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Corporate Services  
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**DIAND's  
Consultation Practices:  
Departmental Overview**

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## Preamble

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This report describes how DIAND has carried out a major commitment to consult with the constituencies it serves; using 1995-1996 as a base year as consultation became a higher priority for the department. Aboriginal and Northern peoples and the Government of Canada have put a priority on forging a new relationship and since the resulting partnership has become a way of doing business, this report is to some extent caught in a time warp.

However, it demonstrates that the department has undertaken a myriad of activities to meet this priority, and shows from the departmental perspective, how this occurred.

The department has not adopted a national policy, single definition or set of department-wide principles on consultation. Rather, new approaches are appearing, mainly in regions, where relationships between governments and communities are evolving to accommodate the transition to self-government.

This report identifies many departmental activities in recent years and develops some models which provide a starting point to understand the consultative process and to generate discussion with our partners about DIAND's approach to building a new relationship with First Nations, Inuit and Northerners.

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# Acronyms

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AES -	Arctic Environmental Strategy
AFN -	Assembly of First Nations
AROP -	Aboriginal Representative Organization Program
CAP -	Congress of Aboriginal Peoples
CCMD -	Canadian Centre for Management Development
CWT -	Consultation Work Team
CYFN -	Council of Yukon First Nations
C & PD -	Consultation and Policy Development
DAEB -	Departmental Audit and Evaluation Branch
DAEC -	Departmental Audit and Evaluation Committee
DAP -	Developmental Assessment Process
DIAND -	Department of Indian Affairs and Northern Development
EMS -	Expenditure Management System
FMS -	Financial Management System
FSO -	Funding Service Officer
IAD -	Intergovernmental Affairs Directorate
ITC -	Inuit Tapirisat of Canada
MNC -	Metis National Council
NAFC -	National Association of Friendship Centres
NCC -	Native Council of Canada
NWAC -	Native Women's Association of Canada
O&M -	Operations and Maintenance
PTO -	Provincial / Territorial Organizations
RCM -	Responsibility Centre Manager
RDG -	Regional Director General
SPPD -	Strategic Planning & Policy Direction
VCC -	Vote Control Code

# Executive Summary

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This report is an overview of the Department of Indian Affairs and Northern Development consultation practices, and presents a general description of consultative activity undertaken mainly in 1995-1996. This overview was originally intended to serve as the first phase of an evaluation which would then be undertaken jointly with First Nations, Inuit and Northerners. The second phase has been superseded as the department has rethought its relationships and partnerships that have become the accepted way of doing business as promised in “*Gathering Strength*”. However, this report serves as an important information base which supports the continued building of new partnerships.

The principal topics covered in this report are the following:

- the nature of consultation activity carried out across the department;
- the clarity and consistency of departmental objectives and their relationship to overall government objectives; and
- best practices and possible alternatives.

In addition, this overview develops a lexicon of consultation terms and concepts; and identifies lessons learned and best practices from other government departments as a basis for future considerations.

The review of departmental consultation practices involved identification of some recent departmental activities through a combination of over one hundred interviews, reviews of the literature and other documents. In addition, interviews were conducted with representatives from eleven other federal departments who have major consultation roles to identify what else is happening across government.

The findings indicate that there are substantial consultation activities occurring at all levels in the department for different purposes. Consultation as a means of establishing a dialogue or forum for discussion with our partners, has become an expected way of doing business among departmental officials, and thus is regarded among managers as a sound management practice as opposed to a program in its own right. The value of these efforts relates to the extent to which the initiatives they support achieve desired objectives.

About \$3.8 M was allocated directly to consultation in 1995-1996. Many officials believe this to be a conservative estimate of the department-wide investment in consultation and consultation-like activities. However, consultation components are often an implicit factor of the many and often multi-year initiatives across the department, and as such it is difficult to summarize.

In regions, new organizations representing First Nations, such as the Atlantic Policy Congress and the Alberta Summit are emerging with whom regional officials are establishing working relationships. These relationships seem to be very much in keeping with senior direction to strengthen partnerships expressed in the current DIAND Framework for Action plan, and the new direction expressed in “*Gathering Strength*”, yet there is no explicit departmental policy or directive which guides consultation. One advantage of this approach has been the development of flexible strategies in the various regions and sectors to meet diverse needs. A disadvantage has been the lack of a consistent set of principles and the sharing of best practices across the department.

There is a high profile in government on public consultation - in 1997-1998, the Institute on Governance hosted a senior round table of discussions on citizen participation in public policy making; Environment Canada has developed a new and much admired consultation policy with a special Aboriginal component; the Privy Council Office in 1997-1998 hosted an Interdepartmental Discussion meeting on First Nations consultations where DIAND was asked for ideas and models of how to consult.

This overview also proposes a classification of consultation activities by purpose- ie. devolution, policy, new strategies, fact finding, corporate, and ad hoc/problem solving. There is also consideration of some distinct approaches as beginning models; for example, the “blank-page approach”, government-led initiatives, negotiation, partnership, and information-sharing. The level of openness and lack of restriction have to do with such factors as statutory obligations, pre-existing conditions, needs of participants and so on.

The results of this overview reflect the widespread nature of consultative efforts at DIAND. While no recommendations are made in this report, the information presented should assist departmental officials in the design of future consultative and partnership development efforts.

### **Purpose of the Report**

This report summarizes the findings of an overview study which was intended to serve as the starting point for an evaluation of DIAND consultation practices in 1995-1996. It focusses on describing departmental consultation activities, including highlights for those of other departments, for consultations with First Nations, Inuit and Northerners. The intended evaluation has been deferred in view of major new partnership initiatives.

### **Need for the Overview**

Consultation is an area of increasing importance in how government interacts with its citizens, and significant activity is occurring across departments to implement consultative policies and refine current practices. DIAND is seen by other departments as a leader in using various consultative approaches with First Nations, Inuit and Northern Peoples to achieve devolution and self-government objectives, most recently expressed in the department's framework for action.

Nevertheless, there is much confusion about the meaning and implementation of consultation among various participants involved. In the past, DIAND was perceived as not acting in good faith in its approach to consultation, and despite increased emphasis on openness and joint undertakings in recent years, this perception may continue to some degree. Consequently, prior to launching a significant study of consultation practices of the department, the Departmental Audit and Evaluation Branch undertook to develop a clear understanding of how the term is used within the department, the scope of activities undertaken under the consultation rubric, the lessons to be learned from best practices, and greater precision on the issues.

## Section 2 - Issues and Approach

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### Approach

Initially, this project was to be an evaluation of the Departmental Consultation practices to be conducted in two phases. Phase I was to identify the nature and scope of consultation activity as well as examine the underlying rationale. In the absence of a formal policy or program, no departmental overview existed. It has been necessary to create one to prepare for the evaluation of effectiveness and best practices with First Nations, Inuit and Northerners.

Initially, Phase I was expected to be a brief documentary exercise. However, collecting information proved difficult and a number of efforts were made over the past year to identify, understand, categorize and document the vast and diverse range of consultation activities occurring across the department. In the end, it was impossible to fully account for all the activities although a sample of activities was reviewed. Considerable progress has been made in identifying the types of consultation initiatives and activities that take place in the regions and headquarters as well as the funding systems and resources that support them.

As a result of an executive decision regarding the development of a partnership approach, it was decided that the second phase of this study would be deferred.

### Issues

The initial evaluation Terms of Reference, approved September 25, 1995, specified five key issues to be addressed:

1. What consultation activities are carried out across the department? Are they clearly defined? Are they delivered in a consistent manner? Have they changed in the last five years?
2. Are DIAND consultation objectives clear and consistent with departmental and government policy? Are these objectives being met?
3. What departmental resources are allocated to consultation? How do they compare with other departments? Is consultation being delivered in a cost-effective manner?
4. Do First Nations support consultation as practised by DIAND? What aspects are effective from their perspective? Which are not?



5. What best practices exist as models for future consultation? Are there better ways for the department to achieve its objectives? What lessons can be learned from consultation practices of other departments?

In addition to these issues, the Departmental Audit and Evaluation Committee (DAEC) requested that the evaluation provide: a consistent lexicon related to future consultations; identify how resources are linked to the receipt of intended deliverables; and identify lessons learned from other departments' Aboriginal consultations, as well as best practices to provide guidance for future consultations.

## **Scope of the Overview**

This overview involved several research components which are summarized in this report. The state of current knowledge on the subject of consultation was investigated through a literature review, and identification of contemporary government activity. Approaches used across the department were profiled, specific cases were examined with a view to determine the elements of effective consultation models, and several attempts were made to account for resource allocation.

The evidence collected primarily responds to issues 1 through 3 and 5, since additional information was to be collected to address them in Phase II. This overview does not address the issue of cost-effectiveness, identified in issue 3, nor does it deal with the perspectives of First Nations or northerners on DIAND consultation practices.

Theoretical consultation practice from the literature including a generic model is identified. The experience of other departments is described in particular with reference to First Nations. A series of observations is presented in relation to each issue from this information.

## **Methodology**

This section describes the methodologies used to collect information . The results are presented in Section Three.

### **Literature Review and Theoretical Model**

This review identifies the main themes in the literature and provides examples of good modern practice. In particular, a generic model developed by the *Canadian Centre for Management Development* (CCMD) reflects a continuum of approaches to consultation available to public sector organizations which range from unilateral presentation to a passive audience to full partnerships and devolution of authority.

## **Consultation Activities of Other Federal Departments**

Eleven departments known to have consultation initiatives involving Aboriginal peoples were contacted regarding their activities. The departments include Heritage Canada, Environment Canada, Health Canada, Fisheries and Oceans, Justice Canada, Corrections Canada, Industry Canada, Revenue Canada, Canada Mortgage and Housing, and the Privy Council Office. Their experiences were summarized based on anecdotal reporting and available data, and may not fully represent a comprehensive picture of the various departmental positions.

## **Overview of Departmental Practices**

Regional and headquarters consultation undertakings in 1995-1996 were profiled through a combination of file reviews and over 100 interviews with various program authorities and funding service officers. A basic description of approaches to consultation was prepared for each region. These profiles are essentially a “snapshot” of the different ways departmental officials have responded to the need to consult.

## **Financial Information Gathering**

While consultation is a specific budget entity, it may be included in other budgets for various initiatives undertaken together with First Nations, Inuit and Northerners. In order to obtain ballpark estimates of this level of effort, attempts were made to identify and collect information from over one hundred departmental officials on consultation related expenditures.

In the first attempt, various regional and departmental officials were approached to identify, from their activities and initiatives, components and/or processes which they believed were consultative. The majority of responses indicated that departmental officials employed various consultation approaches in conducting business, although they had no formal or “prescribed” means of assigning costs to them.

An initial examination was also made of the department’s financial management system in 1995-1996, focussing mainly on expenditures. With the assistance of the Finance Branch and the Policy and Strategic Direction Sector, a series of data “runs” were conducted on vote control codes (VCC) which record consultation expenditures (e.g. VCC 375 captures all C&PD expenditures). Officials indicated that the results represented incomplete information on consultation expenditures.

To fill in the gaps, several individuals were asked to estimate the magnitude of consultation activities and reconcile them as much as possible with the financial management system. Although further expenditures were described for some initiatives, it is still the officials' view that these figures could still not reflect the level of effort committed and, any guesses could misrepresent what was actually happening. The prevailing view is that consultation is simply included in the department's way of doing business and as such is not measurable as a separate entity. Accordingly, rather than attempt to present an incomplete and misleading tally, any expenditures identified for specific initiatives will be presented as examples in the appropriate section of this report.

## Section 3 - Key Findings

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This section presents the main findings from the information collected in this study. These findings are based on information provided by departmental officials, reviews of statistical, financial and documentary reports and files, and are analysed in relation to the evaluation issues 1, 2, 3 and 5 as initially planned for.

### Introduction

Consultation has never been a formal program entity at DIAND, and as a result, there is no single operating definition nor is there any central or clear source for consultation funding.

Departmental officials have at times attempted for the sake of clarity to define consultation. However, the act of defining was seen as unduly restrictive at a time the department was working hard to change its operations from a direct program delivery system to a funding body with policy and accountability roles. In addition, Aboriginal constituents seemed to feel that flexibility was an essential test of departmental credibility and willingness to change, and so the attempts to create a standard definition were abandoned. Managers have tried to fulfill the requirement to obtain Aboriginal input through whatever means they deem appropriate, and have broad leeway to define and fund opportunities for involvement (refer to discussion of consultation continuum in Section 4).

Funds are required for Aboriginal peoples to be able to meaningfully consult with government on the vast array of issues as the department devolves. The department has a number of mechanisms that allow the following: a **Core funding** budget which supports organizations; a **Consultation and Policy Development (C&PD)** funding budget which is allocated annually to regions from headquarters to support specific initiatives; consultation funding under **C&PD authority** where managers use this vote control code (VCC 375) to account for consultation spending; and flexible use of **program funds**, which may or may not reflect a consultation component. Funds are usually provided as a package and a way of doing business. Funds are not usually broken down into components, nor is there a standard definition of the term. Thus, it is not possible to reasonably estimate what proportion is directed just for “consultation” on a department wide basis.

## **Summary of Financial Aspects of Consultation**

### **DIAND Consultation Expenditures: Principal Findings**

*Departmental spending on consultation is likely to be much larger than what is actually recorded in the Expenditure Management System (EMS).*

There are two important reasons for concluding that the Expenditure Management System is constrained from yielding a full picture of the cost of DIAND consultation activities. First, activities related to consultation are not exclusively recorded as “consultation”. Second, the departmental accounting system was designed to record specific program expenses such as education, housing or social development, as opposed to monitoring and tracking specific “activities” such as planning, policy development or consultation.

The same reasoning leads to a conclusion that “consultation” activity throughout DIAND headquarters and regions is most likely greater than what is officially recognized under traditional consultation budgets.

In planning how to resource and prioritize their activities, it would seem that both Aboriginal peoples and DIAND would benefit from clear reporting on the allocation of funds. With an enhanced ability to relate spending to specific consultation activities, Aboriginal peoples and DIAND would be better positioned to identify the most efficient approaches and activities to achieve mutually-recognized goals.

On the other hand, there would be costs to generate this information related to the enhancement of the department's accounting systems. In addition, a significant cost to consultation is the time of departmental employees and that of their Aboriginal counterparts which is very difficult to quantify. Further study would be required to determine whether the costs of generating better cost data on consultation would justify the benefits.

### **Detailed Discussion of Consultation Expenditures**

The financial management systems were queried for available information on all identifiable funding directed to consultation.

**Table 1** presents the planned budget for Consultation and Policy Development (C&PD) funding in 1995-1996, broken down by regions according to the department's financial records. For headquarters and all regions, the C&PD Budget totalled \$3.8M.

<b>Table 1: C&amp;PD Planning Budget for 1995-1996</b>	
<b>Region</b>	<b>C&amp;PD Budget</b>
HQ	0
Atlantic	199,890
Quebec	306,000
Ontario	664,740
Manitoba	429,660
Saskatchewan	514,350
Alberta	269,100
British Columbia	1,050,750
Yukon	176,740
Northwest Territories	192,420
<b>TOTAL</b>	<b>\$3,803,650</b>

In addition to the C&PD budget, it is known that core funding also provides organizations with a base of support which allows them as one facet of their existence, to consult with the department on a day-to-day basis. This funding amounted to about \$9.4M in 1995-1996.

#### *Challenges Associated with Core Funding*

In a December 1996 core funding meeting held in Toronto, regional officials noted challenges being faced with respect to the rationale and administration of core funding. Most notably, core funding has not kept pace with the complex changes occurring within the department and First Nations' organizations. The growing number of Aboriginal organizations and questions with respect to the extent of their representation have placed increasing stress on program administration and limited resources.

Departmental officials have been placed under intense pressure to decide which organizations receive funding based on the program's current rationale. On a day-to-day basis, officials are concerned with who ought to be "at the table" in any particular consultation and whether participants should be compensated.

The issue of core funding further complicates these concerns because decisions with respect to who ultimately receives core funding have a direct relationship to the degree of perceived "credibility" these organizations have in the communities. Departmental officials attempt to be impartial in such decisions. The fact that limited resources are available, suggests that some funding decisions could be potentially unpopular.

It was also suggested that the reality in most regions is that financial resources are inadequate even for those organizations that have been recognized as qualifying for Core Funding. As such, DIAND officials often top-up core funding with program dollars to compensate. Such decisions raise questions with respect to the rationale of core funding. Furthermore, calls have been made for a more equitable national formula, and additional resources.

Regional officials, although recognizing that some degree of funding is necessary, are not certain as to whether core funding is the appropriate instrument to accomplish departmental objectives. Most believe that long-term funding is needed to allow the department to engage in long-term planning. At present, budgeting decisions are made annually. The efficacy of such a system is considered by officials to be relatively low because some organizations with which a relationship has been built may not qualify for funding the following year. As such, the relationship may be adversely affected, and any sound work conducted in a given year may be lost.

## **DIAND Consultation Practices**

This section identifies from a departmental perspective efforts that have been made to establish a formal consultation approach.

### **History and Evolution of Departmental Commitments**

#### **Government Commitment**

The Government of Canada made it clear in its *Red Book*, that it intends to build a new partnership with Canada's First Nations, Inuit and Northern peoples. It commits to developing a "more comprehensive process for consultation between federal ministers and Aboriginal representatives with respect to decision-making that directly affects First Nations, Inuit and Métis peoples"<sup>1</sup>. This commitment, combined with the Government's recognition of the inherent right of self-government, land claims negotiations, and devolution of DIAND responsibilities, has placed significant pressure on relevant departments to alter the way in which government generally relates to First Nations. Consultation on issues that affect the lives of Aboriginal communities is considered paramount.

#### **Departmental Recognition of Consultation**

At the same time, as departments are working out new relationships with Aboriginal peoples, DIAND is in a unique position of turning over its responsibilities to Aboriginal peoples and should ultimately cease to exist as a department. In the meantime, the process of transferring to diverse Aboriginal nations, organizations and communities the responsibilities formerly carried out by the federal government requires development of capacities and resources at a pace that matches their needs. The department has recognized for some years that consultation is fundamental to the new partnership to be forged with First Nations, Inuit and Northerners.

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<sup>1</sup> Creating Opportunity: The Liberal Plan for Canada, Ottawa, 1993, page 98.

In 1990, the Regional Director General (RDG) of Alberta chaired a Deputies' Council For Change (DCFC) working group which produced a discussion paper entitled, *Consultation in the Indian-DIAND Relationship*, which was to be the first step toward developing guidelines for consultation and negotiation. Six broad principles were stated which aimed at developing a detailed policy on consultation consistent with the *Principles for Consultation* established by Public Service 2000.

### **Creation and Demise of a Consultation Directorate**

Based on this paper, *The Deputy's Notes on Consultation* were prepared on February 7, 1992 which called for the establishment of a Consultation Directorate responsible for the preparation of an overall consultation policy consistent with the demands of the Federal Government.

The general mandate of the Directorate, created in the spring of 1993, was to provide support and guidance for consultation activities within DIAND and other departments and agencies. More importantly, its task was to promote a government-to-government relationship with First Nations and Inuit peoples. Specific responsibilities of the Directorate included:

- development of training programs to enhance skills;
- identification of "best practices";
- provision of advice and assistance to DIAND and other departments; and
- involvement in financial support for consultation activities.

However, the department was reorganized and as operations were decentralized to regions in 1993, the directorate was soon effectively disbanded. The directorate had, before its demise, prepared a *National Consultation Framework*, which contained three guiding principles modelled after the work of PS2000: openness, fairness, and respect. Although the report was not well received by regional officials who wanted flexibility to develop an approach with First Nations without preconceived restrictions, new expectations of the department were articulated in it.

### **Departmental Restructuring and Renewed Commitment to Consultation**

The organizational changes facilitated the transfer of the administration and management of programs to Indian and Inuit communities such that the department remained primarily an agency which channels funds to First Nations for service delivery. Headquarters functions were limited to Policy Development, Finance, Claims, Lands and Trust Services and Operations.



Another key change was the recognition that the policy work of the department would take on more of a consultative nature. “Consultation”, while undefined, was encouraged at all departmental levels with the result that many initiatives were implemented to meet individual circumstances with a considerable degree of flexibility. The major focus was on achieving a working relationship with First Nations, Inuit and Northerners; and on effective results rather than following formal administrative guidelines. As a result, a wide but undocumented array of consultation practices have evolved in recent years.

In 1995, a guide for government managers was distributed which clearly articulated the fiduciary or special relationship between the federal government and Aboriginal peoples. These were based on Supreme Court decisions of *Guerin* (ruled that the federal government must exhibit high standards of care in decisions about Aboriginal assets under its control) and *Sparrow* (ruled that the federal government can affect existing Aboriginal and treaty rights but must do so in a carefully prescribed manner). Informed consent in the case of *Guerin*-like obligations and consultation in the case of *Sparrow*-like obligations, which arise particularly in the Northern program, are now key features of departmental practice.

### **Strengthened Commitment Through the Framework For Action: A Work In Progress**

In January of 1996, the department produced the first edition of *DIAND's Framework for Action (A Work in Progress)* which identified the critical importance of managing DIAND's routine business effectively in order to achieve success in four priority action areas: implementing self-government; improving conditions; achieving claim settlements; and, political and resource development in the North.

The document addressed the accountability implications of the changing relationship between government and First Nations and emphasized the importance of transparency, disclosure and redress principles in strengthening accountability. It also highlighted the importance of greater representation of Aboriginal peoples within the department, the need for improved effectiveness in financial management, and flexibility in funding arrangements.

No steadfast and identifiable departmental objectives for consultation were identified upon which specific indicators are attached, or impacts can be measured. However, there is little dispute among departmental officials that the Government of Canada through the Minister of Indian Affairs and Northern Development and his senior officials has clear “expectations” that First Nations, Inuit and Northerners be consulted appropriately on decisions which affect their lives.

In 1997-1998, the *Framework For Action II* clearly states the department's commitment to “strengthen partnerships with First Nations, Inuit and Northerners as well as the importance of changing our ways of doing business”. Specific commitments include forging new partnerships to Aboriginal peoples and increased focus on capacity building through support for such things as extending DIAND's information infrastructure, implementing financial transfer agreements, and harmonizing federal funding and reporting requirements. Effective communication and trust are also recognized as critical to the success of this direction.

In January 1998, DIAND responded to the call of the Royal Commission on Aboriginal peoples

for significant changes in the government's relationship with Aboriginal peoples through the report *Gathering Strength - Canada's Aboriginal Action Plan*. This report, developed in collaboration with the AFN, outlines in practical terms how the Government of Canada and Aboriginal peoples can work as partners, in a more effective relationship. This action plan is seen as "the first step on a journey" to address the legacies of the past and begin the healing process. It also has significant implications in terms of building a series of techniques and systems of communications and decision-making, of which consultation may be only one means.

## **Status of DIAND Consultation Initiatives**

### **Headquarters Consultation Initiatives**

All three sectors based at departmental headquarters, the Indian Program, the Northern Affairs Program and Corporate Services carry out some consultative initiatives. These may take the form of major projects (e.g., Sustainable Development; Arctic Environmental Strategy - AES) or ongoing processes (e.g., Advisory Committees for program evaluations). In some cases, program officials estimated rough costs they felt were associated with consultation activities for some projects. These are reported to provide a feel for the seriousness with which the department sees the consultation process, although it is recognized that these costs include many features from travel to overhead to reporting that not everyone would agree is "consultation" per se.

Northern Program officials were best able to identify activities which could be classified as having consultation components. This was due in part to the fact that the program is largely self-contained and the data are thus more accessible. Consultation expenditures associated with the Nunavut Secretariat at headquarters were significant (\$3.15 million). Others included the High Arctic Inuit Relocation initiative, constitutional development consultations for the Western N.W.T., and the Fur Program consultations which totalled \$5.32 million in additional consultation.

### **Regional Consultation Profiles**

Regions have emerged as the primary departmental interface in working with First Nations, Inuit and Northerners to bring about the kinds of changes both federal and Aboriginal leadership are seeking. Regional officials indicate that there are extensive and recognizable consultation activities with First Nations, Inuit and Northerners taking place across the department that vary to meet individual requirements.

Regional representatives reported that there have been some fundamental changes in the way the department generally functions with respect to consultation. Some changes have occurred over time while others have come about recently. Many changes are due to federal and departmental policies aimed at devolution of responsibilities and movement toward self-government.

Such policies have placed increasing pressure on Aboriginal peoples to create organizational structures which can plan for and deliver appropriate programs. These organizations have multiplied in number and are emerging as key entities for regular consultation with the department. Each DIAND region has experienced such growth in the number of formal structures. Following are general descriptions of the organizational dynamics for consultation within each region, with cost estimates where they were available.

**Atlantic Region:** Over the past five years, the Atlantic Region has seen several changes with respect to the way in which First Nations relate to the department. The recent creation of the Atlantic Policy Congress (APC), is a forum for regular discussions on a range of issues, both policy and regional and is the first single institution representing all First Nations in the region. Its creation was a joint venture between DIAND and First Nations to provide a forum for First Nations to become more proactive in policy areas.

The APC has four levels: All Chiefs (decision-making body), Executive Board of Chiefs (sets Executive Directors guidelines), Office of the Secretariat (includes Executive Director, Research Policy Advisors and administrative support), and Standing Committees which are formed to address specific issues. The Executive Director is the liaison between DIAND and the APC and is usually the department's point of contact for 31 First Nations. The APC received \$343 000 in 1995-1996 from C&PD funds. *Ad hoc* support may also be provided from other federal departments.

The Mi'kmaq Nova Scotia Canada Tripartite Forum, and the Mi'kmaq Educational Authority are also designed to discuss and negotiate issues specific to Nova Scotia, and education respectively. The creation of such structures combined with the reorganization of the regional DIAND office in 1991, has generated enthusiasm between government and First Nations. Respondents agreed that such formal structures have increased First Nations' capacity to consult thereby creating a dynamic whereby they have greater input to government decisions. It is also believed, from the department's perspective, to have improved relationships between DIAND and First Nations.

Departmental officials indicated that there are no standard consultation processes used by the region. Processes are directly related to the issue, the actors involved, and the formality of the exercise. However, common elements were noted in conducting a consultation. The most important of these was planning, the conduct of consultation assessments (i.e. strengths, weaknesses analysis, stakeholder analysis) to determine the parameters of a potential formal consultation, and a determination of formal actors.

**Quebec Region:** Consultation in the Quebec Region is part of routine activity. Although there are no formal structures in place, respondents described consultation as generally official policy in the region. When necessary, the province's Chiefs are called to discuss important issues generally resulting from calls from headquarters to discuss overall departmental initiatives, policy, or legislation. The Regional Director General maintains frequent contact with communities to discuss important issues.

As in other regions, First Nations are expected to submit a funding proposal for consultations with their communities which includes the nature of the exercise and processes to be used. The following steps are followed:

- a consultation plan is prepared;
- regional Executive Committee reviews the plan and gives approval;
- relevant information is circulated to community Chiefs;
- First Nations receive community feedback on the issue;
- information from communities is relayed to DIAND at a formal meeting;
- a formal report is prepared and circulated to relevant authorities; and
- the final decision is communicated to First Nations.

In other cases involving a consultation project more specific to one band or one Aboriginal organization, the consultation project and funding proposal submitted to the region is then:

- examined by the regional applications processing committee which reviews the plan and grants its approval, and confirms regional funding for the project;
- the applicant (band, organization or individual) is notified of the committee's decision; the applicant conducts the consultation and receives comments from Aboriginal peoples affected by the issue under consideration; and
- the consultation report and expenditures report are sent to DIAND.

**Ontario Region:** Consultation has become an increasingly regular part of business in the Ontario Region. The main forum for consultation remains the Indian Commission of Ontario (ICO) formed in 1978, comprised of community leadership from four First Nation organizations and independent communities, and provincial and federal representatives. The ICO was developed as a partnership and a new approach to assist in resolving issues of mutual concern. Its principal priorities currently are to facilitate discussion and negotiation around devolution, land claims, and self-government.

There are no overriding guidelines or policies with respect to the conduct of consultation in Ontario. Respondents indicated that such policies would not be useful because each exercise must be treated differently. The highest level is a tripartite council which is a minister/provincial minister/grand chief level consultation forum. In most cases, the ICO is responsible for consultation initiatives including the routine management of the consultation process. The Council meets 3 times yearly and all three parties must agree before an issue can be raised for discussion. In addition, there is a Senior Steering Committee that meets six times yearly and oversees the process and prepares for Council meetings. This Committee is composed of senior decision-makers who provide advice on ICO operations, identify issues, and develop the consultation/negotiation agenda.

Examples of specific outputs include the following:

- five-year Ontario wide policing agreement;
- regional police service for the Six Nations of the Grand River; and
- Agreement between Ontario, Canada, and Nishnawbe-Aski Nation for the creation of six reserves and community infrastructure.

The ICO is funded 65% from the federal government and 35% is from the provincial government. In 1995-1996, the ICO received \$724 000 from DIAND, of which \$384 000 was for Core and \$340 000 was for land claims. Ontario contributed \$432 000.

Consultation and Policy Development dollars support Aboriginal associations' participation in the tripartite process. In 1995-1996, \$501,000 was allocated for this purpose and \$108,000 was provided to supplement the associations' C&PD funding with results-oriented project funds.

Aside from the ICO, consultations also occur informally between the region and individual First Nations or First Nations organizations regarding matters of local concern.

**Manitoba Region:** The principal consultation initiative in Manitoba is the dismantling of DIAND's regional operations. A formal process has been established with the Assembly of Manitoba Chiefs to discuss ways and means of devolving programs and services. In this regard, the vast majority of the regional office's activities are centred around consultation in various forms. The single greatest shift in regional practices, therefore, is that decisions are not and can not be made in isolation.

There are no formal guidelines and policies for consultation in Manitoba. However, the Regional Director General has issued some general operating principles to be followed by all branches. Such principles are characterized as follows:

- prior to any change in policy or legislation, a determination must be made as to whom will be affected, and determine impacts as best as practicable;

- First Nations are to be involved in all aspects of a formal consultation exercise; and
- First Nations must participate in the final decision.

In 1995-1996, \$4.78 M was allocated to the Assembly of Manitoba Chiefs (AMC) to assist with Dismantling Manitoba's regional operations.

**Saskatchewan Region:** Respondents in the Saskatchewan Region indicated that their consultation practices have changed significantly in the past five years. They attribute such change to recent commitments in the *Red Book* and other major federal policy initiatives. These policy changes are seen as a catalyst whereby the region is becoming more active with respect to consulting First Nations on a wider array of issues. The main First Nation structures with which consultation occurs regularly are the Federation of Saskatchewan Indian Nations (FSIN), composed of sixty-nine of seventy communities and seven Tribal Councils. Respondents indicated that over time, the frequency of "formal" consultations is diminishing due in large part to individual communities wanting a greater say in departmental initiatives. In this regard, there has been increasing contact between individual community leadership and senior departmental officials.

There were mixed responses from officials regarding their awareness of formal guidelines and policies about consultation. They agreed, however, that individual processes such as self-government and other programs include general parameters about the way in which consultation is to occur. Some respondents indicated that there are broad directives regarding consultation in that First Nations must be included in major policy decisions. Saskatchewan has a flexible approach to consultation and while general steps are identified to help guide expectations, they may be amended depending on the issues and organizations involved.

**Alberta Region:** The 1990's has shown significant shifts in the way consultation is approached in Alberta. Again recent federal government initiatives laid out in the *Red Book* have precipitated a review of regional priorities and decision-making processes. In recent years, DIAND officials and various First Nations' representatives have reviewed how communities are to be involved in departmental decision-making. That review concluded that some organizations no longer enjoyed the support of member communities. The Chiefs of Alberta gathered at the political level and formed the Chiefs' Summit to discuss common issues and interests. When federal and provincial governments are invited to participate, the Summit becomes a neutral ground to address issues with them. The First Nations Resource Council acts as Secretariat to the Summit Steering Committee (six or seven chiefs and one or two elders), providing technical support and playing a policy research role.

Relationships are set out in three formal Accords. The first, the *Unity Accord*, sets out nature of the relationship among the Chiefs. The second, the *Canada Accord*, sets out the parameters for the Government of Canada/First Nations relationship. Finally, the *Alberta Accord*, sets out the provincial/First Nations relationship.

Meetings are held with federal/provincial government participation twice yearly. In between these meetings, Summit Chiefs meet internally to consolidate issues and develop strategies for addressing issues with the governments. Issues may be raised by approaching the Steering Committee which controls the agenda. The Summit receives \$500 K from DIAND and \$250 K from the province. Modest additional funds are provided by Health Canada's Medical Services Branch.

In addition to the Chiefs' Summit, First Nations are also approached on program matters through the nine Tribal Councils or the three Treaty organizations. Respondents in Alberta tend to regard consultation as a formal means of arriving at decisions.

Regional guidelines establish a definition of consultation, management policy, responsibilities, processes, and means of directing inquiries. The regional directive is clear about the reasons for consultation and the general process that must be followed to achieve specific objectives. However, it also indicates that the process for consultation should be consistent with the nature and breadth of the issue, the organizations involved, and the timing for response. Four stages were identified to be followed:

- **planning**: identification of stakeholders, preliminary discussions, resources identification;
- **development of terms of reference**: defined objectives, development of methodology;
- **consultation/negotiation**: exercise conducted according to the terms of reference; and
- **evaluation**: monitoring, reporting, adjustment of processes followed.

Regional officials believe that this approach has greatly improved effective consultation with First Nations.

**British Columbia Region:** There have been significant developments in the way consultation is approached in the B.C. Region. Most important among these is the use of a regional Consultation Framework which outlines the principles and best practices for effective consultation. Consultation is seen as a tool used toward an end. Specifically, consultation is "...providing for client input into decisions, but with decisions still made by the government or service provider". As such, consultation in B.C. Region is approached through formal mechanisms. The region deals primarily with Tribal Councils and individual First Nations communities. Although a general framework defines the parameters of a consultation exercise and the general methodologies to be employed, each exercise is planned individually.

The regional Consultation Framework was identified by respondents as the most significant guideline. It was initiated by the region as a 1994-1995 management plan priority. A consultation work team (CWT) headed up by the Intergovernmental Affairs Directorate (IAD) and composed of staff from all directorates was established.

After reviewing what was known about the consultation experience in the region, the CWT decided to invite First Nations to join them in a “workout” to develop principles for consultation. The structure was a 4 day session with ten DIAND officials and First Nations participants all of whom were asked to speak from their own experiences rather than representing any entity. The process was open and equal, and produced 10 principles and 10 “best practices” for consultation between DIAND and First Nations in British Columbia. These principles form the basis for the B.C. Consultation Framework, which were approved for DIAND use by the Regional Executive Committee. Approximately \$10,000 was expended for travel and accommodations for First Nations participants. DIAND staff time and salaries, meeting material and other O&M expenditures for the workout are not included in the above estimate.

The premise of the framework is “to improve the quality of service to First Nations and to increase First Nations’ participation in the decision-making process”. The framework identifies a standard consultation process to be followed by all regional branches.

All of these stages are guided by standard operating principles which respect the participation of all stakeholders. Most important, effective consultation is considered to be decisions made after all parties’ views have been considered, and a final decision made with appropriate involvement.

**Figure 1** outlines the principles of formal consultation with First Nations in the British Columbia Region.

**Figure 1 -  
British Columbia Region Consultation Principles**

<b>Principles of Formal Consultation with First Nations in the B.C. Region</b>	
1.	British Columbia Region will utilize the consultation process.
2.	Consultation will recognize First Nations’ right to govern themselves according to their principles and priorities.
3.	Consultation will be based on mutual trust, respect and understanding.
4.	First Nations will have the opportunity to identify and prioritize those issues that require consultation.
5.	First Nations will be provided the opportunity to initiate consultation processes.
6.	First Nations will have the opportunity to participate in defining the consultation process.
7.	There will be full disclosure of all relevant information, including intent, parameters and objectives of any consultation. To the extent possible, this information will be communicated in plain language.
8.	To the greatest extent possible, sufficient time / resources will be provided for effective and meaningful consultation to take place.
9.	When consultation takes place it will occur before decisions are made.
10.	Consultation will include accountability for implementation and follow-up.

Source: BC Consultation Framework



**Yukon Region:** As in other regions, consultation in the Yukon Region has taken on greater importance. Self-government processes in the Yukon have taken precedence across the region. In this regard, a number of important organizations are used to assist. They include the Council of Yukon First Nations (CYFN), the territorial government, and the federal government. Consultation is generally used to engage First Nations and industry leaders on a variety of issues including rights issuance to Crown resources, forestry issues, water and mining licenses, and various DIAND program activities. With respect to the latter, Tribal Councils are considered the focal point for consultations. In general, consultation is considered a routine part of the activity. An important issue for respondents in this region is that consultation must occur prior to any final decisions being made.

They agreed, however, that each DIAND program consultation exercise should be addressed individually. Specific methodologies will be planned based on the nature and breadth of the issue, the actors involved, and the timing of final decisions. In this respect, either the CYFN or individual Tribal Councils will be approached for their input. For many other formal types of consultation such as land use permits, standard processes are set out in guidelines.

**Northwest Territories Region:** Consultation is seen as an integral way of operating. Program staff in the N.W.T. highlighted the long history and cultural importance that consultations play in the North. The small population means that staff are closer to client. The impact of past studies such as the Mackenzie Valley Pipeline Inquiry, set the standard for consultations with First Nations in the NWT. Respondents in the N.W.T. also indicated that consultation practices have changed significantly in the past five years due in large part to changing government policy and increased importance placed on the direct participation of Aboriginal peoples in decisions which affect them. In addition, recent initiatives such as the *Arctic Environmental Strategy* (AES) have emphasized a “bottom-up” approach to consultation and partnership. Such initiatives combined with legal developments (e.g. *® vs. Sparrow*), and federal moves toward the encouragement of self-government, have placed great pressure on the department to consult on a broader range of activities.

Consultation in the N.W.T. occurs under both the Indian Affairs Program and the Northern Affairs Program. With respect to the Indian Affairs Program, consultations occur regularly with individual communities negotiating land claims or self-government agreements. Consultations will vary depending on the issue involved and the centre of responsibility (i.e. territorial or federal). Under the Northern Affairs Program, various legislation exists within which consultation processes are defined including environmental programs (e.g., AES), land use, water and environmental management, and mining permits. Each of these areas utilizes various processes for consultation including steering and advisory committees, management boards comprised of various stakeholders, and technical committees. These Northern programs set out clearly the reasons for consultation and the processes to be followed.

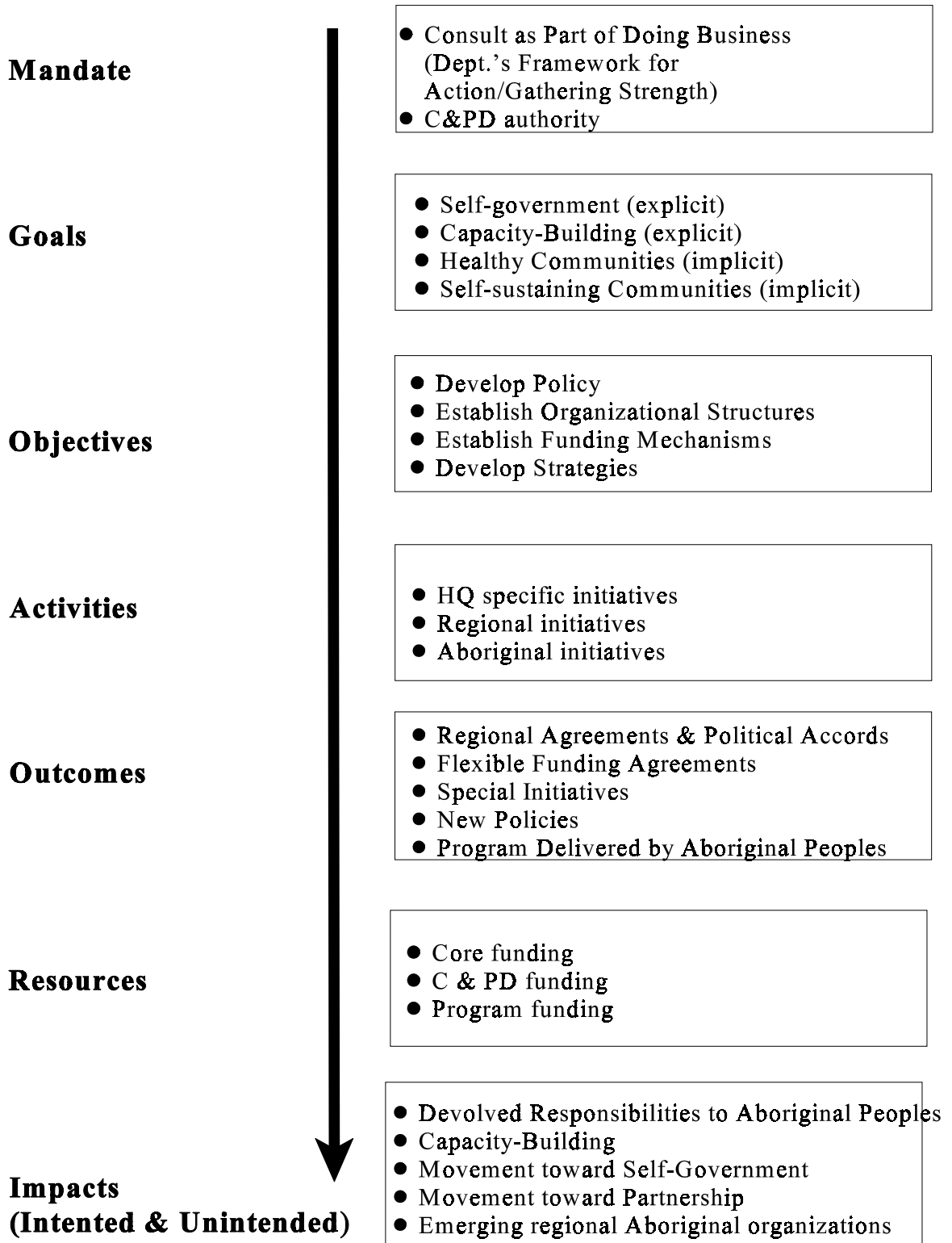
Departmental officials follow the consultation guidelines of the Government of Canada Fiduciary Guidelines, and the Northern Affairs Program Guidelines. However, the regional office has developed guidelines regarding matters where fiduciary questions are raised by First Nations. Beyond these general guidelines, there are no formal processes for consultation in the N.W.T. other than those contained within specific legislation. Respondents indicated, however, that the process is determined based on the nature of the consultation exercise and the actors involved.

## **DIAND's Consultative Approach**

### **Logic Model of Departmental Consultation Activities:**

A logic model showing the relationship of goals and objectives to activities and structures to outputs is used to clarify how a given program or area of activity fulfils its mandate. In the case of consultation at DIAND, there have been no explicit consultation goals or objectives established, given that consultation is a management practice and not a program; yet, there is significant implicit direction to consult that is clearly recognized and implemented by officials with what seem to be appropriate results. **Figure 2** on the following page illustrates this connection.

**Figure 2 - Consultation Logic Model**



## Literature Review And Theoretical Perspective

There is a substantial body of writing on the subject of consultation in Canada which can provide a starting point for understanding its significance for DIAND. Common themes that emerged in the literature reviewed include the need to ensure that the consultation process involves interactive communication and feeds into the decision-making process in a clear and transparent manner. Moreover, consultation should take place while there are still decisions to be made.

The main goal of public consultation is to make better decisions. This is usually accomplished by ensuring stakeholder participation early on in the process and a general understanding of the parameters before the consultation process formally begins. Guiding principles should emphasize openness, honesty, transparency of process as well as trust and respect for different values and points of view that are brought to the consultation arena. In situations where trust has been damaged, emphasis is placed on making extra effort to earn it back.

As the public becomes more sophisticated and new technologies make information more readily available, there is pressure on government to incorporate more visibly democratic methods of decision-making. Increased involvement in planning and decision-making, leads to a greater likelihood of stakeholder support for, and ownership of initiatives, access to better information, shared expertise, pooled resources (both human and financial) and shared infrastructure. Additionally, increased participation may substantially reduce resistance and conflict.

However, with increased participation of the general public, government will need to undergo a major paradigm shift in the way it conducts business. As some of the literature points out (eg. Service to the Public Task Force Report, 1990), the federal public service has not in the past had an entrenched consultative culture nor has it valued consultation skills. There is a high level of skill required to consult effectively and individuals selected to represent an organization should be credible and trusted by stakeholders as well as have an appropriate level of authority and experience.

While consultation is being undertaken in many departments at a variety of levels on a number of issues, few had central units dedicated to consultation and there has been relatively little progress in the area of policy development. Only recently have some federal departments initiated the development of guidelines, or principles for consultation, but few were considered to be formal consultation policies.

A key concept often misunderstood is the term *consensus building*, which some practitioners believe means unanimity. Consensus building can be a useful tool in a process where stakeholders have a common understanding of its meaning. *Consensus building means that participants reach a general agreement to proceed.* The degree of openness may be affected when participants in a consultation process have an overriding responsibility to defend the interests of the group they represent and therefore may not always be open to compromise.

Other issues people bring to a table which may prevent effective consultation include:

- conflicting accountabilities which preclude resolution;
- continued mistrust based on past experience;
- confusion of political with consultative mandates; and
- consultation fatigue, which recognizes that stakeholders may not always have the time and resources to participate in the profusion of consultation opportunities that may exist.

In addition to the literature reviewed, several theoretical models were considered.

### **Faces of Consultation: Theoretical Model**

There are many definitions and perceptions of consultation, all of which may be valid for the individuals or organizations that adopt them as well as the circumstances they reflect. Some public sector organizations believe that consultation is simply taking stock of what interest groups or other organizational elements have to say while others would argue that consultation is a cooperative process to achieve either homogeneous or divergent objectives.

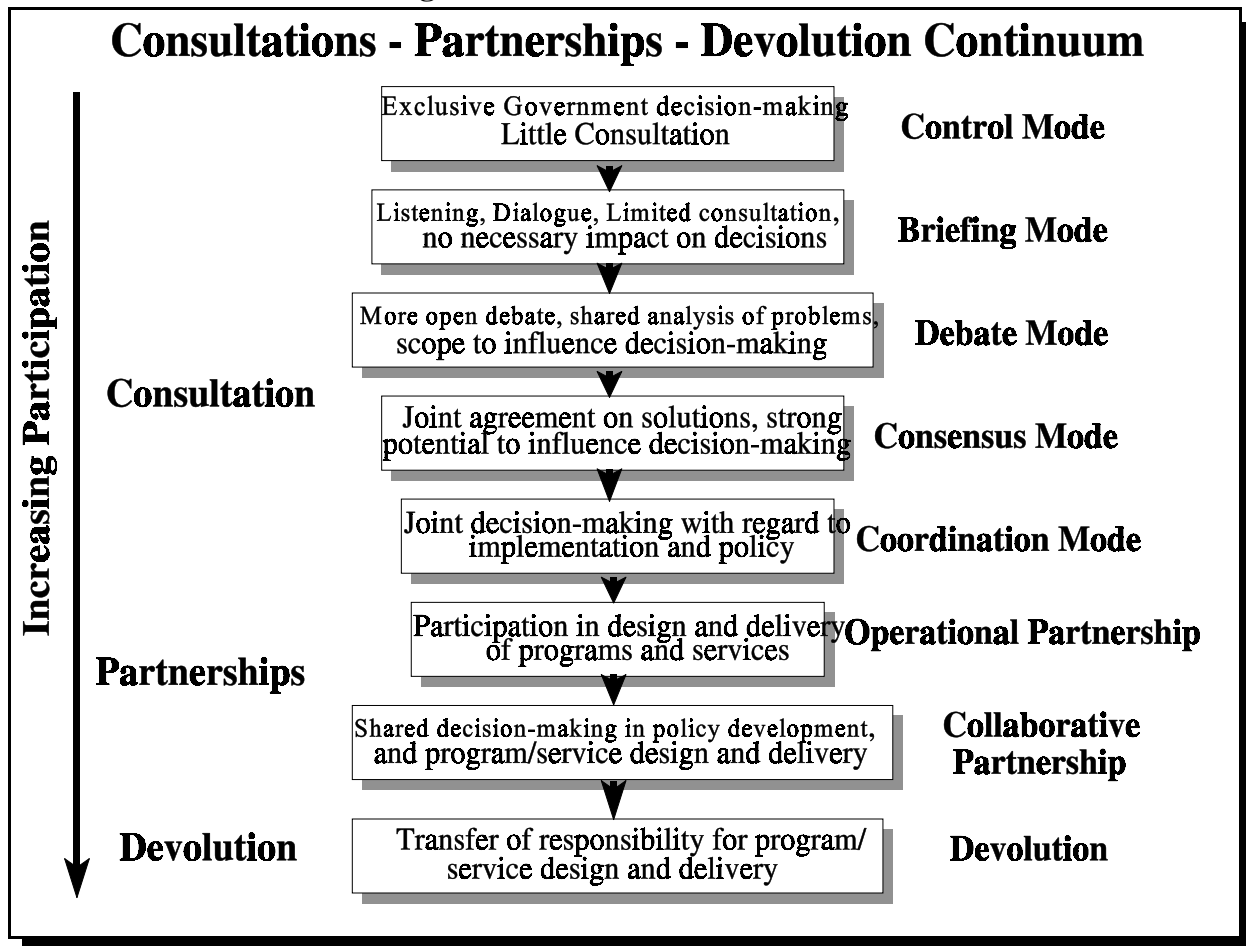
Regardless of its many interpretations, consultation, itself, can generally be viewed as a range of activities which occur along a continuum. At one end, is a sharing of information with the public regarding government decisions. On the other end of the continuum, is joint decision-making, where participants share the responsibilities of prioritizing the issues, planning the process, choosing the best solution, implementing the solution and monitoring its outcome. The desired result is devolution or the transfer of decision-making from one party to the other.

Since DIAND must address differing Aboriginal interests, circumstances dictate what form of consultation may be appropriate. For example, control mode may be used where statutory compliance is being monitored (e.g. with the pollution provisions of the *Fisheries Act*), while collaboration and partnership characterize new initiatives such as sustainable development. However, it would appear that DIAND, in recent years, has significantly reduced the use of control model while collaborations are increasing.

**Figure 3**, is based on earlier work done by the CCMD, represents an idealization of the various approaches to consultation. It clearly illustrates the characteristics associated with each mode of consultation as well as the progression toward devolution. Although not specific to a particular department or organization, the CCMD model permits practitioners of public consultation to gauge where they are situated on the consultation continuum. Nonetheless, it generally reflects the approach the department is actually following. The final transition for devolution involves transferring responsibility for program design and delivery to First Nations, Inuit and Northerners, while retaining a shared policy role.

Although this model has much to offer in terms of consultation, there are limitations. One particular limitation pertains to the absence of a transfer of policy development responsibility under devolution on the continuum. Responsibilities transferred under devolution apply solely to program/service design and delivery. Policy development seems to remain shared with the Government (or federal department). Although shared decision-making in policy development may be sufficient, it is unclear how this will correspond to the transfer of full responsibilities, for example, in the area of elementary and secondary education.

**Figure 3 - Consultation Continuum**



## Other Federal Activities

Representatives from eleven federal departments with known public consultation experience were interviewed and relevant documentation of their practices was scanned. In particular, their experiences with First Nations consultation were explored. The departments include: Heritage Canada, Environment Canada, Health Canada, Fisheries and Oceans, Justice Canada, Correctional Service Canada, Industry Canada, Revenue Canada, Human Resource Development Canada, Canadian Mortgage and Housing Corporation, and the Privy Council Office.

Consultation has recently acquired a very high profile in government as departments find ways to meet the *Liberal Red Book*<sup>2</sup> commitment to develop a comprehensive process for consultation and build new partnerships with Aboriginal peoples. The other driving factors placing consultation at the forefront are: landmark Supreme Court decisions (specifically Sparrow); and the recognition that Aboriginal peoples should have substantial involvement in the making of decisions on issues that directly affect them.

In 1997-1998, a Citizen Engagement Round table was sponsored by the Institute on Governance on the issue of citizen engagement from the perspective of the relationship between government and the public at the level of policy creation and development. The Privy Council Office (PCO) is currently facilitating Interdepartmental Discussions to share departmental consultation experiences and lessons learned. Other federal departments who recognize the special relationship with Aboriginal peoples and seek effective consultation approaches, often asked DIAND to provide First Nations case studies as examples.

While the various consultation approaches employed by federal departments range from the traditional to the very advanced, it is clear that there is movement throughout government. Environment Canada in particular has developed a sophisticated consultation policy which reflects democratic guiding principles and a specific set of guidelines for consultation with First Nations peoples. These were presented for discussion at an Interdepartmental Discussion Group hosted by the Communications and Consultation Branch, Privy Council Office in December, 1996. It should be noted that while parts of Environment Canada's consultation policy and guidelines may be useful in developing a protocol for DIAND, Environment Canada's policy maintains that the department has decision control.

### Consultation Activity with First Nations

The majority of federal department representatives interviewed for this study indicated that consultations with First Nations have increased significantly over the past five years. They attributed the increase to: greater activity within departments which subsequently increased consultation; and, a Supreme Court decision <sup>®</sup> vs. Sparrow which led to more consultation on certain rights-based issues.

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<sup>2</sup> Liberal Party of Canada, *Creating Opportunity: The Liberal Plan for Canada*, Ottawa, 1993.

For those departments which did not experience increased consultation, some of the reasons provided include: a corporate culture or management philosophy that placed a low priority on consultative activity; damaged relationships with existing stakeholders; or, the fact that consultation practices had become much more complex and required more time.

Most indicated that the extent of their consultation activities with Aboriginal peoples goes no further than national organizations. Departments such as Health Canada and CMHC, which deal with national and regional First Nation organizations, indicated that more formal processes for consultation would be useful given the complexity of inter-relationships between Aboriginal peoples and other departments with program responsibilities.

Departments indicated they experience significant challenges when consulting with Aboriginal peoples; in particular, that this type of consultation differs considerably from that with other stakeholders. In their view, cultural sensitivity to decision-making processes and communication techniques warrants unique approaches which can be time-consuming and labour-intensive. Some respondents observed that First Nations may look for more participation in decision-making than other clients, which often finds them unprepared.

These federal representatives also indicated many challenges associated with Aboriginal consultation including the lack of consistent funding sources and appropriate mechanisms to provide the flexibility to achieve varied objectives. Such challenges have placed increasing pressure on other departments to develop an overall policy to assist in rationalizing and organizing their consultation activities.



## Section 4 - Consultation Models

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### Consultation Models and Practices

Given the extreme difficulty in gaining a common understanding of consultation and its implications for participation, decision-making, and funding, there is a strong interest expressed by managers both within and outside of DIAND to examine where “successful” consultations have arisen.

While this overview was not designed to provide in-depth case studies, senior management did request that an attempt be made to identify a “lexicon” related to future consultations. Given past difficulties that attended every attempt to define consultation, it was decided to examine a range of initiatives where consultation was in some aspect involved, to consider what it meant in those circumstances and what made it work.

There are many sensitivities about consultation where government was perceived to have given only lip-service in situations where Aboriginal peoples expected a greater role and joint decision-making. This difficulty is compounded as assumptions get made by all parties without clarification with the other about expectations for timing, participation, roles, process, funding, products, and resolution to name a few.

### Types of Departmental Consultation Initiatives

Many interactive undertakings have occurred between DIAND and Aboriginal peoples in recent years. It is difficult to categorize consultations as officials and Aboriginal peoples work out principles and structures that satisfy their unique requirements. At the same time, there are clearly some patterns to be observed in situations in which DIAND engages in consultative type activities with its partners.

**Figure 4** identifies a number of examples where consultation strategies were employed with obvious positive results, at least from the departmental perspective. As a starting point, the types were loosely categorised by the purpose each initiative was intended to serve. These include:

- **Devolution-type consultations** which provide for effective transfer of former DIAND programs and responsibilities to First Nations authority or to Territorial governments. Pre-existing conditions include statutory, fiduciary and other requirements such as infrastructure support which may limit the scope of shared decision-making.
- **Policy-type consultations** may be undertaken where existing policies are ineffective or detrimental to Aboriginal peoples, where conflicting interpretations exist, or where new approaches are required to existing policies. An example is the review of the Specific Claims Policy.

- **Consultations on new strategies**, where the department has the opportunity to introduce new strategies without pre-existing limitations, are expected to be full and open and to involve First Nations, Inuit and Northerners from the very beginning. An example is the Sustainable Development Strategy which has employed a partnership approach between the department and First Nations.
- **Fact-finding consultations** may be undertaken when there are requirements for collection and reporting of information that is acceptable and credible to all affected parties, despite contentious concerns or any previous conditions of mistrust.
- **Corporate-type** where it is becoming more common for some corporate departmental entities to engage in consultation as a way of doing business, even though they are not part of the readily identifiable groups for First Nations contact.
- **Miscellaneous or problem-solving consultations** are generally *ad hoc* and require participative solutions to problematic situations.

They have also been analysed by key participants, who initiated them, major steps, costs including direct “consultation” allocations, duration, and form of agreement.

This categorization is by no means meant to be comprehensive, but provides a basis for consideration of where some effective consultations have come to exist, who might be involved, what process is followed, what resources were used and what outcomes resulted. Such information is helpful in planning future undertakings and clarifying for all participants what to expect. There are many other consultation initiatives taking place across the country that might yield further understanding about effective or ineffective processes, and, as with the above, Aboriginal input is required to adequately assess them.

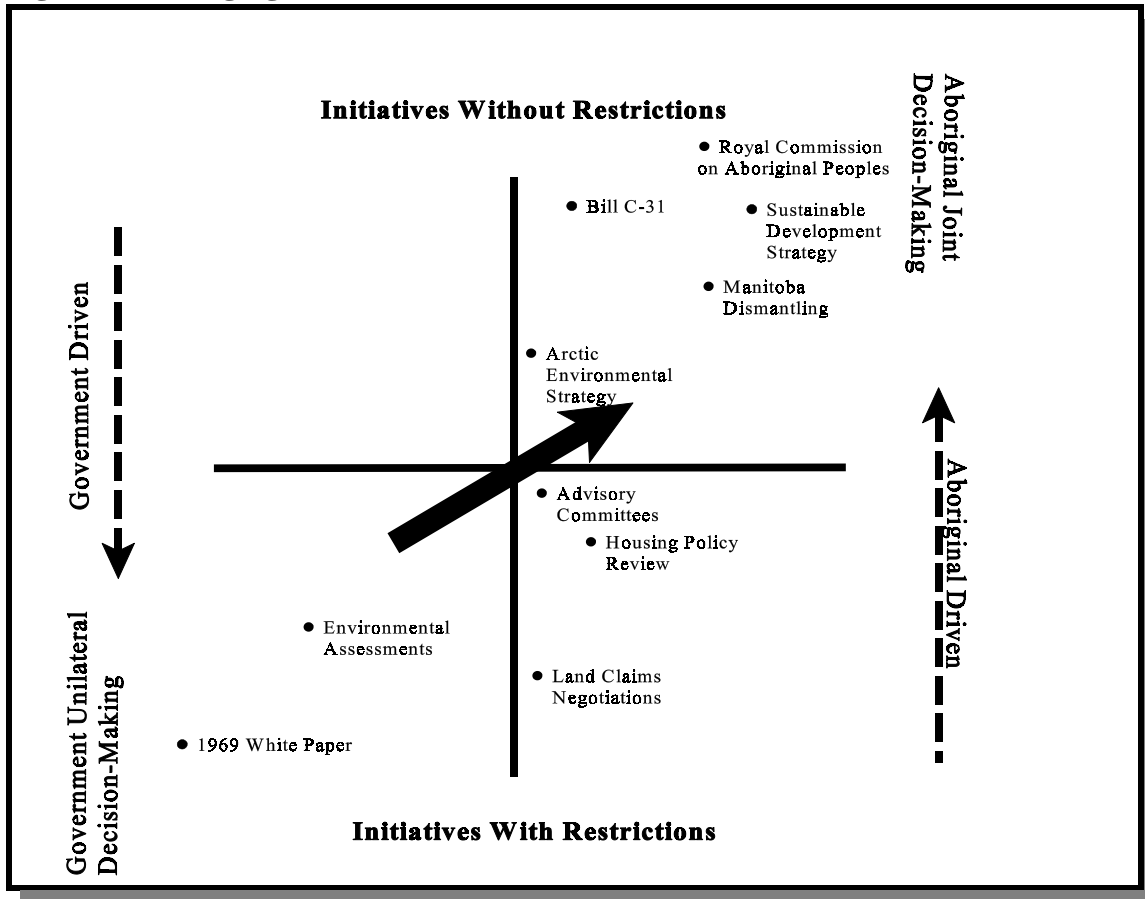
**Figure 4 - Types of Departmental Consultations**

Type	Example	Purpose	Key Participants	Who Initiated?	Steps Involved	Total Cost of Initiative	Consultation Estimates	Duration	Form of Agreement
Devolution	Canada/ Yukon Oil & Gas Accord	Transfer federal management to the Yukon gov't to support northern control	Yukon, federal gov't, Council of Yukon First Nations(YFN)	Northern Political & Economic Framework	AIP, 1993 Accord, Consultation with YFN, 1997 Accord Implementation Act introduced, awaiting 3rd reading	Oil and gas revenues are \$1.5M/year	\$70K for YFN consultation	1991 - 97	Accord signed by Minister of DIAND and Yukon government leader
Policy	Housing	allocation of financial assistance following policy review recommendations	-AFN , -DIAND regions & HQ, -Chiefs & Tribal Councils	First Nations issue	-Phased approach: -4 working groups, -Discussion groups & paper, -First Nations Task Force	?	?	1992 -	Housing Policy Framework
New Strategy	AES	introduction of new strategies without significant pre-existing limitations	-DIAND Northern Program	Federal initiative	4 part consultation	\$ 100 M - (\$ 91.3 M DIAND managed)	\$3M (250K/yr)	1991-97  18 months of consult'n before strategy started	Consultative approach endorsed as a blue print for future gov't initiatives in the North
Fact-Finding	Bill C-31	collection and reporting of credible information	-AFN, NWAC, NCC, FSIN - DAEB -DIAND managers - other depts.	Parliamentary requirement in response to First Nations	-Agree on TORs -Steering and working committees	\$1.3M	\$ 262 K plus \$218K for hearings	1990-91 (18 months)	Contribution Agreement Report to Parliament jointly signed
Corporate Strategy	DAEB Advisory Committees	Objective results to serve all parties	-DAEB, -Programs, -Regions, -First Nations & Northerners	Routine Departmental practice	Reviews plans, contracting, instruments, findings, recommendations reports	less than \$2K/ project	Expenses to attend Advisory Committee meetings	each project differs	Ratification of report before presentation to senior management
Problem Solving	Red Bank Land Dispute	Joint problem solving	Region, Band and 17 community members	First Nations & Federal Gov't	discussions of issues and solutions	costs for relocation	no direct costs	11 months	?

## Changing Patterns of Consultation

In addition to these specific initiatives, there seems to be increasing interaction at the regional level where community leaders and regional managers maintain ongoing contact and exchange. Out of these experiences is emerging new ways of doing business that lend themselves to another kind of analysis. The changing patterns of consultation approaches begin to be reflected in the following chart of the patterns of consultation.

**Figure 5 - Changing Patterns of Consultation**



From a superficial overview, it is clear that the direction is moving toward more openness, more joint decision-making with Aboriginal peoples, and more initiatives that are driven by Aboriginal peoples, while the traditional departmental roles are being reduced. It might be fruitful to develop this model further with a larger selection of examples and Aboriginal input.

## Emerging Models

Although there are many interpretations of the meaning of consultation, most practitioners of public consultation view it as a range of activities which occur along a continuum much like the one developed by the CCMD (Figure 3). At the one end, consultation consists of sharing information with interested parties regarding decisions which have been made by government. Some groups, and in particular some First Nations would probably consider this a poor example. On the other end of the continuum, consultation can be seen as joint-decision making, where the participants share the responsibilities of prioritizing the issues, planning the process, choosing the best solution, implementing the solution and monitoring its outcome. The premise is that as long as the objectives and limitations of consultation are clearly established before the process begins, any activity along the continuum can be considered consultation.

DIAND has employed a variety of consultation models and/or approaches to suit its many initiatives. These approaches follow a natural progression on the “consultation continuum” and are as follows:

1. ***Information Sharing*** - A sharing of information usually occurs when one party requests information from that of other or involves providing advice.
2. ***“Government-led” Approach*** - Involves building a strategy initiated by government, jointly over a period of time and allows participants to plan a process (or processes), identify products, define roles and budget resources. The AES strategy is one example.
3. ***Negotiations*** - When participating in a negotiation, participants assume that each side has a matching power and solutions will involve compromise (e.g. Land Claims). The move to accelerate settlements means that government has to be more willing to accommodate Aboriginal interests than in the past.
4. ***“Blank page” Approach*** - The rationale underlying this approach is to engage in a forum for discussion whereby the participants “come to the table” with no preconceived notions about what is about to be discussed. It is becoming an idealized approach frequently mentioned by Aboriginal peoples. This approach works best for new and unrestricted areas (e.g. sustainable development), since presumably any participant has the opportunity to introduce an item for discussion. It is difficult, however, to determine in the current format when to initiate such a process since the departmental need to vet or properly define an idea with senior management could be construed as advanced decision-making.
5. ***Developing Partnerships*** - Engaging in consultations as partners involves trust, mutual

respect and understanding. Partnership assumes an equality among participants and necessitates a joint undertaking for the achievement of a commonly agreed upon goal.

While it would be very difficult to develop a framework which could be applied consistently to every consultation, it is important not to look at each consultation activity in isolation. **Table 2** illustrates the various consultation approaches employed by DIAND and some of the qualities that make them work.

**Table 2 - DIAND Consultation Approaches**

	<b>Information Sharing</b>	<b>Government-led Approach</b>	<b>Negotiation</b>	<b>Partnership</b>	<b>Blank-Page Approach</b>
<b>Examples:</b>	conversations, meetings, committees, open forums, communiques, discussion papers.	Arctic Environmental Strategy, Royal Commission on Aboriginal peoples	Land Claims Settlements	Atlantic Policy Congress, BC Treaty Commission, Indian Commission of Ontario	Sustainable Development
<b>Characteristics:</b>	oral and written information	statutory requirements; formal structures; identified participants.	an equality of power among participants, problem-solving involves compromise.	involves consensus-building, assumes an equality among participants, necessitates a joint-undertaking.	a new initiative, joint decision-making, equal power among participants, flexibility in structure, time and resources.

## Section 5 - Discussion of Issues

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The following observations are made in response to the issues relevant to the scope of this departmental overview of consultation activities. These observations will help inform senior management of the status of consultation activities in the department as of 1995-1996 and any implications for subsequent years.

### **Issue 1: Departmental Consultation Practices**

*There is currently extensive consultation activity throughout DIAND at all levels. The commitment to consult and activities in support of it have increased in the past 5 years.*

While there is no specific operating definition of the term “consultation”, the review of departmental consultation practices has identified extensive and unmistakable consultative activity and widespread commitment to it across DIAND in all sectors and at all levels of operation. First Nations, Inuit and Northern people have consistently called for increased and open consultation, and the department has responded with strong direction to consult in order to create effective devolution strategies. For example, the 1997-1998 Departmental *Framework for Action* states explicit deliverables on partnerships and the 1998 departmental report *Gathering Strength* recognizes partnerships as the framework for all departmental activity.

Consultation is likely to continue to have a high profile with the growing trend for government to consult openly with citizens. DIAND is seen by fellow departments as a leader in conducting consultations. Other federal departments in a discussion forum hosted by the PCO, indicated that they are looking to DIAND for case examples of consultations with Aboriginal peoples. The round table on citizen engagement has addressed the issue of developing policy through dialogue and developed guidelines.

As the government’s efforts toward devolution and self-government have increased in recent years, so too has the recognition by officials that consultation is a precursor to decision-making. The number of fronts on which consultation has been engaged has led to a categorization by purpose and approach. This document is intended to shed some light on the range of initiatives taking place. This document offers a beginning in the acknowledgement of the consultation process, identification of the players, resource commitments and roles in decision-making.

With the rapid growth in activity that is also partly based on need to rebuild trust and move joint agendas, there comes the possibility of consultation fatigue, which can occur when activity happens on too many fronts for a community or organization to address. Departmental officials (who have a bureaucracy made up of nine regions and headquarters behind them) and First Nations (who represent over 600 communities and various organizational institutions) Inuit and Northerners alike are operating under severe resource constraints. Consultation with its extra dimensions of time and effort and representation adds substantially to their burden.

*Although consultation has come to be a routine part of departmental business activity, there is no common definition which unites officials around a consolidated purpose or set of processes. This has both advantages and disadvantages. Because there has been no definition, the approach has evolved in an adaptable, flexible and interactive fashion. At the same time, there is no consistent set of principles or sufficient sharing of experiences across the department.*

Departmental officials have struggled to define what is meant by consultation in order to know how to incorporate it into regular business. Their task has been a difficult one because Aboriginal peoples have different understandings and expectations about the consultation activity/process. Furthermore, the nature of departmental activities is so varied, ranging from the negotiation of land claims to the regulation of natural resource use. Finally, the legacy of mistrust has not entirely dissipated.

At the same time, officials were driven by the need to achieve progress in response to strategic direction to work successfully with First Nations, Inuit and Northerners. This was further complicated by the newly decentralized department where it was becoming increasingly clear that while some in headquarters tend to see consultation as subject specific, regions see it as a continuous process with a wide array of potential consulting bodies.

Eventually officials dropped the preoccupation with a consistent definition and worked with local constituents on specific operations and procedures. With no departmental restrictions of an umbrella approach, officials and Aboriginal peoples were able to identify approaches that suited their needs.

The primary strength of these structures is to facilitate communication between departmental and Aboriginal representatives. There seems to be considerable flexibility about how to conduct any given consultation, depending on the issue, and the department's latitude to share or pass on responsibility among other criteria. The extent of these initiatives and the First Nations structures, e.g., the Alberta Summit, the Atlantic Policy Congress, that have evolved, provide preliminary indications of success. At the same time, there is potential for "reinventing the wheel" as sharing of experiences is limited.



In addition, while consultation within the department is evolving into working partnerships, elsewhere in the federal system, it is still implicit that final decision-making rests with government. This may be appropriate for departments which are not devolving responsibilities to their constituents but it creates a lot of pressure on the word “consult” as well as great potential for continued misunderstandings.

***Consultation occurs around different issues, structures and capacities***

To begin to understand how consultation may be activated, a breakdown of categories was presented in Section Four. These are identified initially by purpose: devolution type consultations, policy type, new strategies, fact finding, corporate type and *ad hoc* or problem solving types of consultation. Using this framework, we may further consider how the approach may be classified- e.g. blank page or white paper; partnership process or statutory obligation. Based on these concepts, it may be possible to better plan for and conduct consultations and identify appropriate strategies to guide future work.

***The context is changing rapidly as new priorities evolve; the nature of consultation is becoming more sophisticated and established between government and its citizens, while the nature of the relationship between DIAND and Aboriginal peoples is broadening as partnerships increasingly replace consultation in importance as the way to conduct business.***

As the strategic commitment to forge partnerships increase, it is not clear what role consultation alone will continue to play. As First Nations, Inuit and Northerners acquire the capacity and the responsibility to manage their affairs, the need for consultation by DIAND could reasonably be expected to diminish. If that capacity involves creation and funding of functions that used to be performed by DIAND, the implications for funded consultations are less clear. While there may be a need for consultation as long as the department continues to carry any responsibilities towards its constituents, it should presumably diminish in significance to the extent that these constituents are able to conduct their own affairs independently.

The Royal Commission on Aboriginal peoples has provided strong messages around the nature of relationships that Aboriginal peoples are likely to demand of the government in coming years, and work to address these issues is now in progress in line with directions set out in *Gathering Strength*.

There are further implications for the need for policy consultation with Aboriginal peoples. While structures are increasing in regions, there is no single group that represents all First Nations. There is a need to further refine how policy consultations will effectively take place and to identify and support Aboriginal capacity to respond to this gap.

## **Issue 2: Clarity of DIAND Consultation Objectives**

*The consultation activities undertaken by the department are clearly in support of government objectives including self-government.*

DIAND did not have explicit consultation objectives before the 1996-1997 *Framework for Action* despite a very strong policy orientation which reflected broad federal objectives. While this has provided much freedom to officials to develop working consultations as needed, it is not evident how effectively those objectives have been met or whether there is sufficient central guidance.

## **Issue 3: Resources Allocated To Consultation**

*There is no specific accounting system that recognizes and records consultation activity consistently across the department. While the flexible and individual nature of the departmental consultation activities has been an asset in developing new approaches, expenditures have not generally been recorded as consultation outside core and C&PD funds. Consultation is not a program by itself but rather a sound management practice widely recognized across the department integral to program management operation.*

As Section Four indicates, consultation related expenditures likely exceed what is recognized by the department's accounting systems, which are designed to track program expenditures and not those of a management practice like consultation.

Aboriginal peoples as well as DIAND might benefit from better information about the costs of consultation when spending restraints affect availability of program funds. In planning how to resource and prioritize their activities both Aboriginal peoples and DIAND could find use for guidelines around what could be covered when special funds are provided. Particularly as they struggle with limited program dollars, it would be useful to know whether more efficient ways to consult could be discovered. For example, various approaches could be more easily compared to ascertain which is the most cost effective. Budget forecasting might also improve.

Any efforts to provide better costing information would necessarily be substantial. For example, the departmental expenditure management system would need to be altered; and the significant costs involved in staff time would need to be tracked. Finally, the costs to the department's Aboriginal partner organizations would need to be estimated in some manner. All told, it is not clear whether the costs in gathering this information would be commensurate with the benefits to be realized.

While some of the resources for consultation are in support of special projects and initiatives, some also are directed to core funding and support of organizations. Such organizations may receive many layers of funding depending on the nature of consultative work they are engaged in. At the same time, new structures are emerging, particularly in regions, such as the Alberta Summit, or the Atlantic Policy Congress.

These regionally based entities provide a new level of interaction for the department, and it is not clear whether they are replacing or changing any of the past roles of existing organizations in representing Aboriginal interests.

Suggestions from departmental representatives to increase efficiencies in using consultation funding included the following:

- providing more structure to consultations;
- reducing any resource duplication for consultation at a departmental and First Nations level;
- using specialists to facilitate consultations with First Nations and Northerners;
- ensuring that consultation priorities and objectives are clear; and
- adhering to a reasonable schedule for discussion of specific issues.

#### ***Issue 4: Aboriginal Support for DIAND Consultation Practices***

***Aboriginal peoples have clearly indicated that they expect full and open participation in DIAND's undertakings, and many have established organizational structures which support involvement.***

While Aboriginal peoples were not approached in this departmental overview study, they have over the years presented some clear messages to departmental officials.

The recognition of the need for Aboriginal support for consultation has been brought home on many fronts to departmental officials. There is general understanding and commitment to Aboriginal objectives and their need to be involved directly in decisions that affect them. The creation by Aboriginal peoples of structures to correspond with DIAND regional management makes this easier for the department to carry out consultation.

Although they are usually referred to as a collectivity, Aboriginal peoples are not a homogeneous group with a single point of representation. As well as separate nations, there are communities, local government structures, political organizations, institutions, etc. spread across the country with differing interests and capacities.

Many officials point out that Aboriginal peoples are different in culture, values, capacity, expectations. For example, while the RCAP report refers to 60-80 Aboriginal nations that have an inherent right to self-government, there are far more entities who interact with DIAND currently and they cannot be assumed to have the same interests. The absence of a focal point or standard process for consultations makes it more difficult to ensure that the right people and organizations are consulted. As partnership grows and becomes stronger, it may be possible for First Nations, Inuit and Northerners to be more specific in identifying their requirements for support.

### ***Issue 5: Best Practices and Lessons Learned***

***Departmental officials over the years have developed different models to fit different situations, all of which have produced fruitful lessons as presented in this report. From DIAND's perspective these represent "best practices". However, no attempt should be made to assess how effective consultation efforts have been without the participation of all those involved.***

While no comparative analysis is provided, the examples presented in this report might be from the department's perspective good practices since they all were put into effect, involved First Nations, Inuit and Northerners and produced results. Consultation is now recognized as a way of doing business. Regular contact with Aboriginal leadership and communities is a welcome shift away from unilateral decision-making. Increasingly there is as wide recognition among DIAND officials that no single consultation model is appropriate in all situations for all Aboriginal peoples, many of which have different approaches to making decisions.

Benefits and challenges arising from consultation activities offer some context for beginning to assess "best practices":

Some of the benefits include:

- increased legitimacy and credibility of both process and outcome;
- greater Aboriginal and stakeholder support for and ownership of initiatives;
- endorsement of outcome or product;
- access to better information;

- reduced conflict and resistance;
- shared expertise;
- opportunity for capacity building and continuous learning;
- positive rapport and ongoing goodwill; and
- increased potential for future partnerships.

Some of the challenges that exist with consultation as identified by many of the practitioners include:

- dealing with conflicting agendas;
- restricted resource requirements;
- identifying participants and representatives;
- establishing trust;
- building consensus;
- ensuring linkage to decision-making;
- dealing with demands by external agents (eg Treasury Board, provinces etc);
- dealing with new participants (eg replacements);
- balancing bureaucratic and community responses;
- consultation fatigue; and
- complexities of administration outside traditional structures.

## Section 6 - Conclusions

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This section draws key conclusions on consultation based on the findings of this report. They include:

- consultation is a complex subject which defies easy definition.
- extensive consultative activity is taking place at DIAND.
- costs are difficult to track because consultation is not a program but rather a management practice.
- the department has long been viewed as coming to the table with decisions (or preferred outcome) in hand. This perception has damaged DIAND's credibility with First Nations and other Aboriginal constituents, despite considerable departmental efforts to work jointly to common ends.
- this overview provides information to assist the department in recognizing significant consultative activity that has been occurring but has yet to be documented.
- given new policy directions (eg. self-government, devolution etc.), the new relationship between DIAND and its partners will be seen by other federal departments as a model for doing business. DIAND has the opportunity to be proactive (eg. the AES, sustainable development strategy, etc.) in demonstrating how to include constituents in decisions affecting them.

# TERMS OF REFERENCE

## Terms of Reference

### Evaluation of Departmental Consultation Practices Need

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**Purpose:** To determine the nature and effectiveness of DIAND consultation practices and to identify a rationale and potential alternatives in support of the development of a departmental consultation strategy.

**Background:** In keeping with the federal policy to consult with the First Nations, DIAND currently practices consultation in almost every aspect of its business, but there are very different understandings of the meaning of “consultation” among the various participants involved. There are many government players involved in consultations in regions and headquarters as well as other jurisdictions including other departments, province and territories. There are also many different kinds of consultation including formal and informal, funded and unfunded. While consultation activity has increased in recent years as part of an evolving relationship with aboriginal people, DIANDs good faith has sometimes been challenged because of differing expectations about what subjects require consultation and why, what processes should be involved, what results to expect, and what action should be taken.

Expenditures for formal consultation are significant, and various budgets are implicated, for example, over \$8M in core and other funding went to First Nations in 1994-1995, while additional consultation funds may be provided through other departmental or governmental mechanisms. There is a need to rationalize what is being funded and to determine the value of these activities to all stakeholders. Other departments have chosen to reduce funding lines, e.g., Canadian Heritage has begun to adjust its core funding to aboriginal groups, and this may have implications for DIAND. There may also be opportunity for DIAND to better manage its consultations through a focus on a consistent rationale and value for money of its activities.

**Issues:** Key issues to be addressed include:

1. What consultation activities are carried out cross the department? Are they clearly defined? Are they delivered in a consistent manner? Have they changed in the last 5 years?
2. Are DIAND consultation objectives clear and consistent with departmental and government policy? Are these objectives being met?
3. What departmental resources are allocated to consultation? How do they compare with other departments? Is consultation being delivered in a cost effective manner?
4. Do First Nations support consultation as practised by DIAND? What aspects are effective from their perspective? Which are not?



5. What best practices exist as models for future consultation? Are there better ways for the department to achieve its objectives? What lessons can be learned from the consultation practices of other departments?

**Scope:** The evaluation will be national in scope, and will be based on information and documentation from DIAND and external sources, including other government departments and First Nations.

**Approach:** The evaluation is to be conducted in two phases using a combination of in-house resources and contractors. Phase I will be an internal, administrative exercise to inventorize all DIAND consultation activities and expenditures, including conditions for consultation, types of agreements and funding mechanisms, and results; and to provide a rational framework for consideration of consultation alternatives. This will be based primarily on file and document reviews and interviews with key managers. An advisory committee for Phase I will consist of departmental representatives at the request of the program. Phase II will look at the relative effectiveness of consultation activities, their cost effectiveness and the development of alternative models, and will be conducted through a significant consultation process.

**Schedule:** Phase I data collection will take place during the fall of 1995, with reporting in January 1996. Planning, including a budget and schedule for Phase II will be addressed pending consultation process.

**Costs:** The costs of Phase I will include \$45K for contracting services to be borne equally between DAEB and the program.

**Approved by:**

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Strategic Policy and Planning  
October 12, 1995