Most provincial Crowns deploy Sec. 35 consultation on the lower end of the spectrum (ex. 45 days' notice, usually after a mega decision has been made by them, municipalities, or industry) – in Manitoba this is the norm. "Mere" consultation vs. "Meaningful" consultation

- This is a common complaint. The Courts have said that the level of consultation required depends on the strength of an asserted claim to rights or to land title, and on the extent to which the proposed decision or activity will potentially harm those existing or asserted rights. Unfortunately, in Canadian Law, the burden rests on Aboriginal peoples to prove that their rights exist. This takes an enormous amount of capacity, time and effort on behalf of the First Nation. The pattern exhibited in court cases seems to show that the Crown often can be biased in their strength of claim analyses – they assume that Indigenous peoples do not have strong claims to rights or title to land, thus skewing consultation activities towards the lower end of the spectrum. The reasons for this bias are complex and deeply rooted in colonial thinking. It will be interesting to see how the Courts interpret the Duty to Consult considering Canada's adoption of the United Nations Declaration on the Rights of Indigenous People (UNDRIP), and in particular the principle of Free, Prior and Informed Consent.

- If you find that your First Nation has been placed on the lower end of the spectrum and you have concerns with how the proposed project may affect your Community, I suggest getting more involved in engagement events. Often times it is the squeaky wheel that gets the grease and even though your Community may be identified on the Crown's spectrum as being owed less consultation (whether that's fair or not), through actively engaging the proponent First Nations can be consulted based on their identified issues / concerns and not just on the spectrum of consultation as identified.

- Other options include:

    - Does your First Nation have a written "Declaration" or statement which outlines your territorial claims? If so, consider sharing that statement with gov't and industry officials so they are on notice that meaningful consultation on any decisions that have the potential to impact your rights is required.
    - Develop and share a consultation protocols or guidance document.
    - Other efforts including entering negotiations or litigating are costly and time consuming and can take away from your ability to implement your own Land Code Governance. If you are having troubles responding to consultation and implementing your Land Code governance, please let us know.

Historical and traditional sites should be part of the consultation process.

- There is some case law on the right to traditional sites.
- Canada lacks comprehensive legislation that protects historical and traditional sites – also referred to as cultural heritage sites. One of the challenges is due to the separation of Federal and Provincial powers in Canada's Constitution. While "Indians and lands reserved for the Indians" are a distinct Federal responsibility, the sale of public lands belonging to the Province (where many cultural heritage sites reside) is a Provincial responsibility. While Canada has some Federal legislation (e.g. the *Historic Sites and Monuments Act*), most heritage protection legislation is enacted by the provinces and territories. For example, the BC Heritage Conservation Act provides that the duty to consult is triggered when sites are being considered for designation as a heritage site under the Act. Although the Act require permits for archaeological investigations or alterations of a designated heritage site, consultation is not required for these permits under the Act, but may be initiated according to Provincial policy or in fulfillment of agreements made with individual First Nations. A major gap in Canadian Aboriginal Law exists with respect to heritage sites that exist on privately held land, which have little to no protection.

Saskatchewan and Manitoba have similar Provincial Government Consultation Policies. The limitation is that the provinces will only accept the Duty to Consult if the project is on unoccupied Crown lands.

- The issue of Aboriginal rights on private property is the "elephant in the room" in Canadian Aboriginal Law, and one in which the Supreme Court of Canada has yet to significantly weigh in on. However, in *Hupacasath v. British Columbia (Minister of Forests)*, the BC Supreme Court determined that "the Crown's honour does not exist only when the Crown is a land-owner. The Crown's honour can be implicated in...decision-making affecting private land" (paragraph 199). Until the Supreme Court of Canada weighs in, the inconsistent approach across Canada when dealing with Aboriginal rights on private land is likely to continue.

Municipalities gauge on "risk" is so skewed… engage early to help the project along, otherwise last-minute engagement will stall projects- they're so slow in recognizing us as stakeholders and partners.

- There is no clarity in Canadian Law on whether, or to what extent Municipalities have the Duty to Consult. However, it is clear that when an Aboriginal right is being impacted, Aboriginal people deserve the right to be consulted by *someone.* The legal duty of consultation rests with the Crown, and municipalities are creations of the Crown. The B.C. Court of Appeals in *Neskonlith Indian Band v. Salmon Arm* found that municipalities in B.C. lack the authority and practical resources necessary to carry out consultation. Relations between Indigenous people and municipalities across Canada face pressure over the lack of guidance in Federal and Provincial Law over whether and how municipalities should consult with Indigenous people.
- The RC can help provide resources when First Nations and their neighbouring municipalities are looking to consult one other or work together on projects of shared interest (e.g. have conversations beyond only when the municipality needs to consult First Nations legally).

Our First Nations are as entrepreneurial as anyone. So, when it comes to consultation and engagement, our nations should be engaged at the concept/idea stage of a project from proponents/governments. Not just when all financing, partnership options are limited by proponents/govts BEFORE consultation begins. At the end of the day, our Nations know the value of their lands and waters.

- The concept of Free, Prior and Informed Consent as outlined in UNDRIP should provide guidance to the Crown and to Proponents when conducting consultation. Specifically, *Prior* means that consultation should occur at the earliest possible stage, sufficiently in advance of any authorization or commencement of activities, and implies that time is provided to understand, access and analyze information before any activities take place.

Our Nation has started our own Land Referral Portal, where all consultations are supposed to be input by the proponent; so that it has to be sent in our specific format, rather than "their" format. I am not sure if it is up and running yet but can find out. This way, they match our timelines, and it can be put on our map layers where we need it.

- We have a portal too, here is a link for information on it https://thestsa.ca/stsa-operations/prro/stolo-connect/.

Q: Consultation with band councils vs traditional governments?

- This is an important question which should be determined internally by a First Nation as it rebuilds its governance and moves away from the *Indian Act*. Recent events publicized in the media, including the Wet'suwet'en blockades, illustrate that Crown consultation is not an effective mechanism to deal with these kinds of internal tensions and conflicts, and can in fact exacerbate or make those tensions worse in a community. Communities need the resources and support to determine what consent means for them, and what kind of process can help them determine if consent can be granted, withheld or withdrawn.

A LOT of the time provincial notices are 11th hour, and lack information, forcing First Nations to react vs being proactive on the front end of a decision....take time to request the information they have, take time to make sense of it, this is logical for a First Nation to gather info and make sense of it (as step 1 & 2)...ex. Provinces have extensive broad data on minerology, and longer term economic plans, but will bait First Nations into site specific approach of engagement at the 11th hour

- The Crown has repeatedly failed in the Duty to Consult, as multiple court cases demonstrate. Governments tend to apply a very narrow interpretation of court cases, the principles of the Duty to Consult, and the rights and interests of Indigenous peoples, while applying very broad interpretations of their own authorities and the interests of their constituents. Hopefully the principle of Free, Prior and Informed Consent (FPIC) will gain traction in Canadian Law and Crown governments will understand the benefit of building consensus, collaborating with First Nations and recognizing their rights. Consultation processes are often very complex and require a lot of information sharing – the establishment of online portals to serve as a vehicle for this information sharing have helped improve consultation processes.

30 % no and 30 % not sure about consultation process should be a topic for a future webinar I think ...it is a critically important topic has been very helpful to us.

- Thank you for the suggestion - we hope to host future discussions and offer additional resources around consultation. Stay tuned!

Some companies would say sending a letter or even calling the office as a part of consultation.

- Ideally, companies are reaching out in the hopes of improving or establishing genuine relationships with First Nations, and not simply out of an obligation to fulfill the "procedural aspects" of consultation on behalf of the Crown. The Courts have interpreted the Duty to Consult as existing on a spectrum (that is, the level of consultation required depends on the strength of an asserted claim to rights or to land title, and on the extent to which the proposed decision or activity will potentially harm those existing or asserted rights). However, First Nations may not agree with this interpretation. Another important principle from the Courts is that an Aboriginal right does not have to be proven for the Duty to Consult to be triggered – note this does not necessarily prevent the First Nations interests' from being impacted, but it could position a First Nation to negotiate accommodation measures.

- In order to clearly identify to the proponent what consultation looks like for your Community I suggest providing a Consultation Protocol document which can outline your First Nation's expectations when it comes to being consulted. Here you can note how many times the proponent must contact you and what method works best (e.g. call, email, in-person, Community Meeting, C&C meeting, Lands Committee meeting, etc.). I do know that some proponents consider calling 3 times and sending an email as a sufficient level of effort to start conversations with Communities.

Q: If you have a high volume of consultation requests, how do you prioritize which requests to respond to?

- we decide which projects, changes to acts or species management protocols apply or greatly affect our lands, resources, ongoing projects, waterways and so on.

- Generally, prioritize referrals in close proximity to the Nation's reserve and those with the greatest potential impact on community interests.

If anyone is interested to chat about the consultation process relating to our EA Law, my email is consultation@dokis.ca

- Thank you for offering your support, Adam Wright with the Resource Centre will follow up as he would like to learn more about your approach to consultation relating to EA law.

Q: How do you differentiate between consultation and engagement, and how does consultation and engagement interact?"

- On the differences between consultation and engagement, I think most would say that consultation is a formal, on the record approach based on legal obligations to do so. Consultation is an example of engagement, but engagement is broader and can occur even with no legal obligation to do so. So, sometimes the federal, provincial, and territorial governments will say they are not consulting but just engaging without any duty to do so.

- consultation starts when both parties meet face to face regarding the project, they can say they engaged the first nation with a letter of the proposed project.

- Also, on engagement, we have for today's purposes tended to characterize the discussions that take place internally within a land code First Nation as engagement. Chief and Council, the Lands Committee, and lands offices may have all sorts of reasons for wanting engagement with community members, such as education, raising awareness, building community support, buy-in from community members, and encouraging compliance with requirements of new First Nation laws. In some cases, you may have provisions of your land code which require community meetings or community votes to approve. I have not heard of this being called "consultation" but probably 0K to call it engagement with community members under the land code.

Matsqui is very proud even our Elders are logging into go-to meetings and participating for the last 7 months. We just set them up with all the apps and more for ease.

If anyone is interested in learning more about online engagement platforms, please email stephen.mcglenn@labrc.com or adam.wright@labrc.com

With respect to the privacy act/antispam, the membership are stakeholders and with a vested interest that the lands dept. Hold a trust relationship over and a responsibility to communicate the lands business to our stakeholders and with that view the anti-spam legislation doesn't apply in our humble opinion.

TLU studies are important for First Nations with the consultation process, the backbone of Traditional lands.

- Yes. Unfortunately, while governments speak of "rights recognition," the burden of proof on Aboriginal peoples to "prove" their rights in Court has been and remains very high. Traditional Use Studies have become a powerful tool for First Nations in consultations, in negotiations and in Court, to document and translate the millennia of their life and culture on the land, and their rich oral histories into powerful maps, interviews, testimonies, reports, studies, etc. The historic Tsilhqot'in Case (2014), where the Supreme Court of Canada recognized Aboriginal Title for the first time, required tremendous effort on the part of the Tsilqoht'in people to demonstrate their Title in court. This is a powerful example of how traditional use studies can be instrumental in land claims.

- Traditional Knowledge can also play a powerful role in Land Code governance. Some examples include: mapping and protecting cultural heritage sites on-reserve land; documenting your community's living and oral history; and establishing a role for traditional knowledge and knowledge keepers in your own environmental assessment and other planning processes. More importantly, traditional knowledge studies are an opportunity to document and celebrate First Nation culture, and with intention can help to bring a community together in an inclusive, safe, accessible and healing process.

- If you are interested in learning more about Traditional Knowledge, discussing its' importance and role in your community's lands governance planning, or would like support in designing a traditional knowledge study, please contact Zara Contin, our Traditional Knowledge Specialist at zara.contin@labrc.com

I feel with constant change in offices is an Issue.

- Turnover amongst government and industry is so common - another reason for keeping a good long-term record of what has (and hasn't happened) so far in consultations.