

**MINISTÈRE DE L'ENVIRONNEMENT
ET DE LA LUTTE CONTRE
LES CHANGEMENTS CLIMATIQUES**

Direction générale de l'évaluation environnementale et stratégique

Guide on the information and consultation process carried out with Aboriginal communities by the proponent of a project subject to the environmental impact assessment and review procedure

Coordination and editing

This publication was produced by the Direction générale de l'évaluation environnementale et stratégique of the Ministère de l'Environnement et de la Lutte contre les changements climatiques.

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Dépôt légal – 2021
Bibliothèque et Archives nationales du Québec
ISBN 978-2-550-88412-5 (PDF)

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NOTICE

This document presents information of a general nature, together with some practical advice, for project proponents working in the private sector, on the implementation of an information and consultation process with Aboriginal communities in Québec regarding projects subject to the environmental impact assessment and review procedure (EIARP)¹ applied to southern Québec. The information and advice are for information purposes and have no bearing on the views of any Aboriginal community or nation. The present document constitutes neither a legal opinion nor legal advice. It should not be interpreted as such and cannot be used to that end.

The present guide does not constitute a complement to the *Directive pour la réalisation d'une étude d'impact sur l'environnement* (the Directive), which is sent to proponents after they file a Notice of Project with the Ministère de l'Environnement et de la Lutte contre les changements climatiques (the Ministère). The requirements that project proponents are bound to respect under the EIARP are set out in the Environment Quality Act (c Q-2), in the Regulation respecting the environmental impact assessment and review of certain projects (c Q-2, r 23.1) and in the Directive. As for the present guide, it offers *recommendations* on how to carry out an information and consultation process with Aboriginal communities, based on best practices in the field. The Ministère recommends that project proponents engage in good faith, as early as possible, in an information and consultation process with the Aboriginal communities concerned, using an approach based on respect, transparency and cooperation.

¹ The EIARP is governed by the [Environment Quality Act](#) (Title I, Chapter IV, Division II, Subdivision 4).

FOREWORD

In accordance with the environmental impact assessment and review procedure (EIARP) applied in southern Québec, three guides have been produced for project proponents to help ensure that they give full consideration to the concerns of Aboriginal communities and the public when planning and executing projects subject to that procedure:

- [*L'information et la consultation du public dans le cadre de la procédure d'évaluation et d'examen des impacts sur l'environnement : guide à l'intention de l'initiateur de projet*](#): this document presents the recommendations of the Ministère and the information required of project proponents, under the EIARP, with regard to the information and consultation process to be carried out with the public.
- *Guide on the information and consultation process carried out with Aboriginal communities by the proponent of a project subject to the environmental impact assessment and review procedure*: this, the present guide, sets out the recommendations of the Ministère for carrying out a distinct and adapted information and consultation process with the Aboriginal communities concerned.
- [*Guide à l'intention du promoteur de projet à propos du processus de participation publique sous l'égide du Bureau d'audiences publiques sur l'environnement*](#): this document is meant to assist project proponents in preparing for consultations by the Bureau d'audiences publiques sur l'environnement (BAPE).

The first two guides are complementary and should be used as such, since the recommendations in the first guide are equally relevant to Aboriginal communities. However, in view of the cultural, social, historical, legal and political features that distinguish them from other communities, the Ministère recommends that project proponents carry out a separate information and consultation process for Aboriginal communities likely to be affected by the impacts of their project. To that end, the present good practices guide offers concrete suggestions on how to make the process proactive and constructive. The process should be developed in collaboration with the Aboriginal communities concerned, to ensure that it is genuinely adapted to the specific characteristics of each of them.

The present document draws on the experience of the Direction générale de l'évaluation environnementale et stratégique in conducting Aboriginal consultations. It also draws from good practices for public participation found in the literature that have a bearing on projects subject to the EIARP. The project proponent will find additional information to that contained in the [*Information for Developers and General Information Regarding Relations with Aboriginal Communities in Natural Resource Development Projects*](#), published by the Gouvernement du Québec in 2015.

This guide was submitted for consultation to all the Aboriginal communities concerned and to the principal ministries and agencies of Québec that interact with Aboriginal communities, including the Secrétariat aux affaires autochtones.

The Ministère will periodically revise this guide to keep its content up to date. Users are invited to submit comments and suggestions for future editions, by mail or email, to:

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675, boul. René-Lévesque Est
Édifice Marie-Guyart, 6^e étage, boîte 83
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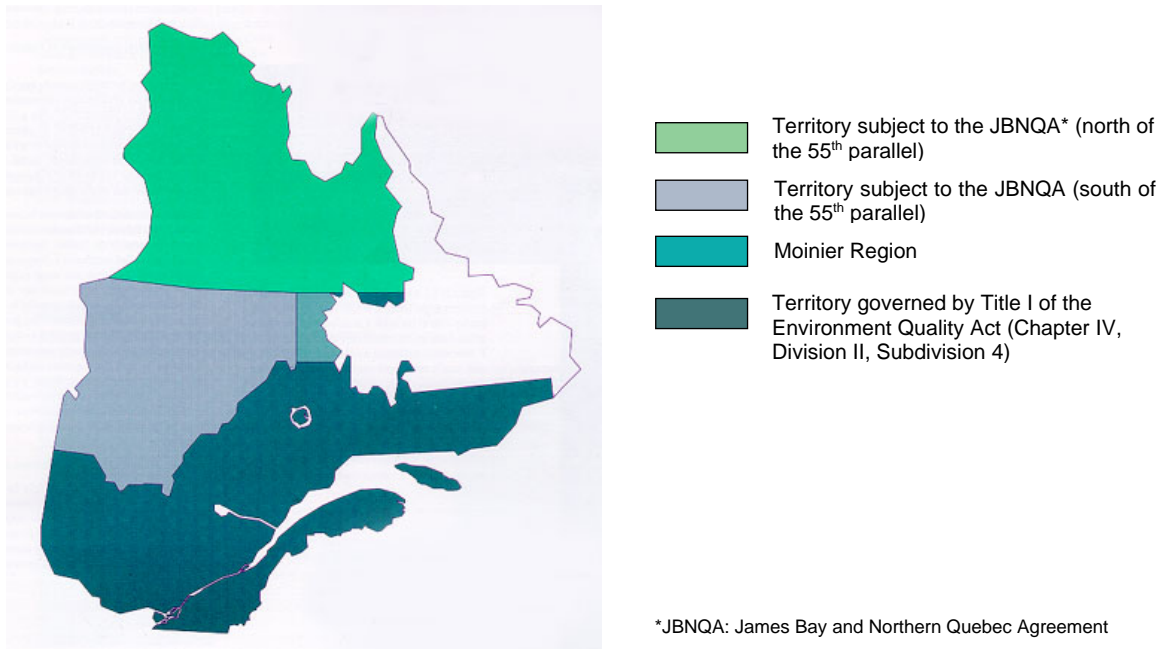
Email: consultation.autochtone@environnement.gouv.qc.ca

INTRODUCTION

The present guide is addressed to project proponents in the private sector whose projects are subject to the EIARP. Government ministries, which are legally obligated to consult with Aboriginal communities, should instead refer to the [Interim Guide for Consulting the Aboriginal Communities](#) and to their own policies if any on this matter when they undertake projects subject to the EIARP.

The purpose of the EIARP is to enable the Government to make informed decisions on the authorization of major projects that could substantially disturb the environment or that raise serious concerns, notably among Aboriginal communities. It helps the project proponent to design a project that, in addition to being economically and technically feasible, has been optimized to ensure its smooth integration into the receiving environment and its overall acceptability from an environmental standpoint. To that end, the EIARP takes into consideration, among other things, the way in which the various concerned or interested stakeholders have been involved in the project planning process, and the results of the consultations carried out².

Map 1: Territory of application of the EIARP (governed by Title 1 of the Environment Quality Act)³



² To learn more about the EIARP applied in southern Québec, visit: www.environnement.gouv.qc.ca/evaluations/procedure.htm.

³ For projects in northern environments (whose environmental assessment is governed by Title II of the Environment Quality Act), project proponents are invited to consult the following documents on carrying out a public participation process as part of project planning: [Consultations Conducted by the Proponent: Expectations of the Review Committee](#) (COMEX, n.d.), [Best Practices for Project Proponents: Project-related Public Participation and Engagement in the James Bay Territory](#) (JBACE, 2019) and [Reference Guide on Environmental and Social Impact Assessment Procedures Applicable in Nunavik](#) (KEAC, 2019).

The proponent of a project subject to the EIARP should initiate an information and consultation process early in the planning stages of its project, particularly with the Aboriginal communities concerned⁴, to give them the opportunity to exert a genuine influence on questions to consider, issues to address, assessments to perform, choices to make and decisions to take⁵. Ultimately, the goal of this process is to ***allow the Aboriginal communities concerned to be adequately informed, make their concerns known, and improve the design of the project to avoid or mitigate negative impacts on the communities and their environment, while maximizing positive spinoffs, in all phases of execution.***

The project proponent is invited to implement an information and consultation process based on the practices recommended by the Ministère in the context of the EIARP, which are set out in the present guide. Doing so will facilitate the project's harmonious integration into the receiving environment, the coordination of different uses of the territory, and the maintenance or improvement of the quality of life of the communities present, thus increasing the likelihood of project acceptance by the communities concerned. That being said, the Ministère wishes to emphasize that efforts invested by the project proponent in implementing an information and consultation process should always be tailored to the circumstances and the environment concerned, based on the parties' needs, the nature, location and status of the project, the scale of the work, the actual impacts on the territory, and the specific realities of each Aboriginal community concerned. However, carrying out such a process does not guarantee that the project will be deemed acceptable by the community concerned, since that depends on a host of factors⁶.

The present guide also gives specifics on the information that could be relevant to gather when a consultation is carried out by the project proponent, notably with regard to the characteristics of the Aboriginal communities concerned, their presence in and use of the territory, and the social, cultural and economic values they attach to the different components of their physical, biological and human environment. The gathering of this information, directly from the communities concerned, will allow the project proponent to obtain first-hand data useful for drawing a better portrait of these communities and the use they make of the territory and its resources. The project proponent will thus be in a position to better target the issues and potential impacts of its project, particularly based on the concerns expressed by the consulted communities. It is also recommended to have the communities concerned participate in information gathering and analysis to enable them to highlight their knowledge of the study area and its resources.

The first chapter of the guide presents preliminary considerations before starting such a process, including: the distinction between a government consultation and one conducted by a project proponent, the particularities of Aboriginal communities to take into account, principles to respect, and provisions to make in order for the process to go well. The second chapter describes out the practices recommended for informing and consulting Aboriginal communities during project planning, and details the information that can be gathered in consultations, including concerns expressed about the project. The last chapter presents the Ministère's recommendations for continuing the process with the Aboriginal communities concerned following the filing of the impact assessment and receiving the Government's decision.

⁴ The Aboriginal communities referred to in the present guide are among the nations recognized by the Assemblée nationale du Québec. For more information, see the following document:
www.autochtones.gouv.qc.ca/publications_documentation/publications/document-11-nations-2e-edition.pdf.

⁵ MELCC (2018b), p. 3.

⁶ To learn more about the concept of social acceptability and how it is considered by the Ministère, see the guide on public information and consultation, *L'information et la consultation du public dans le cadre de la procédure d'évaluation et d'examen des impacts sur l'environnement* (MELCC, 2018a, p. 5).

1. PRELIMINARY CONSIDERATIONS

1.1 Distinction between government consultations and consultations by project proponents

It is important to understand that the efforts of the project proponent to inform and consult Aboriginal communities are at all times distinct from consultations that the Government may conduct with certain Aboriginal communities for a project's environmental assessment. The obligation to consult and, if necessary, accommodate Aboriginal communities stems from the principle of the honour of the Crown, and is incumbent on the Québec government⁷, pursuant to certain decisions rendered by the Supreme Court of Canada⁸.

Under the EIARP, which leads to a government decision as to the authorization of a project, the obligation to consult Aboriginal communities falls on the Ministère, acting on behalf of the Government⁹. When a Notice of Project is filed with the Ministère, it evaluates whether the project triggers the obligation of the Crown to consult an Aboriginal community. If the project is likely to have an adverse effect on a community's right, whether claimed or established (legally or by treaty)¹⁰, the Ministère will launch its own consultation of the community concerned. The Ministère then informs the project proponent of its intention to conduct a consultation, which does not prevent the proponent from doing so as well. Under no circumstances may a project proponent's consultation replace the Crown's duty to consult. **Diagram 1** below provides an outline of actions specific to each stakeholder participating in the EIARP with regard to the consultation of Aboriginal communities.

Although distinct, consultations by the project proponent and by the Government can be complementary, both in terms of the approach with the Aboriginal communities and in terms of the consideration of their concerns. Thus, the project proponent's efforts, oriented more toward harmonious and constructive relations, could start at the very beginning of project planning, before the Government's consultation, and continue after it. With respect to addressing concerns, the objective of the Government's consultation is to reconcile the interests of Aboriginal communities with those of society in general, while protecting the Aboriginal rights to the greatest extent possible. The Government's consultation must therefore ensure that the potential adverse effects of the project on the rights of these communities are minimized by determining, where appropriate, accommodation measures. On the other hand, the steps taken by the project proponent could aim to improve the project's integration into the host environment, in particular by allowing the Aboriginal communities concerned to benefit from the project's positive spinoffs and by taking their environmental and social concerns into consideration.

A project proponent may be called to play a significant role in the Ministère's consultation, to ensure that the project is properly understood and to provide information on technical aspects. It may also be asked to respond to concerns expressed by the community. Finally, the Ministère may require a project proponent to discuss accommodation measures that may be necessary to mitigate, as much as possible, any adverse effects on the rights of the Aboriginal community concerned¹¹.

⁷ To learn more about the governmental obligation, see the reference *Gouvernement du Québec* (2008).

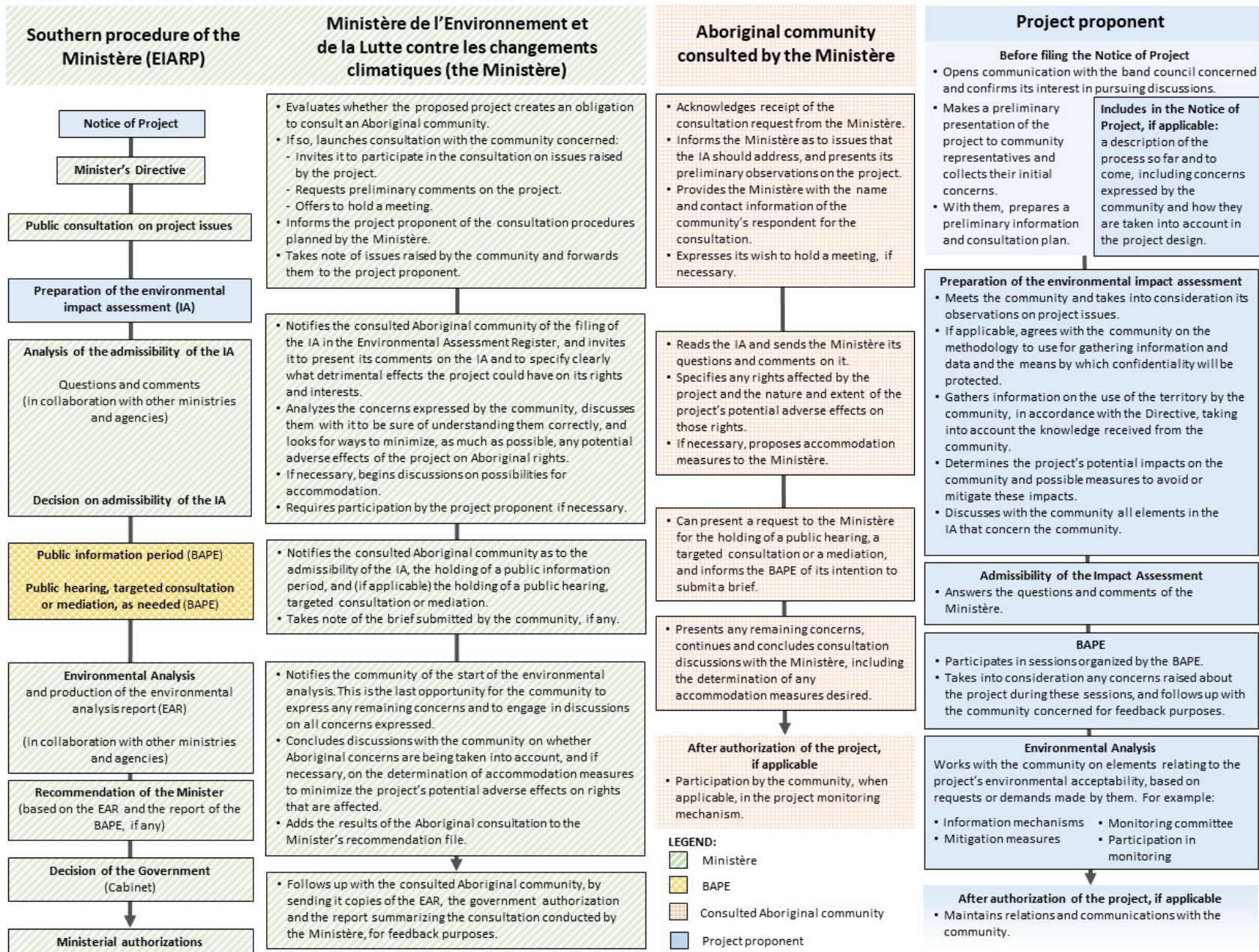
⁸ Examples include the following decisions: *Haïda Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCC 511; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 SCC 550; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCC 388; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCC 650.

⁹ However, if the project proponent is a ministry, the obligation to consult Aboriginal communities will fall on that ministry.

¹⁰ To learn more about ancestral and treaty rights, see the reference *Gouvernement du Québec* (2015), p. 6.

¹¹ *Gouvernement du Québec* (2015), p. 10.

Diagram 1: Principal actions of EIARP participants regarding the consultation of Aboriginal communities



1.2 Aspects of Aboriginal communities to consider

The Ministère recommends that the project proponent implement a distinct and adapted information and consultation process with Aboriginal communities, in particular because of the special relationship that these communities have with the territory. Certainly, hunting, fishing, trapping and gathering are not exclusively practised by Aboriginal communities; however, these “traditional” activities generally involve customs, practices and traditions that were an integral part of the distinct culture of Aboriginal communities before Europeans arrived, and they continue today. They are thus associated with existing “Aboriginal and treaty rights”, which are recognized and affirmed by section 35 of the Constitution Act of 1982¹². Though the Crown obligation to take Aboriginal rights into account falls exclusively on the Government, the recognition and protection of these rights justifies that the concerns expressed by Aboriginal communities with respect to these traditional activities be considered separately by the project proponent. The way in which they are practised, the times when they are practised, and the purposes they serve, can be very different from non-Aboriginals that practise the same activities.

The practice of traditional activities is recognized as being essential to the transmission of culture from generation to generation. The transmission of the way of life inherent to Aboriginal culture is largely achieved through practising these activities and being in the places associated with them. That way of life is still a contemporary reality, though it may be practised more or less intensively depending on the individual, the family, the time of year and the location of a particular community.

Traditional activities also have a communal dimension since harvested resources are often shared within the community and thus contribute to social cohesion. For some communities, this dimension can also be expressed in land use practices, such as the management of trapping territories. In addition, many communities have adopted codes of practice for harvesting wildlife or fish resources.

Beyond the unbreakable ties between Aboriginal communities and their traditions and ancestral practices, these communities also want to share in the benefits of the modern world. Thus, some wish to participate in the sustainable development of the land and its resources. There are more and more Aboriginal businesses, run by individuals or band councils, with a significant labour force and expertise in areas like forestry, transportation, construction, roadways, fisheries and archaeology. For a directory of Aboriginal businesses, see the website of the First Nations of Québec and Labrador Economic Development Commission¹³. The Ministère therefore encourages project proponents to contact representatives of the communities concerned directly, for the latest information on local Aboriginal businesses and services.

Lastly, Aboriginal communities have a governance structure that sets them apart. Band councils are the representative bodies of Aboriginal communities, with different responsibilities than those of municipalities. Many band councils belong to tribal councils¹⁴, whose role may include political representation and that can offer services to affiliated communities, notably for project analysis.

¹² To learn more about ancestral and treaty rights, see the reference Gouvernement du Québec (2015), p. 6.

¹³ To consult the Aboriginal Business Directory, visit:
<https://entreprises.cdepnq.org/#/>.

¹⁴ For a list of tribal councils and other bodies, visit:
www.autochtones.gouv.qc.ca/nations/organismes_autochtones.htm#regroupements.

1.3 Principles for establishing harmonious relations with Aboriginal communities

Certain principles should be observed in order to establish and maintain good relations with Aboriginal communities¹⁵:

- **The information and consultation process should be launched as early as possible in project planning.** The sooner the process begins, the likelier it is that Aboriginal representatives will want to take part, since they will see an opportunity for their concerns, needs and aspirations to be genuinely taken into account. This can help build trust and a constructive relationship.

By initiating discussions with Aboriginal representatives as early as possible in the process of project planning, the proponent could avoid having to make major changes late in the EIARP, and thus avoid scheduling delays. The search for mutually satisfying solutions that prevent or mitigate negative impacts and maximize positive effects may require a series of discussions.

- **The process should be tailored to the context.** The project proponent should adjust its information and consultation process to align with the interests, needs and concerns of the Aboriginal communities affected, as well as with their resources, the scope of the project and its potential impacts. Means and methods of informing and consulting should be chosen to fit the social, political and cultural reality of each community that will be involved in the process. To that end, it could be useful to work up an information and consultation plan in collaboration with community representatives, e.g. to get their advice on which methods would be best (see **section 2.1.3** for more on this).
- **Project proponent consultations should be conducted in a spirit of dialogue and collaboration, based on listening, respect and transparency.** These principles make for good communications and will contribute to building relationships of trust with Aboriginal communities.
- **The project proponent should have a genuine desire to take into account the needs and concerns expressed by the Aboriginal communities affected.** This could be done by being open and interested in examining the possibility of modifying certain aspects of the project, or of putting in place certain mitigation measures, based on comments and suggestions received from the communities. It is also important to respect their desire to keep certain information confidential, if that is what they wish (see **section 2.2.1.5** on respecting confidentiality).

By applying these principles, the project proponent can lay the foundation for a beneficial collaboration, not least by facilitating knowledge acquisition that could improve project design and contribute to the impact assessment.

¹⁵ The Ministère recommends that project proponents respect the principles discussed in this section as well as those set out in the guide on informing and consulting the public as part of the EIARP (MELCC, 2018a, p. 6-7).

1.4 Provisions to make for a successful process

After validating the interest of the Aboriginal communities concerned in participating in its information and consultation process, the project proponent is advised to include a number of elements in order to promote the smooth running of the process, in particular:

- **A resource person assigned to relations with Aboriginal communities.** This role requires good knowledge of the Aboriginal context to fully understand Aboriginal needs, concerns and views, along with skills in intercultural relations and an ability to explain in plain language the technical and scientific content of the project documentation.
- **The possibility of having to communicate in English with certain communities and translate documents, where necessary¹⁶.**
- **Material and financial resources to match the logistical requirements of information and consultation activities (renting venues for meetings, travel, producing information documents, etc.).** The project proponent could also consider offering financial support to the communities to facilitate their participation in the process.
- **Be flexible, allowing for delays that may arise at certain points in the process.** It is important to draw up a realistic schedule for organizing and carrying out information and consultation activities, allowing for circumstances that could have an impact on the level of participation (for example, summer holidays, hunting periods, community gatherings, traditional activities, and so on). Delays should be expected, for example if an Aboriginal representative wants to consult community members to hear their concerns about potential impacts of the project.

Allow time to make sure, with each community, that their concerns are interpreted correctly and that information obtained from them is handled properly. Good relations can be maintained by avoiding misunderstandings and ensuring that errors in comprehension by either side are corrected promptly.

¹⁶ For information on the languages used by Aboriginal communities, see the following (in French) (p. 14): www.autochtones.gouv.qc.ca/publications_documentation/publications/document-11-nations-2e-edition.pdf.

2. INFORMATION AND CONSULTATION PROCESS: PRACTICES RECOMMENDED DURING PROJECT PLANNING

This chapter describes how to implement the process recommended by the Ministère for informing and consulting Aboriginal communities (if applicable) during project planning (see definitions in **Box 1**). These practices and the order in which the actions proposed are carried out can vary in order to adapt the process to the communities concerned, the individuals consulted and the objectives pursued. In this regard, the project proponent is advised to solicit the collaboration of community representatives to determine which practices to apply among the suggestions offered here, depending on the project, its issues and potential impacts, the features of the receiving environment and the interest of communities in participating.

The Ministère recommends that the project proponent initiate this process before filing the Notice of Project in order to establish good relations with the Aboriginal communities concerned by the proposed project and to take their concerns into consideration in the project's design. However, the implementation of an information and consultation process is mandatory during preparation of the environmental impact assessment, in particular with any Aboriginal communities concerned (if applicable), in accordance with section 5 of the Regulation respecting the environmental impact assessment and review of certain projects (C Q-2, r 23.1).

Box 1: Information and consultation in the context of a project subject to the EIARP

Information: Process by which a project proponent disseminates information, notably to any Aboriginal communities concerned (if applicable), about its business, its intentions and the proposed project, including its risks and potential impacts (positive and negative), to provide them with an overview of the project.

Consultation: Iterative and retroactive process whereby the project proponent exchanges with the population, including any Aboriginal communities concerned (if applicable), and explains how it has taken into account their concerns, needs, suggestions, expectations and perceptions regarding the project. Conducting consultation activities can also enable the project proponent to obtain information on the communities, which could be useful in determining the issues and analyzing the project's potential impacts.

2.1 Before filing the Notice of Project

Right from the start of project planning, the Ministère recommends that the project proponent take a number of steps toward informing and consulting the Aboriginal communities concerned by the project.

The objectives at this stage could be as follows:

- Establish a communications channel with each community concerned.
- Make a preliminary presentation of the project to community representatives (nature of the project, location planned, projected schedule, details of the assessment process, etc.).
- Confirm the interest of the communities in participating in the information and consultation process.
- Determine the sources of information available and, if possible, initiate discussions with community representatives on the desired form of collaboration, the type of knowledge or studies that might be required and the preferred methodology for gathering information on the environmental components valued by the communities.
- Identify the principal concerns of each community about the proposed project, with the goal of taking them into account during project development.
- Prepare, if possible in collaboration with community representatives, a preliminary information and consultation plan.

The sections that follow focus more specifically on identifying the Aboriginal communities to consult, collecting preliminary information, establishing relations and preparing an information and consultation plan.

2.1.1 Identifying Aboriginal communities and collecting preliminary information

To identify communities that could be concerned by the project, and to obtain preliminary information about them, contact the Secrétariat aux affaires autochtones¹⁷. **Map 2** presents the location of the Aboriginal communities of Québec. Contact information for each can be found here:

http://www.autochtones.gouv.qc.ca/nations/liste_communautes_en.htm.

The project proponent is advised to inform and consult the Aboriginal communities that could be affected by the proposed project, i.e. not just those dwelling in or near the project's structures and area of influence, but also those that regularly or occasionally frequent or use this area.

Before making contact with Aboriginal representatives, the Ministère recommends that the project proponent take the time to get informed about their respective communities in order to obtain a basic knowledge of their social, cultural and economic characteristics, their governance structure and the services offered by their administration. The websites of Aboriginal communities and tribal councils can be good sources of such information. It would also be wise to look up any agreements between these communities and different levels of government, and to find out whether any other agreements are being negotiated. To obtain this information, contact the Secrétariat aux affaires autochtones¹⁸.

¹⁷ A summary description of the features of each community can be found here:

http://www.autochtones.gouv.qc.ca/relations_autochtones/relations_autochtones_en.htm.

¹⁸ The Direction des négociations et de la consultation of the Secrétariat aux affaires autochtones can be reached by telephone at 418-643-3166 or by email at www.autochtones.gouv.qc.ca/email.asp.

Map 2: The Aboriginal communities of Québec



Source: Secrétariat aux affaires autochtones (2016).

2.1.2 Establishing relations

To establish good relations with Aboriginal representatives, the Ministère encourages the project proponent to be proactive by offering to go and meet with them, even if the project is in its infancy. This first meeting can be an opportunity for the project proponent to announce its intentions and to share whatever information it can about the project. It will also give the project proponent some insight into how the project may be seen by the communities concerned, while allowing them to confirm whether they wish to be informed and consulted during project development.

Therefore, to facilitate good relations with band councils, the project proponent should contact the band council for each community it wishes to inform and consult. It will be up to their representatives to designate a resource person to follow up on the project and to inform the project proponent on the methods to be used for proper consultation. Some communities also have a consultation office to which the project proponent could be referred.

These first contacts with Aboriginal representatives will be an opportunity to find out what means of communication would be most effective to disseminate information within the community (e.g. community radio, local newspaper, social networks, etc.) and to determine sources of information about their communities.

After these initial communications, the project proponent should follow up with the resource person, keeping them informed about the status of the project (filing of the Notice of Project, studies that will be done toward the impact assessment, etc.) and sending them an information and consultation plan for comment (see **section 2.1.3** and the model plan in **Appendix 1**).

Lastly, the Ministère suggests that the project proponent properly document the information and consultation process, starting from the first exchanges with the communities, identifying the people contacted, the questions and concerns they raised, and the follow-ups that have been or will be carried out (see **Appendix 2** for a sample communications register). Note that if the project proponent holds an information and consultation process before filing the Notice of Project, the latter must include a brief description of what was done, as prescribed in section 3 of the Regulation respecting the environmental impact assessment and review of certain projects (c Q-2, r 23.1). The Notice of Project should also report any concerns raised by participants in the course of these information and consultation activities, and their impact on the project design.

2.1.3 Preparing a preliminary information and consultation plan

Under section 3 of the Regulation respecting the environmental impact assessment and review of certain projects (c Q-2, r 23.1), the Notice of Project must include a description of the information and consultation activities that the project proponent intends to carry out during preparation of the environmental impact assessment, including those with any Aboriginal communities concerned (if applicable).

The Ministère recommends that the project proponent prepare and make public a preliminary information and consultation plan, as a way for the public and the Aboriginal communities concerned to find out how and when they can obtain information about the project, during planning, and to express their questions, comments or concerns (see the model plan in **Appendix 1**).

The information and consultation plan for Aboriginal communities should be prepared in collaboration with their representatives. Indeed, the latter may wish to give their views on how the communities wish to be consulted and on the means to be used to transmit information¹⁹. The project proponent will benefit from knowing what they expect from the information and consultation process, including mutually acceptable outcomes. By planning it with them, the project proponent could determine the best times to consult different segments of the population, which stakeholders to meet depending on the issues to discuss, the most

¹⁹ Some communities have established a consultation protocol which is applicable to environmental assessment of projects.

appropriate methods of consultation, the frequency of meetings, what information documents will be required, how much time to allow for communities to read them, and how to ensure the confidentiality of certain information if so requested by the communities. Collaborative planning will also help ensure that the process stays on track and remains effective, reducing the risk of participation diminishing over time. The Ministère recommends however that the project proponent be flexible and open to modifying the plan if necessary, as the project evolves.

The above recommendations also apply if the project proponent intends to conduct an information and consultation process during the phases of construction, operation, even closure of the project. The plan for such a process must be included (in a preliminary version) in the impact assessment²⁰. Presenting it early to Aboriginal representatives for their comments and suggestions will help ensure that information and consultation activities during project execution are suitably tailored to the communities concerned and meet their needs and expectations.

2.2 During performance of the impact assessment

Once the impact assessment begins, the information and consultation process must be intensified, particularly with any Aboriginal communities concerned (if applicable). At this stage, the objectives could be as follows:

- Define, in collaboration with community representatives, a method for considering Aboriginal knowledge and other information relevant to the project, in particular on the frequentation and use of the territory and on components of the environment that are valued by the communities.
- Gather data and information from the Aboriginal communities to learn what they know about the receiving environment and to understand their concerns about the proposed project.
- Ensure that relevant issues are considered in the impact assessment, especially with regard to concerns expressed by consulted communities.
- Assess the project's potential impacts on components of the physical, biological and human environment that are of special importance to the communities, particularly with regard to the use and frequentation of the area under study, based on the existing information available or obtained through consultations.
- In collaboration with consulted communities (if applicable), determine measures that would avoid or mitigate negative impacts and maximize positive effects.
- Disseminate information on the status of the project and the assessment of its potential impacts. Indeed, any information useful to the understanding of the project and its potential impacts, both positive and negative, should be communicated to the communities by the project proponent, to provide them with an overview of the project.

The sections below present the recommendations of the Ministère on information and data gathering, determining issues and analyzing potential impacts on Aboriginal communities, seeking solutions to the issues determined and performing follow-up and feedback with consulted communities.

2.2.1 Information and data gathering

To determine and assess the potential impacts of a project, data and information about the receiving environment must be gathered. Particular attention should be paid to valued environmental components, meaning elements that are deemed to have scientific, social, cultural, economic, historical, archaeological or aesthetic importance²¹. It is especially through consultation with the Aboriginal communities that the project proponent will be able to obtain this kind of information. The practical and methodological advice presented below can guide the project proponent through this important phase of preparing the impact assessment. It should be kept in mind however that the process employed must be adapted to the context of the area under study and the specific reality of each project and each community, notably as concerns the selection of people to consult and the choice of information and consultation methods. Also, the project

²⁰ MELCC (2018b), p. 9.

²¹ MELCC (2018b), p. 10.

proponent should take care to determine the most appropriate time to gather information, allowing for circumstances that could have an impact on the level of participation (summer holidays, hunting periods, community gatherings, traditional activities, and so on).

2.2.1.1 Details on information to present in the impact assessment

As indicated in the Directive, the description of the receiving environment presented in the impact assessment must include components of the environment that are valued by the Aboriginal communities concerned, and describe their use of the resources and the territory under study, by specifying, where applicable, the activities practised by them for food, domestic, ritual or social purposes and the knowledge associated with these activities. It also indicates, where applicable, the presence of hunting, fishing, trapping or harvesting sites, as well as places of interest such as heritage or archaeological sites, and so on²². Such information can be obtained through exchanges with the communities, during preparation of the impact assessment, or from existing documentary sources. However, the project proponent should ensure that these documentary sources are reliable and up to date.

The description of the receiving environment, including physical and biological environments, could include the knowledge of Aboriginal communities²³. Such knowledge could concern, among other things, information about the area's ecosystems, wildlife and plant species, water regimes and so on. Based on observation and experience of the territory, it is part of the social, cultural and spiritual identity of Aboriginal communities, interwoven with their values and a particular vision of the environment. This knowledge can therefore inform the project proponent about the use of the territory and its resources by Aboriginal communities, the values they attach to different components of their environment, the potential impacts of the project and how to avoid or mitigate them. Aboriginal knowledge can make a valuable contribution to the impact assessment, whether to complement existing information or to suggest what studies should be done to obtain a better baseline²⁴.

However, it should be remembered that the description of the receiving environment must focus on the valued components of the environment and must only contain information that is relevant and necessary to determine the issues and analyze the impacts of the project²⁵. Furthermore, for the sake of rigor, the project proponent should ensure that the information presented in the impact assessment accurately describes what the communities wanted to express.

For a detailed list of information to be provided in the impact assessment about the information and consultation process carried out by the project proponent, if any, the latter is invited to consult the second chapter of the guide on public information and consultation in the context of the EIARP²⁶. Briefly, a project proponent should detail what was done to take into account the concerns of Aboriginal communities during project planning, and if nothing was done, explain why. If the project proponent approached the communities with a view to conducting an information and consultation process and they did not respond, this also should be mentioned in the impact assessment, with an explanation, if possible, of the reasons for this lack of participation. This will give the Ministère a sense of what was done by the project proponent to inform Aboriginal communities and to understand their needs, points of view and concerns about the project. This information will be taken into consideration in the Ministère's environmental analysis of the project.

2.2.1.2 People to consult and other sources of information

When preparing to gather information on Aboriginal communities, especially with regard to their presence in and use of the area under study, and to find out what concerns they may have about the proposed project, the project proponent should contact the representatives of those communities, whether the band council

²² MELCC (2018b), p. 13.

²³ MELCC (2018b), p. 11.

²⁴ To learn more about how to gather and use Aboriginal knowledge for the purposes of an environmental impact assessment, see Déturche (2014).

²⁵ MELCC (2018b), p. 9.

²⁶ MELCC (2018a).

or an entity mandated to act on their behalf, as the case may be. Representatives from each community could also inform the project proponent about the characteristics of the community and the issues it perceives with respect to the project. They can identify useful sources of information, be they members of the community or documentary sources. Some communities keep databases on land use, to which they may grant access under certain conditions. Representatives could also direct project proponents to relevant studies, whether completed or underway.

2.2.1.3 Recommended methods

Different methods can be used to obtain as much information as possible on Aboriginal communities and to find out their concerns about a given project. Among the methods suggested in the guide on informing and consulting the public for the EIARP²⁷, preference should be given to those that allow direct contact with the people being consulted, such as interviews, information and consultation sessions in each community, and site visits to the planned location of the project. These methods, adapted to the cultural and linguistic particularities of the communities, should enable the project proponent to more adequately characterize the receiving environment and better assess the potential impacts of its project on these communities.

The Ministère recommends that the project proponent determine, in collaboration with Aboriginal community representatives, the preferred methods of consultation and data gathering. The project proponent should also modulate the intensity of its information and consultation efforts to match the objectives pursued, the scope of the project and the interest and concerns of Aboriginal communities regarding the project.

Interviews

If representatives of the communities being consulted are in favour, consider holding interviews with key people in each community.

It is best to plan for semi-directed interviews, using open questions that allow respondents to express themselves freely. Note that it may be necessary to have an interpreter on hand, depending on who is being interviewed. That said, the choice of interpreter and interviewer should be made in agreement with community representatives.

Information and consultation sessions for the communities concerned

The project proponent can also organize information and consultation sessions that are specifically addressed to Aboriginal communities. Such sessions could take the form of workshops focusing on particular themes. If this option is chosen, representatives of those communities can indicate the best formula for holding such sessions, the best ways to disseminate information about them, the principal elements to address and any particular needs to consider (e.g., services of an interpreter). They can also suggest times and places for information sessions, and participate in the logistics of organizing them.

If authorized by the participants, it can be useful to record and transcribe such sessions, to be better able to understand the intention behind what is said. Also, for any question that the moderator cannot answer right away, be sure to follow up later with answers for the participants.

Visit to the intended site of the project

In order to make the project more concrete, it is suggested that representatives of the communities consulted be invited to visit the intended implementation site to make it easier for them to visualize the

²⁷ MELCC (2018a), Appendix 1.

location of the planned infrastructures. A site visit can facilitate the gathering of information on land use, encouraging community members to express what the location represents for them.

2.2.1.4 Participation of Aboriginal communities in conducting the impact assessment

To build a constructive working relationship, the project proponent should try to have the Aboriginal communities participate in the development of the project, for example by carrying out parts of the impact assessment that could interest them. This would allow them to highlight their knowledge of the territory and its resources, while helping to determine appropriate measures to avoid or limit negative impacts and maximize positive spinoffs. This approach could enable the project proponent to establish sustainable relations with Aboriginal communities in the medium to long term.

Participation by Aboriginal communities in gathering information requires agreeing on the type of participation desired and which methods to use, and, if appropriate, discussing what financial contributions could be made. To maximize chances of success, the Ministère recommends that the project proponent involve Aboriginal representatives as early as possible in the different phases of information gathering and impact assessment.

2.2.1.5 Protecting confidentiality

Some of the information obtained during the consultation process may be considered sensitive by Aboriginal communities, in particular the location of camps, the places where traditional activities are practised, the species harvested in certain areas, the sites where medicinal plants are gathered, their properties, and so on. Consulted communities may want to keep this type of information confidential. The Ministère therefore recommends that the project proponent inform the communities and everyone it has met that certain information can be kept confidential if they wish.

It is important that the project proponent explain that much of the information and documentation submitted to the Ministère will be made public in the Environmental Assessment Register created under section 118.5.0.1 of the Environment Quality Act (c Q-2)²⁸. When the confidentiality of certain information is required by an Aboriginal community, it is incumbent upon the project proponent to determine with the community the means of ensuring such confidentiality. Information obtained on a confidential basis must not be included in the impact assessment. Of course, for the purposes of its environmental analysis, the Ministère has to know the potential impacts of the project on activities practised by the communities and the measures planned by the project proponent to avoid or mitigate them. But it is not necessary to indicate, for example, the precise location of sites where activities are practised, if that information is deemed sensitive and confidential.

2.2.2 Determining issues and analyzing project impacts

By shedding light on the concerns raised by the project and on the characteristics of the area under study, information gathered during consultations with Aboriginal communities, if applicable, will enable the proponent to reflect on the issues and potential impacts of its project.

The determination of issues must also consider any comments sent to the Ministère during the public consultation required under section 31.3.1 of the Environment Quality Act (c Q-2), including those of Aboriginal communities (see **Box 2**). As well, any concerns expressed by Aboriginal communities in the consultation conducted by the Ministère under the Crown's duty to consult must also be considered in the determination of issues.

Issue: In the context of the EIARP, an issue is a major concern for the government, the scientific community or the population, including the Aboriginal communities concerned, whose analysis could influence the government's decision to authorize or reject a project.

²⁸ The Environmental Assessment Register can be consulted (in French) at: <http://www.ree.environnement.gouv.qc.ca/index.asp>.

Box 2: Public consultation on issues that the impact assessment must address

As stipulated in section 31.3.1 of the Environment Quality Act, the Notice of Project and the Minister's Directive, published in the Environmental Assessment Register, must be put to public consultation by the Ministère. Details on the conduct of this consultation are given in sections 7, 8 and 9 of the Regulation respecting the environmental impact assessment and review of certain projects (c Q-2, r 23.1).

Within 15 days after receiving the Minister's Directive to carry out an environmental impact assessment, the project proponent must publish, in a daily or weekly newspaper circulated in the region where the project would be carried out, a notice announcing the commencement of the project's environmental assessment. Within 30 days following the publication of this notice, any person, group or municipality may communicate to the Minister in writing their observations on issues that the project's impact assessment statement should address. Within 20 days following the end of this consultation, the Minister must send to the project proponent, and publish in the Environmental Assessment Register, the observations on issues that were made to the Minister and that warrant the obligation to take them into account in the project's impact assessment. Subsequently, the project proponent must describe, in its impact assessment, any modifications it has made to the project and any mitigation measures it has planned in response to observations made during the consultation.



When analyzing impacts on Aboriginal communities, one aspect to consider is how their concerns are anchored in their identity, culture, way of life and social cohesion. Thus, when assessing impact intensity, the Ministère recommends that the project proponent take into account the different dimensions (social, cultural, economic) associated with the places that are important to those communities and with the traditional activities prized by their members.

As well, in many cases, they may have concerns that extend beyond the potential impacts on their use of the territory and its resources. They could also be concerned about the project's impacts on wildlife or plant species that are culturally important, even species that are not harvested, and could want to get a clear understanding of how the project could impact ecosystem integrity.

As for the presentation of the results of this analysis in the impact assessment, as mentioned in the Directive, it is recommended that the results be grouped in distinct sections, with information pertaining to Aboriginal communities made clearly apparent. The Ministère strongly encourages project proponents to involve Aboriginal communities directly in the production of these sections²⁹.

²⁹ MELCC (2018b), p. 9.

2.2.3 Seeking solutions for issues raised by the project

By acquiring knowledge about Aboriginal communities concerned by the project, and consulting with them, project proponents can be proactive, collaborating with those communities to find solutions, based on the issues identified in the previous stage and the impacts expected if the project goes ahead. Measures should then be considered to avoid or mitigate negative impacts and to maximize positive spinoffs on the communities concerned and their living environment.

At this stage, it is important that the project proponent be open to comments and suggestions from those consulted, with the objective of improving the design of the project. The proponent should be ready to modify or enhance the project in light of those comments and suggestions, for example by planning other options or measures toward integrating the project into the receiving environment, maintaining or improving the quality of life of the surrounding population, and reconciling uses of the territory.

In some cases, the project proponent's consultation of Aboriginal communities could lead to formal agreements containing, for example, provisions on the transmission of information, protection of the environment, training and employment, the awarding of contracts, or investments in the community. The content of such agreements and whether they merit negotiating will depend on the nature of the project, its effects on the territory, and the specific reality of the Aboriginal community concerned³⁰.

At present, the project proponent is under no legal obligation to conclude such agreements. However, the Ministère is generally in favour of them because such agreements can secure numerous benefits for Aboriginal communities and foster the establishment and maintenance of good relations with them. Such agreements are private however, engaging only the project proponent and the community concerned, with the Ministère playing no role in them.

2.2.4 Follow-up with consulted Aboriginal communities and feedback

Following the gathering and analysis of information, the project proponent should present Aboriginal representatives with a report, summarizing their concerns and the information acquired about their community. This will help ensure that it has understood them correctly, and that the information it intends to present in the impact assessment is accurate.

In addition, if any questions were left unanswered in the consultations, it is always good practice to follow up and provide answers to the communities concerned. Follow-up and feedback activities will give the communities a chance to see how their concerns, comments and suggestions were considered in the preparation of the impact assessment and the design of the project, and to understand why any proposals of theirs were not followed. This information should also go into the impact assessment, as mentioned in the Directive³¹.

³⁰ Gouvernement du Québec (2015), p. 8.

³¹ MELCC (2018b), p. 8-9.

3. CONTINUING THE INFORMATION AND CONSULTATION PROCESS AFTER FILING THE IMPACT ASSESSMENT

After filing the impact assessment with the Ministère and while awaiting the Government's decision, even afterwards if the project is authorized, the project proponent should continue communications with Aboriginal communities, to keep them informed, respond to their concerns or simply to maintain the relationship that has been established with them.

3.1 During the BAPE mandate and environmental analysis of the project

If the impact assessment is deemed acceptable, the Minister instructs the project proponent in writing to begin the period of public information required under section 31.3.5 of the Environment Quality Act (c Q-2)³². This 30-day period usually includes an information session held by the Bureau d'audiences publiques sur l'environnement (BAPE), to which are invited citizens of the area concerned including those from Aboriginal communities. Such sessions may be held in an Aboriginal community if it could be directly affected by the project. The Minister may then give the BAPE a mandate to hold a public hearing, targeted consultation or mediation³³. If so, the BAPE will produce a report for the Minister with its observations and analysis. The Ministère recommends that the project proponent give careful consideration to concerns raised during BAPE sessions, and be completely transparent in responding to questions.

Separately, the Ministère performs an environmental analysis of the project, in collaboration with other ministries and organizations, with a view to advising the Minister on the project's environmental acceptability, the advisability of letting it proceed, and if so, the conditions for authorization. At the conclusion of this analysis, the Direction générale de l'évaluation environnementale et stratégique produces an environmental analysis report. This report and that of the BAPE if any are the two documents on which the Minister will base his recommendation to the Government.

If the project is modified in the course of the BAPE's mandate and the environmental analysis, the project proponent may be required by the Ministère to discuss accommodation measures that may have come up in the government consultation, to mitigate as much as possible any potential infringement on the rights of Aboriginal communities.

³² The Minister can however mandate the BAPE to hold a public hearing without a public information period, if such a hearing appears inevitable due to the nature of the issues or when justified by public concerns.

³³ To learn more about the role of project proponents at this stage, see the [Guide à l'intention du promoteur de projet à propos du processus de participation publique sous l'égide du Bureau d'audiences publiques sur l'environnement](#) (BAPE, 2017).

3.2 After receiving government authorization

When a project is authorized, the project proponent can continue to hold discussions with the Aboriginal communities concerned, in the manner agreed upon with them, while conducting information and consultation activities during all phases of project execution (construction, operation and closure as the case may be). Such activities would provide the communities with information on the project's status, the precise location of infrastructures, the monitoring of project impacts, and measures taken in respect of the conditions for authorization and any requests that may have been made by the communities. In addition, the Ministère recommends that the project proponent inform representatives of the affected Aboriginal communities a few weeks before work begins in areas of interest to them, to allow them time to notify Aboriginal users of the land.

The project proponent is advised to adapt its information and consultation efforts to the circumstances, the interest of the communities concerned, and concerns raised by the project, unless particular requirements are specified in governmental or ministerial authorizations. The choice of information and consultation methods should be made in collaboration with community representatives.

Furthermore, it is a good idea to set up a mechanism such as a monitoring committee, devoted specifically to relations between the project proponent and the Aboriginal communities concerned, as a way of preserving the relationship and facilitating information exchange. Note that for some projects it is required by law to create a monitoring committee with an Aboriginal representative³⁴.

If a monitoring committee formed of other area stakeholders is set up on a voluntary basis by the project proponent, Aboriginal representatives may wish to be on it, whether as observers or active participants, to be kept informed of other issues raised by the project.

Relationships formed with Aboriginal communities could also be continued in the context of monitoring studies. Whenever such studies are done, it can make sense to invite the communities to join in carrying them out (e.g. on environmental or social components) if they have indicated an interest in doing so. Even if they are not, the Ministère recommends that they be sent results that could interest them.

Our final recommendation has to do with non-Aboriginal workers in areas used by Aboriginal communities. Wherever there is a risk of friction, project proponents should plan to provide intercultural training for non-Aboriginal workers, to sensitize them to Aboriginal realities and contribute to building better relations between them.

³⁴ For certain mining operation projects, the holder of a mining lease is required to establish a monitoring committee within 30 days after the lease is issued, pursuant to section 101.0.3 of the Mining Act (c M-13.1). This committee must include, if applicable, a representative of an Aboriginal community consulted by the Government with respect to the project, and all members must be from the region where the mining lease was granted. This requirement also applies to the holder of a licence for the exploration, production or storage of petroleum resources, who must establish a monitoring committee within 30 days after the licence is awarded, in accordance with the provisions of the Petroleum Resources Act (c H-4.2, sec. 28 and 55). That said, being consulted by the Government should not necessarily be the only criterion for identifying Aboriginal communities that may be invited to participate in the work of the monitoring committee.

For further information on monitoring committees and the legal obligations incumbent on the holders of mining leases and petroleum exploration, production and storage licences, see the [Best Practices Guide for Monitoring Committees and Legal Obligations of Mining and Petroleum Projects Promoters](#) (MERN, 2019).

CONCLUSION

The Ministère has produced the present guide to set out its recommendations for implementing an information and consultation process with the Aboriginal communities concerned during the planning and implementation of a project subject to the environmental impact assessment and review procedure. In view of their cultural, social, historical, legal and political characteristics, the Ministère recommends that the project proponent consult such communities in a distinct manner. The present guide also provides details on the knowledge and information that could be gathered from Aboriginal communities in the information and consultation process that project proponents may conduct for the purposes of the environmental impact assessment.

The information and consultation process should be worked out in collaboration with community representatives and launched as early as possible in the planning stage. Depending on circumstances and the interest shown by the Aboriginal communities concerned, the process could be pursued thereafter in an ongoing manner to contribute to a lasting and constructive relationship with the communities and facilitate the project's execution.

That said, efforts to apply the recommendations set out in the present guide should be always be tailored to the context and the specific reality of each community, taking into account the scope of the project and the magnitude of its real or potential impacts on the territory involved and on the communities themselves.

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APPENDIX 1: MODEL INFORMATION AND CONSULTATION PLAN

PROJECT TITLE
PROJECT PROPONENT
CONTEXT OF THE INFORMATION AND CONSULTATION PROCESS
<i>* In particular, specify the phase of project planning or execution to which the process corresponds (during the impact assessment, during construction, operation, closure...).</i>
AIM AND OBJECTIVES PURSUED
<i>* State the aim of the information and consultation process and the objectives pursued.</i>
LIST OF PEOPLE, GROUPS AND ORGANIZATIONS TO INFORM AND CONSULT
<i>* It is recommended to first meet with the representatives of the Aboriginal communities concerned, who may direct the project proponent to people to consult within their community.</i>
INFORMATION AND CONSULTATION METHODS PLANNED
<i>* As appropriate and where needed, such methods can include interviews, information and consultation sessions and visits to the location of the proposed project, to ensure a good understanding of the concerns of Aboriginal communities concerned with regard to the project and to provide them with information about the project. The choice of information and consultation methods should be made in collaboration with community representatives and take into account their specific needs (services of an interpreter, translation of documents, financial support, etc.) in order to facilitate their participation. Confidentiality protection measures should also be foreseen and determined with the communities consulted by the project proponent if they wish to keep confidential certain information deemed sensitive.</i>
PLACES AND TIMES FOR INFORMATION AND CONSULTATION ACTIVITIES
<i>* Draw up a realistic schedule for organizing and carrying out these activities, allowing for circumstances that could have an impact on the level of participation (summer holidays, hunting periods, community gatherings, traditional activities, etc.).</i>
MEANS OF COMMUNICATION TO ANNOUNCE ACTIVITIES
<i>* Different means of communication can be employed to reach different people. Allow a reasonable amount of time for them to read the documentation and prepare their comments.</i>
DOCUMENTS TO PRODUCE TO INFORM AND CONSULT ABORIGINAL COMMUNITIES
<i>* Prepare descriptive, easy-to-understand documents that are appropriate for the people targeted.</i>
ISSUES TO DISCUSS
<i>* Determine, in a preliminary manner, the issues to discuss with each community to be consulted, based on their concerns, and be open to discussing any other issues they may raise.</i>
RESULTS EXPECTED
<i>* Describe the expected results for the project proponent and for the communities consulted, in relation to the information and consultation process.</i>
FOLLOW-UP AND FEEDBACK MECHANISMS
<i>* Specify the means (minutes of meetings, reports, activities) and methods of dissemination that will be used to communicate the results of the process, the answers given to participants and any modifications made to the project in response to their concerns. These follow-up and feedback activities will help the project proponent to ensure that it has correctly understood the comments expressed by communities and that the information it intends to present in the impact assessment is accurate.</i>

APPENDIX 2: COMMUNICATIONS REGISTER (EXAMPLE)³⁵

Aboriginal community:							
Date	Method of communication	People contacted	Objective(s)	Questions and concerns raised	Potential impacts of the project	Actions proposed	Follow-up to do
	Examples: - Letter - Email - Telephone call - Meeting	Name and function				Examples: - Changes in project design - Measures to avoid or minimize negative impacts on the community, and to maximize positive effects - Negotiation of an agreement with the community	Examples: - Answers to unresolved questions - Information to provide to the community - Explanations if concerns were not taken into account or if suggestions were not followed

³⁵ This register can be used by project proponents as an internal management tool to keep track of communications related to the information and consultation process. Note however that if the register is sent to the Ministère under the EIARP, all personal information should be removed to preserve the anonymity of the persons contacted by the project proponent.

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