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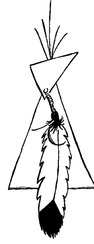

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Comments regarding the government of Quebec's

Interim Guide for Consulting First Nations

Prepared by the Algonquin Nation Secretariat

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BACKGROUND.

In response to recent Court decisions (ie., *Haida*), during the spring of 2006 the government of Quebec released an *Interim Guide for consulting Aboriginal Communities* ('the Guide"), which set out a new consultation policy framework. In conjunction with the release of the Guide, the Executive Council appointed Jules Brière as a Special Representative to consult with First Nations on their response to the Guide, in order to consider the feedback and make appropriate adjustments to the policy framework.

On September 15, 2006, a delegation of Chiefs and advisors from the Algonquin Nation Secretariat (ANS)[1] met with Jules Brière and several Quebec officials in Gatineau. During the meeting, views were exchanged, and the ANS indicated that part of its follow up would be to provide a formal response to the Guide.

GENERAL COMMENTS.

In general terms, the ANS welcomes efforts made by the government of Quebec to respond to the legal requirements set out by the Supreme Court of Canada in instances where Aboriginal and treaty rights are asserted. Overall, the Guide appears to follow the principles and duties laid out by the Supreme Court of Canada in *Haida* and related cases. At the same time, the ANS has some serious concerns about the document.; there are some areas where improvements are required; and others where clarification is required. These deficiencies need to be addressed before the ANS can provide a clear endorsement. During our meeting with Mr. Brière and his delegation, Quebec's representatives did provide some additional details in response to our questions, and, where relevant, these are identified in the sections below.

Some of the over-riding concerns ANS has about the document are as follows:

(a) There is some uncertainty regarding the status of this document. It is stated to be "interim" and this suggests that something else will be coming. Yet, upon the release of the document it was indicated that it would be effective immediately. During our meeting Mr. Brière indicated that the policy itself will evolve through time, and that adjustments will be made. As a first stage, a final version will be produced once Quebec has completed its round of discussions with First Nations. This was somewhat reassuring. However, what would be more reassuring is a strong indication that the final document and any further changes will be based upon consensus with First Nations and Quebec.

(b) The document is also stated to be a "guide", which raises questions about whether individual Departments or agencies will have discretion over whether or not they are required to apply its terms. During our meeting, the Quebec representatives assured the ANS that the Guide is mandatory, since it relates directly to the Crown's legal obligations related to consultation. However, they added that different Departments (and administrative regions) are at different

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[1] Representing the Algonquins of Barriere Lake, Timiskaming, and Wolf Lake.

levels of understanding and have different procedures in place, so it will take some time to obtain uniformity and compliance.

> **Probably, the document ought to make it explicit that the obligations referred to in the guide are legally binding. It is a "guide" insofar as it is guidance on Quebec's interpretation of those obligations.**

(c) The document uses the terms "Aboriginal communities", which is consistent with the "Aboriginal" rather than the First Nation agenda. However, it does make specific reference to "band councils" later in the document. The reference to "aboriginal communities" could lead to some uncertainty or confusion as to who the policy actually applies to. During our meeting, Quebec representatives confirmed that the policy at this time only applies to First Nations. There are unresolved issues relating to the existence (or not) of Metis in Quebec, but for now the policy applies to First Nations.

> **It would provide clarity, and remove some possible basis for unmet expectations, if the Guide mentioned explicitly that it applies to First Nations.**

(d) Another over-riding concern is with who makes the decisions. It is very much written from the perspective of the Crown, with government officials making some of the final determinations. If the objective is reconciliation, then there should be a more balanced process leading to decision-making, which includes as much as possible common agreement or understandings between the First Nation and Quebec.

> **There should be more balance in the process of reaching decisions which would enable Quebec to work cooperatively with First Nations in decisions re: the existence and scope of an asserted right; the degree of infringement; and the need for, and measures to achieve, accommodation.**

REVIEW OF SPECIFIC SECTIONS.

Introduction.

The introduction to the Guide highlights the fact that First Nations are taking part in various economic development projects in Quebec. This suggests that the orientation of the consultation Guide is to promote, or perhaps protect, economic development projects which might have an impact on Aboriginal rights. It is important for the government of Quebec to understand that our First Nations view economic development as a priority. However, we also view our culture, language and ways of life to be essential to our survival. Therefore, the approach to consultation and accommodation cannot be solely driven by economic development imperatives.

The 4th paragraph refers to "several government departments, agencies and corporations over the years having already developed consultation practices that satisfy the parameters established by the Supreme Court of Canada". This is a worrisome passage because in our experience this has not generally been the case, and it might lead to complacency among some Departments and Agencies that their practises do not need to be adjusted to conform to the new requirements of

the law. However, later on the Guide states that *Haida* and related cases "set new requirements", which suggests that all government bodies should be willing to admit that their existing practices fall short of the new requirements.

> **The Guide should be unequivocal in saying that past and present practises across all departments must be reviewed against the new requirements set out by the courts.**

The purpose of the document, described in the last paragraph of the first page is good and gives reason for optimism. It seems to indicate that these efforts to conform with the new state of the law are originating at the Cabinet table, which is the highest level within government.

1. Objectives.

In our view, the objectives of the policy ought to be stated more firmly, definitively, and consistently. The 1st paragraph says that it is intended to propose "guideposts" for various government departments, etc., which does not suggest legal duty. In contrast, the 2nd paragraph is much better, especially the reference to "making more operational the constitutional duty incumbent on the government of Quebec to consult the Aboriginal communities ….".

It might also be useful and probably important for the document to incorporate some of the language from *Haida* regarding reconciliation, which has been the dominant theme of the Supreme Court's rulings since *Sparrow*. The following passage from *Haida*, is an example:

"...In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honorably. Nothing less is required if we are to achieve 'the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.'" (*Haida*, at para. 17)

> **From our understanding of the cases, this is or ought to be the over-riding objective of any consultation - accommodation process - reconciliation of our respective interests.**

Another over-riding objective that could be stated, and is emphasized elsewhere in the document, is the "honour of the Crown". It should not be a problem to include this in the overall objectives, since the Guide does make this point quite amply elsewhere in the document.

> **Stated as an objective, this might be: to ensure that the honour of the Crown is maintained in all dealings with "Aboriginal communities", when they assert that their rights are affected.**

There is only one other objective that ought to be stated, or maybe it can be stated as part of one of the objectives: that is, some sense that the perspective of the "Aboriginal communities" needs to be met, incorporated or addressed through the process of consultation-accommodation. This is clear in the case law and is part of the notion of "reconciliation".

> **There needs to be explicit reference in the objectives that the perspective of the First Nations need to be incorporated, and that this is an essential element of reconciliation.**

We discussed these points with the Quebec delegation during our meeting.

2. Scope.

The document says that it "applies to every government department, agency and corporation …". The language is good, in that it is stated in a mandatory way. It is good also to see that the document is to apply to "corporations" - presumably this includes Hydro Quebec, which in the past has acted as though it does not have to obey the same rules as other government Departments and agencies.

One area of some concern is that the document does not apply to "private lands". This requires further discussion, because it is not a settled or cut-and-dry issue. For example:

- Sometimes the line between public lands and private is not clear. For instance, Domtar may be owned privately by shareholders, but as far as we understand, it is controlled through funds held by the government of Quebec.

- What about municipal corporations, are they private? Or are they considered government "corporations" under the Guide?

- What about situations in which the government issues permits to conduct activities on private lands? This is probably covered, but the language in the guidelines is broad enough that it might be read to exclude these situations too.

- It is not clear whether the duties normally associated with Aboriginal and treaty rights continue to apply or terminate when public lands become private lands: the jurisprudence is divided on this issue. It is clear that both Aboriginal and treaty rights can continue to co-exist in private lands along with the rights of the private landowners.

These are areas which require further thought and discussion.

The 2nd paragraph of this section of the Guide describes the activities to which it applies:

> "The guide applies to activities related to the planning and drafting of statutes and regulations, as well as to activities ensuing therefrom, such as the development of the territory and natural resources. It also applies to government policies that may affect rights claimed by Aboriginal communities."

It is good that the Guide applies to the "planning and drafting of statutes and regulations".

We indicated during our meeting that in *Haida*, the Supreme Court said involvement at the strategic planning level was specifically required. During our meeting, members of the Quebec delegation assured us that it was "implicit" in the Guide that it is to include planning activities at the strategic level (long term planning), and not just at the annual or operational level. This was discussed at length with the Quebec representatives during our meeting. However, given the different approaches taken by various government departments on this particular point, it would be far better if this were stated explicitly in the Guide.

> **There should be explicit mention in the Guide that the First Nation role in planning includes meaningful participation at the strategic level (long term planning).**

With regard to potential government actions, activities or conduct under "statutes and regulations", we are not certain that the phrase "as well as to activities ensuing therefrom" quoted above, catches all such activities. What would be the status of activities under Crown prerogative, or conduct by provincial officials under federal regulations, such as Fisheries Regulations?

It is good that the Guide applies to government policies. However, the last paragraph of this section is problematic, where it says: "… the guide does not apply when specific consultation measures have already been agreed upon with the Aboriginal communities, notably within the context of sectoral agreements." All of the ANS member First Nations have such sectoral agreements. Some of these might not be as comprehensive or as adequate as to what is required under *Haida* and related cases, or for that matter, the Guide. The sectoral agreements were done or negotiated prior to the Interim Guide, so we think it might be unfair to say that the agreements supercede the Guide, since they might in fact fail to meet the standards set out in the relevant cases.

The better approach might be to say that the higher standard applies or that the First Nation has the choice. Or, as an alternative, existing agreements could be reviewed cooperatively, measured against the legal requirements of *Haida* and related cases, and amended as required.

> **The Guide should take a different approach to the relationship between existing agreements, which pre-date *Haida* and related cases, and the Guide itself. When there is a difference in standards, either the higher standard should apply, or else the First Nation should have a choice.**

The final and a significant concern under "scope" is whether it applies to prior activities? Does it apply to statutes and regulations that have already been enacted, such as wildlife legislation?

The Quebec delegation indicated that past infringements would be covered under comprehensive claims. But, what about activities that have been initiated prior to the Guide, but have an ongoing impact and which may represent ongoing infringements? Clearly, these kinds of impacts are not just historic and would seem to be subject to s. 35 of the *Constitution Act, 1982* and the *Haida* ruling. Therefore, they ought to be covered by the Guide.

Examples of these types of infringements were provided by members of our delegation to Mr. Brière and are as follows:

- CAAF's or forestry agreements previously signed;

- Hydro permits/licences previously issued;

- Cases where prior consultation measures were clearly inadequate or prejudicial (for instance, BAPE hearings or impact studies where relevant documentation was not provided in the working language of our communities);

- Cases where the past construction of dams, reservoirs and other water control or electricity generating measures result in ongoing infringements through their continued day to day operations. These ongoing impacts include erosion, disruption of travel and navigation of the waterways (both summer and winter), and impacts on fish and wildlife relied upon for subsistence;

- Outfitters that have an ongoing impact on the available harvest for hunting and fishing.

Specific fact situations affecting our member communities were also given and we would like to take this opportunity to repeat and elaborate on these:

The Algonquins of Barriere Lake continue to be impacted by the operation of the Cabonga and Dozois reservoirs. In the past, members of the Algonquins of Barriere Lake have lost their lives due to the unannounced release of water in the Cabonga reservoir during the winter months. Although since that time communications between Hydro Quebec and the Algonquins of Barriere have improved, ongoing and negative impacts related to water navigation, fish & wildlife, and erosion, continue to occur as a result of the ongoing operation of these reservoirs.

The Timiskaming Reserve lies directly downstream from four dams on the Quinze River between the outlet of Lac des Quinze and the head of Lake Timiskaming. Beginning in the early part of this decade, a number of developments have taken place which affect these structures, including a retrofit of the dams, a proposed hydro development at Angliers, and a proposed transfer of some of the structures from the Crown in right of Canada to the Crown in right of Quebec. Although BAPE hearings were held with regard to the retrofit of the dams, the technical and related studies were never made available in English although English translations were requested; moreover, the Timiskaming First Nation was never involved in the strategic level planning, or in the design or implementation of the impact studies.

In fact, no meaningful attempt at consultation with the Timiskaming First Nation took place, despite repeated requests, and despite clear notice being given that the structures in questions were squarely within Timiskaming's Aboriginal title territory. It is to be noted that the Angliers project has not yet been completed, so it is possible to go back and fix the deficiencies in the consultation process for that project and the government is duty-bound to do so under the law and the Guide.

There is a related matter concerning the proposed transfer of the structure at Angliers, as well as the dams at Kipawa and Laniel, from Canada to Quebec. With regard to this proposed transfer, (which, as far as we know, has yet to take place), there has been an apparent unwillingness on the part of both Quebec and Canada to respond in a meaningful way to Timiskaming's assertion of Aboriginal title to the affected area and the request for consultation. In this instance and little or no disclosure from either government. Canada's response has been that since the transfer is to the Quebec Crown there is no requirement to consult or that Quebec has the duty to consult and accommodate. And yet the Timiskaming First Nation's Aboriginal title lands, as well as it's Reserve, continue to be and will be further impacted by the day to day operation of these dams.

The Wolf Lake First Nation's Aboriginal title territory will be impacted by the proposed transfer of the Kipawa and Laniel dams from Canada to Quebec, but they have received no disclosure and their interests have apparently not been considered. Many of the concerns mentioned above apply equally to Wolf Lake First Nation.

> **Further thought needs to be dedicated to this issue of prior developments whose continuance creates contemporary and future infringements, and related obligations to consult and accommodate in such cases**. **Moreover, in instances where the duty to consult is engaged, such as in the specific cases cited above, the government ought to review repair the deficiencies in the consultations.**

3. Duty to Consult.

Our main point with this section is that one would not want to give the impression that government alone shall decide if accommodation is required at the end of the consultation process. The need for accommodation, and the nature and scope of the measures required to achieve that accommodation, should not be left to the unilateral discretion of the government. The section should be re-worded to recognize the role of consensus and reconciliation.

4. The Consultation that the Crown Must Hold.

The 1st sentence of this section is satisfactory: "Since the honour of the Crown requires that the rights and interests of Aboriginal communities be addressed, departments must consult and, in certain cases, accommodate these communities."

The 2nd paragraph outlines a process within government for addressing the implementation of this Guide, but this could be slow and cumbersome. Moreover, because it consists strictly of government people, based on our past experience, it would undoubtedly err on the side of government. In other words, it might be creating a process which would inevitably be biased against First Nations. The section should be modified accordingly.

Preliminary Analysis.

In itself, this is satisfactory, but part of the problem will be mustering the proof required to show the existence of a potential or "claimed" right. The less proof the claimant has, the weaker the case, and the more latitude the government person undertaking the preliminary analysis has to reject asserted interests and impacts.

Therefore we would suggest that there be some provisions which require:

(a) due diligence on the part of the Crown to take some reasonable steps or measures to assist the claimant in putting this supporting documentation together, ie., funding of capacity land use & occupancy studies; and

(b) the application of the precautionary principle at the preliminary analysis stage, i.e., giving the claimant the benefit of the doubt. This is certainly consistent with the honour of the Crown, as per *Haida*.

Parameters of an Adequate Consultation.

The 1st paragraph gives cause for some concern, as outlined above. The Guide reinforces the point that some department's consultation practices are already in conformity with the law. Moreover, it says departments are to "reorient their future consultations … by taking into account *their own ministerial reality*". In our view, this may give too much latitude to departments to operate autonomously and in a manner inconsistent with the Guide.

The stated "objectives of an adequate consultation" appear to be too slanted in favour of the government party. For example, the first objective is to "allow the Crown to provide relevant information concerning the envisaged action" – a rather fuzzy and ambiguous statement, considering the ability and resources available to the Crown to provide clear and precise information. This is in great contrast with the next two objectives which require the Aboriginal communities to "explain in a clear and precise manner" the nature of their rights and the impacts. During our meeting with Quebec officials, we stressed that if the Crown requires clear and precise information from the First Nations, then this also requires that the Crown provides clear and precise information about its plans.

The objectives need to be redrawn and made more balanced, to include the following:

-to allow the Crown to provide complete and comprehensive information concerning the envisaged action, including strategic and operational information;

-to allow the First Nations to participate in the consultation on an informed and meaningful basis;

-to allow the First Nations to receive all the information in the language of their choice and in the language they understand;

-to allow the First Nations to be adequately resourced to enable them to hire technical expertise to participate on a level basis with the Crown; and

-to allow the department and the First Nations affected to reach an agreement in advance on the parameters of the consultation.

As well, the "principles that should guide the consultation process" ought to be redrafted in the same way as the objectives.

The description of "who should be consulted?" is satisfactory. There is no question that "the band councils" should be consulted. However, the burden of deciding on the impact of an infringement should not be borne by the band council alone.

The band council should be able to direct or designate who else is required to be consulted and by whom - for instance harvesters or those families who use a particular territory or site.

The description of "participation of third parties in certain stages of the process" is satisfactory.

The description of "interministerial consultation" is very good because it obligates government to coordinate their activities and provide a coherent response to issues. The challenge will be to see that this goal is achieved in practise.

The subsection on "funding" is welcomed but weak. To make the Guide meaningful, Quebec will need to put up the money required to give life to the process.

Funding needs to be provided to enable Aboriginal communities to:

-develop capacity;
-undertake traditional land use mapping;
-engage technical expertise; and
-be able to participate in consultation processes

Regarding funding, policies and procedures also need to be put into place to ensure that they balance two key objectives. On the one hand, Quebec has a legitimate need to ensure accountability with respect to expenditures from the treasury. But on the other hand, the terms and conditions and the funding process itself cannot be so onerous that a disproportionate amount of time and effort is taken up with proposal writing, administration and reporting.

"Project" funding, which is proposal-driven, would not be an effective way to address resourcing needs, because it tends to increase the administrative steps referred to in the preceding paragraph. Moreover, it creates the potential for funding to be used as a means of exerting undue pressure on claimants, by officials who might be in support the project or infringement. Some type of formula or block funding on a multi-year basis would be more appropriate.

Consultation Stages.

The opening paragraph of this subsection expresses a commitment to address Aboriginal rights and interests, which is welcome.

The description of the "first stage: create an adapted consultation process" is adequate as well, though it could be improved. For example, the first point/paragraph could be redrafted – it assumes that band councils will inform the department of other Aboriginal communities who may be affected. This may not happen. However, the next seven points/paragraphs are very good. And, the 8th point, which provides for translation of documentation into the appropriate language, is excellent. The remaining points are satisfactory. The last point, which says the department should document the consultation steps taken, should apply equally to the Aboriginal communities, with the Crown providing assistance to enable them to do this.

The description of the "second stage: implement the consultation" needs to incorporate the Aboriginal perspective. It says that government should validate the information obtained from Aboriginal communities. First Nations should be able to do the same and should be able to request further information and clarifications, as required.

"Third stage: analyze the consultation" is the next subsection. The statement of the two principles under this heading ought to be amended or supplemented to leave open the option that a project may be eliminated if the circumstances require it. Clearly, *Haida* and *Taku River* say that Aboriginal claimants do not have a veto; however, neither do those cases say that projects will inevitable go ahead.

The next paragraph emphasizes that an evaluation of the results of the consultation will determine the need for accommodation measures. It says:

> to evaluate if accommodation measures must be sought … a department must first analyse the results of the consultation that it held with the Aboriginal communities …. This stage will help determine the envisaged action's degree of infringement on the rights and interests of the Aboriginal communities.

This is an important stage and should require an assessment of the nature of the Aboriginal and treaty rights claimed. The nature of the right infringed and not just the impact will have some influence on the issue of accommodation. For example, if the right asserted is Aboriginal title, the accommodation will need to address the inescapable economic component of Aboriginal title.

> **The list of questions cited to assist in the evaluation process should include something on the nature of the right -ie., is it a site specific right to harvest, or a broader right of Aboriginal title?**
>
> **The issue of who does the analysis and who decides on whether accommodation is required also needs to be examined more closely. It should not be a unilateral decision by the Crown. At the very least, the Guide should direct that the analysis**

incorporate the Aboriginal perspective. Alternatively, the Crown could establish a mechanism which provides for some joint decision on this matter.

5. Adjustment of the Accommodation.

The big concern in this section is the same as that referred to in the preceding section: who decides whether accommodation is required? As aforesaid, this should not be left to the unilateral discretion of the government.

One of the good things in this section is that it calls for negotiations once it is determined that accommodation is required. However, as already mentioned above, the considerations leave out an important aspect: the nature of the rights asserted and affected.

The negotiation considerations listed under the 2nd paragraph ought to be modified to include the nature of the rights affected.

The 3rd paragraph provides that "it is up to the department to apply the accommodation measures adapted to its reality …". There are two problems with this. First, it should not be just up to the department – the Aboriginal community affected ought to have a role in the accommodation measure too. Second, allowing the department to "apply accommodation measures *adapted to its reality"* would appear to be an escape hatch to give the department room to slide out of its obligations and avoid the legal duties laid out by the Court.

The First Nation(s) affected need to play a role in determining and implementing the accommodation measures.

The adaptation of accommodation measures to "departmental realities" needs to be closely circumscribed to mitigate against avoidance of legal duties related to consultation and accommodation.

It should be made clear as well that there is an additional outcome or option: simply not proceed with the project.

The last paragraph of this section is very objectionable in our view. While financial compensation should not be an "automatic reflex", it should also not be the last resort or be too onerous to obtain in negotiations.

The Guide must be more flexible with respect to compensation, and provide a balanced and fair approach to the matter. The considerations ought to include:

-the nature of the right affected;

-will there be an impact on the livelihood of the community; and

-whether the infringing project or action has an economic component, in other words, will the developer and the government be making money in the endeavour?

6. Emergency Situations.

It is understandable that in situations of high emergency the normal consultation requirements should be relaxed. However, provision ought to be made to address the impact and institute accommodation measures as soon after the emergency as possible.

7. Decision.

This is the last section. It makes reference to the department documenting the steps taken to consult and the assessment of the consultations by the department. It also says that an explanation should be provided regarding the decision taken to address concerns raised by First Nations. This is good. However, as aforesaid, we think it is problematic that this assessment and decision is to be taken by the department and the Minister to the exclusion of the Aboriginal claimant.

> **The decision stage should provide for a greater and more meaningful role for the First Nation affected, consistent with the principles of coexistence and reconciliation.**

The last paragraph indicates that the assessment will normally be appended in brief to Cabinet. This signifies that the decision will be at the highest level within government, which is good.

OTHER CONSIDERATIONS.

Having concluded our comments on the Guide itself, we would now turn to some other matters which also need to be considered. Some of the comments that follow are a direct result of the discussions that took place when we met with Mr. Brière and the Quebec delegation in Gatineau. Others arose independently, but we offer all of them here so that they can be considered along with the preceding sections.

Agreements or protocols.

It is agreed that post-*Haida* we are all in new territory and it is not surprising that in some cases their will be divergent expectations. In order to respond to this reality and increase the likelihood of shared expectations and cooperative approaches to consultation, we recommend that consultation agreements or protocols be entered into between First Nations (or tribal councils as the case may be, and the government (or individual government departments). These could incorporate agreed-upon procedures, time lines, and address other matters (such as the collection and/or sharing of data) that will facilitate the an orderly and predictable process.

The locus of consultation.

Depending on the issue, consultations may need to occur at different levels. For instance, where the potential impacts directly affect lands and resources or a particular territory, the focus of consultation will need to be either at the band council level or the tribal council level. And, as

mentioned above, at the local level in certain cases the band councils or tribal councils themselves will have to consult with their constituent members or families.

Other times, consultation on a province-wide or regional basis may also be required if an issue is broad (for instance, province-wide policy or legislation). In these cases, and where the First Nation has clearly mandated the collective body to speak for it in the matter, then it may well be most appropriate for the government of Quebec to focus its consultation efforts at the wider level.

There will, therefore, need to be a certain flexibility built into the measures which will be put into place to implement the Guide.

Economies of scale.

On another level, there are opportunities to reap benefits from economies of scale in cases where, for instance, individual First Nations have mandated a tribal council to act on their behalf, or assist them, as the case may be, in a particular consultation. Building capacity at this aggregate level is therefore something to be encouraged, if, as stated above, these bodies have a demonstrated mandate from their members. This could also assist in the development and sharing of best practises among First Nation organizations.

Technical standards.

Much of the technical work arising from consultation efforts will, of course, focus on establishing the facts related to a particular First Nation's interests in territory and land & resources. The government of Quebec needs to be confident that decisions regarding who to consult are based on facts and evidence. In this regard, the collection, sharing and retention of data, and especially the **reliability** and **compatibility** of data, will be increasingly important considerations. It will be necessary to encourage and ensure as much as possible that recognized and sound methodologies are employed in the collection of data, especially related to traditional territories, current use & occupation, and core community territories vs. areas of shared use. The adoption or appropriate standards and the encouragement of best practises in these areas should be a priority.

Timing and Planning processes already underway.

Representatives of Quebec highlighted two issues of concern to them, in connection with the requirements for consultation and accommodation.

- One was, how to meet consultation requirements when time is of the essence?
- Another was, how can consultation requirements be met if a particular department or agency is half-way or more through a five year planning cycle?

The simple answer to both of these points is that the legal requirements prescribed in *Haida* apply. However, the ability to modulate or adapt to the circumstances will depend upon the nature of the right, the scale, scope and nature of the infringement as well as the capacity and

resourcing of the First Nation. With regard to the planning cycles of government, these should not be an impediment to implementing constitutional rights of First Nations.

These matters may need more time to consider and we are prepared to work with Quebec officials in finding creative solutions. How these situations are ultimately addressed is uncertain at this point in time, but much will depend on the willingness of Quebec to take seriously its duty to consult and accommodate, and also on the resources available to enable us to participate meaningfully in the process.