

Aboriginal Engagement Duty to Consult

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Constitutional Rights

- Subsection 35(1) of the *Constitution Act, 1982* states:
“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”
- Defines who Aboriginal peoples are:
 - Indian (First Nations)
 - Inuit and;
 - Métis
- Protects Aboriginal and treaty rights including rights already established or which may be asserted.

Key Court Decisions- Duty to Consult

- Supreme Court of Canada decisions
 - Haida Nation, Taku River, Mikisew Cree
- All decisions recognize that the Crown's duty to consult arises where:
 - the Crown has knowledge, real or constructive of the existence or potential existence of an Aboriginal or treaty right, and
 - contemplates conduct that might adversely affect the right in question.
- Source of the duty is the "honour of the Crown" - federal and provincial

Aboriginal and Treaty Rights

Aboriginal Rights

- Stem from practices, customs or traditions integral to the distinctive culture of each Aboriginal community, e.g. hunting and fishing.

Treaty Rights

- Stem from the signing of treaties by Aboriginal peoples with the Crown.
- Treaty rights can include:
 - Reserve lands;
 - Financial compensation;
 - Continuity of traditional use.

Relevance to Municipalities

- No Supreme Court of Canada decision yet.
- Based on the direction in recent case law, it is the Province's view that local governments will likely be found to have a duty to consult in some circumstances.
- Aboriginal assertions increasingly draw in lands and processes in which municipalities have an interest, for example:
 - archaeological/burial site issues raised in land use planning and development process
 - impact of growth on hunting and fishing rights

Relevance to Municipalities

- Engagement/consultation with Aboriginal peoples as;
 - part of the community;
 - part of the cultural heritage;
 - participants in the local economy, community health, investment and growth.
- Makes sense to engage affected Aboriginal peoples as part of a municipality's regular business.

Engagement/Consultation

- Meaningful engagement/consultation can be based on:
 - good relationships with neighbours;
 - engaging Aboriginal peoples in policy and program development that do not affect rights; or
 - a duty to consult on Aboriginal or treaty rights where there may be adverse impacts.
- Nature, scope and content of duty to consult can vary widely depending on the particular circumstances.
- Approaches to engagement/consultation:
 - should be flexible to adapt to particular circumstances
 - objective should be to help build co-operative relationships and mutual respect with Aboriginal peoples.

Relevance to Land Use Planning in Municipalities

- Developing approaches:
 - How to assess the need for engagement
 - Options for engagement
- Working with Aboriginal partners to:
 - Look for opportunities to promote engagement and;
 - Develop approaches that will work for both communities.
- Importance of keeping municipal records relating to all engagement/consultation processes.

Ontario's Draft Consultation Guidelines

- Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal and Treaty Rights, June 2006
- Draft guidelines:
 - guidance to Ministries on their duty to consult
 - considerations in forming a consultation approach
- Ministry of Aboriginal Affairs is seeking the input of both Aboriginal peoples and non-Aboriginal stakeholders

Canada

- Canada recently released its Aboriginal Consultation and Accommodation - Interim Guidelines for Federal Officials to Fulfil the Legal Duty to Consult (February 2008) <http://www.ainc-inac.gc.ca/nr/iss/acp/intgui-eng.pdf>

Some Resources

- Indian and Northern Affairs Canada (www.ainc-inac.gc.ca)
- Ontario Ministry of Aboriginal Affairs (www.aboriginalaffairs.gov.on.ca)
- Aboriginal Canada Portal (www.aboriginalcanada.gc.ca)
- Aboriginal communities
- Chiefs of Ontario website (www.chiefs-of-ontario.org)
- Federation of Canadian Municipalities: Land Management Project:
<http://imp-pgt.fcm.ca/english/index.html>
- Union of British Columbia Municipalities www.civicnet.bc.ca
- Internet keyword search using your favourite search engine








Conclusion

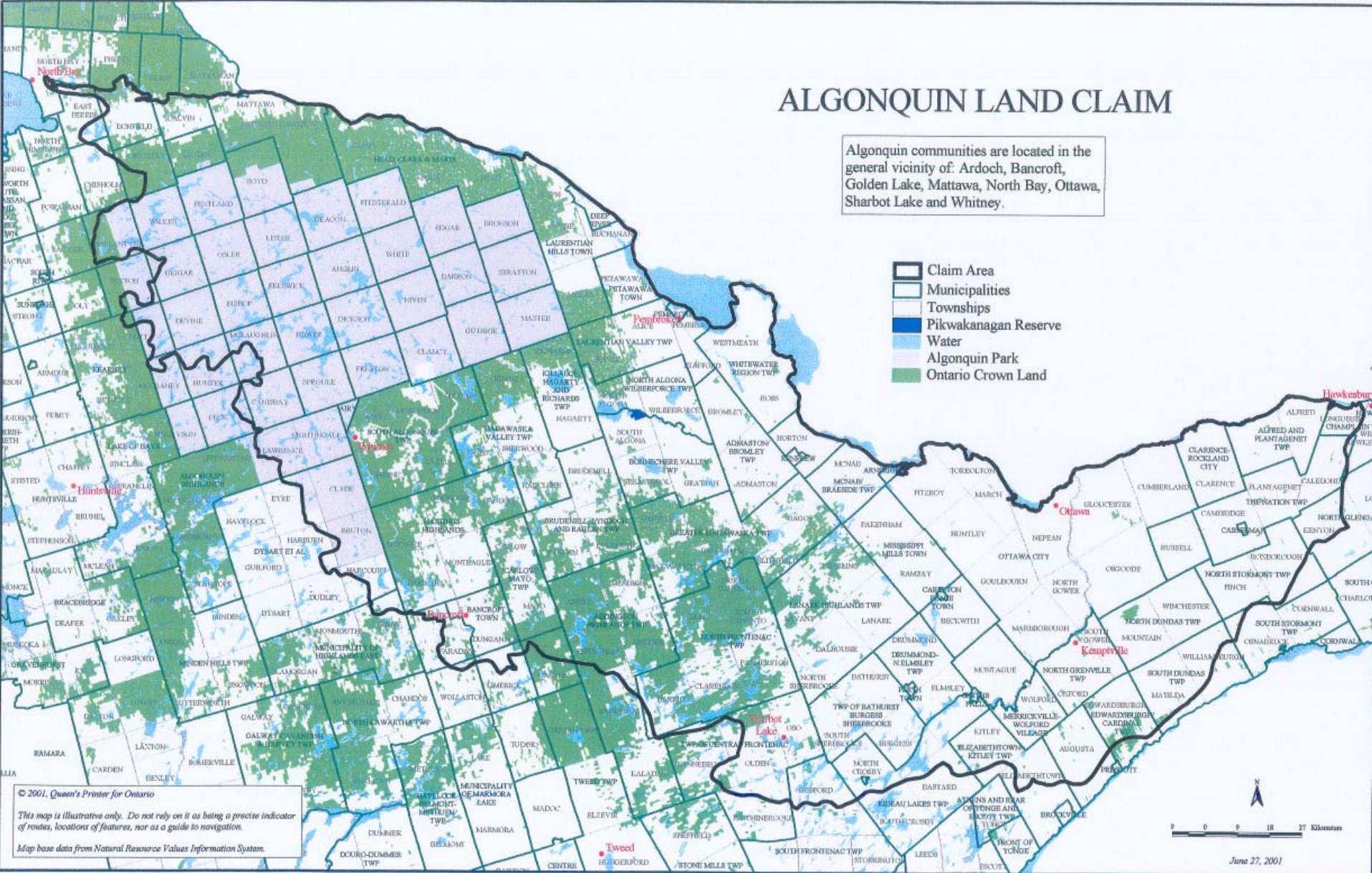
- Legal meaning of the constitutional protection given to Aboriginal and treaty rights in 1982 has developed and its significance has grown over the past 25 years
- Duty to consult is a key element in the protection of Aboriginal and treaty rights
- Key to dealing effectively with these issues will not come through recourse to the courts
- Building positive relationships and engaging early in the process with Aboriginal communities (as more than a stakeholder) in a meaningful way will often be the most effective way for all parties to find solutions to move forward
- We anticipate that meaningful engagement with Aboriginal communities will become normal business practices of all governments

Thank you .

ALGONQUIN LAND CLAIM

Algonquin communities are located in the general vicinity of Ardoch, Bancroft, Golden Lake, Mattawa, North Bay, Ottawa, Sharbot Lake and Whitney.

-  Claim Area
-  Municipalities
-  Townships
-  Pikwakanagan Reserve
-  Water
-  Algonquin Park
-  Ontario Crown Land



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