

Back to Basics: Key Terms in the Canadian Regulatory Context

Sandra Gogal, Rachel Donnelly

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Advancement through regulatory processes in Canada often requires engaging proximate Indigenous communities who may be impacted by a proposed project. Ensuring engagement is meaningfully conducted at all stages of project development can insulate permits and approvals from court challenges that result in expensive and lengthy delays and disrupt production timelines. Getting these processes right requires careful attention to legal landscape surrounding engagement and consultation with Indigenous communities, including the terminology used in this context.

Below we clarify some key terms used in the Canadian regulatory context:

- **Aboriginal people:** are defined under the Canadian Constitution as First Nation, Inuit, and Metis peoples in Canada.¹
- **Indigenous:** is a collective term for the original peoples of Canada, which includes Aboriginal people.²
- **Aboriginal rights:** are rights recognized and affirmed under section 35 of the Canadian Constitution.³ These rights include rights to fishing, hunting, trapping, and gathering, among others.
- **Duty to consult:** the duty to consult requires that federal and provincial governments consult with Indigenous communities and people when making decisions that could impact their Aboriginal rights.⁴ Proponents may contribute to these processes by sharing information with Indigenous communities, participating in discussions to better understand community concerns, and by adopting mitigation measures that consider Indigenous knowledge and perspectives.

At Cassels, we have extensive experience advising mining companies on the implementation and execution of engagement processes with Indigenous communities, including community outreach programs and preparing impact benefit agreements. Please reach out to one of our team members to learn more about how we can contribute to successfully advancing your project through these processes.

¹ *The Constitution Act, 1982*, [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#), s 35(2).

² Government of Canada, "Indigenous peoples and communities" (modified 13 June 2024), online: [link](#).

³ *The Constitution Act, 1982*, s 35(1).

⁴ *Haida Nation v British Columbia (Minister of Forests)*, [2004 SCC 73](#) at paras 32 and 35.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.