Duty to Consult
Frequently Asked Questions

Q: What is the duty to consult?

A: The general principles of the Crown’s duty to consult and, where appropriate, accommodate, were laid out in 2004 and 2005 by the Supreme Court of Canada in the *Haida, Taku River* and *Mikisew Cree* decisions.

The duty to consult is based upon the honour of the Crown, which requires that the Crown consult with and, if required, accommodate the interests of Aboriginal peoples when the Crown has knowledge of the potential existence of an Aboriginal or treaty right and contemplates decisions or actions that might adversely affect it.

The scope of the duty is proportionate to a preliminary assessment of the strength of the asserted Aboriginal or treaty right and the seriousness of the potentially adverse effect upon it.

Q: Does the duty to consult apply in PEI? Who has the responsibility to consult?

A: Yes, the duty to consult and, where appropriate, accommodate First Nations is a legal duty that rests with the federal and/or provincial government(s) (the Crown). Decision makers in each department have the responsibility to consult with the Mi’kmaq if a decision or action may adversely affect a treaty right or an asserted or proven Aboriginal right of the Mi’kmaq.
PEI Aboriginal Affairs Secretariat

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Q: Does the provincial government have a policy on duty to consult? Who do I contact with questions on duty to consult?

A: Yes. In 2009 Executive Council approved the *Provincial Policy on Consultation with the Mi’kmaq*.

If you have any questions about the duty to consult or the provincial policy, you may contact PEI Aboriginal Affairs Secretariat. Legal questions on the duty to consult should be directed to your departmental solicitor.

Q: What is the role of the Aboriginal Affairs Secretariat in the consultation process?

A: The Aboriginal Affairs Secretariat provides general advice and guidance to provincial government departments and occasionally acts as a liaison between government and First Nations, throughout the duty to consult process. Information on archaeological sites, protocols and traditional Mi’kmaq use can be obtained from the Secretariat, as well as contact information.

Q: When is the provincial government required to consult the Mi’kmaq? Does it apply to me?

A: The provincial government has a duty to consult in a meaningful way with the Mi’kmaq when a proposed provincial decision or action may adversely affect a treaty right, or an asserted or proven Aboriginal right, of the Mi’kmaq. As an employee of the provincial government, you may be required to consult the Mi’kmaq during a decision making process if the proposed decision may affect the Mi’kmaq people of the province.
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Q: How do I know who to consult with?

A: The government of PEI consults with the Mi’kmaq of PEI, as they are the only indigenous Aboriginal group in the province. Under the federal Indian Act, the Mi’kmaq of PEI are represented by the Lennox Island and Abegweit First Nations.

Consultation with the two First Nation communities is conducted through the Mi’kmaq Confederacy of PEI (MCPEI), a tribal council organization that represents both Lennox Island and Abegweit. MCPEI has offices in Summerside and Charlottetown.

If you have questions about First Nations’ interests or concerns or would like to notify the First Nations about an upcoming decision or action, you may contact the Mi’kmaq Consultation Unit, which is housed at MCPEI’s Charlottetown office.

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Q: Why does the Aboriginal Affairs Secretariat refer to archaeological impact assessments when I inquire about the duty to consult?

A: According to Section 5 (3) of the Archaeology Act, where the Minister believes that any person is engaged in any activity that the Minister considers is likely to result in damage to, or destruction of, any
archaeological site, the Minister may order the person to provide the Minister with an archaeological impact statement. The First Nations may also request archaeological impact assessments on sites that are of traditional significance to the Mi’kmaq.

Prince Edward Island also has an Environmental Impact Assessment (EIA) process for projects that could have an impact on the environment. Any undertaking which could have a significant effect on the environment must be submitted in proposal form to the PEI Department of Environment, Energy and Forestry. At this point, the department will decide whether an EIA is warranted, and potential interests of the First Nations must be considered in the decision making process.

**Q:** *Can I take training on duty to consult?*

**A:** The Aboriginal Affairs Secretariat in partnership with the Mi’kmaq Confederacy of PEI is working with the Public Service Commission and Ceridian Learning to transform the current Lunch’N’Learn presentation series into a cross-cultural training course which will include a unit on duty to consult. On request, the Secretariat also conducts divisional sessions to answer department-specific questions and – usually with First Nations input - assist in developing efficient and effective processes.

**Q:** *Who do I contact for more information?*

**A:** The Aboriginal Affairs Secretariat office within Executive Council is available to answer questions on the provincial duty to consult policy. You may contact our office at (902) 368-6583.
Additional Resources


*Government of Prince Edward Island Provincial Policy on Consultation with the Mi’kmaq.*

*The Crown’s Duty to Consult Aboriginal People.* Thomas Isaac and Anthony Knox. 2003


*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage),* Supreme Court of Canada, 2005.