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Re-Imagining Canada’s Legal and Procedural Framework for Indigenous Consultation: An Honourable Obligation

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Re-Imagining Canada's Legal and Procedural Framework for Indigenous Consultation: An Honourable Obligation

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In 2004, the Supreme Court of Canada established a constitutionally entrenched legal doctrine that requires the Crown to consult with Indigenous peoples whose interests may be affected by proposed projects or public policy initiatives. Although the doctrine encourages parties to reach agreements through negotiation, disputed outcomes are commonplace and courts or tribunals are frequently called upon to resolve differences. The idea that judicial intervention in other than highly complex or novel disputes might be avoided animates my research and frames its recommendations.

My doctrinal research explores legal, conflict resolution, and negotiation theories to understand how differing Indigenous and Western worldviews may affect the consultation process, and how such apparently incompatible worldviews might be reconciled. My objective is to recommend ways to reduce uncertainty, improve process efficacy, and increase the number of negotiated settlements in the context of Canada's Duty to Consult legal doctrine.

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