



Municipal and Indigenous Relationships ~ Striving for Success and Mutual Understandings

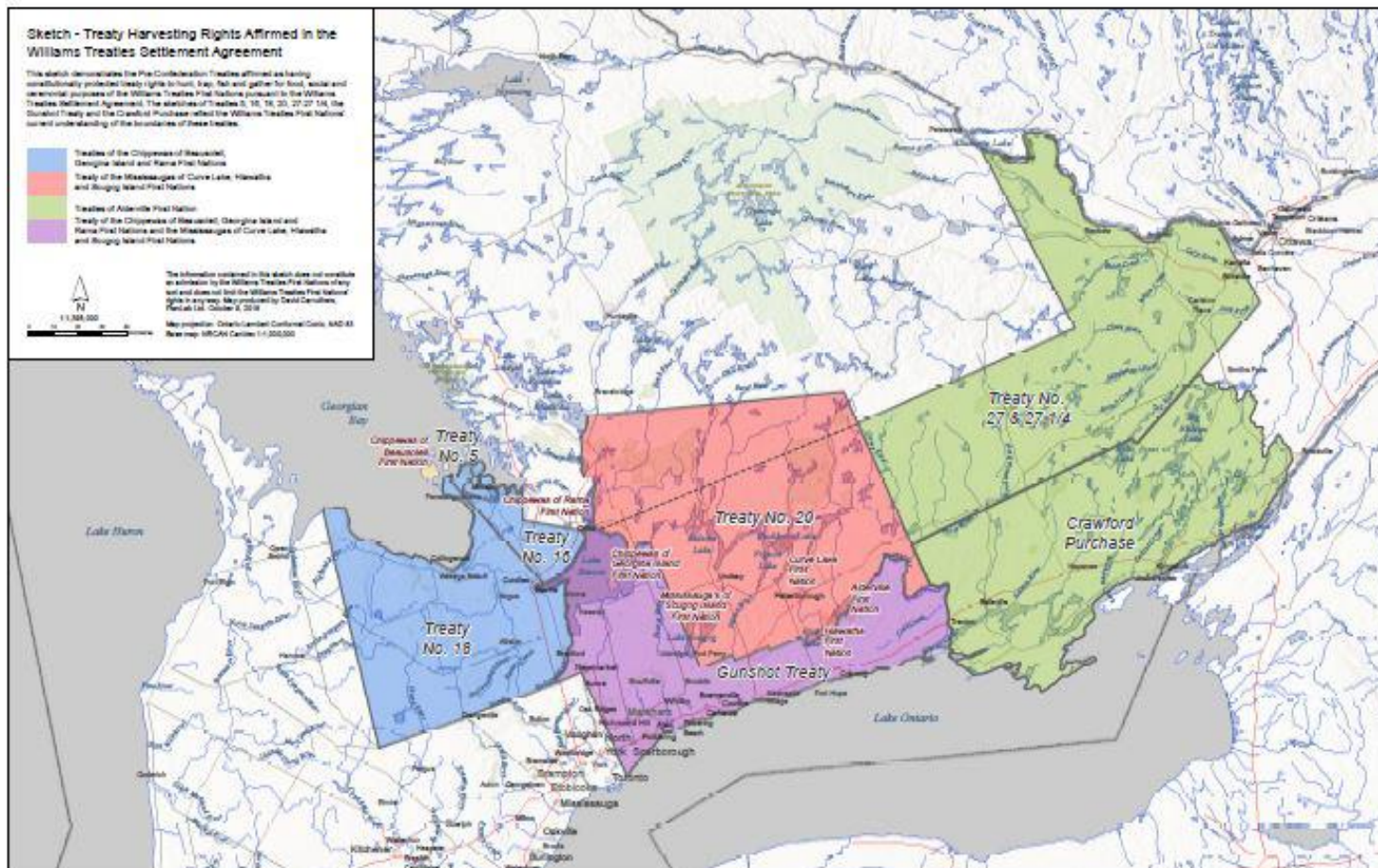
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Aboriginal and

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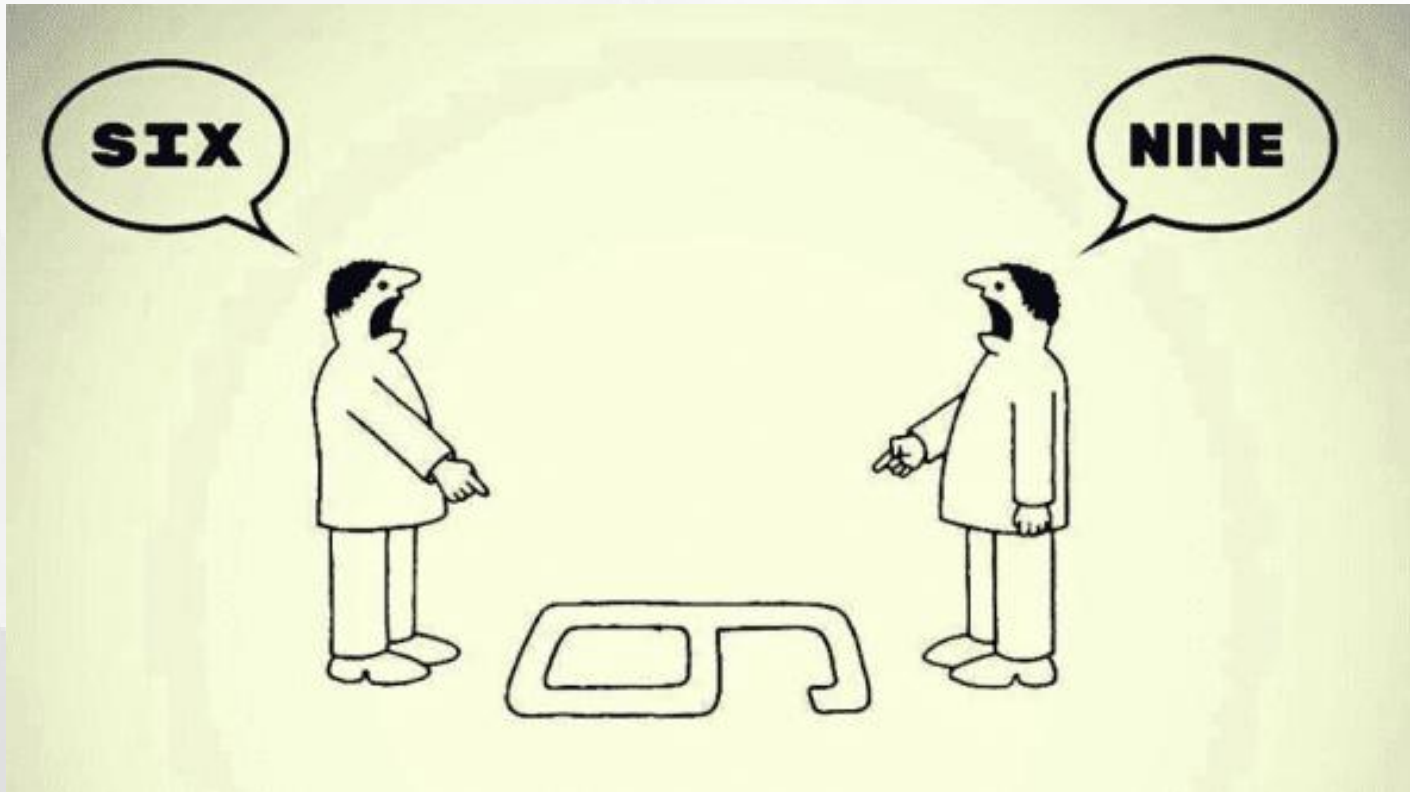
Outline For Today



- Before we begin, We collectively would like to acknowledge that we are gathered on the territory of the Anishinabae peoples, primarily the Chippewa and Michi Saagiig Nations.
- I would like to invite you to join us in a smudge or come learn about it after our presentation.
- So what we are going to talk about today:
 - Indigenous Perspectives
 - Municipal Perspectives
 - The Questions that always arise
 - Truth and Reconciliation and where do municipalities fit in
 - Open Panel Discussion
 - Working together to call the Government to task
 - Tips moving forward



Perspectives



Indigenous Perspectives



It is funny, both the federal and provincial governments say, you must work with Indigenous Peoples and more than often delegate the “Duty to Consult (DTC)” to a proponent.

But typically,

- The government may not have the “right” or “best” individuals to help you with this work,
- Truly not have a full understanding themselves of what DTC is,
- May not provide you (the proponent) with the right communities to contact,
- And most importantly they don’t tell you exactly when to do it.

- More often, governments fail to understand the complexity and diversity in the Indigenous community.
 - Tend to forget about the urban Indigenous community!
 - Tend to believe that there is only one “type” of Indigenous community and
 - Truly does not understand when they ask for a Indigenous community comment, the implications of inviting the wrong community outside of their territory!



Municipal Perspectives



- Want to do the right thing but do not know how to go about it.
- Look to the provincial and federal regulators for expertise and guidance.



My Perspective: Creating an Effective Relationship with First Nations



- It always comes down to two things:
 - Language
 - People
- If:
 - **both parties** know and respect each other as people and;
 - **both parties** know how to communicate effectively with each other

REMEMBER: First Nations are like anyone else, we are people too.

Questions that always arise



- Where does the DTC apply?
- What thresholds or municipal activities trigger the Duty?
- Does the Duty apply to privately-owned lands?
- How much consultation is needed to satisfy the Duty?
- Is Indigenous agreement required to move forward with a project that is in the greater public interest?
- Can a rights-bearing community say no to a municipal proposal?
- Can a First Nation charge a municipality to finance Indigenous participation in DTC proceedings?
- Who pays? Isn't the Crown responsible for this cost?

The Challenge



- The Duty to Consult refers to a Crown obligation to consult with and accommodate concerns from rights-bearing Indigenous communities when the Crown contemplates action that could adversely impact existing or asserted Aboriginal and Treaty Rights.
- Municipal governments lack the practical resources to consult and accommodate. Such governments ...range greatly in size and tax-base, and are generally concerned with the regulation of privately-owned land and activities thereon.

- Municipal governments may be asked (will be delegated 😊) by the Province to carry out Duty to Consult processes on Ontario's behalf. Ontario remains legally (and financially) responsible for making sure the Duty is met and on what basis.
- Municipal governments have an interest in participating in DTC proceedings where municipal business is at stake. It is also the neighborly thing to do.

Truth and Reconciliation and Municipalities



- ‘Reconciliation’ is challenging to define. Processes of rebuilding nation-to-nation relations in accordance with Aboriginal and Treaty Rights and efforts to pursue reparations (e.g. amends + damages) for past wrongs are often referred to as reconciliation.
- It involves working together based on mutual understanding and respect. It is not a one way street.

- Indigenous peoples are seeking justice, respect, self-determination, and a better life for their children and future generations. Environmental stewardship is a key priority for many groups.
- Colonization, and subsequent government policies/legislation, has resulted in a loss of political, economic, social and cultural autonomy, leading to pervasive and oppressive social and economic conditions within Indigenous communities.
- Today, Indigenous peoples are seeking to overcome these conditions by strengthening Indigenous nationhood, rebuilding healthy communities and reclaiming their Aboriginal and Treaty Rights.

Complication and Dynamics of Reconciliation!

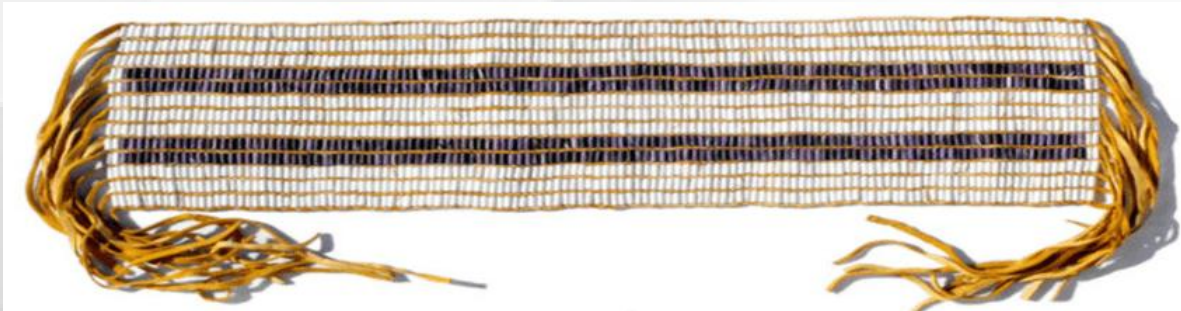


- Constitutional recognition of Aboriginal and Treaty rights were codified in Section 35 of the Constitution Act in 1982.
- The Supreme Court of Canada has interpreted s. 35 of the Constitution Act as providing the legal basis for the reconciliation in Canada needed to resolve claims, address inequities, redress harms and rebuild nation-to-nation relations.
- The term “reconciliation” as employed by the Supreme Court of Canada implies the existence of two sets of interests –those stemming from s. 35 rights and those stemming from other societal rights and interests.
- However the challenge remains that this is left out of policy or there is confusion on how to implement it.

Indigenous Views on Reconciliation



- Self-government is necessary for the exercise of already acknowledged Indigenous rights.
- The Two Row Wampum symbolizes the of Indigenous rights –two nations on parallel paths, neither interfering with the other’s internal affairs. It dates back to the early seventeenth century, and was allegedly adopted by the Crown in the mid-17th century and confirmed by the Treaty of Niagara in 1764.



Did you know? To further complicate things!



LAND CLAIMS AND TREATY IMPLEMENTATION

- Some aspects of land claim and treaty implementation negotiations between the Crown and rights-bearing Indigenous communities may impact municipal governments.

For example:

- Transfer of lands within a municipality to a FN;
- Potential impacts on municipal revenues/the property tax base if lands are found to have Aboriginal Title;
- Municipal land use planning jurisdiction, etc.



How would a Municipality Implement this?

- PPS (which is under revision) uses terms like “consider or encourage.”
- Municipalities must remember that their municipality sits on top of our territories

Serving Indigenous residents

- Further to provincial requirements, municipal governments also have an interest in promoting reconciliation due to the prevalence of Indigenous residents within their jurisdiction.
- More than 85% of Ontario’s Indigenous peoples live off-reserve and in urban or rural centers.
- Some municipalities are increasingly becoming home to large concentrations of Indigenous peoples.
- Other municipalities serve as hub regions to which Indigenous peoples from nearby communities travel to obtain services.
- Municipal residents of Indigenous heritage contribute to economic development and local cultural vitality.

- The Truth and Reconciliation Commission of Canada (TRC) was created in 2008 to explore the impact of the Residential School System on Canada's Indigenous peoples.
- In 2015, the TRC issued 94 Calls to Action to “redress the legacy of residential schools and advance the process of Canadian reconciliation.”
- Of these 94 calls to action, 5 specifically refer to municipal government.

Call#



- # 43. “We call upon federal, provincial, territorial and municipal governments to **fully adopt and implement the UNDRIP as the framework for reconciliation.**”
- # 47. “We call upon federal, provincial, territorial and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and terra nullius, and to reform those laws, government policies and litigation strategies that continue to rely on such concepts.”

- # 57. “We call upon federal, provincial, territorial and municipal governments **to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the UNDRIP, treaties and aboriginal rights, Indigenous law and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.**”



- #75. “We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential schools students, and current landowners **to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance commemoration and protection of residential school cemeteries or other sites at which residential school children were buried.** This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.”



- #77. “We call upon provincial, territorial, municipal and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation.”

James A. Gifford Causeway Project



James A. Gifford Causeway Project

Original Floating Bridge



21 JUNE 1948



James A. Gifford Causeway Project



James A. Gifford Causeway Project



James A. Gifford Causeway Project

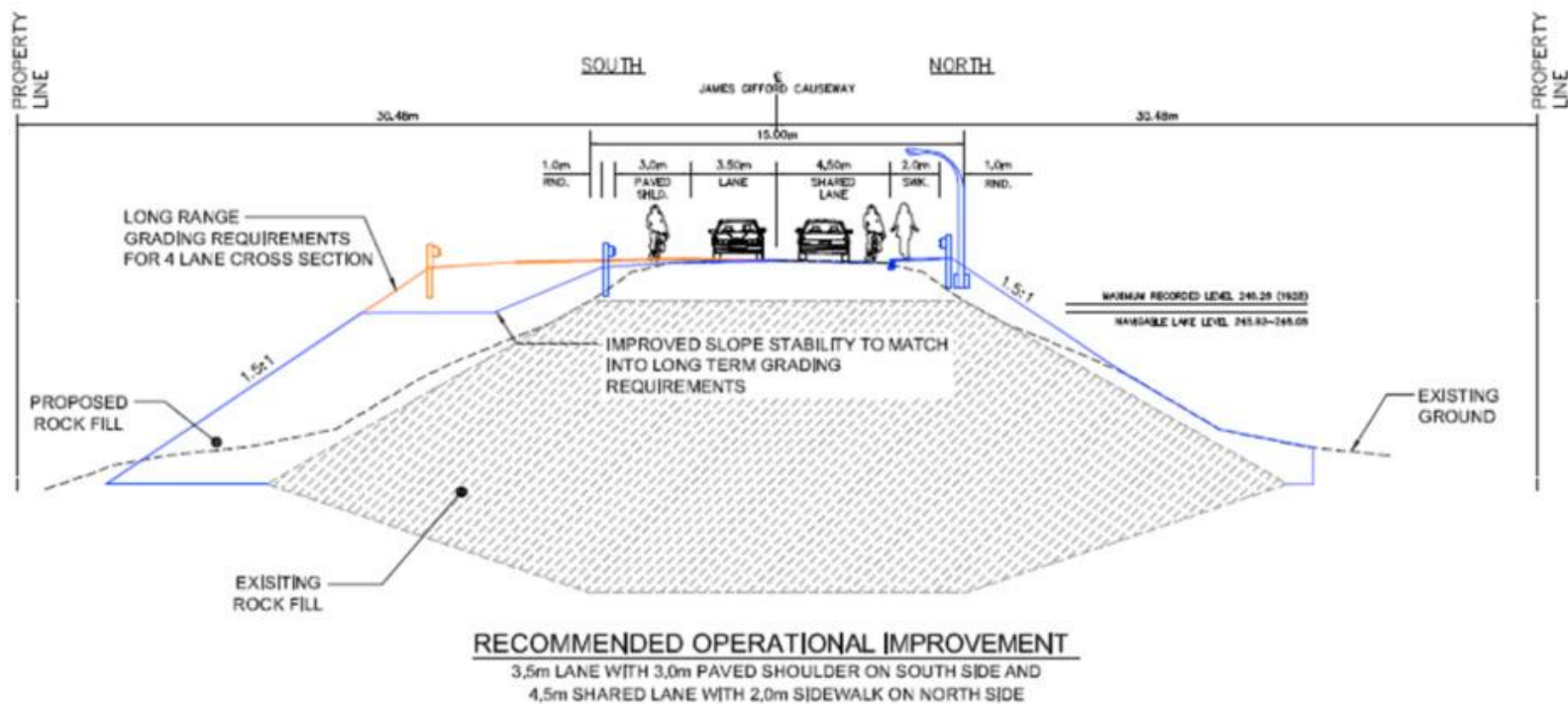


James A. Gifford Causeway Project

Project Overview



- Municipal Class Environmental Assessment (MCEA) commenced in 2011 as a schedule “C” project
- Received Provincial MCEA approval in 2016



James A. Gifford Causeway Project

Project Overview



- In 2017, the County commenced the DFO permit application process
- A Request for Tender was issued by Peterborough County with the intent of commencing the construction phase in 2018
- In late 2018, DFO delegated the Federal Duty to Consult process to the County as part of the permit application process
- This required enhancing the local Municipal-Indigenous relationship
- In early Fall of 2019, the County received a DFO Fisheries Act Authorization for this project

Common Challenges in Developing Strong Municipal-Indigenous Relationships



- Institutions
- Resources
- External Intervention
- Past History
- Imperative/Timelines
- Cultural Knowledge

Definition: The rules and norms that govern decision making process

- Executive Autonomy
 - Amount of actors requiring to be involved can slow the process
 - Can staff commit to decisions/cooperation (e.g. Is Municipal or Band Council approval required). This barrier can cause frustration if not equal for both parties.
 - Steps/process for decision making can vary. Where more steps exist (e.g. sub-committee review), the additional time required to complete such can test the patience of the speedier actor

Resources



- Typically there are limited resources for both Local Municipalities and First Nations.
- Some of these limited resources can include:
 - Financial resources
 - Time
 - Expertise
 - Staffing, and
 - Infrastructure



External Intervention



- Federal and Provincial governments in Canada can have influence on relations between Municipal and Indigenous governments
 - Often delegation of the Duty to Consult process to the local municipality without providing any funding or assistance on the process
 - Past history or polarizing events can have negative impact
 - Passing of new legislation

Imperative



Definition: The urgency of the need for a collaborative solution to solve a shared problem

- When stakes are high for all parties involved, it is more common that collective action will occur; however, when only high for one party, the willingness to come together can be less likely

Cultural Knowledge



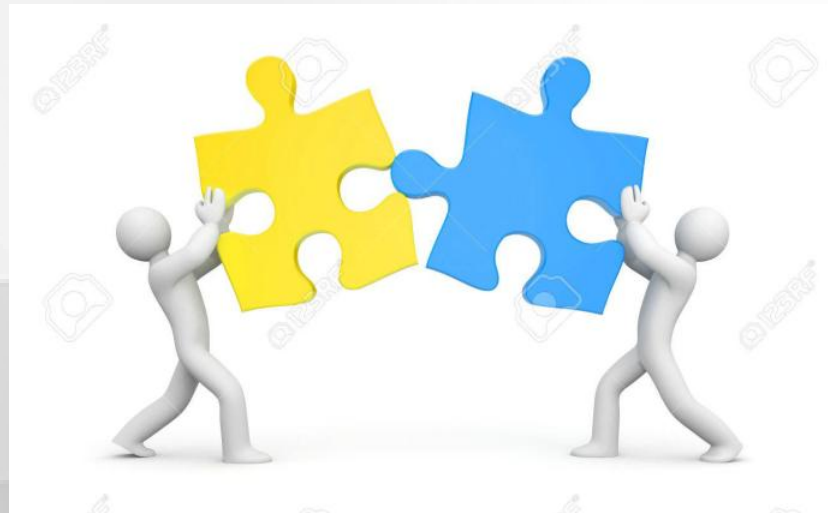
- A lack of knowledge on the cultures of all parties involved can have a negative impact
 - Typically Municipal staff do not have a comprehensive understanding of different Indigenous cultures (cultural diversity)



Lessons Learned



- Obstacles/challenges for Municipal-Indigenous relationships can be overcome
- Early engagement
- Continue to develop and enhance Municipal-Indigenous relationships



Please Pass the Problem



- So now we are going to open it up to the floor.

We are going to take a few moments and talk about problems you had, anticipate to have, or are currently having in your engagement/consultation efforts.

- So ANY Volunteers who like to share?
- What do you acknowledge, the Traditional Territory or Territory of the First Nation?
- Easy question, who can tell me the difference between *engagement* and *consultation*?

- When does the legislation you work in tell you to engage with the Indigenous community?
 - What are the challenges around that?
 - What is the intent or purpose of your engagement effort?
 - Does your project allow for the proper integration of Traditional Knowledge?

Who can tell me

1. What is defined as enough engagement?
2. Then what is ACCOMADATION?
 - Can the crown assign accommodation?

Provincial and Federal Governments Put to Task!



- Clarify responsibility for the Duty to Consult and the Duty to Accommodate recognizing its constitutional Crown obligations
- Promote Municipal-Indigenous relationship-building and local cooperation
- Provide necessary funding, resources, guidance and supports in DTC proceedings that involve municipal governments
- Involve and educate municipal governments in land claim and treaty implementation scenarios where these processes impact municipal governments. ~This point is critical since most “Canadians have no education on the contractual agreement (Treaty) that allows them to occupy and operate in Canada.

Just some thought to leave you with



- Get to know First Nation, Métis and other Indigenous communities living near or within your municipality as part of continuous municipal practice, including their leaders and staff.
- Do your research to understand the history of the land in your area, including treaties and Indigenous histories.
- Develop good working relationships with Indigenous communities, political organizations and service providers located near or within your municipality to be able to productively deal with issues together as they arise.
- Take your time: trust and building good relationships should not be rushed.

- Introduce yourself: Indigenous leaders and service providers will want to get to know who you are.
- Send neighboring First Nations notice of municipal consultations –ask what type of processes they would like to be notified about and ask how they would like to participate in existing statutory municipal consultation processes.
- Identify pathways to reach out to Indigenous community members to obtain their perspectives and feedback.



Miigwetch! Questions?



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