

Chiefs of Ontario

First Nations Lifelong Learning Table – Planning Circle

Duty to Consult and Engagement

March 5, 2024



Disclaimer

Chiefs of Ontario is not a holder of Aboriginal and Treaty rights and is not a party to consultation unless otherwise mandated by Chiefs-in-Assembly





Purpose of Presentation

- Overview of Chiefs of Ontario supplemental material for improved consultation and engagement practices and relationship building
- Clarify the role of the Chiefs of Ontario regarding consultation and engagement with First Nations in Ontario
- Opportunity for ongoing discussions on consultation and engagement with First Nations in Ontario



Chiefs of Ontario Supplemental Materials

1. **Minimum Standards and Principles for Consultation and Engagement**
2. **Engagement Checklist**

Disclaimer: In accordance with COO Resolution 21/39, Chiefs of Ontario developed materials to support potential solutions to substandard consultation and accommodation practices of Ontario. These materials do not replace nor are they held above the processes, guidance, and/or standards provided directly by First Nations. These materials are supplemental aids, rather than a substitute or alternate for processes designed by First Nations. The content of these materials are the floor, not the ceiling.



Minimum Standards and Principles for Consultation and Engagement

The goal of this checklist is to provide ministries with a launching off point for improved processes that is further detailed and expanded upon through the guidance of specific First Nation Protocols, laws, and customary practices.



Consultation vs. Engagement

Consultation
refers to
processes that
carry a legal
duty to consult
First Nations

Engagement
refers to
processes that do
not carry a legal
duty to consult
but the interests
of First Nations
are at play



Standards and Expectations for Consultation and Engagement

Disclaimer: There are 133 First Nations across the Ontario region, and each impacted or potentially impacted First Nation must be directly contacted to learn about their specific standards and expectations for consultation and engagement before these processes begin. Those standards and expectations must be followed by your Ministry during each and every consultation and engagement. Each First Nation has the right to update and modify their standards and expectations over time, and it is the responsibility of your Ministry to learn about these updates through ongoing relationship building and communication.



Application of Guiding Standards and Principles

The guiding principles must be followed during processes of **both** rights-based **consultation** and interest-based **engagement**.

1. There are often differences in opinion between First Nations and the government as to whether a right is potentially impacted;
2. By making a decision to engage rather than consult based on an assumption that rights are not implicated, the government is pre-empting processes and speaking on behalf of First Nations rights without the necessary input;
3. Undertaking engagement processes at a lower standard erode the nation-to-nation relationship, the spirit of reconciliation, First Nation sovereignty, and free, prior, and informed consent.



Principles of inherent jurisdiction and governance

Consent-based process

First Nations have the right to give or withhold consent

Includes the right to negotiate accommodation from the Crown

Nation-to-Nation Relations

Protection and preservation of Aboriginal and Treaty Rights

As guaranteed under section 35 of the Constitution Act, 1982

True Reconciliation

Decolonize Crown processes

Ownership of information (OCAP®)

Crown respects and implements First Nation decisions



Principles of co-existence and economy

Supporting capacity needs

Ensure rights-holders can fully prepare for, and engage in, adequate and respectful consultation with the Crown

I.E. Ample time and funding provision

Relationship building

Build mutually respectful long-term relationships

Ongoing and respectful dialogue



Principles of respectful process

Standardized and comprehensive processes

Advance notice

Accountable delegation

Milestone achievement

Community-specific approach

Flexibility and adaptability

First Nation
Dispute
Resolution



Checklist for Consultation and Engagement

The goal of this checklist is to provide ministries with a launching off point for improved processes that is further detailed and expanded upon through the guidance of specific First Nation Protocols, laws, and customary practices.



Pre-Consultation/Engagement Tasks



Initial Outreach Regarding Consultation Process



Consultation & Engagement



Consent-based Accommodation

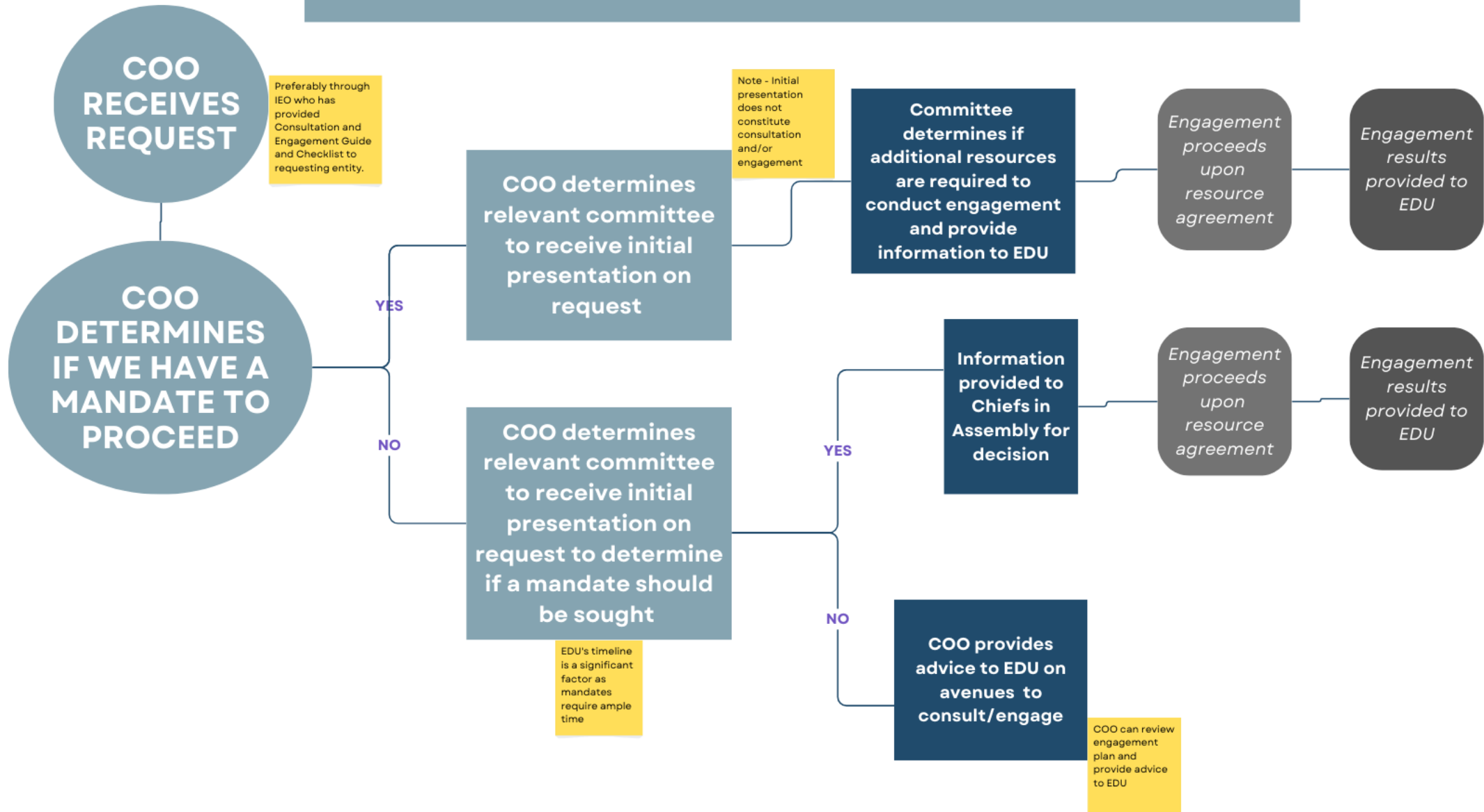


Ongoing



COO Process on Requests for Consultation and Engagement

Consultation/Engagement Request



Q&A

