TABLE OF CONTENTS

PART A – OVERVIEW

I Introduction 6

II Common Law Duty to Consult 7

III Government's Response 8

IV Context across Canada 9
- 1. Historical and Geographical 9
- 2. Legal 9
- 3. International 10

V Updated Consultation Guidelines 11

VI Guiding Principles and Consultation Directives 12

PART B – GETTING READY FOR CONSULTATION AND ACCOMMODATION

I Roles and Responsibilities 18
- ❖ Federal Departments and Agencies 18
- ❖ Provinces and Territories 18
- ❖ Aboriginal Groups 19
- ❖ Third Parties 19

II Developing a Departmental or Agency Approach to Consultation and Accommodation 21
- 1) Identify Crown conduct in relation to the duty to consult 21
- 2) Assess potential adverse impacts of departmental and agency activities 21
- 3) Identify potential or established Aboriginal or Treaty rights and related interests 22
- 4) Develop a departmental or agency approach to consultation and accommodation 22
- 5) Coordinate with partners, and/or rely on other consultation processes 25

III Organizing your Department or Agency for Consultation and Accommodation 30
- 1) General considerations 30
- 2) Organizational, financial and human resources considerations 30
- 3) Training considerations 31
- 4) Engaging Justice counsel in the consultation and accommodation process 32

PART C – STEP-BY-STEP GUIDE TO CONSULTATION AND ACCOMMODATION

Introduction 36

Phase 1: Pre-Consultation Analysis and Planning 37

Step 1: Describe and 'map out' the proposed Crown conduct 37

Step 2: Identify potential adverse impacts of Crown conduct 37

Step 3: Identify which Aboriginal groups are in the area of the proposed Crown conduct and ascertain their respective potential or established Aboriginal or Treaty rights and related interests 38

Step 4: Make an initial determination as to whether there is a duty to consult 40

Step 5: Assess the scope of the duty to consult and, where appropriate, accommodate 42

Step 6: Design the form and content of the consultation process 44

Step 7: Ensure that a records management and filing system is in place 51

Phase 2: Crown Consultation Process 52

Step 1: Implement the consultation process 52

Step 2: Document, catalogue and store all Crown consultation meeting records and other correspondence 53

Step 3: Develop and maintain an issues management tracking table 53

Step 4: Adjust the consultation and accommodation process, as necessary 53

Phase 3: Accommodation 54

Step 1: Gather and analyze information supporting the basis for accommodation 55

Step 2: Identify possible accommodation measures and options 55

Step 3: Select appropriate accommodation options 56

Step 4: Communicate and document selected accommodation measures 56

Phase 4: Implementation, Monitoring and Follow-Up 57

Step 1: Communicate and implement the decision(s) 57

Step 2: Monitor and follow-up 57

Step 3: Evaluate the consultation process 57

ANNEXES

Annex A: Definitions 62

Annex B: Legal Case Summaries 64