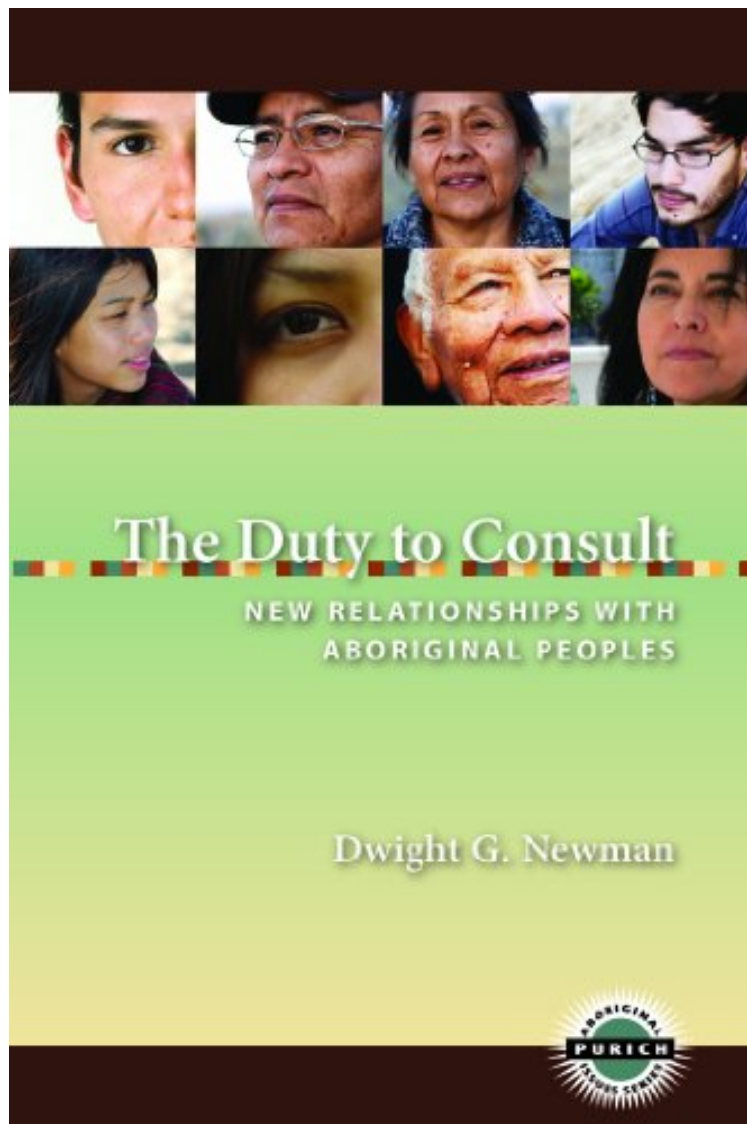


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The Duty to Consult: New Relationships with Aboriginal Peoples (Purich's Aboriginal Issues Series)

Dwight G. Newman

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Dwight G. Newman : The Duty to Consult: New Relationships with Aboriginal Peoples (Purich's Aboriginal Issues Series) before purchasing it in order to gage whether or not it would be worth my time, and all praised The Duty to Consult: New Relationships with Aboriginal Peoples (Purich's Aboriginal Issues Series):

Canada's Supreme Court has established a new legal framework requiring governments to consult with Aboriginal peoples when contemplating actions that may affect their rights. Professor Newman examines Supreme Court and lower court decisions, legislation at various levels, policies developed by governments and Aboriginal communities, and consultative round tables that have been held to deal with important questions regarding this duty. He succinctly examines issues such as: when is consultation required; who is to be consulted; what is the nature of a "good" consultation; to what extent does the duty apply in treaty areas; and what duty is owed to Mtis and non-status Indians? Newman also examines the philosophical underpinnings of the duty to consult, as well as the evolving framework in international law and similar developments in Australia.

[W]hen precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. Chief Justice Beverley McLachlin, Supreme Court of Canada, *Haida Nation v. British Columbia*, 2004. Canada's Supreme Court has established a new legal framework requiring governments to consult with Aboriginal peoples when contemplating actions that may affect their rights. The nature of the duty is to be defined by negotiation, best practices, and future court decisions. According to Professor Newman, good consultations are about developing relationships and finding ways of living together in the encounter that history has thrust upon us. Newman examines Supreme Court and lower court decisions, legislation at various levels, policies developed by governments and Aboriginal communities, and consultative round tables that have been held to deal with important questions regarding this duty. He succinctly examines issues such as: when is consultation required; who is to be consulted; what is the nature of a good consultation; can consultation be carried out by quasi-judicial agencies and third parties; to what extent does the duty apply in treaty areas; and what duty is owed to Mtis and non-status Indians? Professor Newman also examines the evolving duty to consult in international law, similar developments in Australia, and the philosophical underpinnings of the duty. "When precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it." Chief Justice Beverley McLachlin, Supreme Court of Canada, *Haida Nation v. British Columbia*, 2004. About the Author Dwight Newman is Associate Professor of Law at the University of Saskatchewan, where he also served as Associate Dean of Law from 2006-09.