



Notes for the Ministerial Statement of the Minister for Native Affairs, Mr. Geoffrey Kelley

**At the time of the presentation of the
Interim Guide for Consulting the Aboriginal Communities**

**City: Québec
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Routine proceedings

Ministerial statements

**Statement of the Minister for Native Affairs,
Mr. Geoffrey Kelley**

Interim Guide for Consulting the Aboriginal Communities

(The spoken version prevails)

Mr. Speaker,

In his inaugural speech, Québec's Premier stated that our government would promote dialogue and agreements with the Aboriginal nations wishing to contribute to Québec's development and to improve their own living conditions. Moreover, he announced that we were in the process of preparing a policy to consult the Aboriginal nations that would take into account the legal obligations that we are required to meet. It gives me great pleasure to present to this Assembly the *Interim Guide for Consulting the Aboriginal Communities*, which is a first step towards achieving the objective that we have set.

In recent months, various Aboriginal communities have shown a growing interest in taking part, in different ways, in economic development projects.

Their requests are based on the recent evolution in the field of Aboriginal law. Mention may be made of the rulings in the *Haida Nation v. British Columbia (Minister of Forests)* and the *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* cases, handed down by the Supreme Court of Canada on November 18, 2004 and which concern the Crown's obligation to consult and accommodate the Aboriginal people, as well as the decision in the *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* case handed down on November 24, 2005. As we will see, the decisions set new requirements in the field of Aboriginal law. The Supreme Court requires that governments adopt an official process, which can take the form of a consultation policy.

Mr. Speaker, I am pleased to announce that the Cabinet has adopted an interim guide for consulting the aboriginal communities, a measure awaited by the communities and that will allow the departments and agencies of the Government of Québec to progressively harmonize their consultation practices.

As the title indicates, the guide is an interim document. On the one hand, because the government wanted to comply with the obligation

expressed by the Supreme Court in a responsible manner and, on the other hand, because the government always had the intention of presenting the guide to the representatives of the Aboriginal communities as well as to the stakeholders concerned by the subject before adopting a more definitive policy. As I have just pointed out, the guide is intended for every government department, agency and corporation when an action being envisaged can encroach on the rights claimed by the Aboriginal communities. In general, the actions that should be considered do not concern private lands.

The guide applies to activities related to the planning and drafting of statutes and regulations, as well as the activities ensuing therefrom, such as the development of the territory and natural resources. It also applies to government policies that may affect the rights claimed by Aboriginal communities.

The obligation to consult will vary according to two main factors: the seriousness of the claim and the importance of the project's anticipated impact on the right. Consultation will be on a case-by-case basis and will be in accordance with a comprehensive and coherent government approach.

The Supreme Court has expressed various principles applicable to the consultation, including the following:

- The two parties must participate in the process in good faith.
- The Crown must really have the intention of taking into account the concerns of the Aboriginal communities to the extent that they are expressed; this is what is expected of honourable behaviour.
- True consultations must be held even if there is no obligation to reach an agreement.
- The Aboriginal communities must not frustrate the efforts made in good faith by the Crown. Nor should they defend unreasonable positions to prevent the Crown from acting in those cases where, despite a true consultation, the parties are unsuccessful in reaching an agreement.

The right to be consulted under certain circumstances does not give the Aboriginal communities a *veto* right over the decisions of the Crown.

Discussions will be getting under way shortly with representatives of the Aboriginal communities on the conditions associated with the interim guide. The Government of Québec has mandated Mr. Jules Brière to act as special representative of the government, who will

hold discussions with the Aboriginal people as well as with stakeholders interested in the subject. On various occasions, Mr. Brière has acted as special legal advisor to the Government of Québec on questions related to managing the public domain and the exploitation of its resources, as well as in relations between the State and certain Aboriginal nations.

The government's objective is to explain the content of the guide and, in so doing, to offer the Aboriginal people the possibility of commenting on the guide and making suggestions. Following these meetings, the government's representative will report to me and will submit recommendations that will enable the government to adopt a more definitive policy, namely a clear and transparent approach officializing our initiative.

Mr. Speaker, this initiative should result in a behaviour that promotes good and harmonious relations between the citizens who live on the same territory, a territory that we will then be able to develop in a manner that is sustainable and profitable for all.

Mr. Speaker, I request the consent of the House to table the *Interim Guide for Consulting the Aboriginal Communities*.

Thank you, Mr. Speaker.