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The Duty to Consult and the Legislative Process: But What About Reconciliation?

By: Nigel Bankes

Case Commented On: *Canada v Courtoreille*, 2016 FCA 311 (CanLII)

In *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* (2010 SCC 43 (CanLII) at para 44), the Supreme Court declined to answer the question of whether legislative action might trigger the duty to consult and, where appropriate, accommodate Aboriginal groups. This question was front and centre in *Canada v Courtoreille*, 2016 FCA 311 (Can LII), which involved the omnibus budget bills of the Harper administration (2012). The majority (Justices de Montigny and Webb) answered (at para 3) that "legislative action is not a proper subject for an application for judicial review … and that importing the duty to consult to the legislative process offends the separation of powers doctrine and the principle of parliamentary privilege." Justice Pelletier offered concurring reasons which are somewhat more nuanced as to the possibility of intervention in the legislative process. He would give effect to the duty to consult in a particular, and narrow set of cases, but still concludes that, in most cases, the duty to consult has no place in the legislative process.

The background is well summarized at paras 5 & 6 of the judgement:

In 2012, the Minister of Finance introduced Bill C-38, enacted as the *Jobs, Growth and Long-Term Prosperity Act*, 1st. Sess., 41st Parl., 2012 (assented to 29 June 2012), S.C. 2012, c. 19 and Bill C-45, enacted as the *Jobs and Growth Act* 2012, 1st. Sess., 41st Parl., 2012 (assented to 14 December 2012), S.C. 2012, c. 31. These two omnibus bills resulted in the repeal of the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37; the enactment of the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52 (CEAA, 2012); as well as in amendments to the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Species at Risk Act*, S.C. 2002, c. 29, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33 and the *Navigable Waters Protection Act*, renamed the *Navigation Protection Act*, R.S.C. 1985, c. N-22 (NPA).

Mikisew Cree alleges that the omnibus bills reduced the types of projects that were subject to federal environmental assessment, reduced the navigable waters that required federal approval to build obstructing works on them, diminished the protection of fish habitat, and reduced the requirements to approve effects on species at risk. Since environmental assessments and other federal approval mechanisms typically allow First Nations to voice their concerns about effects on its treaty rights to hunt, fish and trap, and have those rights accommodated, the Mikisew Cree argue that this reduction in oversight may affect their treaty rights and accordingly, the Crown should have consulted with it during the development of that legislation and upon its introduction in Parliament. The Mikisew Cree sought declaratory and injunctive relief against the Crown before the Federal Court.

It bears emphasising that the Mikisew Cree First Nation (MCFN) was positioning itself to attack the preparatory steps leading up to the introduction of the legislation rather than the legislative process in Parliament.

Justice Hughes granted the application in part. This was an appeal and cross-appeal from that judgement.

The majority suggested (at para 16) that the appeal gave rise to four issues:

1. Did the Judge err in conducting a judicial review of legislative action contrary to the Federal Courts Act?
2. Did the Judge err by failing to respect the doctrine of separation of powers or the principle of parliamentary privilege?
3. Did the Judge err in concluding that the duty to consult had been triggered?
4. Did the Judge err in determining the appropriate remedy?

The majority found it unnecessary to address issues 3 & 4 since it was able to dispose of the appeal by answering the first two questions in the affirmative. In fact, the majority (at para 39) could have disposed of the appeal with its affirmative answer to the first question. Technically therefore everything after that is simply obiter. Justice Pelletier also confined his analysis to the first two questions.

Did the Judge Err in Conducting a Judicial Review of Legislative Action Contrary to the Federal Courts Act?

For the majority, the MCFN application was an application for judicial review, but as a statutory Court the Federal Court could only consider the matter if it had jurisdiction to do so under the *Federal Courts Act*, RSC 1985, c. C-7 (*FCA*). The majority was of the view that in order to establish that, MCFN had to show two things (at para 23): "First, that there be an identifiable decision or order in respect of which a remedy is sought. Second, that the impugned decision or order be made by a 'federal board, commission or other tribunal'."

The majority was of the view that the MCFN could not meet either of these criteria. As to the first, the majority found it difficult to identify any particular decision that was the target of MCFN's application (or indeed any particular decision that Justice Hughes had identified) (at para 24): "It is not clear, however, what particular decisions [were being referenced]. If it is the decision to move forward with a policy initiative with a view to bringing proposed legislation to Cabinet for approval and eventually, to Parliament for adoption, it would presumably not meet the requirement for a formal decision as it would be inchoate in nature and not formally recorded." But even if the target could be something a bit more amorphous than a decision (e.g. a 'matter') as suggested by s.18.1 of the *FCA* and some of the relevant case law, there was still the difficulty that the matter had to fall within the purview of administrative law rather than legislative action. While the majority at this point may well be trespassing into the second question, for the majority (at para 21) it was still grounded in the proposition that the Federal Court only had jurisdiction over administrative action and not legislative action. Thus (at para 26) "To the extent, therefore, that the ministers and the Governor in Council were acting in their legislative capacity in developing the two omnibus bills, as argued by the appellants, judicial review would clearly not be available."

If there was no decision or even a relevant matter, it was equally clear to the majority that there was no 'federal board, commission or other tribunal'. The question of whether an entity is a 'federal board, commission or other tribunal' turns largely on the source of that entity's authority. If that authority (here the authority to develop and present legislation to Parliament) is sourced in federal legislation, then the entity would be amenable to judicial review. MCFN seems to have argued that in developing new legislation a Minister would be acting under the relevant departmental legislation (e.g. *Department of the Environment Act*, RSC 1985, c. E-10) at least with respect to the development or consultation phase of that legislation and was thus amenable to judicial review during that phase.

The majority considered that there were two main obstacles to this approach. First, as a matter of text, nowhere does the relevant departmental legislation refer to the responsibility to develop legislation for introduction to Parliament. If the Minister had such a responsibility then (at para 28) such a responsibility "flows from the Constitution itself and from our system of parliamentary democracy, and not from a delegation of powers from Parliament to the executive." Second, the majority was obviously not persuaded that there was a clear or workable distinction between the administrative or executive elements of the development of legislation and the legislative process itself. Rather (at para 29) "the legislative process is a fluid exercise involving many players, both at the political and at the government officials level. It would be artificial to parse out the elements of a minister's functions associated to either its executive or legislative functions for the purpose of drawing a red line between the dual roles of the members of Cabinet." That was probably enough to dispose of the matter but the majority did go on to reference s.2(2) of the *FCA* suggesting (at para 32) that Justice Hughes had offered a restrictive interpretation of that section. Section 2(2) provides that: "(2) For greater certainty, the expression 'federal board, commission or other tribunal', as defined in subsection (1), does not include the Senate, the House of Commons, any committee or member of either House ….".

In light of that the majority concluded as follows on the first issue (at para 38): "The source of the power that the appellant ministers exercised and which is the true object of the respondent's complaint was … legislative in nature and derived from their status as members of Parliament. Therefore, the matter is not a proper subject for an application for judicial review under the *Federal Courts Act*."

Justice Pelletier, concurring in the result, side-stepped much of the analysis under this first heading. Justice Pelletier reasoned (at paras 66 – 82) as follows: (1) MCFN's application was largely a request for a series of declarations, (2) a declaration can be sought either by way of an action or on application, (3) an action under s.17 of the *FCA* is an action against the Crown and need not be against a 'federal board commission or other tribunal', and (4) since the Court has a broad jurisdiction to correct procedural irregularities the failure to proceed against a 'federal board commission or other tribunal' could not be fatal.

Did the Judge Err by Failing to Respect the Doctrine of Separation of Powers or the Principle of Parliamentary Privilege?

The majority recognized (at para 40) that "there is a clear tension in the case law between the doctrine of the separation of powers and the duty to consult". The "separation of powers doctrine is not explicitly entrenched in the Canadian Constitution" but "courts have frequently recognized" its "normative value". In resolving that tension in this case, the majority came down firmly in favour of the separation of powers, the sovereignty of Parliament, and the related principle that the courts cannot impose additional procedural obligations on the legislative

process. This did not mean that MCFN was without a remedy and the majority mentioned three avenues of relief that might be available. Two of these avenues were extra-judicial. First, the majority suggested that Ministers of the Crown might (and perhaps should) consult as a matter of public policy. Second, First Nations like MCFN might take advantages of opportunities to participate in the legislative process such as by appearing before parliamentary committees. And third, a First Nation might attack either the resulting legislation or the subsequent statutory decisions based on that legislation. Here is what the majority had to say about that (at para 63):

> To the extent that the impugned decisions directly derive from the policy choices embedded in a statute, the validity of such a statute may be called into question and consultation prior to the adoption of that statute will be a key factor in determining whether the infringement of an Aboriginal or treaty right is justified. But courts cannot and should not intervene before a statute is actually adopted. To come to the opposite conclusion would stifle parliamentary sovereignty and would cause undue delay in the legislative process. This is the very vehicle through which many reform initiatives, including those necessary for the proper development and recognition of Aboriginal rights and interests, are adopted.

As noted in the introduction, Justice Pelletier was somewhat more nuanced. He agreed that in this particular case the development of the omnibus legislation did not trigger a duty to consult because (at para 91) it was "legislation of general application whose effects are not specific to particular Aboriginal peoples or to the territories in which they have or claim an interest. The origin and development of the duty to consult does not support the view that it requires the Crown to consult with Aboriginal peoples in cases where the governmental action is aimed at the whole of the territory of Canada and all of its peoples." In such a case "The duty must be found in the decisions by which such legislation is operationalized." However, in comments that were clearly obiter Justice Pelletier suggested that he might see matters differently if the legislation in question was, for example, project specific approval legislation (not unknown in many Canadian jurisdictions and particularly common at one time in Newfoundland and Labrador) (at para 87):

> Putting the matter another way, the duty to consult would undoubtedly be triggered by the executive's approval of a project which adversely affected a First Nation's interest in a given territory. Can it be said that the duty to consult would not be triggered if the same project were approved and set in motion in a special law passed for that purpose? While this is not the case we have to decide, it does highlight the point that the argument that the legislative process is indivisible, from policy development to vice-regal approval, may be problematic in other circumstances.

This idea however could not be applied more broadly for fear of paralyzing the legislative process (at para 92):

> The duty to consult cannot be conceived in such a way as to render effective government impossible. Imposing a duty to consult with all Aboriginal peoples over legislation of general application would severely hamper the ability of government to act in the interests of all Canadians, both Aboriginal and non-Aboriginal. Consultation takes time and the more groups there are to be consulted, the more complex and time-consuming the consultations. At some point the ability to govern in the public interest can be overwhelmed by the need to take into account special interests.

Commentary

There are three parts to these comments. The first section discusses the scope or breadth of application of the decision. The second section discusses the majority's comments as to the three forms of recourse said to be available to indigenous communities in the absence of importing the legal duty to consult into the legislative process. The third section suggests that we need to re-imagine the relationship between the doctrine of the sovereignty of Parliament and the duty to consult in light of the goal of reconciliation.

Scope

This decision is very much a decision about the (non) application of the duty to consult in the parliamentary process (and in the provinces, the legislative assembly process); it does *not* speak more generally and inclusively to that category of decisions known as delegated legislative decisions, i.e. rule-making whether in the form of regulations, rules, adoption of land use plans etc. While there is conflicting authority as to whether or not the duty to consult applies to such decisions, there is little if anything in this judgement to support the view that delegated legislative decisions do not attract the duty to consult. Such decisions cannot benefit from arguments of parliamentary privilege and such decisions are in principle subject to judicial review in the ordinary course – albeit not usually on procedural grounds: see *Att. Gen. of Can. v. Inuit Tapirisat et al*, [1980] 2 SCR 735, 1980 CanLII 21 (SCC); *Homex Realty v. Wyoming*, [1980] 2 SCR 1011, 1980 CanLII 55 (SCC).

Available Recourse: Fact or Fiction?

The majority offered MCFN the consolation that it would still have some level of recourse even if it did not have a *right* to be consulted as part of the legislative process. But none of the options identified seem very realistic. The first two depend upon the political commitment of governments to engage rather than a legal commitment to do so and the reference to parliamentary committees seems particularly hollow (and indeed almost insulting) in relation to the Bills in question. These Bills were deliberately presented by the government of the day as omnibus bills and characterized as money bills in order to escape scrutiny by the specialized House standing committees. Furthermore, confining indigenous communities to this sort of engagement serves to categorize indigenous communities as mere stakeholders rather than communities with constitutionally protected rights. It is as if the majority had completely forgotten that it was these bills that triggered the Idle No More Movement and significant engagement of civil society across Canada. These particular applicants needed no reminder from the Court of other avenues of civic engagement.

The final recourse offered is recourse to the courts after the legislation has passed, potentially questioning the validity of the statutes or statutory amendments as an unjustifiable infringement of aboriginal or treaty rights. I think that there are several difficulties here. The first is that any indigenous community taking on this issue would face a huge evidentiary challenge which would of necessity be based on the counter factual: i.e. it would involve a comparison with what the situation would be under the previous state of the law versus the position under the impugned statutes. This will be a monumental task – far harder than proving that the cumulative effect of the Crown's taking up activities constitutes a breach of treaty hunting rights. Second, and even more seriously, this solution is far too reactive. It contemplates breach of duty and then justification of that breach rather than a deliberative process aimed at responding to concerns ('demonstrable integration') and avoiding breach. The case law from *R. v. Sparrow*, [1990] 1

SCR 1075, 1990 CanLII 104 (SCC) to *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), shows a welcome movement from breach and reaction towards more proactive and creative approaches that seek to avoid infringements of constitutionally protected rights. This judgement, if upheld, reverses that trend.

Reconciliation

As a statement of the law of Canada as it stood in 1982 before the enactment of s.35 of the *Constitution Act, 1982*, this decision is clearly doctrinally correct. But we have moved on from the Constitution as Bagehot (quoted at para 31) knew it. The relevant questions are thus two-fold: first, is this understanding still good law, and, even if it is good law, is the decision consistent with a reading of the Constitution that is sensitive to the ideas informing the Report of the Truth and Reconciliation Commission and the need to decolonize Canadian law. Surely one must be suspicious and questioning of a decision that relies so heavily on the *sovereignty* of Parliament (see references at paras 12, 52, 54, 57, 59, 60, 63) at the same time as the Supreme Court instructs that the purpose of s.35 of the *Constitution Act, 1982* and the duty to consult and accommodate is to bring about a reconciliation of Aboriginal peoples to the acquisition of sovereignty by the Crown: *Mitchell v. M.N.R.*, [2001] 1 SCR 911, 2001 SCC 33 (Can LII); *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73 (Can LII).

As to the first question (is it still good law?) this is ultimately a question for the Supreme Court of Canada. The Court ducked the question in *Rio Tinto* but perhaps now the question needs an answer. The majority puts the question in terms of the conflict or tension between "the doctrine of the separation of powers" and the judicially developed duty to consult. And perhaps therein lies the difficulty. Words like 'conflict' or 'tension' suggest that these two ideas or constitutional principles are in opposition and that one must inevitably trump the other. But that is not a necessary understanding; a different understanding would suggest that the challenge is that of how to read these different parts of the Constitution together. This is pre-eminently a challenge for the Supreme Court of Canada. The Court rose to that challenge in 1990 in its *Sparrow* decision. There the Court quoted with approval Noel Lyon's statement to the effect (at 1106) that s.35 "renounces the old rules of the game under which the Crown established courts of law and denied them to question sovereign claims made by the Crown". The Court itself went on (at 1106) to "sketch the framework for an interpretation of the words 'recognized and affirmed'." In much the same way the challenge for the Court now is to sketch an approach to the interpretation of, and reconciliation between, the separation of powers and the duty to consult.

The principal problem with the doctrine of the separation of powers is that it simply doesn't recognize a role for indigenous peoples; they are not comprehended in the terms legislative, judicial and executive branches of government. The Court needs to find a way to read that doctrine in a way that recognizes a role for indigenous peoples. The absence of explicit language in s.35 on this point should no more deter the Court in this interpretive exercise than it did in *Sparrow*. As the Court noted in *Sparrow* (at 1109):

> There is no explicit language in the provision that authorizes this Court or any court to assess the legitimacy of any government legislation that restricts aboriginal rights. Yet, we find that the words "recognition and affirmation" incorporate the fiduciary relationship referred to earlier and so import some restraint on the exercise of sovereign power. Rights that are recognized and affirmed are not absolute. Federal legislative powers continue, including, of course, the right to legislate with respect to Indians

> pursuant to s. 91(24) of the *Constitution Act, 1867*. These powers must, however, now be read together with s. 35(1). In other words, federal power must be reconciled with federal duty and the best way to achieve that reconciliation is to demand the justification of any government regulation that infringes upon or denies aboriginal rights.

The challenge for counsel on appeal will be to sketch a vision of how it might be possible (short of amending the Constitution) to operationalize consultation obligations *within* the legislative process. In doing so it will be necessary to keep in mind that the Court is unlikely to be prescriptive. Past decisions (see especially *Haida*) make it clear that it is up to the governments to structure an appropriate consultation process that allows the Crown to discharge its obligations.

The Court of course may choose to affirm the early line of authority notwithstanding the change in the constitutional order wrought by the 1982 amendments. But even if it does, that will not let governments off the hook because they at least need to ask whether this hoary principle (what Charles Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (1982) might refer to as one of the "Lords of Yesterday") is consistent with the ideas underlying the Report of the Truth and Reconciliation Commission. In this context it may be worth looking at the consultation procedures adopted in Norway in 2005 (reproduced below) as part of a political agreement between the Saami and the government of Norway. The procedures lay out a framework for consultation between state authorities and the Saami Parliament. There is no equivalent to the Saami Parliaments of the Nordic countries in Canadian law and polity and careful thought would have to be given to who might be parties to such arrangements. This would undoubtedly be difficult and perhaps divisive as some will recollect from the Charlottetown Accord negotiations, see *Native Women's Assn. of Canada v. Canada*, [1994] 3 SCR 627, 1994 CanLII 27 (SCC), (where NWAC was denied a seat at the negotiations to advocate for the ongoing application of the *Charter* to Aboriginal governments). But it may be worth a try. The proposition that there is no duty to consult in setting the most basic of ground rules for environmental protection because it is: (1) an infringement of the privileges of Parliament (read settler state), and (2) too difficult, is inconsistent with the goal of reconciliation and it is ultimately unacceptable.

In addition to considering the parties to the arrangements it will also be necessary to consider the scope of such arrangements. The guidelines from Norway suggest that while "The consultation procedures apply in matters that may affect Sami interests directly", "[m]atters which are of a general nature, and are assumed to affect the society as a whole shall in principle not be subject to consultations". This perhaps echoes, at some level, the distinction that Justice Pelletier makes in his judgement; but in thinking about the appropriate test we should not forget that apparently neutral rules of general application may have a disproportionately disadvantageous effect on indigenous communities: *Dick v R*, [1985] 2 SCR 309, 1985 CanLII 80 (SCC).

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Text of the Norwegian Consultation Procedures between State Authorities and The Sami Parliament

Published under: Stoltenberg's 2nd Government

As an indigenous people, the Sami have the right to be consulted in matters that may affect them directly. In order to ensure that work on matters that may directly affect the Sami is carried out in a satisfactory manner, the Government and the Sami Parliament agree that consultations between

State authorities and the Sami Parliament shall be conducted in accordance to the annexed procedural guidelines.

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Oslo, 11 May 2005

Erna Solberg Minister of Local Government and Regional Development	Sven-Roald Nystø President of the Sami Parliament

1. The Objective

The objective of the procedures for consultations is to:

- contribute to the implementation in practise of the State's obligations to consult indigenous peoples under international law.
- seek to achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests.
- facilitate the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society.
- develop a common understanding of the situation and developmental needs of the Sami society.

2. The Scope

- The consultation procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities.
- The consultation procedures apply in matters that may affect Sami interests directly. The substantive scope of consultations may include various issues, such as legislation, regulations, specific or individual administrative decisions, guidelines, measures and decisions (e.g. in governmental reports to the Norwegian Parliament, the Storting).
- The obligation to consult the Sami Parliament may include all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.
- In matters concerning the material basis for the Sami culture, including land administration, competing land utilization, and land rights, the obligation to consult the Sami Parliament is applicable to traditional Sami areas; this includes the counties of Finnmark, Troms, Nordland and Nord-Trøndelag, and the municipalities of Osen, Roan, Åfjord, Bjugn, Rissa, Selbu, Meldal, Rennebu, Oppdal, Midtre Gauldal, Tydal, Holtålen and Røros in the county of Sør-Trøndelag, and Engerdal and Rendalen, Os, Tolga, Tynset and Folldal municipalities in

Hedmark county, and Surnadal and Rindal municipalities in the county of Møre- og Romsdal.

- Matters which are of a general nature, and are assumed to affect the society as a whole shall in principle not be subject to consultations.

3. Information

- State authorities shall fully inform the Sami Parliament about all matters that may directly affect the Sami, as well as about all relevant concerns and queries at all stages of the process.

4. Public disclosure

- Information exchanged between State authorities and the Sami Parliament in connection with consultations may be exempted from public disclosure provided it is authorised by law. The principle of expanded public disclosure shall be practised. The final positions of the parties in individual matters shall be made public.

5. Regular meetings

- Regular half-yearly meetings shall be held between the Minister responsible for Sami affairs and the President of the Sami Parliament. Other governmental ministers may attend these meetings when required. At these meetings, the situation and developmental needs of the Sami society, issues of fundamental and principle importance, and ongoing processes, shall be discussed.
- Regular half-yearly meetings shall also be held between the Sami Parliament and the Interministerial Coordination Committee for Sami affairs. Among other things, information about relevant current Sami policy matters shall be provided at these meetings.

6. General provisions concerning the consultation procedures

- The consultations carried out with the Sami Parliament, in application of the agreement on consultation procedures, shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures.
- State authorities shall as early as possible inform the Sami Parliament about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected.
- After the Sami Parliament has been informed on relevant matters, it shall inform the relevant State authority as soon as possible whether further consultations are required.
- The Sami Parliament can also independently identify matters which in its view should be subject to consultations.
- If State authorities and the Sami Parliament agree that further consultations shall be held on a specific matter, they shall then seek to agree on a plan for such consultations, including the dates and venues for further contact (e.g. meetings, video-conferences, telephone contact, exchange of written material), deadlines for responses, whether consultations at the political level are required and the type of political proceedings. Sufficient time shall be allocated to enable the parties to carry out genuine and effective consultations and political consideration of all relevant proposals. In case it is necessary for the Sami Parliament to consider and debate the matter concerned in a plenary session, such debate and consideration must be conducted as early as possible in the process.
- When necessary, provisions shall be made for further consultations. Consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.

- When a matter is submitted for consideration to the Government (Cabinet), the ministerial submission document shall clearly inform other governmental ministries about the concluded agreement with the Sami Parliament and, if necessary, also to include information about matters where agreement has not been reached. In governmental propositions and reports to the national parliament, the Storting, on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted.

7. Minutes
- Minutes shall be kept of all consultation meetings between State authorities and the Sami Parliament. The minutes shall include a brief account of the subject matter, the views and positions of the parties, and the conclusions made at the meeting.

8. The need for studies/knowledge base
- The Royal Ministry of Local Government and Regional Development and the Sami Parliament shall jointly appoint a specialized analysis group which, inter alia, shall submit an annual report concerning the situation and developmental trends of the Sami society on the basis of Sami statistics. The report shall be used as the basis for consultations on specific matters and for consultations concerning the developmental needs of the Sami society at one of the half-yearly meetings between the Minister responsible for Sami affairs and the President of the Sami Parliament.
- When State authorities or the Sami Parliament consider there to be a need for background studies to strengthen the factual or formal basis for assessments and decisions, this shall be raised as early as possible, and both parties shall include questions concerning the terms of reference for such studies into the consultation process. The Central Government and the Sami Parliament shall seek to reach an agreement on the terms of reference for such a study, and who shall carry out the study. The Central Government and the Sami Parliament are obliged to assist in providing information and materials necessary for carrying out the study.

9. Consultations with other affected Sami entities
- In matters where State authorities plan to consult local Sami communities and/or specific Sami entities or interests that may be directly affected by legislation or administrative measures, State authorities shall as early as possible notify which Sami entities or organizations it regards as affected by the matter, and discuss the coordination of such consultation processes with the Sami Parliament.

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