without prejudice to the inherent and Treaty rights of all First Nations in Ontario.

² Reference to First Nations includes First Nations rights-holders, Aboriginal rights-holders, and Treaty rights-holders.

³ First Nations have the right to trigger consultation and engagement processes based on their nationhood and interests. Ontario ministries are to respond, substantially address, and fully engage in consultation and engagement processes triggered by First Nations.

government action or decision may impact inter-provincial and international state boundaries, such as land and water-way use.

This checklist is to be used in tandem with the ***Minimum Standards and Principles for Engagement*** to inform how you satisfy each stage of the consultation and engagement process.

The checklist is as follows:

Pre-Consultation/Engagement Tasks

- ☐ Assess and improve your department's ongoing relationships or lines of dialogue with First Nations, well in advance of a consultation process.
- ☐ Review and become familiar with the existing First Nation Consultation Protocols and First Nations traditional laws and customary practices that will be relevant to your project and that set out defined processes, governance structures, and rights.
- ☐ Review and make note of the First Nations' rights and interests, and/or Treaties in the activity area. This will help ensure you speak with the necessary rights holders as well as determine whether there are consultation obligations that apply through a Treaty.
- ☐ Review and make note of the unique circumstances of the First Nations that you will be consulting with, such as traditional laws and interprovincial territories, as well as any geographic considerations that apply through Treaty.
- ☐ Become familiar with and follow First Nation-specific processes and expectations for being contacted and having consultations initiated, as many processes are not necessarily published in Consultation Protocols.

Initial Outreach Regarding Consultation Process

- ☐ *Notice of consultation:* Send notice to the necessary First Nations.
 - Notice must be early, in writing, and clear.
 - Notice must be in the language of the First Nation, in addition to English and French.
 - Notice must be amended or expanded as needed, based on the input of rights holders.

- ☐ *Note:* Notice of consultation to the correct First Nation(s) needs to be confirmed by the First Nation(s) before the Crown can proceed to the next stage of the process. Your departments are required to follow-up with the correct First Nation(s) to ensure notice has been received.
- ☐ *Assessment:* First Nations will consider and assess the project based on their internal processes and timelines.
- ☐ *Decision:* First Nations will make a decision about the proposed consultation, including whether to proceed with or without terms.
- ☐ *Note:* No information or communication shall be deemed to be consultation until the First Nations agree.

Consultation & Engagement

- ☐ *Process:* As many First Nations have enacted Consultation Protocols or follow community-specific consultation processes, the overall process is best designed according to First Nation protocols and processes.
- ☐ *Timelines:* The readiness and preparedness of First Nations to participate in consultation and engagement processes will be determined by the rights-holders. Ontario Ministries are to respect and accommodate the timelines required by rights-holders.
- ☐ *Input:* Departmental officials must hear and incorporate the guidance and input provided by First Nations, in ways directed by the First Nations. The process must adapt and adjust to reflect new information and unforeseen issues.
- ☐ *Costs:* The full cost of entering into consultation and engagement with First Nations shall be provided by the Crown, including through the provision of technical and financial resources, and as determined by the rights-holders.
- ☐ *Confidentiality:* Any records, data, and traditional knowledge gathered or recorded is the sole property of the First Nations that provided it. Data agreements adhering to OCAP® should be used when needed. First Nations have the right to share and discuss data with their government and community.
- ☐ *Delegation:* The duty to consult cannot be delegated; only specific procedural processes can be delegated to municipalities and/or project proponents. If your department delegates specific procedural aspects to municipalities and/or project

proponents, you must maintain appropriate oversight throughout the entire process.

- ☐ *Note:* Delegated municipalities and project proponents are required to follow and respect the standards and processes of First Nations, such as those outlined in this document.
- ☐ *Regular Contact:* Regular contact must be maintained between all parties involved throughout the process.

Consent-based Accommodation

- ☐ First Nations have the right to the accommodations that they see fit and such accommodations must be recognized and fulfilled by the Crown without delay.
- ☐ Accommodation includes the full range of actions including altering or cancelling a project, especially when government proposed development on traditional and treaty territories is incompatible with First Nations' rights.
- ☐ The full costs of accommodation shall be covered by the Crown as determined and required by First Nations.
- ☐ The Crown must provide regular status and progress reports throughout the implementation of the accommodation.
- ☐ First Nations reserve the right to revisit their accommodation needs.

Ongoing

- ☐ *Relationship Building:* First Nations expect and require your departments to actively build mutually respectful long-term relationships which honour and uphold treaty rights and respect self-determination and inherent jurisdiction.
- ☐ *Follow-up and Evaluation:* At each stage of the consultation and engagement process, your departments are to follow-up with status updates. Following the end of the consultation process, your departments should evaluate the overall process in order to continuously improve and better meet First Nations' needs.
- ☐ *Indigenous Dispute Resolution:* Any disputes between the parties should be referred to the dispute resolution mechanisms desired by the First Nation.

- *Ministry Training:* Ministry officials should undertake ongoing training in cultural competency and First Nations history, Treaties, law, and languages.