



CAPP CANADIAN ASSOCIATION
OF PETROLEUM PRODUCERS

INDUSTRY PRACTICES

**Developing Effective
Working Relationships
with Aboriginal
Communities**

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Developing and maintaining effective communications and associated business relationships with local aboriginal communities is becoming increasingly beneficial for operators within the upstream oil and gas industry. Effective working relations support more timely access to land and greater involvement with local labour and contractors. In contrast, failure to develop productive, two-way communication processes can result in misunderstandings, disagreements, or unresolved opposing views. Recent court interpretations of resource development decisions have changed the expectations and roles for industry, governments and affected communities, thus supporting a growing need for effective working relationships among all parties.

The unique interests and constitutional rights of aboriginal communities support the rationale for industry to develop strong business relationships with communities, relationships based upon trust and respect to achieve common goals. This guide addresses the key issues and supporting rationale for oil and gas proponents operating in areas of identified interest to aboriginal communities.

Purpose of This Guide

This guide will:

- Provide rationale to support internal and external corporate considerations and preparations with regards to developing long-term business relations with affected aboriginal communities.
- Suggest certain practices and steps for the planning and executing of both regular interaction and formal consultation with aboriginal communities.
- Provide CAPP members with a reference guide to assist with managing aspects of aboriginal affairs as part of ongoing operations, and with managing projects that may impact aboriginal communities.

Canada's aboriginal peoples¹ have unique rights as stated under the Canadian Constitution. Recent appeals court decisions have provided guidance regarding the roles and responsibilities of government, industry and aboriginal communities with regards to these rights as applied to the management and development of Canada's natural resources. But this still remains an area of uncertainty.

This guide is written to assist companies that have, or are planning to acquire, land or resource access rights from the provincial or federal governments. In accordance with governments' intent and several Supreme Court of Canada decisions, this document anticipates that governments will fulfill the Crown duty to consult and accommodate First Nations and aboriginal communities.

While acknowledging the benefits of common industry objectives, CAPP and its members recognize that companies are distinct, independent entities. Within this context, this guide is not intended to be prescriptive by defining required or anticipated practices. It is intended as a reference guide to complement the individual corporate policies and programs to which CAPP member companies currently adhere.



¹ For the purpose of this document, and for ease of reference, the term "aboriginal" is used as an inclusive term of Indian, Metis, and Inuit. Where a specific term is used, it is done so with intent for clarity. This terminology is not offered as, nor intended to be, a full and complete definition of the inclusive or specific terms.

SECTION 2 THE BUSINESS CASE



Companies strive to manage many risks: economic, legal, safety, environmental, operational and those affecting corporate reputation. Within this framework, CAPP has been a long-standing advocate of our industry conducting meaningful public involvement and community relations as a key aspect of resource management. Understanding the interests of aboriginal communities, along with the development and implementation of strategies to address their unique concerns, is a key part of responsible risk management. The continuing evolution of the case law regarding aboriginal rights, along with the corresponding changes in regulatory requirements for consultation, adds to the level of risk and uncertainty. Legal decisions, policy changes and associated regulatory changes are evolving and industry's challenge is to adapt industry practices accordingly.

Numerous court decisions have confirmed that, in the appropriate circumstances, provincial and federal governments owe a duty to First Nations to consult with them and to accommodate their interests before making decisions that may affect the First Nations' ability to exercise aboriginal and treaty rights. This includes decisions involving oil and gas related activities such as approvals for access roads, pipelines, well sites and facilities.

Recent court decisions have extended this duty to planning activities such as decisions to open an area to resource development. Based on these earlier decisions, and specific to individual cases, some courts have held that governments have failed to satisfy their obligations to First Nations prior to approving licenses, transfers, or projects. In these instances, the license or authorization in question has been set aside, resulting in delays and added expense, and sometimes culminating with project cancellation and foregone expenditures. While these legal challenges started in the forest, mining and fishing industries, in the past few years there have been several actions by First Nations alleging that the Crown has failed to fulfill its duties to First Nations in approving oil and gas activities.

These legal cases have clarified that governments owe the duty to consult and appropriately accommodate, and that governments cannot delegate the ultimate responsibility for carrying out this duty. However, governments may delegate administrative aspects of this role and there are project-specific actions that industry proponents can take to support government consultations. Industry efforts can thereby reduce the risk of legal challenges and the likelihood of any such challenges being successful. Knowledge of the legal duty and the roles and responsibilities of various parties is important in taking these steps and managing these risks.

Building mutually beneficial and effective relations with aboriginal communities makes good business sense, both in the short-term for current business needs, and in the long-term for enduring projects and activities. It is imperative that management be fully aware of the risks associated with failure to meaningfully consult, when required.

Establishing Good Relationships

Good relations with affected aboriginal communities can assist with all of the following:

- **Regulatory approvals** through potentially minimized timing delays and a minimized potential for legal challenges. In addition, some jurisdictions include community relations as integral aspects of regulatory approvals, making good business relationships even more relevant to operators.
- **Improved certainty of project schedule and costs** because costs associated with projects generally escalate when there is uncertainty regarding the timeline for approvals.
- **Corporate acceptance by the community**, and subsequent support for industry's social license to operate, for example:
 - Corporate acceptance results in greater tolerance of unanticipated project changes, and a greater aptitude for collaborative problem solving.
 - When local people understand and accept a project, they are less likely to oppose the project through delays, roadblocks, litigation, or negative media coverage.
 - Community leaders (e.g. Chief and Council) represent the views of the collective, and can often assist project proponents to better understand individual concerns.
 - When local people feel their issues are addressed, they may formally support a project (e.g. through written letters of support).
- **Cost reductions due to improved access** to local labour force and contractors, including:
 - Community members may want to pursue economic opportunities associated with development plans, thus a community's early knowledge of upcoming projects may help community members compete for economic opportunities.
 - Community representatives can direct project proponents towards local service providers, both individuals and company representatives.
- **More informed decision making** due to improved communications and reduced uncertainty, including:
 - Early identification of the communities' interests, concerns, and priorities.
 - Improved ability to avoid culturally or ecologically significant areas, alter project timing and employ specialized technical practices (e.g. low impact).
- **The ability to continue to address evolving regulatory requirements.** Several provincial governments are developing policies with regards to aboriginal consultation. It is anticipated these provincial policies will lead to aboriginal consultation requirements being incorporated into regulatory approval processes.



SECTION 3 THE APPROACH

Public involvement is a process through which a company builds relationships between itself and various stakeholders. While many of the same practices associated with public involvement programs still apply, the unique rights of aboriginal communities require a distinct and separate stakeholder process. For example, the Courts have confirmed the existence of certain rights for First Nations communities that require these communities be consulted by government prior to approval of developments that may infringe on aboriginal rights. To help governments address their consultation requirements related to treaty and aboriginal rights, stakeholder programs with aboriginal communities should encompass additional considerations beyond traditional public involvement programs.

The courts and governments are still wrestling with a clear definition for consultation. However, broad clarification that was initially provided in the *Sparrow* case (Supreme Court of Canada, 1990) has been built upon through the courts. In general, the government (often with the assistance of the developer) should be able to confirm the following:

- There is a valid legislative objective for any infringement of a right.
- There has been appropriate consultation by government with affected community(ies).
- The potential adverse effect has received adequate consideration and reasonable efforts to avoid or mitigate, and these considerations have been incorporated into government decisions.

Failure of the government to address these factors could result in additional project risk in terms of higher costs and/or project delays for the industry operator.

CAPP believes industry's primary role in consultation is associated with project-specific development, while governments primary role is associated with broader consultation issues. Thus, the role of industry is to enhance government consultation through:

- Early notification to government and aboriginal communities to ensure parties are informed about the project proponent's proposed activity. Information should include short-term and long-range plans (where possible) in the area.
- Discussing with aboriginal communities how proposed activities may affect traditional land uses and activities.
- Recording and addressing issues or concerns identified by the aboriginal communities and identify efforts made to address these issues or concerns.
- Considering the circumstances of the project and avoiding impacts on aboriginal communities' traditional uses. Where avoidance is not possible, reasonable efforts to mitigate impacts should be considered.
- Upon request, make documentation and other information related to consultation activities carried out by the developer available to government.

SECTION 4 RECOMMENDATIONS

In order to address the role of industry proponents, the flow chart on Page 6 summarizes the recommended steps to assist with developing and maintaining positive business relations with aboriginal communities.

CAPP recommends this approach to communications with aboriginal peoples in order to satisfy three key goals:

- To support efforts to establish long-term, good-neighbour relationships with aboriginal communities.
- To meet or exceed the general regulatory requirements for consultation thereby assisting government in meeting governments' legal obligations for consultation and accommodation.
- To reduce project risk.

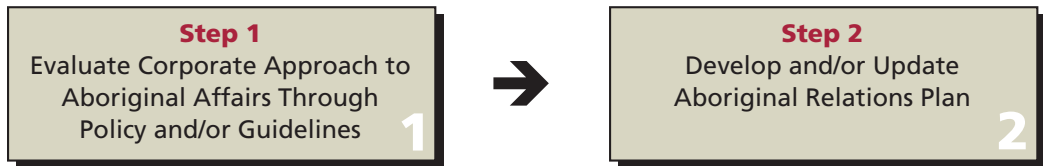
This guide focuses on new project developments. However, it is important to recognize that effective involvement and consultation requires regular interaction with aboriginal communities before, during, and well after project implementation.

A detailed description of a generic public involvement program can be found in CAPP's *Guide to Effective Public Involvement*. The information here is based on the aforementioned CAPP document, but geared toward involvement with aboriginal communities and formal consultation. There are six steps outlined in the approach to aboriginal involvement and consultation shown in a flowchart on Page 6. The steps are not always sequential and may require parallel activities. While the steps are listed in chronological order, they are intended to be considered as an iterative process requiring regular corporate evaluation and parallel activities.



**SECTION 5
SIX STEPS TO ABORIGINAL RELATIONSHIPS,
INVOLVEMENT AND CONSULTATION**

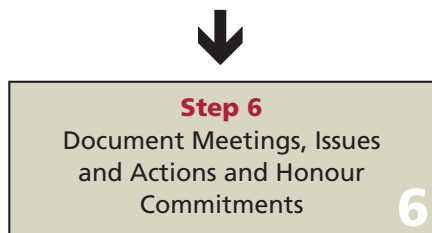
Corporate Planning Phase²



Project Specific Planning Phase



Relationship Building and Consultation Phase



² Corporate planning phase is at the discretion of each company. While CAPP recommends the development of a corporate Aboriginal Affairs Policy, CAPP also recognizes that the goals of such a policy can be reached through other means.

1

Step 1 – Evaluate Corporate Approach to Aboriginal Affairs Through Policy and/or Guidelines

What

- High level determination to outline corporate approach, principles, and goals for aboriginal community relationships.
- Corporate approach will be targeted to either parallel or complement existing corporate policies (e.g. Public Affairs), and may be combined with other public policy documents.

Why

- Provides direction and a means to clarify how the corporation will interact with aboriginal communities.
- Sets standards and expectations for employees and contractors to interact with aboriginal representatives, and ensures a consistent approach for all future dealings.
- Provides a touchstone to test day-to-day decisions as they pertain to aboriginal affairs.

When

- Now – management must set the standards, expectations and direction to ensure the company's intent in interactions with aboriginal communities is achieved.
- While the policy/guidelines should stand the test of time, the corporate approach should be periodically reviewed and updated to reflect changes in the company's perspective, laws, regulations or social environment.

Who

- Corporate policy/guidelines should be developed by staff knowledgeable of both corporate policies and of aboriginal affairs.
- Senior management of the company should endorse the overall approach, and may be involved in the development of the policy/guidelines.

Where

- The corporate approach should be developed internally to support corporate strategies and policies; once completed the approach should be shared externally.

How

- Use publicly available policy/guidelines information from CAPP, Alberta Chamber of Resources (ACR), or Industry web sites.
- Draft approach (e.g. policy/guidelines) should be concise and should focus on key corporate principles and standards.
- The approach policy/guidelines should be tested within the company and approved at the senior management level.

Key Considerations and Questions

- **What approach will be adhered to in working with aboriginal communities?**
- **How will aboriginal affairs be managed within the organization (e.g. priorities, leadership, standards)?**
- **What will corporate policy/guidelines be for key issues (e.g. consultation, employment, training, business development)?**
- **How will company adherence be evaluated?**

Measuring Success

- **Are the corporate approaches to aboriginal affairs within corporate policy and/or guidelines in place are understood and supported at all corporate levels?**



CORPORATE PLANNING PHASE

2

Key Considerations and Questions

- Are there aboriginal concerns associated with the planned project?
- If yes, are those concerns clear and have they been confirmed?
- Is the full consultation process factored into the overall project plan?
- When should consultation begin to ensure adequate time to complete the process, including changes to project design in order to address key issues?
- How can local economic opportunities be incorporated?
- What consultation initiatives has (or will) government undertake?
- What are the government's and aboriginal community's expectations of the consultation process and have both parties been appropriately involved?
- How will the plan be monitored and evaluated?

Step 2 – Develop and/or Update Aboriginal Relations Plan

What

- An internal company document, consistent with the corporate approach to aboriginal affairs, which additionally considers the company's specific strategies and tactics to meet business goals.
- Plan will typically address: general and project-specific goals, accountability, resourcing, priorities, legal issues, practices and procedures, building a long-term relationship, aboriginal issues, and plans to address associated commitments and/or agreements.

Why

- As per other planning activities; sets clear guidance on scope, expectations and approach.
- Provides a means to measure and evaluate effectiveness and progress.

When

- During early project planning and development stages, and should be integral to projects where aboriginal communities may be affected.
- In the absence of project-specific activities, the plan should be part of annual business planning cycles to address ongoing interaction with aboriginal communities in current operating areas.

Who

- Must be supported by line or project management, and designed by those knowledgeable of aboriginal affairs issues.
- The inclusion of internal corporate stakeholders will encourage broader ownership of the plan, and enhance internal support in an area that may be a critical path for a project.

Where

- Should form an integral part of relevant project plans and/or of regular company planning.

How

- Management sets expectations for the project management team to develop aboriginal affairs and/or consultation plans as part of every project that may impact aboriginal communities.
- Scope of plan is proportional to scale and duration of project and relevant issues expected.
- Ensure coordination with other steps: Assess the potential for aboriginal concerns (Step 3), confirm issues (Step 4), and develop listing of key issues and associated actions (Step 5).

Measuring Success

- **Aboriginal Relations Plan is in place and functioning.**
- **Project proceeds as planned.**
- **Plan is updated to reflect aboriginal issues/agreements/commitments.**



3

Step 3 – Research Project-Specific Issues as Required Per Aboriginal Relations Plan

What

- Process to research and understand key relevant aboriginal interests and concerns.
- Process to adequately consider the perspectives of key formal and informal community leaders.
- Process to develop an initial understanding of how a community works to identify and resolve issues including how they prefer to be consulted.
- Process for corporate understanding of land rights/claims issues and potential legal issues.
- Process may be iterative (see Step 5) as other issues and potential mitigation measures are identified during consultations with community representatives.

Why

- To ensure corporate representatives are prepared for meetings with community.
- To ensure the community is approached in a manner that will be effective and respectful for both the community and for the company.
- To understand past or current issues, and to have a plan in place to address same.

When

- Develop prior to formal project-related contact with aboriginal communities.
- Develop during early stages of a project as part of project planning activities.
- Incorporate information into discussions on future and ongoing activities.

Who

- Should be sponsored by line department or project organization, and developed by those knowledgeable in aboriginal, legal and public affairs.

Where

- Research is developed and used internally by the company to initially identify issues.

How

- Research is incorporated into the Aboriginal Relations Plan (Step 2).
- The approach will vary depending upon of the existence of operations in the area and current aboriginal community relationships. In general, the required information can be obtained from:
 - An informal visit to the community prior to any official project review.
 - Current or recent experience of colleagues (within your company, in other companies, and consultants).
 - Industry, business or professional associations.
 - Government and regulatory staff, as well as past regulatory applications/interventions.

Key Considerations and Questions

- **What are likely to be the key issues of local aboriginal communities which may be affected by project activities?**
- **Who are community representatives?**
- **How have previous issues been resolved with communities?**
- **What is the best approach to engage the community?**

Measuring Success

- **Understanding of who key aboriginal leaders and representatives are.**
- **Prepared to have an effective series of meetings/interactions with local aboriginal leaders and community members.**
- **Preliminary listing of potential issues is completed.**



RELATIONSHIP BUILDING AND CONSULTATION PHASE

4

Key Considerations and Questions

- For long term projects, ensure that the company develops a sustained "good neighbour" relationship with the aboriginal community.
- The development of a relationship based on trust is key and continuity of contact with the community will be beneficial throughout the project.
- Be patient and take time to listen to the general issues as this may help formulate the approach for project detail and mitigation discussions.
- Be respectful at all times and honour traditions.
- Learn about local traditions and cultures through research, awareness and education and incorporate local communication traditions where possible.
- Work with community to choose best options for consultation process.

Measuring Success

- Community is willing to meet and discuss issues.
- Mutual respect and/or trust begins.
- Understand initial issues and potential solutions.



Step 4 – Initiate and Build Relationships with Aboriginal Community

What

- Process for interfacing with the elected aboriginal leadership, elders, and the community.

Why

- To introduce company and corporate representatives to community members and leaders.
- To introduce the project at a high level and initiate a forum for dialogue with the community.
- To begin to understand the people, their issues, and their concerns.

When

- During early project development stages, but after research is essentially completed.
- This process is ongoing and will likely be combined with the latter stages of Step 3.

Who

- Person who will be the primary contact during project development; continuity is key to building trust.
- Select secondary contacts could include several people with responsibility for aboriginal affairs, regulatory affairs, public affairs, land access, or project management.

Where

- All communities are unique, but the first meeting should take place in the aboriginal community with a visit to the Chief and Council, elders, the community office, or an appropriate regional office.
- Where a community is not in a remote location, meetings could take place offsite at a location chosen by Chief, elders, or other community representatives.

How

- Review and incorporate relevant research information (e.g. from Step 3).
- Be prepared to listen and discuss issues of concern.
- Meet with Councillors and elders in the community office (if available).
- Consider needs and interests of the community within the framework of corporate culture and priorities.
- Build relationships through company integrity, mutual respect and trust.

5

Step 5 – Consult with Aboriginal Community

What

- Process to discuss project plans and community concerns, to consider relevant aboriginal rights that have been identified by the Crown, and to develop appropriate mitigative actions.

Why

- To meet or exceed regulatory and legal requirements, and to be a good neighbour.

When

- Early in the regulatory approval process to ensure adequate lead time to address issues.
- May involve multiple meetings depending on project scale and complexity of the issues.

Who

- Company representative to be the primary contact during project development (continuity is key).
- May include additional people with responsibility for aboriginal affairs, regulatory affairs, public affairs, land access, procurement and/or project management.
- Within the community, consult with Chief and Council (or their designate) in order to assess the need to consult with other community leaders and representatives.

Where

- Meetings will often take place in the community but can occur elsewhere as appropriate. Project plans should be discussed with community leaders and include reviews at community locations such as aboriginal offices or council chambers (if invited to attend).

How

- Use the prescribed consultation process that may be in place for your province and/or territory. Where one does not exist undertake the following:
 - Listen to the concerns and paraphrase for clarity; consider need for translation and/or interpreters.
 - Meet in large and small groups to provide key leaders with opportunity to understand and ask questions.
 - Based on concerns raised, return again to outline how these concerns will be addressed.
 - Develop a user-friendly description of the project for distribution at meetings and/or through the community office (include environmental aspects, mitigation plans and potential opportunities for the community).
 - Conduct reviews of the project in a manner that is agreed to by the community.
 - Communicate and work with community representatives on agreed actions (when appropriate) and document the balance of issues and the plans to address those issues.
 - Confirm with key government regulators, departments and agencies on plans to consult in the area.
 - Invite government representatives to open sessions to assist government in meeting its legal consultation obligations.
 - Document the process as part of the Aboriginal Relations Plan (Step 2).

Key Considerations and Questions

- **What treaty and/or aboriginal rights, identified by communities and government, may be affected?**
- **Can effects of these identified rights be avoided or mitigated to the satisfaction of both the community and the company?**
- **How will mutually acceptable solutions be reached?**
- **Who within the community should be included in discussions?**

Measuring Success

- **Process builds long-term relationships.**
- **Consultation process is satisfactory for community, government, and industry.**



RELATIONSHIP BUILDING AND CONSULTATION PHASE

6

Key Considerations and Questions

- In order to avoid future misunderstandings, how will the company ensure agreement among parties regarding identified issues and subsequent actions?
- How will relationships be maintained?
- How will commitments be tracked?

Measuring Success



- Commitments are honoured well after project completion.
- Paper trail of issues and actions agreed to address issues.
- Shared understanding by all parties on concerns, and actions to address concerns.

Step 6 – Document Meetings, Issues and Actions, and Honour Commitments

What

- Clear and concise documented records have proven valuable to ensure alignment, avoid misunderstandings, and to provide a means to structure progress on agreed-to plans. For appropriate documentation, CAPP recommends the following process:
 - Contact lists, records for every meeting, and a reporting system for issues raised.
 - Outline actions taken to address issues and those actions that were agreed to.
 - Collect all correspondence on issues, actions and agreements.
 - Outline commitments made and related implementation plans to ensure commitments are honoured for near and long-term.

Why

- To meet expectations of regulators, to demonstrate due diligence, to ensure clarity of expectations and actions, and to be a good neighbour.

When

- As part of project development and regulatory approval process.
- Should occur beginning with first contact with community members, and continue until site is reclaimed.

Who

- Person who will be the primary contact with aboriginal community during project development. When changes occur, ensure new contact is properly briefed and has the opportunity to build a new relationship with the community.

Where

- Documents should be kept at the company office and may accompany project regulatory applications.
- Agreed actions communicated to the aboriginal community and the regulator.

How

- Prepare a chronological listing of all interfaces with the community for each project.
- Summarize date, attendees, topics of discussion and any issues raised for each interface.
- Respond to verbal issues during meetings and document issues by letter to the community.
- Document agreements in a letter to the community and provide copy to regulator.
- Summarize outstanding issues and share with project management for direction on resolution; additional document plans may be required.
- Document commitments made and responsibility for closure on each.
- Confirm commitments satisfactorily completed to all parties.

Step 1

Step 2

Step 3

Step 4

Step 5

Step 6

In January of 2006, the Alberta Chamber of Resources (ACR) released its document *Learning from Experience, Aboriginal Programs in the Resource Industries*. This detailed report is available at www.acr-alberta.com.

ABOUT CAPP

The Canadian Association of Petroleum Producers (CAPP) represents 150 companies that explore for, develop and produce natural gas, natural gas liquids, crude oil, oil sands, and elemental sulphur throughout Canada. CAPP member companies produce more than 98 per cent of Canada's natural gas and crude oil. CAPP also has 125 associate members that provide a wide range of services that support the upstream crude oil and natural gas industry. Together, these members and associate members are an important part of a \$90-billion-a-year national industry that affects the livelihoods of more than half a million Canadians.

Our Mission: Enhancing the economic well-being and sustainability of the Canadian upstream petroleum industry in a socially, environmentally and technically responsible and safe manner.

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