

BUILDING

Sustainable relationships



ABORIGINAL ENGAGEMENT & SUSTAINABILITY

A CCSR compendium of leadership practices based on
the *Building Sustainable Relationships* conference
hosted in Vancouver on February 8-9, 2005



CANADIAN BUSINESS
SOCIAL RESPONSIBILITIES

Building Sustainable Relationships

A Compendium of Leadership Practices
in ABORIGINAL ENGAGEMENT AND SUSTAINABILITY.

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Table of Contents

Foreword	About Canadian Business for Social Responsibility and the <i>Building Sustainable Relationships: Aboriginal Engagement and Sustainability Conference</i>	iii
Executive Summary		iv
Case Study 1	Maori engagement with government and corporations in economic development and natural resource use: Lessons from Aotearoa, New Zealand	1
Case Study 2	Syncrude Canada and Fort McKay First Nation: Partnering for success	7
Case Study 3	Synergy: A united perspective between the Hupacasath First Nation and Polaris Minerals Corporation	19
Case Study 4	EnCana Corporation and Métis Nation of Alberta and Saddle Lake First Nation: Partnerships do make a difference	27
Case Study 5	Tsleil-Waututh First Nation and Ecotrust Canada: A cooperation model	35
Case Study 6	Can mining lead to sustainable economic opportunities for Indigenous women? An Australian perspective	43
Case Study 7	Haisla First Nation and Alcan Inc.: Forging a lasting friendship	53
Case Study 8	The Raglan Nickel Mine: What comes after an Impact/Benefits Agreement?	63
Case Study 9	Tembec Forest Products and Algonquin First Nation and Timiskaming First Nation: Empowering community and individual success	73
Case Study 10	Sustaining relationships through collaborative approaches: BC Hydro and BC Aboriginal Fisheries Commission; Manitoba Hydro and York Factory First Nation	81
Case Study 11	Creation of the Industry Council for Aboriginal Business	93
Presentation 1	Progressive Aboriginal Relations program: Canadian Council for Aboriginal Business and Cameco Corporation	103
Presentation 2	Building sustainable relationships between First Nations and the resource sector: Why, how and what are the benefits?	109
Presentation 3	Current and emerging laws on the recognition of Aboriginal title and rights in B.C.: What are the social and legal implications for Aboriginal communities and industry?	117
Presentation 4	Can the financial sector promote effective Aboriginal engagement through risk assessment?	127
Acknowledgements		134
Bibliography		135

Foreword

On behalf of Canadian Business for Social Responsibility (CBSR) I am pleased to present *Building Sustainable Relationships: A Compendium of Leadership Practices in Aboriginal Engagement and Sustainability*.

The following book is based on a CBSR conference hosted in Vancouver on February 8-9, 2005.

The cornerstones for the conference were case studies presented through stories told by industry and Aboriginal partners, sharing their balanced perspectives of building and sustaining partnerships in the natural resource sectors. The unique format of the guidebook reflects the conference presentations: conversations between partners presenting distinctive points of view and candid examples of collaboration between corporations and Aboriginal communities.

The conference themes and agenda were developed in collaboration with a Steering Committee comprising leaders from Aboriginal communities, industry, government and non-governmental organizations. The Committee's support was invaluable, guiding the creation of this opportunity for speakers and participants to engage on the importance of mutual respect, cultural acceptance, trust and leadership.

Although these case studies span various sectors and geographies – from forestry in northern Quebec to mining in Australia – the stories share a common theme: intent on the part of the Aboriginal and industry partners to collaborate and create a better future for all. These practical and inspirational case studies were designed to facilitate peer-to-peer learning, and hopefully bring readers a few steps further on the engagement journey, finding common ground on what sustainability means for Aboriginal communities and corporations – economically, culturally, socially and environmentally.

CBSR is proud to provide you with this resource, fostering a deeper understanding for the shared responsibility of engagement between Aboriginal communities and the natural resource sectors.



Adine Mees
President and CEO
Canadian Business for Social Responsibility

Executive Summary

On February 8-9, 2005, Canadian Business for Social Responsibility (CBSR) hosted the *Building Sustainable Relationships: Aboriginal Engagement and Sustainability Conference*, a collaboration between CBSR and leaders from industry, Aboriginal communities, government and Non-Governmental Organizations (NGOs). The conference focused on Aboriginal engagement in the context of sustainability and corporate social responsibility (CSR) in Canada's natural resources sectors, particularly the mining, oil and gas, forestry, and energy industries. The unique format of the guidebook reflects the conference presentations and the interactive spirit of the proceedings: conversations between partners presenting distinctive points of view and candid examples of collaboration between corporations and Aboriginal Communities. While the statements attributed to the various presenters and moderators are representative of the actual discussions, those statements are not literal quotations.

The two-day conference was opened and closed by Leonard George of the Tseil-Waututh First Nation, who set the tone for the conference. He cited the importance of recognizing the history of the Aboriginal experience in Canada while looking to the future with hopes of creating a new, sustainable reality. Conference participants were witness to 11 case studies on best practices in business/Aboriginal partnerships as well as presentations on several tools for Aboriginal engagement. Although each presentation and case study had unique circumstances and lessons learned, there were some general themes that ran throughout the conference.

Relationships are the Cornerstone of Sustainability

Sustainable relationships are critical to effective Aboriginal engagement. The overriding message from the conference was that first and foremost, Aboriginal engagement is about creating strong and long-lasting relationships. Trust, respect and mutual understanding are the cornerstones of all good relationships, so it is no surprise that successful business/Aboriginal partnerships are based on these same values. Successful Aboriginal engagement can hinge on the ability of companies to foster and sustain healthy relationships with Aboriginal communities.

Sustainability in the resource sector is dependent on effective Aboriginal engagement. Aboriginal communities are deeply intertwined with resource development in Canada, as a majority of that development occurs in or close to Aboriginal communities.

Developing resources in these regions can no longer be done in ignorance of Aboriginal concerns. If companies do not meet with Aboriginal communities at the consultation table, they will likely see them at the litigation table.

Sustainability of their culture, their environment and their economic prosperity is the main concern for Aboriginal communities in Canada. The partnerships discussed at the conference all treated the Aboriginal view of sustainability with due reverence. By its nature, business has traditionally focused on the short term, as profitability and stability in the present are of primary importance. The companies that presented at the conference have shifted their viewpoint to one that looks much more long term. The Aboriginal perspective is inherently long-term – a five- to ten-year plan is relatively insignificant to a community that has existed for thousands of years. By successfully merging the Aboriginal view of sustainability with the business view of sustainability, both the companies and the communities in the conference case studies have been able to benefit from this shift in perspective.

It is no easy task to reconcile the long-term objectives of an Aboriginal community with the business objectives of a resource sector company. The very nature of resource extraction means that companies are almost guaranteed to move on when that resource is no longer present or profitable. That is why many Aboriginal companies have looked to utilize their business partnerships to create the capacity among their people to flourish outside of their immediate relationship with a resource sector partner.

Respect is the Cornerstone of Relationships

Successful partnerships are based on a respect for Aboriginal goals, aspirations, and self-determination. All of the case studies emphasized that the values and goals of the Aboriginal partner must drive the partnership. In terms of engagement, this means taking the time to understand what the core values and long-term goals of the Aboriginal community are and finding a way to fulfill some or all aspects of this vision through your relationship. This does not mean that the company has to embrace Aboriginal values as their own. The goals of Aboriginal communities and resource sector companies can often be extremely compatible, but the goal is for the company to understand the values of the community, not to live them. Ensuring that the goals of the Aboriginal community are the cornerstone of negotiations will mean that the partnership receives crucial support from within the community – without which the partnership is in peril.

Respecting Aboriginal aspirations must include respect for Aboriginal claims on traditional territories. Aboriginal partners repeated this message throughout the conference. Many Aboriginal communities are dealing with unsettled land claims and disputed territories. In many cases, Aboriginal communities are in conflict with each other over definitions of traditional territories. The legal process that some Aboriginal communities are currently engaged in, while thorough, is by its nature slow and cumbersome. Government/Aboriginal relations are complex and filled with historical baggage. Aboriginal communities do not feel that their involvement in the treaty process or litigation with the government should be a consideration for companies looking to do business. If an Aboriginal community believes it has an interest in the region where a potential resource activity is envisioned, then resource companies wishing to develop that resource must consult with that community, regardless of its treaty status. If there are disputes with governments or other Aboriginal communities, a wise company will not take sides.

Aboriginal rights over traditional land have been recognized by the courts of Canada. A common theme expressed by Aboriginal speakers at the conference is that Aboriginal rights in regards to resource development on their traditional lands have been guaranteed through several court decisions. Furthermore, Aboriginal communities are becoming increasingly proficient at using the courts to assert their rights. Aboriginal communities recognize that they are a mandatory partner crucial to the success of any resource development on their traditional lands, and will not back down from confrontation that leads to litigation.

Every Aboriginal community is distinct and unique. There is no one source that can speak for all Aboriginal communities, much as there is no one organization that can speak to the interests of all resource sector companies. Understanding the needs of multiple Aboriginal communities means consulting each community as a distinct partner. In practical terms, this means that procurement opportunities, environmental impact mitigation, employment training programs and other capacity building projects must meet the individual needs of each partner community, and these needs must be defined through an open and thorough consultation process.

Effective Engagement Tools

The case studies presented at the conference showcased successful partnerships that consistently relied on the following lessons learned:

Consult first, plan later. The time to approach an Aboriginal community about a potential project in their traditional territory is not after required permits have been

issued and development plans set. Aboriginal partners should be consulted at the earliest possible stage of the project. Real and open consultation means that development plans can react to the needs and values put forth by the Aboriginal partner. Approaching before any plans have been set or any permit applications are begun demonstrates that a company is serious about involving their Aboriginal partners.

Take the time to listen. Effective consultation cannot be performed over the course of a few meetings. Forming a real and lasting relationship based on trust requires a significant time commitment; one longer than most business is used to. Without spending this time, companies run the risk of losing the support of the community for their project. Repeated visits, both formal and informal, are required to build the trust required by Aboriginal communities. Understanding the short- and long-term goals and aspirations of an Aboriginal community will take time and effort; companies that make this time will be rewarded with a deeper understanding of what they can offer the community and what the community can offer them. Before anything else happens, a company should understand and acknowledge the goals and values of its Aboriginal partner.

Relationships need to be initiated Leader to Leader. Future negotiations and consultations can be delegated to other company representatives, but the initial conversation needs to be initiated by the CEO with the Chief. A leader-to-leader conversation sets the tone for the relationship, denoting the importance given to the potential partnership. Partnership talks with Aboriginal communities should be treated with the same level of respect that any other important business decision receives, and this requires the presence of the CEO.

Companies need to build internal capacity for engagement. Successful engagement requires a certain amount of cultural acceptance and sensitivity, and not all companies have this inherent understanding. Companies that hope to create effective and long-lasting relationships with Aboriginal partners must work to build their internal capacity through training, workshops, secondments, mentoring, etc. If the leadership of the company is stating that they place the highest value on their Aboriginal partnerships while the workforce on the ground is treating Aboriginal partners with disrespect – the strength of the partnership will be severely tested.

Capacity Building Through Partnerships

Aboriginal partners are focused on building capacity in their communities. Although every Aboriginal community has a unique set of needs, all of the case studies revolved around building capacity for future growth. Sustainability for Aboriginal communities means being able to provide employment and economic opportunities

for their members outside of a dependency on one corporate partner. Most of the Aboriginal partners presenting at the conference identified the following key needs that they wanted to be addressed through their corporate partnerships:

Environmental Protection. Aboriginal partners that spoke at the conference uniformly expressed a deep connection to their surrounding environment. Any agreements they entered into with their corporate partners had to address this fundamental value. In particular, the ability of Aboriginal communities to effectively evaluate the environmental impacts of proposed developments is often limited. Companies can play an important role in helping their Aboriginal partners perform independent audits and evaluations of development proposals.

The Tseil-Waututh First Nation's partnership with Ecotrust Canada was built on a shared goal of environmental protection. However, the values and priorities of the Tseil-Wuatuth and their reverence for their environment guided the relationship.

Current and Future input and guidance. Many of the partnerships presented had some form of advisory council with Aboriginal representation that oversaw current and future relationships and agreements. Priorities and business realities change with time; giving Aboriginal partners a voice in any future developments is vital for Aboriginal communities to protect their interests.

The relationship between Falconbridge and the Makivik Corporation, which represents Inuit interests in the region, is governed by a standing committee that oversees the relationship and ensures that conditions of their partnership are met. The Raglan Committee, which meets twice a year, consists of three representatives from the surrounding communities and three representatives for Falconbridge. This committee specifically governs the environmental aspects of the Raglan Agreement (signed between Falconbridge and the Makivik Corporation).

Equity Ownership and Profit sharing. Aboriginal partners are not interested in a passive acceptance of royalty fees from development projects. Rather, several communities have expressed a desire to have equity ownership in development projects and to play an active role in the management of resulting corporations. Often these ownership deals include a buy-out option for the Aboriginal partner to increase their ownership at a later date.

Eagle Rock Minerals, a joint venture between Polaris Minerals and the Hupacasath, Ucluelet, and Tseshaht First Nations, has an option to increase the 30% equity that Aboriginal partners currently hold in the company to

45% in the future. This option to increase equity exists alongside an Impacts and Benefits Agreement that sees the Aboriginal partners enjoy preferential hiring and procurement options along with potential for direct community funding from company profits.

Training and Education. Building capacity within Aboriginal communities requires adequate training, education and mentorship. The ability of the community to make the most of future opportunities relies entirely on having a trained and educated workforce that possesses a diversity of skills. The training and education should be designed to fit the identified needs and goals of the Aboriginal community. This is an important part of self-determination for Aboriginal communities – the ability to determine their future capacity.

The Manitoba Hydro training agreement with the York Factory First Nation is an excellent example of how training customized to community needs can lead to a diversified workforce. The training program is created and administered by each community and is geared to tackling the issues raised by each community.

Employment Opportunities. Most partnerships include a guarantee of employment for Aboriginal community members. Often the guarantee takes the shape of employment targets within the company that match the relative size of the community.

Syncrude has the goal of having 12% Aboriginal representation in their workforce, the same percentage that Aboriginals represent in the region's population at large. At the moment, over 10% of their directly employed workforce is Aboriginal.

Procurement Guarantees. Innovative partnerships have found ways to build capacity within the Aboriginal community by providing procurement opportunities for Aboriginal businesses. Integrating Aboriginal businesses into the supply chain of resource sector companies provides a benefit for both sides of the partnership.

Encana provided the business contacts and influence to help the Metis Nation of Alberta and the Saddle Lake First Nation start up their own drilling rigs. Encana granted its Aboriginal partners a guaranteed number of drilling days to help them find financing and to plan employment targets.

Relationship Facilitation. Resource sector companies often have a wealth of contacts and partners with whom they have substantial influence. Companies can use this influence to help Aboriginal communities gain financing, secure contracts, and develop other partnerships.

In the case of the Khowutzun Development Corporation (KDC) (owned and operated by the Cowichan Tribes of Vancouver Island), its corporate partner, Terasen, was crucial in helping secure a major natural gas distribution contract with the City of Victoria, vouching for KDC and assuring the City that the company was up to the task.

Business Case for Engagement

None of the companies that presented at the conference needed to be convinced of the business case for effective Aboriginal engagement. The resource sector is uniquely dependent on positive relationships with Aboriginal communities. Presenting companies identified the following benefits:

License to operate. Positive relationships with Aboriginal communities means that companies can earn the right to operate in the community. Several conference speakers pointed out that the recent B.C. Supreme Court case that placed the onus for consultation on the government had no effect on the business case for consultations. Without the cooperation and goodwill of Aboriginal partners, businesses can risk losing the license to operate.

Employment needs. The vast majority of resource sector developments are located in the hinterlands of the Canadian landscape and many companies foresee a future shortage of skilled labour. Aboriginal communities offer a local and growing workforce. The Aboriginal population in Canada is growing at a rate faster than the Canadian average and the majority of working age adults will likely be looking for local employment. Securing a skilled labour force that has a low turnover rate is a continual challenge for all industries in the resource sector, tapping into the Aboriginal labour market can meet these challenges.

Assistance with permits, regulations, and certifications. Aboriginal partners can help gain the relevant permits and certifications that companies in the resource sector seek. Companies that can show they have the support of the Aboriginal communities they are operating in face an easier road to gaining government approval of development plans. As well, some certifications, such as

the Forest Stewardship Council forest certification, require effective Aboriginal relations as a requirement for gaining certification.

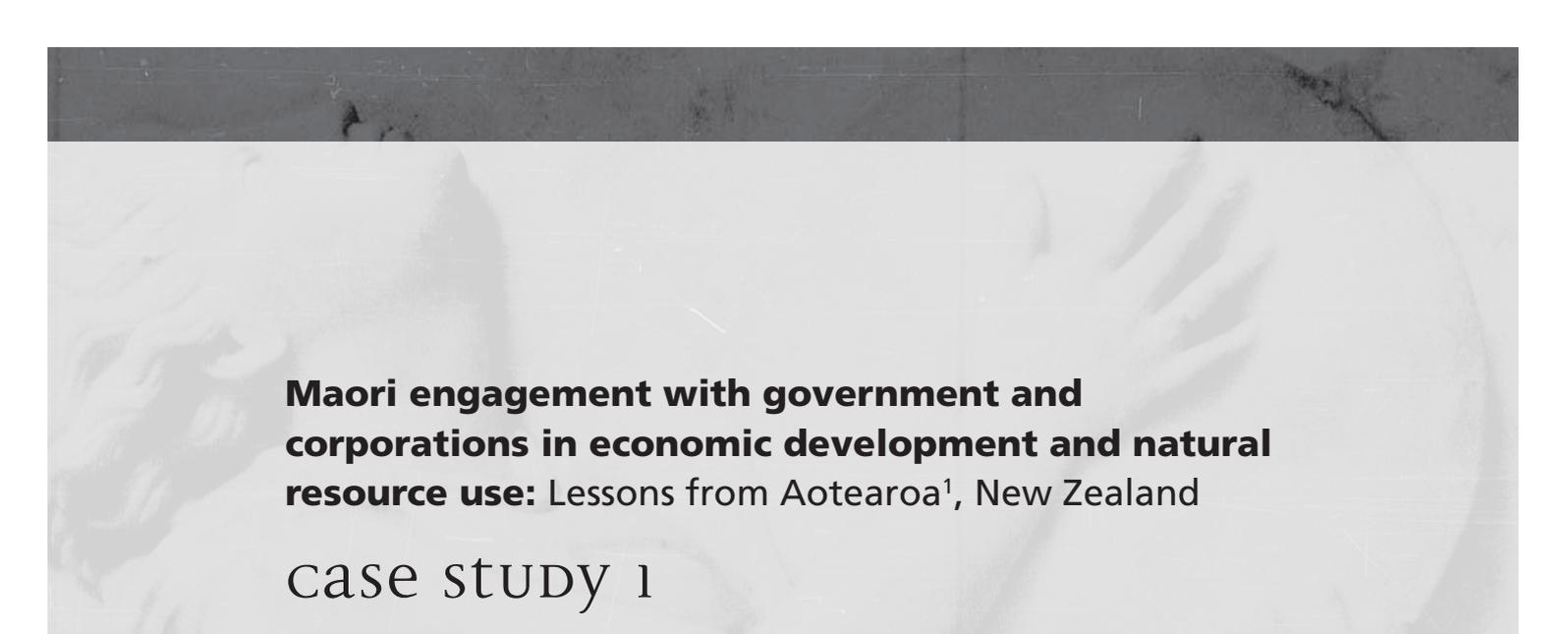
Business certainty. Positive relationships between the company and the Aboriginal community they operate in bring certainty to business operations, something extremely relevant to shareholders.

Innovative approaches to sustainability. Aboriginal communities possess a unique perspective and knowledge about sustainability, a perspective that has been built through generations of learning. Companies that form close partnerships with Aboriginal communities benefit from this knowledge and can expand their understanding of sustainability.

Summary

The *Building Sustainable Relationships: Aboriginal Engagement and Sustainability Conference* offered many examples of the positive relationships that have been built in the resource sector. These relationships have benefited both Aboriginal communities and resource sector companies alike. Ensuring that effective Aboriginal Engagement occurs in Canada will mean building on the positive energy created by the partners who took part in this conference. The lessons learned by companies and communities should help to foster positive relationships in the future and help companies and communities effectively engage with one another.

Fundamental to the conference proceedings was the emphasis on building relationships based on trust, respect and mutual understanding. It is through dialogue and consultation that both Aboriginal communities and resource sector companies will be able to secure a prosperous future together, while avoiding many of the tensions and setbacks that have plagued relations in the past. The conference is one example of how the dialogue can occur and is a step towards furthering the building of strong relationships.



Maori engagement with government and corporations in economic development and natural resource use: Lessons from Aotearoa¹, New Zealand

case study 1

Introduction and Overview

The conference's opening case study featured a dialogue between Arama Kukutai, New Zealand's Senior Trade Commissioner for North America and Director of Paraninihi ki Waitotara Incorporation, and our moderator, Myrna Khan, Canadian Business for Social Responsibility's Vice President and General Manager. Descending from Waikato, Ngati Maniapoto, Taranaki and Te Aupouri iwi, Mr. Kukutai has fortified his Maori heritage with degrees in business and law, and has applied it to a wide range of senior responsibilities in government and business.

In her opening remarks as moderator, Ms. Khan noted the scope of the presenter's background and commented on the aptness of his personal motto: "Give it a go. If you don't, you'll never know." She observed that Mr. Kukutai's broad worldview has been applied to and shaped by his dual responsibilities as New Zealand Trade and Enterprise's Regional Director for North America, and as Investment Director for PKW Incorporation, one of New Zealand's largest 100 per cent Maori-owned business enterprises. Ms. Khan indicated that Mr. Kukutai's presentation to the conference would address the importance that the Maori place on public and private partnerships, and would focus on the inherent sense of sustainability in Maori culture.

Ms. Khan outlined three broad themes to be covered in the course of the case study presentation:

- Similarities and differences between New Zealand and Canada in Aboriginal engagement perspective and experience;
- Notable successes and challenges in New Zealand's industry-Maori partnership experience; and,
- Integral connections between the partnership model and the Maori view of sustainability.

¹ "Aotearoa" means "land of the long white cloud" in Maori and refers to "New Zealand."

Arama Kukutai's Presentation

1. Similarities and Differences between New Zealand and Canada in Aboriginal engagement Perspective and Experience

Arama Kukutai opened his remarks in Maori, thanking the Musqueam, Squamish and Tsleil-Waututh First Nations for their hospitality in welcoming this conference onto their traditional lands, and acknowledging the strength and courage of their ancestors. He then noted that the combination of ancestral connection and political diversity is a key Aboriginal parallel shared by Canada and Aotearoa/New Zealand. While the more than 60 different Maori tribes in New Zealand share a common language and Polynesian genealogy², their governance structures and practices are very distinct and diverse.

As a major difference, Mr. Kukutai pointed to the more comprehensive and unitary treaty-making experience of New Zealand, and cited the historic Treaty of Waitangi, signed by more than 500 Maori chiefs and representatives of the British Crown in 1840.³ On the other hand, Mr. Kukutai noted that that New Zealand's colonial history of conquest, violence, and widespread treaty⁴ violations is consistent with the global experience of Indigenous peoples.⁵

A powerful cultural characteristic of Maori people is the spirit of guardianship ("kaitiakitanga") for future generations. Arama Kukutai depicted the strength of that protective spirit in Maori and Canadian Aboriginal culture as a strongly shared quality.

2. Notable Successes and Challenges in New Zealand's Industry-Aboriginal Partnership Experience

To begin, Myrna Khan asked Arama Kukutai to identify indicators of successful industry-Maori partnership. In response, Mr. Kukutai cited growing Maori ownership of land and resources. Mr. Kukutai pointed out that Maori-owned businesses make up the third largest source of employment in his home province of Taranaki.

² Archaeologists generally agree that the ancestors of the Aboriginal peoples of North, Central and South America came from Asia about 12,000 years ago. See: Robert J. Muckle, *THE FIRST NATIONS OF BRITISH COLUMBIA* (Vancouver: UBC Press, 1998) 15

It is believed that as many as 50 distinct Aboriginal languages were being spoken in British Columbia at the time of European contact. Each Aboriginal nation had its own language, culture, social structure, legal system and political system. See: BC and Yukon Chamber of Mines, *Mining and Aboriginal Community Engagement: A Guidebook for Minerals Exploration and Mining*, (Vancouver: BCYCM, 2005) 45

³ "The wording of the treaty in English indicated that the chiefs were ceding to Britain the sovereignty of New Zealand and were giving the Crown an exclusive right of pre-emption of such lands as the Maori wished to sell. In return, the Maori were guaranteed full rights of ownership of their lands, forests, fisheries and other prized possessions. In addition, the treaty promised them the rights and privileges of British subjects, together with assurances of Crown protection." See: www.nzhistory.net.nz/Gallery/treaty-signs/intro.htm

⁴ It is interesting to note the apparent similarities between the British purposes for the Treaty of Waitangi and for the Royal Proclamation of 1763, which was issued by King George III following the collapse of New France – mainly as a means of preventing conflict between the expected flood of British settlers and the resident Aboriginal Nations. For discussion, see BCYCM's *Mining and Aboriginal Community Engagement Guidebook*, *ibid*, p. 9-10.

⁵ For a compelling account of 500 years of European conquest of Aboriginal peoples in the Americas, see: Thomas R. Berger, *A LONG AND TERRIBLE SHADOW: White Values, Native Rights in the Americas, 1492-1992*, (VANCOUVER/TORONTO: Douglas and McIntyre, 1991)

He also highlighted the successful partnership between PKW⁶ Incorporation and Fletcher Challenge Energy in the pursuit of oil and gas exploration opportunities in New Zealand. Mr. Kukutai noted that while PKW investment is diversifying from its traditional base in the land and dairy industries, its core strategy is investment in traditional Maori lands – even if better returns may be available elsewhere. He declared that PKW's (Parininihi ki Waitotara) 100 year vision is to regain by commercial purchase all of the original incorporation lands in the province of Taranaki lost over the past 150 years. Important to note is that in 1997 the shareholders of the incorporation endorsed this "land management plan."

As another example of partnership success, Mr. Kukutai noted the development of the Maori Education Trust. Established in 1961 with the basic objective to encourage Maori youth to pursue higher education, the Trust's initial scholarships were derived from publicly raised funds, and private bequests, which were subsidized by the New Zealand government. In 2003, annual scholarship funding exceeding NZ\$6 million was awarded to more than 6,000 Maori, 500 of whom earned university degrees.⁷ Six corporations now participate with the Maori Education Trust in scholarship funding partnerships. In addition, PKW has established its own charitable trust for descendants of all shareholders. This trust is entitled to five per cent of the pre-tax income of the incorporation which can be gifted each year. Last year this trust assisted over 400 shareholders with grants.

When Ms. Khan asked Mr. Kukutai to discuss challenges and limits to industry-Maori partnership success, he suggested that paths may be shared, but only so far. Maori values extend to a number of considerations that go beyond economic return; including social, cultural, environmental and educational values. Also, non-Aboriginal business interests sometimes assume that a Maori organization is monolithic or homogenous: i.e., that its leadership speaks for the entire body. Mr. Kukutai stressed that Maori decision-making is not autocratic, and that community unanimity will be rare. On some issues, a majority of the members of the tribe simply will not support a measure being proposed by tribal leadership. Business is advised to consult early and widely, and to ensure that its consultation process truly addresses the goals and needs of the Maori communities in question.

In describing another partnership challenge, Mr. Kukutai noted that the traditional business perspective generally focuses on short-term profitability; whereas the traditional Maori perspective is long-term, and goes beyond economic performance to address the deeper needs of the entire community – embracing social, cultural and environmental values. He also pointed out that these broad community values can have very specific performance metrics. For example, a measure of the success of

⁶ Parininihi ki Waitotara was formed in 1976 as a Maori trust to manage the administration and development of Maori reserved land in the province of Taranaki. New Zealand's Maori reserved lands occupy about 26,000 hectares, held in 2,087 leases. The bulk of that land is concentrated in 344 leases, covering 22,000 hectares in Taranaki. See: <http://www.pkw.co.nz/>

⁷ See: www.maorieducation.org.nz/hist

traditional cultural activities (i.e., martial arts, song, art and weaving) might be the rate of increase in the ability of Maori youth to speak their traditional language.

3. Integral Connections between the Partnership Model and the Maori View of Sustainability

Mr. Kukutai opened this part of the discussion by endorsing the message from Leonard George's conference opening address: "Sustainability results from the building of understandings among people that extend beyond needs of the current moment to embrace the needs of children to come." Mr. Kukutai drew a parallel between George's vision of sustainability and the Maori tradition of "guardianship" for future generations.

Mr. Kukutai returned to the topic of education to demonstrate that Maori partnerships with industry are built on mutual understanding and acceptance of differences, and on a shared commitment to build a better future. He pointed out that while industry must strive to understand and accept Maori values directed at preserving and promoting traditional Maori culture, it is not necessary for industry to adopt those values as its own. Also, Mr. Kukutai noted the importance of Maori recognition that modern industry not responsible for redressing treaty violations and other wrongs of the past. Rather, the Maori approach to partnership with industry focuses on creating the conditions needed to support mutually advantageous future growth, and then ensuring that the benefits of such growth are shared. Maori communities generally recognize that strengthened social license and improved access to a modern, motivated, and business-minded Maori labour force are important and legitimate industry goals for educational partnerships.

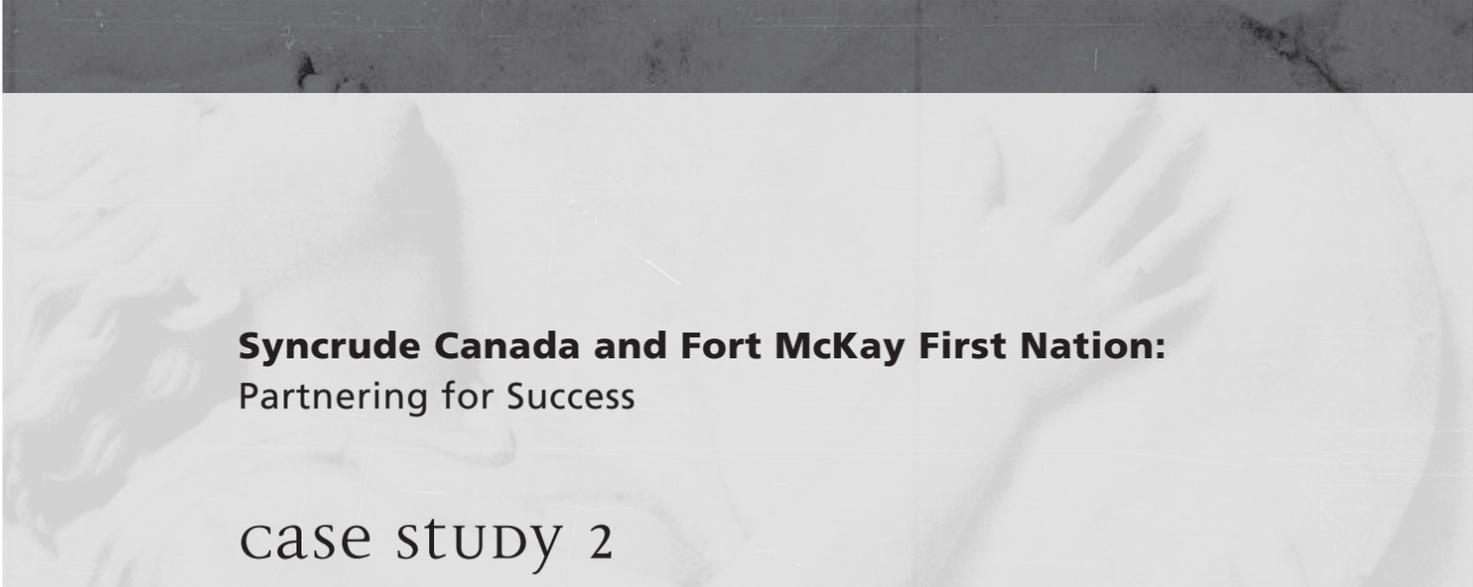
Mr. Kukutai concluded this section by saying that the ability to embrace traditional Indigenous values in modern mainstream society will be integral to the advancement of sustainable development.

Open Floor Discussion

Chief Alphonse Gagnon, of the Wet'suwet'en First Nation, asked the question, "Who speaks for the First Nation during the process of integrating economic, environmental, social and cultural values into the pursuit of that balancing of interests called 'sustainable development'?" Chief Gagnon⁸ stressed the importance of respect for the diversity of the various Clans and Houses that make up the Wet'suwet'en Nation. He explained that each House speaks through its own Hereditary Chief; no Wet'suwet'en chief would presume to speak for a House other than the one that he or she represents. Chief Gagnon noted that Arama Kukutai's presentation had demonstrated the absence of unanimity in Maori tribal society, and he endorsed Mr. Kukutai's earlier comment that this inevitable disparity of views within an Aboriginal community demonstrates that meaningful Aboriginal consultation must be broad and inclusive.

Arama Kukutai closed the session by returning to words used by Leonard George in opening the conference: "The real test and demonstration of sustainability will be whether in 100 years time, the grandchildren of our grandchildren are standing in our place, carrying our names, and giving voice and action to our values."

⁸ Hereditary Chief of the Owl House of the Fireweed Clan. The Wet'suwet'en First Nation is made up of five Clans: Laksilvu (Small Frog Clan), Gil seyhu (Frog Clan), Gitdumden (Bear Wolf Clan), Laksamshu (Fireweed Clan) and Tsavu (Beaver Clan). See <http://www.wetsuweten.com/office/leadership/>



Syncrude Canada and Fort McKay First Nation: Partnering for Success

case study 2

Introduction and Moderator's Overview

This fascinating session highlighted an area featuring some of the world's most intense economic activity, with current and planned oil sands extraction and processing operations valued at more than \$85 billion CAD.¹ The Alberta Energy and Utilities Board ranks the Athabasca Oil Sands as the world's largest proven oil deposit, holding an estimated 1.6 trillion barrels of oil, representing about one third of the world's total deposits.² Syncrude Canada Ltd. is the world's largest producer of crude oil from oil sands, Canada's largest single-source oil producer, and Canada's largest industrial employer of Aboriginal people in Canada.³ Two highly respected leaders took part in this discussion of some of the keys to success and some of the crucial challenges that were overcome during the development of a long-term partnering relationship between Syncrude Canada and Fort McKay First Nation.

Representing industry was Jim Carter, President and Chief Operating Officer of Syncrude Canada since 1997. A founding member and Chairman of the Rocky Mountain Branch of the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), Mr. Carter is a mining industry veteran. He worked his way through progressively more responsible management positions at McIntyre Mines and the Iron Ore Company of Canada before joining Syncrude in 1979.

Located in the heart of the Athabasca Oil Sands deposit, the Fort McKay First Nation faced a stark choice in the 1980's – between preparing to engage with the opportunities and challenges posed by its elephantine new neighbour, or simply being flattened by it. Chief since 1986, Jim Boucher drew on deep experience to provide this session with valuable historical context and leadership insight regarding the Fort McKay First Nation's key decisions and choices, and regarding keys to the strength and durability of its long term partnership relationship with Syncrude.

¹ See *Breaking New Ground: Syncrude's Partnerships with Aboriginal People*, Speaking Notes for Jim Carter, Resource Expo 2002: Business Agreements for Profit, 3 December, 2002, www.syncrude.com

² See: Alberta Energy and Utilities Board, *Alberta's Reserves 2003 and Supply/Demand Outlook 2004-2013*, Statistical Series (ST) 2004-98, www.eub.gov.ab.ca See also: Encyclopedia: Athabasca Tar Sands, www.nationmaster.com

³ See: www.syncrude.com, *About Us*

This case study was moderated by Dave Tuccaro, a member of Fort Chipewyan’s Mikisew First Nation, President and CEO of five successful companies supplying and serving the oil sands industry, and a key player in the formation of both the North-eastern Alberta Aboriginal Business Association and the National Aboriginal Business Association. Mr. Tuccaro led the presenters’ discussion through several key themes, focusing on success factors and challenge issues underlying the strength of the Syncrude-Fort McKay First Nation working relationship, and examining the well-developed industry-Aboriginal community consultation process that exists in the Athabasca Oil Sands region.

Syncrude’s Long-Term Perspective on Aboriginal Engagement

When Dave Tuccaro asked Jim Carter to outline the factors that drove Syncrude’s early and strong commitment to Aboriginal engagement, Mr. Carter’s response went right back to the beginning. Syncrude’s Aboriginal Development Program was launched in 1974, four years before commencement of mining, because Syncrude understood that its oil sands operation would have enormous impacts on its Aboriginal neighbours. Mr. Carter reiterated the thrust of a statement he made in an interview late last year:

“Even before Syncrude began producing oil in 1978, we knew that Aboriginal people are integral stakeholders in the development of the oil sands. Not only do they have a right to be consulted about decisions that could impact them, they also have the right to share in the socio-economic benefits created by our operation.”⁴

He went on to note that Syncrude quickly recognized that its Aboriginal neighbours were an ideal source of valuable human capital: both as employees and as operators of small businesses supplying goods and services.⁵

Syncrude’s President then outlined the six policy areas of its Aboriginal Development Program – corporate leadership, employment, business development, education, community development and the environment. Mr. Carter’s ensuing comments on the rationale and success keys for Syncrude’s Aboriginal Development Program conveyed the spirit of strong words he had used previously, in a major speech to Resource Expo 2002:

“The fundamental objective was to work with aboriginal people so they could

take charge of their future. And that’s the only premise that will work in the long run. We work with Aboriginal employees and contractors on meaningful opportunities and help them develop the appropriate tools to achieve their goals ... And while these [six] focus areas seem to be working for us, I would like to make it clear that there is no magic bullet for corporate Canada to work with the Aboriginal community to solve all our problems. There’s no one-size-fits-all template and no panacea. Quite simply, it takes a lot of effort and success must be built on a high level of trust and understanding.

If you want to make the grade in corporate-Aboriginal relations you’ve got to pay close attention to the individual circumstances of the relationship. That said, it is clear to me that there is one common thread in every situation ... and that is how we can work together for the common good of all.

What’s more, it’s paramount that corporate executives be sincerely committed to Aboriginal development programs if they want them to work. “Lip service” just won’t work, and everyone sees through it very quickly. You simply end up with a culture that is quite different from your stated policy.

At Syncrude, our entire executive and management are as committed

to our Aboriginal initiatives as I am. But we don’t have an Aboriginal Policy per se and there’s not a lot written down. It has simply become part of our culture, part of the way we work, and we expect everyone to uphold this.”⁶

Fort McKay First Nation – Historical Perspective on Oil Sands Development

Dave Tuccaro opened this topic by stressing the significance of Fort McKay First Nation’s location – just 20 kilometres north of Syncrude’s main plant site.

The moderator asked Chief Jim Boucher to outline the Fort McKay First Nation’s historical perspective on oil sands development. Chief Jim Boucher noted that while his people had long appreciated the practical value of the oil sands, from first contact⁷ the Fort McKay First Nation had been wary about the obvious commercial interest shown by Europeans in the bitumen deposits seeping out of the banks of the Athabasca River. Fearing the potential for disruption and destruction of their traditional hunting and trapping lifestyle, the Fort McKay First Nation had been largely opposed to industrial oil sands development – until the collapse of the fur-trading economy in the 1980’s.

⁴ Jim Carter, Press Release launching Syncrude’s 2003/2004 *Aboriginal Review*, December 2, 2004, documenting Syncrude’s relationship with its Aboriginal neighbours in an extensive publication, the only report of its kind published in Canada. See: http://www.syncrude.com/investors/ab_review_04/

⁵ “In our organization, we engage aboriginal resources, first of all, because we see the benefits in doing so. Bottom line benefits to the business in such things as a more productive workforce and a higher capacity supply chain. And bottom line benefits to the community as well ... people who have a say in the nature of development and, who share in the opportunities we all create.” Jim Carter, *Breaking New Ground: Syncrude’s Partnerships with Aboriginal People*, Ibid, p. 2

⁶ Ibid, p. 3

⁷ Peter Pond, the legendary explorer and fur trader, was the first European to see the Athabasca oil sands, drawn to the area in 1778 by rumours of rich fur harvests in the area. Pond was soon followed by Sir Alexander Mackenzie, who made the following entry in his journal in 1788: “At about 24 miles from the fork (of the Athabasca and Clearwater Rivers) are some bituminous

fountains into which a pole of 20 feet long may be inserted without the least resistance. The bitumen is in a fluid state and when mixed with gum, the resinous substance collected from the spruce fir, it serves to gum the Indians’ canoes. In its heated state it emits a smell like that of sea coal.” See: www.syncrude.com/WhoWeAre/EarlyHistory

At that point, it was apparent that major oil sands development was underway on their doorstep, and that the Fort McKay First Nation would have to choose between being overwhelmed by industrial development of the oil sands, or seeking opportunities to participate in that development – on their terms, and protecting their traditional culture and values. Chief Boucher said that this historic choice was made easier by Syncrude’s sincere and supportive approach, already apparent and demonstrated by the quality of its efforts to listen and consult with its Aboriginal neighbours.

Aboriginal Consultation and Capacity Building

Dave Tuccaro began by noting that five distinct First Nations and a strong Métis community all live in the vicinity of the Athabasca Oil Sands deposit. He asked Jim Carter and Chief Jim Boucher to offer their views on the Aboriginal consultation process in the Athabasca region.

Both leaders stressed the significant role played by the Athabasca Tribal Council (ATC) as a forum for developing First Nations policy on common issues, and as a vehicle for negotiation with industry. Formed in 1988, ATC represents about 5,000 residents of the Athabasca region, and includes five First Nations.⁸ Chief Boucher credited the co-operative work of ATC for the creation of 1,200 new jobs, and for the development of effective and respected regulatory mechanisms covering a range of social, environmental and economic issues.

Syncrude’s Jim Carter singled out the emergence of the Athabasca Regional Issues Working Group (RIWG) in 1997 as a key development. After many years as the two oil sands extraction and refining operations in the region, Syncrude and Suncor were being joined by the Athabasca Oil Sands Consortium, and by a number of smaller ventures in tar sands mining and refining operations, and the need for a coordinating body was apparent. RIWG’s website indicates the scope of this umbrella organization’s mandate, membership, and operations:

“[RIWG] was created to deal with four main issues in the community.

- Human infrastructure
- Physical infrastructure
- Environment
- Economic Development

Membership in the group was made up of company and government representatives but its mandate was to provide information to all stakeholders in the region. The first task was to complete a cumulative socio-economic assessment of all the oil sands projects.

One of the early hurdles that faced RIWG was that there were many committees being formed to address oil sands-related issues. A full-time coordinator was hired to support all the committees and to ensure work was completed in an orderly manner.

RIWG now works closely with many organizations and stakeholders in the region to address common concerns and to remove the overlap of services. Some of these organizations include:

- Athabasca Tribal Council/Athabasca Resource Development Working Group
- Métis-Industry Consultation Office
- Wood Buffalo Environmental Association
- Cumulative Environmental Management Association

RIWG now has three full-time staff, a board of directors, 23 contributing members and numerous subcommittees that deal with diverse issues from health services to transportation.”⁹

According to Chief Jim Boucher, the signing of the ATC All Parties Core Agreement in January, 2003 (the 2003 Core Agreement) was another significant step in the advancement of Aboriginal consultation and capacity-building in the Athabasca region. Signed by the five Athabasca Tribal Council Chiefs, seventeen industry representatives and three levels of government, and built on the solid platform created by the 1999 ATC/Industry Capacity Building Agreement, the 2003 Core Agreement provided for delivery of over \$4 million from industry and \$750,000 from the Government of Canada to the region’s five First Nations. An element of the Core Agreement that Chief Boucher singled out was the provision of \$230,000 to each First Nation as base funding for a dedicated Industry Relations Corporation, to assist each community to identify and assess industrial development issues and to consult effectively with industry:

“Industry’s commitment to this agreement will enhance our ability to build strong economies and self-sustaining communities. We look forward to a

⁸ Athabasca Chipewyan First Nation, Fort McMurray #468 First Nation, Mikisew Cree First Nation, Fort McKay First Nation, and Chipewyan Prairie First Nation.

⁹ See: http://www.oilsands.ca/about_us/history.asp

continued productive working relationship in the implementation of our resource development strategy.”

The *Aboriginal Review 2003-2004* provides Syncrude’s perspective on both the 2003 Core Agreement and the Industry Relations Corporations:

“The agreement provides a forum for First Nations, industry and government to identify issues related to regional development and develop effective strategies to mitigate impacts and enhance opportunities. The parties to this agreement are actively involved in designing, implementing, and monitoring these strategies. Some of the issues currently being addressed are sustainable employment and health concerns such as prescription drug abuse.

In addition, the agreement provides each First Nation with base funding of \$230,000 towards an Industry Relations Corporation (IRC) ...

Syncrude has supported the development of an IRC for each First Nation in the region. The IRC is community-owned and provides a linkage among the community, industry, government and other stakeholders. IRC’s are responsible for developing and/or enhancing relationships between the community, industry and government. They also manage regulatory reviews, facilitate community consultation processes, develop agreements and action plans, and represent the community on regional multi-stakeholder committees.”¹⁰

Finally, both President Jim Carter and Chief Jim Boucher noted that Syncrude has negotiated numerous bilateral agreements with Fort McKay First Nation and its other Aboriginal neighbours over the years, addressing a wide range of economic, community, cultural and environmental issues. In a recent Question and Answer Session, Chief Jim Boucher (JB) of the Fort McKay First Nation, Chief Archie Cyprien (AC) of the Athabasca Chipewyan First Nation, and President Sonny Flett (SF) of the Fort Chipewyan Métis Local, provided some strong examples:

“JB: Over the years, we’ve come to agreement on environmental issues and Syncrude has developed measures to mitigate their emissions such as sulphur dioxide. We see that as quite successful in our relationship. As well, we’re seeing some areas returned back to their original state due to reclamation programs; we’ve also engaged in the type of reclamation we’d like to see on a long-term basis, and we’ve taken a partnership role in initiatives like the Beaver Creek Wood Bison Ranch. We’d like to see a much larger herd, but we understand it is limited due to the land that’s available. At the end of the day, reclamation is a key success factor for a healthy legacy for our people.

AC: Syncrude has always been a leader in addressing the concerns of the First Nations communities. Syncrude has been a good corporate citizen and a good neighbour. They have helped us to further the education of our young people, provide employment and develop businesses to service the industry. In particular, the fly-in rotational program has been the most successful employment program – people are lining up to get positions.

SF: The rotational program has definitely had a very positive impact on the community of Fort Chipewyan. It was started over 20 years ago and allows residents in Fort Chipewyan to work at Syncrude on a four days in and four days out schedule. Workers are flown in on Air Mikisew, owned and operated by the Mikesew Cree First Nation, and Syncrude provides the accommodation. It’s very beneficial because people are able to still maintain contact with their family and uphold a traditional lifestyle. It also brings dollars back into the community.”¹¹

Aboriginal Employment and Education

To open this discussion, Dave Tuccaro asked Jim Carter to describe Syncrude’s goals regarding Aboriginal employment, and to outline how the company measures success on that issue:

“Syncrude has always had the goal of matching the community’s Aboriginal demographics in its employment profile. With the current Aboriginal population representing about 12 per cent of the total community, Syncrude’s 1,300 Aboriginal employees¹² make up more than 10 per cent of our work force. And, when our contractors are included, about 13 per cent of Syncrude’s total labour force are Aboriginal people – from entry level positions to running our upgrader’s new Honeywell Control Facility – one of the most technologically advanced control facilities in the world.”

Moderator Dave Tuccaro then asked Chief Jim Boucher to identify the biggest challenge facing the Fort McKay First Nation in preparing its young people to take advantage of oil sands employment opportunities, and to discuss measures being taken to address that challenge.

“Education is the key,” Chief Boucher immediately responded. “Our people have a lot of skills – they’re very good at what they do. But, to participate fully in the highly technical trades opportunities that are being presented to them, they need to learn new skills.”

¹⁰ See: Syncrude’s *Aboriginal Review 2003-2004*, Ibid, 3

¹¹ Jim Carter, Press Release launching Syncrude’s *2003/2004 Aboriginal Review*, December 2, 2004, documenting Syncrude’s relationship with its Aboriginal neighbours in an extensive publication, the only report of its kind published in Canada. See: http://www.syncrude.com/investors/ab_review_04/, p. 7

¹² Industry members of the Athabasca Regional Issues Working Group have undertaken to create 250 new positions for qualified Aboriginal candidates over the five year period 2003-2007. In 2003 alone, Syncrude hired 19 Aboriginal employees under this program. See: Syncrude’s *Aboriginal Review*, Ibid, p. 16

He highlighted the Sunchild E-learning Program, allowing students to communicate with teachers hundreds of kilometres away, on-line, and through audio, video, and text messaging links. Supported by a \$100,000 Syncrude donation and additional funding from Suncor, Sunchild E-learning became full available in September, 2004.

Jim Carter added that Syncrude provides significant scholarship funding for Aboriginal post-secondary education, often without restricting student choice of programming or institution, and often targeting women.¹³ In addition, he said that Syncrude endows the Aboriginal Career Initiative¹⁴ at the University of Alberta, as part of its commitment to support enrichment of Aboriginal communities.¹⁵

Aboriginal Business Opportunity and Development

Moderator Dave Tuccaro then asked Jim Carter to review Syncrude’s perspective and policy on Aboriginal business opportunity and development. Mr. Carter responded, “With pleasure. This is a subject close to Syncrude’s heart, evoking a strong sense of pride throughout the organization.” Jim Carter’s ensuing historical review was very similar in content and tone to remarks he made in a major speech to Resource Expo 2002:

“In the early 1990’s, for example, we made a strategic change in how we worked with Aboriginal businesses in the region. In some instances, we even helped to create new companies. We took the position that the local aboriginal community was entitled to share in the opportunities that Syncrude generates and so we began to develop local Aboriginal businesses by designating work for them. The idea was that, over time, they would be successful and would be capable of competing with other firms in the marketplace. In short, we took a pro-active approach to building critical mass. I believe the Nike people use the phrase “Just do it.”

We also set a target - \$30 million annually - and within two years, we had achieved it. And with a lot of hard work, that figure has been growing every year since. Last year it hit [\$100 million].

I’m going to mention three of the dozens of Aboriginal companies we now work with as examples that demonstrate our success.

2000 Plus is owned by the Mikisew Cree First Nation of Fort Chipewyan and it provides Syncrude with casual labour, grounds keeping services and labour support for our maintenance shutdowns. We did about \$6 million in business with them [in 2001].

Denesolene Environmental is another firm out of Fort Chipewyan, but this one is operated by the Athabasca Chipewyan First Nation. Denesolene provides Syncrude with waste management and janitorial services as well as high-pressure water cleaning of equipment. [In 2001], we did almost \$2.7 million in business with them.

Thirdly, there is Neegan Development, which is a heavy equipment contractor that provides such services as earth moving, tree clearing and ground excavation. Dave Tuccaro has been with Neegan for many years, and originally served as General Manager for its First Nation owners. He bought the firm in 1991 when its only business was a sole source contract from Syncrude. Since then, and with the help of a little business advice from us, the firm has done very well, and now serves a number of clients in the Fort McMurray area.

What’s more, Neegan is now the mother company of two other firms that also service the oil sands, namely Tuc’s Contracting, and Aboriginal Technical Services (ATS). And because he is such a big believer in the value of networking, Dave founded both the North eastern Alberta Aboriginal Business Association and then the National Aboriginal Business Association, both of which have enjoyed a lot of success in bringing Aboriginal entrepreneurs together to share their experiences.

As I said, two of these firms are the business arms of their respective First Nations. They were established after the Chiefs came to Syncrude and talked to us about their vision to offer gainful employment for the people of their community. They also talked to us about their capabilities, and asked if there was a need for any of these things at Syncrude. Well, there was, and the rest is history. But it’s important to remember that the vision in these two examples came from the First Nations, and Syncrude was able to work with them to help them realize it.”¹⁶

Syncrude’s president proudly noted that his company has done about \$700 million in business with Aboriginal companies since 1992. He then offered a strong, simple maxim: “success builds momentum.” Chief Jim Boucher agreed, and went on to note:

“When the Fort McKay First Nation launched a small general contracting business in 1986, as its first commercial venture, the primary objective at the time was to provide employment to band members while generating profits

¹³ “Syncrude scholarships totalling \$28,000/year which are awarded to students of Aboriginal heritage interested in pursuing post-secondary education in a broad range of subject areas. Nine of the fifteen scholarships awarded are targeted at disciplines applicable to work in the oil sands industry ... Four are specifically intended for women.” See: Five Winds International, *CSR Case Study: Syncrude Canada Ltd. Earning its Social License to Operate*, prepared for Interdepartmental Working Group on Corporate Social Responsibility (CSR) 8, http://www.fivewinds.com/uploadedfiles_shared/CSRSyncrude.pdf

¹⁵ Over the years Syncrude’s pursuit of suitable local employment candidates revealed alarming drop-out statistics for Aboriginal high school students. Syncrude’s discussions with local school systems revealed that Aboriginal students from outlying regions are often at least two grade levels behind their peers when they reach high school. Syncrude has committed strong support The Helping Hands Program, launched in 1999 to address key learning issues at the primary level and thereby enabling greater schooling success in later years. Since 1999, Syncrude has invested more than \$425,000 in its support of Helping Hands and related early intervention literacy programs in the Wood Buffalo area. See: *Syncrude’s Aboriginal Review*, p. 23

¹⁴ “Syncrude has contributed \$500,000 to this program, which aims to increase the number of Aboriginal people graduating from the university’s programs in business, engineering, education, and medicine and health sciences.” Ibid, 8.

¹⁶ Jim Carter Speaking Notes, *Breaking New Ground: Syncrude’s Partnerships with Aboriginal People*, Ibid, 3-4

that would enhance the community. By the end of 2004, the Fort McKay Group of Companies numbered 10 corporations, employed about 300 people, and reached \$100 million in annual sales.¹⁷ A number of new initiatives are planned, including a satellite mine, a wilderness park, and a housing development of 500 to 1,000 homes to be built on Fort McKay First Nation land. So long as the future for oil is good, the future for Fort McKay is good.”¹⁸

Environmental Impacts and Management

Dave Tuccaro opened this topic by holding that with the massive scale of investment in new and expanded oil sands operations expected in the years to come, the oil sands industry must expect serious environmental pressures, particularly regarding greenhouse gas emissions. He asked Jim Carter to comment on Syncrude’s perspective and plans for managing the environmental impacts of its operations. Mr. Carter responded:

“Syncrude has been actively committed to site reclamation for many years. Syncrude spends more than \$7 million each year to reclaim land disturbed by the surface mine. After the soil is reconstructed, trees and shrubs are planted, and grasses sown to prepare the land for future uses, ranging from forestry to wildlife habitat to recreation. Over 3 million seedlings have been planted in these new landscapes and approximately 3,300 hectares reclaimed. We will reclaim a further 4,000 hectares over the next 10 years. The 300-strong wood bison herd referred to earlier is being co-managed by the Fort McKay First Nation on Syncrude land reclaimed from its mining operation.

Of our current \$7.8 billion expansion program, \$1.5 billion of that investment is being dedicated to a range of environmental measures. For example, a fertilizer plant is being built as part of our expansion. So, oil production will be increased by 100,000 barrels per day, sulphur dioxide emissions will be reduced by 50 per cent, and we’ll be producing fertilizer at the same time. Also, Syncrude is a founding member of both the Wood Buffalo Environmental Association, which has deployed the most sophisticated regional atmospheric monitoring system in North America, and the Cumulative Environmental Management Association (CEMA).¹⁹

¹⁷ The businesses were created over the years in response to growing demand from leading members of the tar sands industry, who were seeking more Aboriginal involvement in the local economy. “One business does reclamation work on dikes, which is basically planting trees and grass on land used for oil and gas exploration. Another business co-manages a buffalo ranch on a piece of Syncrude Canada’s land; the ranch is home to more than 300 buffalo.” See: http://www.ainc-inac.gc.ca/ab/saba/saba04b_e.html#fkay. *Salute to Aboriginal Business in Alberta 2004 – Fort McKay Group of Companies*.

¹⁸ The Fort McKay Group was one of three finalists for the Eagle Feather Business Award of Distinction for 2004, saluting a First Nation-owned Alberta business “that shows outstanding achievement and incorporates entrepreneurial and cultural

concepts into its operations.” The award was sponsored by INAC’s Alberta Region, conducted in partnership with the Alberta Business Awards of Distinction, and organized by the Alberta Chamber of Commerce. See: http://www.ainc-inac.gc.ca/ab/saba/saba04b_e.html. *Salute to Aboriginal Business in Alberta 2004 – Introducing the three finalists for The Eagle Feather Business Award of Distinction*

¹⁹ CEMA is an industry-led, multi-stakeholder group which has worked with Alberta Environment to develop the Regional Sustainable Development Strategy for the Athabasca Oil Sands Area (RSDS). Completed in 1999, the RSDS developed a set of 14 themes from an initial list of 72 environmental issues identified by local residents. Five “Category A” theme areas were flagged for the majority of new work: “1. Sustainable ecosystems and land

Chief Jim Boucher added:

“Syncrude’s leadership commitment to the Fort McKay First Nation’s social and environmental concerns over the years has been unwavering, and when added to the strength and sincerity of Syncrude’s support on Aboriginal employment and business development issues, has led to the development of a very healthy relationship with his First Nation community.”

Dave Tuccaro observed that Syncrude’s achievements and leadership in Canadian Aboriginal relations have been widely recognized. He pointed out that the Canadian Council for Aboriginal Business (CCAB) have named Syncrude Canada Ltd. as one of only two companies to attain Gold Level Achievement in CCAB’s Progressive Aboriginal Relations (PAR) Program.

Open Floor Discussion

A member of the audience asked Jim Carter to consider the significance of Alberta’s settled treaty status, in terms of provincial resource revenue earned from Syncrude’s oil sands operation.

Jim Carter replied:

“Under Treaty 8, settled in 1899 and covering all of Alberta, Syncrude remits 25 per cent of its annual net revenue to the Government of Alberta as provincial royalties, for use and redistribution as the Government see fit.”

Chief Jim Boucher added:

“Notwithstanding the existence and force of Treaty 8, important Aboriginal community issues continue to be raised for discussion and negotiation with the provincial and federal governments from time to time.”

Don Manson of the University of Northern British Columbia noted the high level of current and expected resource exploration and development in northern B.C., and asked Jim Carter to advise industry on the issue of taking advantage of northern B.C.’s significant “youth cohort” as a source of labour.

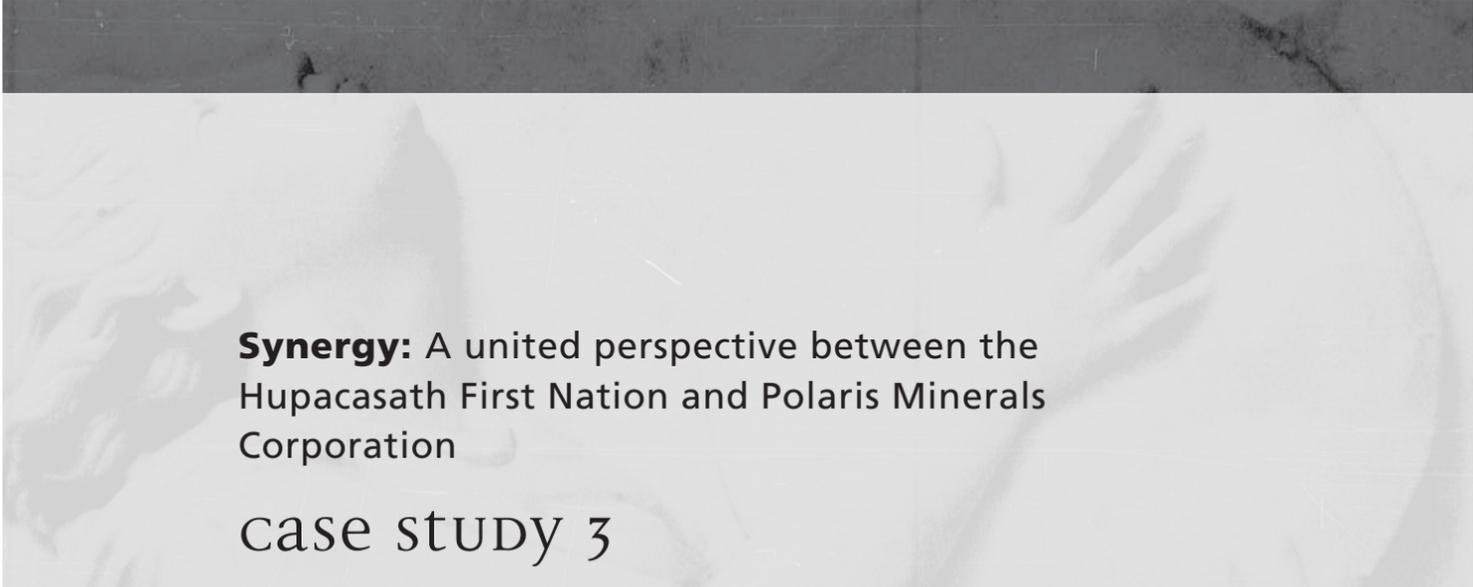
use, 2. Cumulative impacts on wildlife, 3. Soil and plant species diversity (biodiversity), 4. Effects of air emissions on human health, wildlife and vegetation, and 5. Bioaccumulation of heavy metals.” See: *SUSTAINABLE TIMES*, the Alberta Environment RSDS Team Newsletter, Issue 1 – ISSN 1492-3890, April 2000, 1-2

Jim Carter responded:

“Canada has an excellent national apprentice program, known as the Interprovincial Standards (Red Seal) Program. Young people and industry should take advantage of that program. Syncrude aggressively promotes and participates in the Red Seal Program. Of the 2,000 maintenance workers we employ, 150 to 200 are apprentices at any point in time.” And, industry should target Aboriginal youth as key sources of labour.”

Dave Tuccaro closed the session by observing:

“The key to successful engagement is the building of strong relationships between strong people. The evident quality of the relationship between Chief Jim Boucher and President Jim Carter speaks volumes about the quality of engagement between the Fort McKay First Nation and Syncrude.”



Synergy: A united perspective between the Hupacasath First Nation and Polaris Minerals Corporation

case study 3

Introduction and Overview

On the west coast of Vancouver Island, on the shore of Alberni Inlet, lies a 700 million tonne deposit of remarkably high quality granite. That deposit sits on land claimed as traditional Aboriginal territory by three member Nations of the ancient Nuu-chah-nulth Nation: the Hupacasath First Nation, the Ucluelet First Nation, and the Tseshaht First Nation. In 2002, the Hupacasath and Ucluelet First Nations entered a joint venture agreement with Polaris Minerals Corporation (Polaris), a Vancouver-based mining company, forming Eagle Rock Materials Ltd. (Eagle Rock). Polaris specializes in large-scale construction aggregate projects, and has focused its full attention and resources on developing two aggregate projects on Vancouver Island, both as joint ventures with First Nations.

Eagle Rock is preparing to develop that granite deposit on Alberni Inlet into Canada's largest quarry operation (Eagle Rock Quarry). The long-term development plan calls for annual marine shipment of up to 6 million tonnes of premium aggregate materials to major urban markets on the coast of southern California, with the project's lifespan estimated at over 100 years. Eagle Rock's mission statement is bold – embracing the vision of a sustainable business, and committing to the highest standards of environmental responsibility and ethical business practice.

This case study featured a stimulating and entertaining conversation between Dr. Judith Sayers, Chief Councillor of the Hupacasath First Nation, and Marco Romero, President and CEO of Polaris, moderated by Lisa Prinic, Small Business Manager for Canadian Business for Social Responsibility. Their close personal rapport and mutual respect was evident as Dr. Sayers and Mr. Romero discussed some of the challenges that must be overcome to build the trust needed to sustain such a remarkable partnership, and as they heralded some of the exciting economic and social opportunities open to Aboriginal communities and resource companies who are able to join forces, become friends, and build their future together.

The Eagle Rock Joint Venture Agreement

Lisa Princic opened the discussion by highlighting some of the striking features of the Eagle Rock joint venture agreement: most notably a 30 per cent First Nation equity interest¹, with an option to increase that equity position to 45 per cent on the 25th anniversary of project development financing. In the event that treaties are settled over the Eagle Rock Quarry area, the First Nation partners have agreed that they will not impose a tenure or tax regime on Eagle Rock with terms less favourable than what would otherwise apply, for a term of at least 25 years from the date of such treaties. Finally, an Impacts and Benefits Agreement has been negotiated, providing Eagle Rock’s First Nation partners with preferential opportunities for business development, employment and training, and direct community funding. Ms. Princic noted that Polaris and their First Nation partners have raised the bar for Aboriginal-industry joint ventures.

Keys to Putting the Eagle Rock Partnership Together

Marco Romero identified several principles adhered to by Polaris that he believes were critical to the successful conclusion of the Eagle Rock partnership negotiations:

- respect for the asserted traditional rights and title of its First Nation partners;
- acknowledgement that those rights include unextinguished Aboriginal rights, and potentially, title;
- early and sustained engagement by senior management in communication and relationship-building;
- impartiality in dealing with its current and potential First Nation partners, and refraining from taking positions on issues between them – particularly issues involving their overlapping claims to traditional territories; and,
- recognition that First Nation communities generally lack the capacity (expertise and capital) required to evaluate complex resource development opportunities, and that they require industry support in that regard.

Marco Romero elaborated on elements of Polaris’s approach to consultation that he considers keys to the successful completion of the Eagle Rock joint venture agreement:

“Polaris approached its potential Eagle Rock partners very early in the process of research and preparation. We asked for permission to conduct field research on their traditional territories and to meet with them to explain our project concept. We encouraged them to engage experts and consultants of their choice to evaluate the information we presented to them, at our expense. Polaris invested several hundred thousand dollars in providing those resources. We answered all their questions and provided all the information they asked for.”

Chief Judith Sayers confirmed the importance of Polaris’s early and open introduction of the project proposal:

“Polaris showed us respect and patience. They included us in research and planning from an early stage of project concept development. They gave us unlimited information, funded our due diligence, and answered our endless follow-up questions. We played an important role in developing the core concept and the standards applied to the project. We laid our fundamental priorities of protecting the environment and creating capacity for our community on the table, and Polaris worked with us to build those priorities into the parameters of Eagle Rock.”

Chief Sayers noted the fairness Polaris has shown in its negotiations and on-going dealings with its First Nations partners:

“From the beginning and throughout, Polaris has dealt with all three First Nations fairly, equally and openly. Respect and trust for Polaris and within the partnership has been strengthened by that approach. We still have to resolve the territorial overlap between the three First Nations, but there is far less impact on the project when Polaris so consistently steers clear of the issue.”

Polaris’s CEO emphasized the scale and duration of commitment to communication and relationship-building required of senior Polaris senior management:

“Enormous amounts of time and energy have been invested by our management team in an attempt to achieve meaningful consultation. It’s all been about good faith engagement over the long haul. We have spent countless valuable and enjoyable hours getting to know our partners, learning their needs and values slowly and respectfully, fishing, hiking and eating together, and meeting their families with our families. Certainly we’ve had conflicts and tough negotiations – it took a year to get our partnership agreement done - but we’ve built a base of trust and mutual respect. More importantly, we’ve developed friendships.”

¹ The Hupacasath and Ucluelet First Nations each hold a 10 per cent interest and a further 10 per cent interest is held in trust for the Tseshaht First Nation, who have yet to accept their invitation to join the Eagle Rock joint venture. The trust interest will be divided equally between the Hupacasath and Ucluelet Nations upon a triggering event if Tseshaht has not yet joined the partnership upon the occurrence of that event. Source: Interviews with Marco Romero and Chief Judith Sayers.

Those friendships are far more than fringe benefits of the process of successful business engagement, according to the Hupacasath Chief Councillor:

“All that time we spent together without an agenda and away from our offices, fishing, hiking, and eating, bringing our families together – we were building that crucial platform of trust and respect that Marco is talking about. Without the strength and resiliency of the platform we built, our long and difficult negotiations could easily have fallen through. Make no mistake about it; we went through some tough sessions along the way. Marco and I are both strong-willed – we butted heads more than once.”

Chief Sayers identified two leadership qualities demonstrated by Marco Romero that she considered very important to the eventual success of their negotiations:

“First, Marco made the initial contact with us and led the negotiation process himself. Certainly other Polaris people were brought in at appropriate times, but not as surrogates for Marco. Second, Marco was very, very persistent. When he called the first time, he left a message for me to call him back. Well, I didn’t know who he was and I was busy – so I ignored his message. He called again. And again. Soon our receptionist felt that she knew Marco and his company. “Marco called again,” she would tell me. Finally I agreed to meet him for lunch. That hour turned into a three hour meeting, and we were on our way.”

“So, be persistent!” Chief Sayers urged the industry members of the audience. “Just pick up that phone and call. Don’t be put off if we take a while to get back to you, or even if we don’t return your call. Remember that First Nation leaders are very busy – you have to get our attention. Remember also the importance of meeting leadership with leadership. Be very careful about delegation in the getting acquainted, building trust, and key negotiations stages.”

Business Dividends of Aboriginal-Industry Partnership

In discussing business strengths of the Eagle Rock partnership, Chief Sayers keyed on three aspects of the importance of the early inclusion and active involvement of the First Nation partners:

“First, it was a huge advantage in the public consultation element of the permitting process. The project quickly gained credibility and support throughout the community and with regulators, because from early on we were publicly standing shoulder to shoulder with Polaris’ leaders.

Second, our environmental assessment and other permitting processes were simplified by the prior resolution of two of the three First Nations’ territorial issues by agreement with Polaris, and by our collective application for the various permits and certificates. Polaris benefited from relationships the First Nations already had in the community with local and provincial governments, and with other key businesses (such as Weyerhaeuser).

Third, the active involvement of Aboriginal partners made a positive impression on the senior management of our potential California customers when they came to visit. They were worried about the impact of unresolved First Nations title claims on the certainty of supply of aggregates. If we were involved, our Californian customers knew that these issues of title, consultation and accommodation would not pose a problem. They valued the contributions to political and public good will, and the business certainty achieved by our committed participation in the project.”

Marco Romero added that another dividend of the partnership has been the creative force of synergy:

“We’ve learned from each other, and we’ve each absorbed some of the other’s strengths. Our First Nation partners have picked up some of our aggregate industry knowledge, and some of our business and political judgment. The project has benefited greatly from the addition of the Aboriginal sense of intimate connection with the land, and of stewardship for the environment. Not just in our dealings with regulators and the ENGO² community, but in the refinement of our own thinking on environmental issues. Because we were pushed hard by our First Nation partners, and because we were motivated to work together to find solutions, we found innovative ways to improve our environmental performance that would not have occurred to us otherwise. As we realized how strongly determined we were to do this project together, it became apparent that we were no longer working from opposite sides of the table. Our Eagle Rock table had become round. Now, we were bringing our very different perspectives, experiences and skills to bear on our shared problems, seeking and finding creative solutions.”

Mr. Romero provided the audience with an example of such innovation, and of the consternation it caused in some government circles. He explained that when the Eagle Rock team realized that the conventional settling pond approach to waste water purification was impractical and inadequate for the high rainfall climate of the Eagle Rock Quarry location, they developed a filtration system that would allow them to

² Environmental Non-Governmental Organization

release clear, clean waste water into Alberni Inlet. Their plans for such a filtration system were included in Eagle Rock's Environmental Assessment Certificate application. In due course, Eagle Rock received a letter from Environment Canada, inquiring as to the business rationale for such a filtration system for waste water.

Mr. Romero also recounted a powerful moment from CBSR's *Business Case for Sustainability Conference* hosted by Alcan Inc. and NorskeCanada for the resource sector in November, 2003. In explaining the Squamish First Nation perspective on land ownership, Chief Gibby Jacob said, "Our land does not belong to us; we belong to our land."

First Nation Social and Community Benefits

Chief Sayers identified the building of community capacity as the key contribution of the Eagle Rock Quarry project to the Hupacasath community:

"Once we had confirmed that the quarry concept could be environmentally benign, and we had negotiated a business agreement committing the project to high environmental standards, we quite quickly focused on the potential for strengthening our most important assets – our young people. Eagle Rock's future employment opportunities provide tangible incentive and purpose for our youth to pursue advanced education and skill development. When I talk to our youth, I tell them, "Someday you can be one of Eagle Rock's janitors, its CEO, or anything in between. It's up to you." And, at least as important as the jobs, is our direct involvement in ownership and control of the project: building community pride, raising hope, and creating inspiration about entrepreneurial possibilities for our people."

A Partnership View of the Haida Nation Case

It's not surprising that Polaris's CEO and the Hupacasath First Nation's Chief Councillor take similar perspectives on the business implications of the Supreme Court of Canada's recent decision in the *Haida Nation* Case.³ Notwithstanding the technical ruling that the Crown cannot delegate its duty to consult and accommodate First Nations whenever it becomes aware of actions or policies creating potential infringement on claims of Aboriginal rights and title, neither leader sees the ruling as an "industry exemption." According to Marco Romero:

"It's just good business to keep your neighbours and those who have interests in the land informed, and to give them opportunities to participate in and contribute to the decision-making process. Beyond the question of strict legal duty, we believe that the resource sector has a moral duty to consult meaningfully – not only with First Nations affected by our proposed developments, but also with local communities."

Chief Judith Sayers added:

"The smart companies will continue to see consultation and accommodation as building blocks for establishing positive, enduring relationships with Aboriginal communities. Those companies don't waste time and energy worrying about unextinguished rights and title – they've moved way past that, to focusing on the potential for success that lies in building mutual value and certainty."

Open Floor Discussion

Tyson Touchie, the Eagle Rock Project Coordinator for the Ucluelet First Nation, endorsed Chief Judith Sayers' earlier observation regarding the importance of Marco Romero's respect for the diversity of perspectives and interests of Polaris's three potential First Nation partners. Tyson stressed that the consistency and impartiality that Mr. Romero and his Polaris team showed in their dealings contributed significantly to the success of the complex, tripartite process of negotiating the Eagle Rock joint venture agreement. In a question to Marco Romero, Tyson Touchie asked, "How did you know the importance of that diversity issue, and how did you know what to do about it?"

Mr. Romero replied:

"We simply started from the premise of equality. We also made sure that we did our research before we started talking. The B.C. Treaty Commission people were very helpful with traditional territory maps and orientation regarding the status of treaty negotiations and land claims. We soon recognized that the overlap issues are significant in the Quarry area, and we just decided to take a very firm position: Polaris would deal with its prospective First Nation partners equally, impartially, and consistently."

Myrna Khan, CBSR's Vice President and General Manager, asked for an example of one of the "head-butting" exchanges that Chief Judith Sayers alluded to earlier. In response

³ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73

Ms. Sayers referred to a difficult point in the negotiations regarding definition and valuation of the equity interests that the First Nation partners would take in the Eagle Rock joint venture:

“I had been monitoring this very technical and slow-moving discussion from a safe distance, and decided it was time for a strategic display of impatience. So, I told our negotiator to tell Polaris to forget about equity – the Hupacasath would take a simple royalty instead. That might be the only time I deliberately took advantage of Marco’s good nature and intentions: I knew how strongly he cared about having First Nation partners, so I also knew he wouldn’t be at all happy about going back to a royalty structure. It all worked out well in the end.”

EnCana Corporation and Métis Nation of Alberta and Saddle Lake First Nation: Partnerships do make a difference

case study 4

Introduction and Overview

On April 8, 2002, the first trading of EnCana Corporation shares took place. A new, independent oil and gas company was born from the merger of two of Canada’s leading energy companies – PanCanadian Energy Corporation and Alberta Energy Company Ltd. EnCana is North America’s largest natural gas producer and holds enterprise value of \$30 billion. With strong credentials in the field of corporate social responsibility¹, EnCana has created a mandate to ensure that its Aboriginal partners gain procurement contract opportunities and equity ownership through their relationships with EnCana.² Barrie Robb, Vice-President Aboriginal Relations, represented EnCana in this case study. Mr. Robb brought a broad background and perspective to the session: he is currently with EnCana on exchange from the Department of Indian and Northern Affairs Canada, where he has served as Regional Director General, Alberta Region, since 1998. Prior to his arrival at Department of Indian and Northern Development (DIAND) [now known as Indian and Northern Affairs Canada, (INAC)], Mr. Robb had extensive experience as an Aboriginal land claims negotiator, and served in a number of senior public administration roles in the N.W.T. and Yukon Territory.

The Métis Nation of Alberta (MNA) was founded in 1928 by Joseph Dion, who served as its President until his death in 1960. The MNA represents the Métis people of Alberta, and is one of five governing bodies of the Métis National Council. Today the MNA’s more than 30,000 members are led by Audrey Poitras, who is in her third term as President, and who also serves as Vice President of the Métis National Council. Ms. Poitras represented the MNA in this case study.

The Saddle Lake First Nation comprises 8,200 First Nation members resident in northern Alberta. Actively developing reserves’ oil and gas deposits since the mid-1970’s, the Saddle Lake First Nation were represented in this discussion by Brian Cardinal. Mr. Cardinal shared his deep, hands-on knowledge, earned through more

¹ On September 8, 2003, EnCana launched its “EnCana Corporate Constitution,” a clearly worded CSR manifesto that goes well beyond general “mission statement” platitudes to define core Encana values and beliefs, and to set clear standards for Encana practice and behaviour. See: www.encana.com/responsibility/constitution

² See: www.encana.com/responsibility/community/aboriginal_relations.html

than twenty years with the band’s Keyano-Primee Exploration Company Ltd. – first as oil and gas manager, then as business manager for the company.

This case study was moderated by Dr. Ashley Nixon, Senior Adviser of Sustainable Development, Shell Canada, and a member of CBSR’s Board of Directors. Dr. Nixon has worked on environmental management, project appraisal and capacity-building projects in more than 30 countries. His wide-ranging career includes five years as a senior lecturer in environmental management in a number of British universities.

Aboriginal Engagement and EnCana’s Fiscal Management Perspective

Dr. Nixon opened the session by explaining that EnCana and Barrie Robb are the links connecting the two innovative partnerships to be discussed, and that the discussion’s focus would be on the rationale and negotiation process that gave rise to the two ventures. He asked, “How did a huge energy company – the largest natural gas producer in North America, work Aboriginal engagement into its fiscal planning and management processes?”

Barrie Robb addressed EnCana’s ethical, strategic and tactical thinking:

“From the outset, EnCana’s Board of Directors embraced corporate social responsibility (CSR) principles as core corporate values, and directed that formal Aboriginal Guidelines be established to focus EnCana’s engagement with Aboriginal communities. Because EnCana does huge, long-term resource plays on vast tracts of land³, strong relationships with its Aboriginal neighbours are vital keys to enduring success.

So, EnCana had to ask itself and its Aboriginal neighbours, ‘How should we go about the integration of Aboriginal communities into EnCana’s long-term supply chain?’ Aboriginal leaders told us that although their communities were eager to participate as entrepreneurs in regional resource development, too often in the past they had been disappointed with the lack of procurement contract opportunities open to them. EnCana listened, and together with our Aboriginal partners, set out to develop partnership agreements directed at creating Aboriginal equity ownership in drilling rig operations.

In trying to arrange the first joint venture, it soon became apparent that both EnCana’s commercial drilling contractors and our Aboriginal partners’ bankers were reluctant to rely on untested First Nation drilling rig ownership. So, EnCana agreed to act as the unofficial deal underwriter: commissioning the

construction of a new rig, soliciting drilling contractors’ bids, assembling a First Nations partnership group, facilitating their negotiations with Precision Drilling (the winning bidder), and guaranteeing a minimum number of drilling days per year for the next four years.

That first deal went well, and its basic structure has become the prototype for several more that we’ve done since – including the two we’re going to talk more about today.”

Early Aboriginal Perspectives on Drilling Partnerships

Dr. Nixon then turned to Audrey Poitras for the MNA’s perspective on being approached by this giant energy company about buying into a drilling rig so new that it hadn’t yet been built.

Ms. Poitras was emphatic:

“The Métis Nation was very happy to be approached by EnCana about involvement in a drilling partnership. We had already done some serious economic development research that finalized our Economic Development Strategy, so when EnCana approached us, the MNA was ready to go. Initially, we believed that the Government of Canada would also be a partner. Disappointed with the Aboriginal Government Grants only being available for First Nations, the MNA was very grateful for the way our private partners stepped up for us. With the assistance of EnCana, as well as Western Lakota Drilling (our management partner), by way of bridge financing and a secure contract for work, we were able to finalize our deal and move on.”

Brian Cardinal added:

“Both EnCana and Western Lakota were very fair in their dealings with the Saddle Lake First Nation, but long hours still went into negotiating the structure and details of the partnership agreement. Three key issues for us were: long-term profit potential, band member employment potential, and job security. In the end, our core needs were addressed. Western Lakota delivered on job guarantees and provided for significant future profit sharing. EnCana’s willingness to guarantee 150 drilling days per year for a multi-year period was huge comfort for us and for the banks.

DIAND [INAC] contribution of funding under its “Opportunity Fund program⁴ was also instrumental.”

³ Approximately 17 million net undeveloped acres throughout onshore North America, and approximately 78 million net undeveloped acres offshore and internationally. See: www.jobsearchonline.bc.ca/pdf/encana.pdf

⁴ “The fund can provide assistance that will match the applicant’s equity contribution to a maximum of 25% of eligible capital costs, which in turn, can be used to access conventional financing.” See: <http://www.fsin.com/economicdevelopment/opportunitiesfund.html>

Training and Education Issues

Dr. Nixon asked for further discussion of the importance of training, of front-end funding for training, and of education support.

Audrey Poitras lauded the training program developed by the Métis Nation of Alberta in concert with Western Lakota Drilling and funded by Human Resources and Skill Development Canada:

“The program produced enough trained rig hands to allow us to staff our rig, as well as support our trainees’ efforts to acquire jobs with other rigs and rig service companies. The Métis Nation now has rig managers, drillers, derrickmen and motormen on several Western Lakota rigs, as well as other rigs in the industry. The front-end funding support by our partners was very significant, because without Federal Government funding support at that early stage, we were struggling to cope with our rig investment, start-up costs and an uncertain revenue stream.”

Barrie Robb noted that EnCana is very aware that it faces a huge shortage of trained oil and gas workers in the highly active drilling environment of the coming decade. He noted three important education initiatives that receive financial support from EnCana (in addition to ongoing EnCana scholarship programs):

- Northern Alberta Institute of Technology (NAIT) – has created “NAIT IN MOTION” – a fully stocked mobile classroom and laboratory mounted on a semi-trailer, ready to train young welders and technicians in remote locations;
- Southern Alberta Institute of Technology (SAIT) – are offering internet-based technical training tailored for the oil and gas; and,
- Northern Lights College (Dawson Creek, B.C.) – are expanding their oil and gas technical training program.

Economic Spin-offs and Long-Term Benefits

Dr. Nixon asked for Panel comments on longer term economic implications of such equity-based joint ventures for Aboriginal communities.

Brian Cardinal responded for Saddle Lake First Nation:

“The implications are strongly positive, for several reasons. First, the equipment is brand new and very high quality. Ours is a state of the art double-telescoping rig: versatile, durable, and capable of deep drilling. Its capabilities should be in demand for a long time, and it has an expected life span of more than 20 years.

Second, because EnCana and Western Lakota have structured the deal to provide strong front-end support, and because the rig is busy, we expect to recover our investment and pay off the banks within four years.

Third, having equity participation means that we’re in a stronger position to take advantage of down-stream opportunities. Every drilling rig needs a crew to run it. Drill camps, water trucks, loaders and road maintenance equipment are requirements for most drilling sites – providing us with further business and job opportunities.

Another big issue is that First Nations are learning to negotiate from the strong position their tenure gives them, to expand their potential for revenue-sharing. Alberta’s First Nations own 100 per cent of the mineral rights for development on their treaty lands. Traditionally, they have simply taken royalties, but interest is growing for negotiation of more creative and integrated deals. First Nations are learning to leverage their tenure rights to gain opportunities for the lucrative service and supply contracts, and the jobs they bring with them.”

Open Floor Discussion

Marion Hueson, a speaker from the East Kootenay region, representing the Kamas Tribal Council, noted that in her area, industry investment of \$45 million had led to \$20,000 in Aboriginal procurement contracts. She asked the panellists’ advice for improving that ratio.

Brian Cardinal answered:

“It may be time to start demanding – not just contracts, but the integration of procurement opportunities and capacity building. The current Athabasca Oil Sands development boom is generating enough demand for labour to employ many capable and available Aboriginal Canadians, but too often the industry chooses to recruit overseas.”

Barrie Robb added:

“In your Kootenay example, EnCana would look hard at how it could include the local communities, Aboriginal and non-Aboriginal, in its business and in its supply chain. But remember that growth takes time – building capacity, and credibility, and relationships can’t be accomplished overnight. Know where you want to go and make that your destination, but use your determination and patience to take the many small steps needed to get there.”

Brian Cardinal concluded the response with:

“Work hard to learn about the project before you start to negotiate. Identify the project’s needs for labour, supply and service; consider how you could marry those needs with your First Nation’s potential capacity, and how you can propose to incorporate specific capacity-building measures into procurement programs.”

Cliff Atlee, Jr. noted that Indigenous people in northern communities often fear that they face a damning trade-off: as they commit to adapting their ways of life to the demands and opportunities presented by resource industry development, they risk losing touch with their traditional culture. He asked the panel for advice, “What can those communities do to protect their traditional culture while taking advantage of resource industry opportunities, and what can they do to prepare for the inevitable day when industry packs up and moves on?”

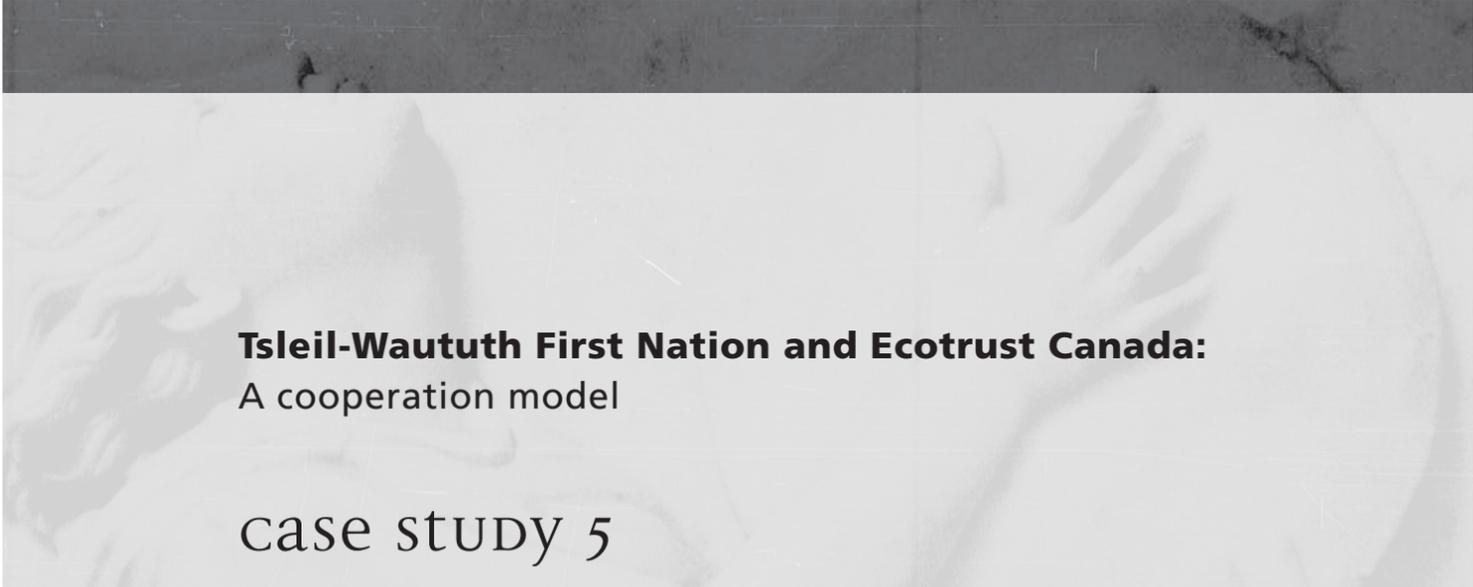
Audrey Poitras noted that there are no magic answers, and that each community must struggle with finding and maintaining its balance between tradition and development. She stressed that the Métis Nation remains deeply committed to traditional values and ways as it pursues current opportunities.

Barrie Robb affirmed the notion that all Aboriginal communities must wrestle with this issue, and added:

“One avenue to explore is the use of the Internet and technology to support of the teaching of Aboriginal culture and language. In Alberta’s Treaty 8 region, a program is well underway in videotaping critical age Elders to record and preserve their traditional knowledge and language.”

The session concluded with Brian Cardinal’s statement that:

“Traditional culture, language and the values they express are sacred to all Aboriginal peoples. Aboriginal communities and their leaders must resist making the false choice between economic development and cultural sacrifice. We must work to get our industry partners to understand and buy in to those traditional values.”



Tsleil-Waututh First Nation and Ecotrust Canada: A cooperation model

case study 5

Introduction and Overview

This session addresses some of the distinctive opportunities and challenges presented by partnerships between Aboriginal communities and non-governmental organizations (NGO's). The partnership featured in this case study is a demonstration of the power of synergy, and of the potential that can be unlocked when Aboriginal vision is focused by appropriate NGO support in pursuit of truly common cause.

The Tsleil-Waututh are a Coast Salish people. Their oral history tells of a pre-European contact society of over 10,000 people, occupying a traditional territory of about 190,000 hectares – from the Fraser River in the south to Mamquam Lake (near Whistler) in the north.¹ Today, about 380 Tsleil-Waututh First Nation (TWFN) members occupy 110 hectares of waterfront property on the north shore of Burrard Inlet, in North Vancouver. With the support of Ecotrust Canada, the Tseil-Waututh recently acquired another 320 hectares of fee simple forest land at the head of Indian Arm, giving them the flexibility to explore various sustainable approaches to settlement, economic development, and conservation.

TWFN's representative for this case study was Leah George-Wilson, currently the Nation's Director of Treaty, Land and Resources, and Co-chair of the First Nations Summit, which represents the majority of B.C.'s First Nations on treaty related issues. Ms. George-Wilson is also the first woman to have served as TWFN's Elected Chief, holding that office from 2001 to 2003.

Ecotrust Canada was founded in 1994 as a not-for-profit organization dedicated to the promotion of conservation economy in the coastal temperate rainforests of North America. Bringing a broad range of technical and financial resources, Ecotrust Canada seeks to build close partnerships with Aboriginal and non-Aboriginal communities, linking conservation opportunities and diversified economic development strategies

¹ See: www.sfu.ca/archaeology/dept/fschool/fs2000/strath/info.html

in areas traditionally dependent on single-industry development, and accordingly vulnerable to external forces.

Ecotrust Canada was represented in this session by its founder and current President, Ian Gill. A respected author and award-winning broadcaster, Mr. Gill serves as a Director of several not-for-profit organizations, including Ecotrust (Portland), the Na na Kila Institute, and the University of British Columbia's Forest Faculty Advisory Committee.

This case study was moderated by BC Hydro's Tana Speerbrecker, Director of Organizational Development, Stakeholder Engagement and Sustainability. Holding both a BA in Social Sciences and an MBA from Simon Fraser University, Ms. Speerbrecker has more than 20 years experience in business management, consulting and business ownership. In setting up the session, she explained that this case study would address the successful campaign mounted by TWFN and Ecotrust Canada to acquire the Indian Arm forestland noted above, and then to achieve Forest Stewardship Council (FSC)² certification of the Tsleil-Waututh's logging operations on 280 hectares of that forestland.

The panellists focused their discussion on three issues: (1) how the partnership project evolved; (2) what role each partner played in the development of the project; and (3) how the project fits into the overall context of the partnership relationship.

1. Evolution of the Indian River Valley Forestland Project

Leah George-Wilson opened the panel discussion with a summary of the geographic, economic, and political challenges posed for Tsleil-Waututh by the reality that the heart of their traditional territory now lies under the modern metropolis of Greater Vancouver. She noted that her Nation and its nearly 400 members hold constitutionally protected rights and title that can no longer be practically exercised, and then described the Tsleil-Waututh vision:

“We know that our people have been here from time out of mind and we are not going anywhere. At the same time, neither are the million or so people that live in Greater Vancouver. We are always looking for a way to work with the people around us. We have been invisible in our territory. Our goal is to put the Tsleil-Waututh ‘face’ back on our territory.”

² FSC is an international not-for-profit organization founded to support environmentally appropriate, socially beneficial and economically viable management of the world's forests through independent forest management certification and marketplace labeling of certified forest products. More than 45 million hectares of forestlands have been certified globally according to FSC standards. See: www.fsc.org

Ms. George-Wilson identified capacity-building as one of the most important priorities in the TWFN campaign to bring that vision to life:

“When my Uncle Leonard George was our Chief, he often talked to our young people about the vital contribution they would be making to their community by pursuing advanced education opportunities, and mastering modern skills. He said that we must learn to be skilful hunters in the city, the way our ancestors were skilful hunters in the forest and on the water.”

She went on to discuss the significance of linking strategic relationship-building to TWFN's traditional stewardship values:

“Building strong relationships with key partners and supporters is vital to making our vision real. Our partnership relationship with Ecotrust is a very encouraging early step in the right direction. We have also built stewardship-based working relationships with BC Hydro, BC Parks, and the federal Department of Fisheries and Oceans. In 1998 we reached agreement with BC Parks for the co-management of Say-Nuth-Khaw-yum Heritage Park/Indian Arm Provincial Park, under a clearly defined cooperative stewardship regime.³ The four member Park Management Board is made up of two Tsleil-Waututh members, and two BC Parks officials.

While TWFN is actively participating in the treaty process, it is important to understand that our commitment to practise and promote our stewardship approach to our traditional lands does not depend on that treaty process. The relationships I've outlined involve implementing real and effective stewardship policy and practice, which will continue through the treaty negotiation process and after implementation.”

Turning to the conception of the idea to acquire the Indian River Valley Forestland through purchase of fee simple title, Leah George-Wilson continued:

“When we started to work with Ecotrust Canada and with Ian in 1998, our Nation's vision of exerting greater stewardship presence over our traditional territory was already defined and advancing. So, our initial work together was technical: focused on land and resource use planning tools like traditional use training and support, GIS⁴ mapping and information management, and research and management planning for Say Nuth Khaw Yum/Indian Arm Provincial Heritage Park.

³ Say Nuth Khaw Yum/Indian Arm Provincial Heritage Park Management Agreement, January 16, 1998. See: www.cpawsbc.org/pdfs/twfn_cpawsbc_protocol.pdf

⁴“Geographic Information Systems”

As that work progressed and our Ecotrust relationship developed, Ecotrust gained understanding of both the nature of our vision and the extent to which our very limited land base restricted our ability to implement it. Our discussions soon included strategies for land acquisition and for increasing our stewardship options. From that point, it didn't take long for the range of Ecotrust's resources, knowledge, and contacts to help to secure financing for the purchase of the land. Then, after thinking among ourselves about FSC certification for a sustainable logging operation, TWFN brought in Ecotrust to facilitate the certification process."

Ian Gill described the growth of Ecotrust's relationship with TWFN as "slow and steady." He recalled:

"In November of 1998, we signed a formal protocol agreement, recognizing our joint commitment to support development of a conservation-economy as a means of enhancing both environmental and community health. The Protocol remains in place today, guiding the various and on-going research and planning projects that the partners are developing together.

Initially, Ecotrust Canada was asked to provide training and expertise to support the completion of a comprehensive traditional use study. Since then, our relationship has steadily strengthened. Our role in the Tsleil-Waututh community has encompassed providing training in GIS and digital information management, supporting resource management planning, and supporting innovative economic development initiatives."

In sketching his view of the evolution of the Indian Arm Project, Mr. Gill noted:

"It grew naturally as the TWFN-Ecotrust Canada discussions focused on the linkage between the Tseil-Waututh aspirations for initiating and practicing sustainable development projects on the one hand, and the need to expand their land base on the other."

Ms. George-Wilson concluded:

"The FSC certification represents a major milestone for us. We are very proud of our achievement in bringing a workable eco-forestry operation to a small portion of coastal B.C. Our staff and our partners at Ecotrust Canada have embraced our dream of practising ecosystem-based management in the Indian Arm valley, and have made that dream a reality."

2a) TWFN's Role in the Project

Leah George-Wilson stated that the critical Tsleil-Waututh contribution was two-fold:

"The clarity and passion of our vision drove the project, and the strength of our determination and patience held it together. Ecotrust's contribution was certainly valuable – without their ability to arrange the financing and technical expertise, it may have taken longer. The vision and drive must come from the First Nation in a partnership project like this; otherwise it will not be supported by the community. I mentioned patience, because the FSC certification process was a long and arduous journey. Some of their requirements simply didn't make sense for our project; there was plenty of frustration in working through those obstacles."

2b) Ecotrust Canada's Role in the Project

Ian Gill set the context by noting that Ecotrust Canada's Cooperation Model for supporting sustainable growth frames its current work with about 25 of B.C.'s coastal First Nation communities on a wide range of projects. He outlined some key elements of Ecotrust's approach to conservation-based development:

"Ecotrust supports greater efforts to:

- Process and add value to raw materials before exporting them;
- Use new technologies to increase the productivity of use of resources, rather than simply to increase the rate of extraction of resources;
- Apply the highest standards of energy efficiency;
- Reduce the release of waste;
- Restrict harvest levels to match natural replenishment;
- Favour native plant species over introduced 'exotic' species; and,
- Manage natural resources to restore and maintain biological diversity."

Mr. Gill identified Ecotrust's specialty:

"We identify and cultivate opportunities for growth in green economic sectors, and then we offer our broad range of skill and experience in environmental management, business development, marketing, and finance – to support the pursuit of those opportunities that fit our client's particular needs and goals."

He described his organization's primary vehicle for delivering its financial support:

“Through a combination of grant funding and low-interest loans, Ecotrust has put together a capital ‘war chest’ for re-lending to Aboriginal groups and other rural communities in coastal B.C. In partnership with Vancity and Western Economic Diversification, Ecotrust has put together our Ecotrust Canada Natural Capital Fund – \$7 million available to qualified clients for financing economic development projects that enhance conservation practices and environmental sustainability.”

Mr. Gill then flagged the two roles that he considered the core areas of Ecotrust's contribution to the Indian Arm Valley Forest Project:

“Our involvement in arranging the unusual transaction's financing, and then in supporting the Tsleil-Waututh in their long walk down the road to FSC certification, were two areas where we felt we were able to make a real difference. On the financing, our partnership with Vancity and Western Economic Diversification was a big factor.

Through the FSC certification process, Ecotrust was able to draw on our prior experience gained in supporting FSC certification applications, in putting on certification workshops, and publishing a book⁵ to guide indigenous peoples in the forestry certification process. But, we also learned a great deal in working with the Tseil-Waututh and FSC on this unusual project. The FSC's standards are both demanding and inflexible. In this case, some of their standard certification requirements were clearly impractical, and even unworkable. Because we were present throughout the process, and because we have established credibility and trust with the FSC, we were able to convince them to adapt their standard to the uniqueness of this project.

Sustainable forestry is a chain of many interdependent links. An important part of Ecotrust Canada's work lies in our ability to bring various members of the value chain together. In this case, it was certainly helpful that Ecotrust financed the start-up of Canadian Eco-lumber Co-op, the Richmond, B.C. ‘green lumber’ retailer through whom most of the Tsleil-Waututh's FSC-certified timber will be sold.”⁶

Leah George-Wilson added:

“I would also say that a key Ecotrust contribution lay in what they did NOT do. They did not push their ideas or agenda at us, and they did not rush in and try to participate in our community planning and consultation processes. Ecotrust gained our trust with their willingness to listen, and with their commitment to learn our needs and goals before offering their advice. And, when they offered their support, it was directed at supporting our vision, and at achieving our goals.”

3. The Indian Arm Valley Project in Context of the Over-all Partnership

Leah George-Wilson described the project as an example of the empowerment that can be achieved by supporting a First Nation's clear vision and strong leadership with like-minded technical capacity:

“The TWFN always finds a way to succeed. Our work with Ecotrust has been built on our community's vision. Certainly Ecotrust's contribution of capacity building, technical guidance and ability to arrange financing was important, but if they weren't involved, we still would have found a way. And yet, we did work well together. Ecotrust's support was an important contribution to turning the Tsleil-Waututh's vision into reality.”

Ian Gill nodded, and said:

“I second that.”

Open Floor Discussion

A member of the audience asked, “Is this a story about a cooperative relationship model that's transferable and scalable, or is it a unique success story about the result of bringing these special players and circumstances together?”

Ian Gill responded:

“This cooperation model is both transferable and scalable. The really important point to note is that nothing that happened here was pre-conceived. Each

⁵ Russell Collier, Ben Parfitt and Donovan Woollard, *A Voice on the Land: An Indigenous People's Guide to Forest Certification in Canada*, Ecotrust Canada and the National Aboriginal Forestry Association, 2002. See: www.ecotrustcan.org/pubs/pubs.shtml

⁶ See: www.ecolumber.ca

partnership and each situation is unique, offering its own opportunities and challenges. In each project, we seek to marry Ecotrust's resources to our partner's vision and circumstances. Some might see our presence throughout the value chain as creating the potential for conflict of interest; I see the creation of a perfect confluence of interests."

A member of the audience asked, "From the First Nation perspective, what are the strengths and weaknesses of dealing with environmentalist organizations?"

Leah George-Wilson replied:

"The strengths are the potential for infusion of capacity-building and resources. It is important that the particular First Nation maintain control, and exercise its leadership. It is the First Nation's vision that is being implemented."

Chief Judith Sayers of the Hupacasath First Nation added:

"It is the responsibility of the First Nation's leadership to choose which organizations they deal with, and on what terms. I can tell you that Ecotrust Canada has helped the Hupacasath a great deal with our run-of-the-river hydro project, providing GIS mapping and other technical support, and financing. We did not find Ecotrust to be intrusive or difficult to deal with."

Can mining lead to sustainable economic opportunities for Indigenous women?

An Australian perspective

case study 6

Introduction and Overview

This session raised subjects rarely addressed directly by resource industries: the historical impacts of colonization and subsequent economic development, including resource extraction and industrial development, on women (particularly Indigenous women) and families, and the potential for meaningful involvement of women in sustainable industry. It is fitting that an examination of such global themes ranged far from British Columbia, to Australia's Northern Territory, featuring Newmont Mining Corporation (Newmont) and the Kungarakany Nation.

Newmont is the world's largest gold producer, employing 14,000 people in operations spread over five continents. A founding member of the International Council of Mining and Metals (ICMM), Newmont is a signatory to the ICMM Sustainability Principles¹, and participates in United Nations' Voluntary Principles on Security and Human Rights². Because its mining operations are often located in remote and undeveloped areas, Newmont projects a high community profile, and carries corresponding responsibility and risk. As Newmont's current CEO recently said, "[W]e are often the first industrial development people have seen. This brings great responsibility. Unless we transparently demonstrate the benefits of our presence, we will face an increasingly hostile business environment."³

Representing Newmont in this case study was a member of the company's global management team, Group Executive – External Affairs, Christine Charles. Responsible for Newmont's external relations regarding its operations throughout Australia and New Zealand, she is a member of the Minerals Council of Australia (MCA) Sustainable Development (SD) Committee, chairs both the MCA's Women and Mining Roundtable and SD Skills Development Group, and chaired the organizing committee of the 2004 Global Conference on Sustainable Development.

¹ www.icmm.com/icmm_principles.php

² www.un.org/Overview/rights

³ Wayne Murdy, CEO of Newmont Mining Corporation, Letter to Stakeholders, *Now and Beyond 2003 Corporate Report*, 2. See: www.newmont.com

Kez Hall is a member of the Northern Territory's Kungarakany and Gurindji Nations, and is a veteran Aboriginal human rights activist and community worker. Her extensive experience combines international, national and local work, including – UN Sub Commission on Human Rights Working Group on Indigenous Populations; non-governmental organization work with Aboriginal and Torres Strait Islander people in Australia; assisting with the International Declaration on Indigenous Peoples' Rights to Education; and diverse work in Aboriginal Legal Services, Training, Education and Health. Ms. Hall is directly involved in environmental, social and economic developments on Kungarakany lands. She is currently working as an advisor for Newmont Australia Limited, in its External Affairs and Communications division. The division is responsible for all of Newmont's regional external affairs activities, including community relations and Indigenous employment.

This case study was moderated by Gary MacDonald, President of Monkey Forest Consulting Limited. As a veteran consultant specializing in social change and conflict management, for the past decade Mr. MacDonald has advised clients on four continents on community engagement issues involving complex social change. Previously, he served as Manager of External Affairs for a \$2.2 billion greenfield development project in Indonesia, and was Newmont's first Director of Social Development.

Introducing the session, Mr. MacDonald noted that although resource industries seldom talk about the impacts of their operations on women and families or about possible roles for women in sustainable resource extraction operations, successful operations often do involve women in meaningful roles. He advanced the view that the extent of women's engagement is often an indication of the vitality of a resource company's engagement with the broader community: "If women are being left out, then probably the community's youth are missing too."

Panel Presentations

The panellists' presentations and discussion developed two over-arching themes: first, historical impacts of past Government policies and practices have shaped the social context for Australia's resource extractive industrial development, including the impacts of that development on Australia's Indigenous women and families; and second, the increasing potential for meaningful involvement of Indigenous women in today's sustainable resource development industries (particularly mining) serves both to lead and measure Australia's broader social progress.

1. Historical Impacts of Government Policy on Australia's Resource Development and Indigenous Women and Families

Christine Charles opened the panel discussion by pointing out that two fundamental challenges impose tremendous corporate social responsibility (CSR) pressures on resource extraction industries:

"Minerals and metals have to be mined where they are found, and those deposits tend to be in remote and geologically rugged areas, often near Indigenous communities and certainly on Aboriginal land. Mining today is operating within an environment created by the policies and practices of the past. In many parts of Australia, over a long period, communities were disrupted, dislocated and destroyed by the pursuit of assimilationist public policies. Children were taken from their parents and placed in residential institutions. Some of what happened occurred through simple ignorance, but a good measure of this abuse took place in the execution of official government policy of the day – 'assimilation.'"

The Coniston Massacre

Ms. Charles then explained that Australia's colonial history established pervasive racist attitudes toward Australia's Aboriginal people. These attitudes were then reflected in the institutions of civil society – particularly the criminal justice and public policy systems. She referred to a dark event in Australian history known as "the Coniston Massacre":

"The 1928 Coniston Massacre involved the murder of more than 100 Aboriginals, killed by a police posse in reprisal for the killing of a single non-Aboriginal man. A number of suspects were criminally charged, but were acquitted. Until recent years, the event has received minimal recognition in the Australian public school system, and recent ceremonies to commemorate the 75th anniversary of the Coniston Massacre were marked by considerable resistance to recognition of the massacre."

Ms. Charles noted that over the decades since the event, the public education system has tended to ignore or downplay episodes like the Coniston Massacre. She went on to outline the social conditions that have devastated Australia's Aboriginal population since European arrival in the late eighteenth century, describing circumstances that closely parallel the Canadian experience:

“Aboriginal population was decimated by European disease in the early decades of contact. Poverty, unemployment, illiteracy, and substance abuse are widespread. About 60 per cent of Australia’s prison population are of Aboriginal ancestry; even though Aboriginal people make up just 2.4 per cent of the country’s total population. Aboriginal population tends to be concentrated in remote areas, far from social services and health care delivery centres, and in close proximity to resource industry operations.”

The Mabo Decision and Native Title

On the subject of “native title,” Ms. Charles noted:

“The convenient colonial doctrine of *terra nullius*⁴ was not overturned until the landmark High Court *Mabo* decision in 1992, which recognized that Aboriginal people may still hold common law or “native” title to land, provided that it has not been lost due to valid acts of government, or by the loss of traditional connection to the land.⁵ The following year saw the Australian Government introduce the Native Title Act, by which it endeavoured to incorporate the principles of the *Mabo* case into Australian land law and management.”

Ms. Charles observed that a tri-partite system has since been established to process Aboriginal land claims to Crown lands under the Native Title Act, involving the federal Government, the Land Councils and industry leaseholders. She added:

“While this system has served an important purpose over the past three decades, it is also has its problems. A complex and restrictive bureaucracy has been created, and a broader, longer perspective is needed. Rapid demographic change and business realism are already driving a more inclusive approach.”⁶

Kez Hall confirmed that the pace of Court resolution of land claims by traditional owners has been “exceedingly slow”:

“In 1978, our Kungarakany Nation launched a land claims proceeding under the Aboriginal Land Rights (Northern Territory) Act, 1976. We witnessed the death of many of our Elders and clan before title was handed back for selected areas of our Kungarakany country in 1993.

Over 800 Aboriginal land claims have been filed under the federal Native Title Act of 1993; two claims have been settled to date. The scale of the practice of

forced relocation of Aboriginal communities since colonial times means that overlapping claims are common and complex. In our own Kungarakany claim, there were five overlapping claims to our traditional territory – three of which were the result of forced relocation.”

Ms. Hall affirmed Christine Charles’s views on the cumbersome quality of the on-going land claims process and added:

“The Land Councils have jurisdiction over almost 50 per cent of the Northern Territory. Royalties earned from resource industry operations on Aboriginal title land go into a Land Fund, used for economic development through the purchase of pastoral or commercial properties. The Land Councils and Representative Bodies for Traditional land owner groups have been male-dominated bureaucracies, with little or no representation by women – despite the powerful traditional role Aboriginal women held, and still try to wield.

The approach to Aboriginal self-determination since the 1970’s has not worked. Because women have been systematically excluded, families and youth are not adequately represented. Under the male-dominated management of traditional lands, sustainable development of Aboriginal communities is not succeeding either – the process is once again not inclusive of women and youth.”

Indigenous Women and Mining

Ms. Charles noted that as Australia’s largest gold producer, with mining properties spread throughout the country, Newmont has had to work hard to deal with its “inherited cultural baggage, local prejudices and biases.” She pointed out that Australia’s mining history has followed the patterns that have marked the country’s social and cultural history:

“Historically, women have made up between seven and ten per cent of mining’s total work force – between two and three per cent in the field. Representation of Aboriginal women in mining has been at even lower levels. The industry has intuitively approached Aboriginal participation in mining’s labour force on a “Man-to-Man” footing. Until recently, Australian mining has lacked the cultural understanding and professional capacity needed to be able to acknowledge mining’s impacts on women and families, and to address the need for meaningful roles for Aboriginal women in the industry.”

⁴ The assumption that Australia was uninhabited or “empty” at the time of first European and therefore became Crown territory by default.

⁶ See pages 7-9 for discussion: [Demographics and the Business Case](#)

⁵ The parallel landmark decision of the Supreme Court of Canada occurred 20 years earlier in *Calder v. Attorney-General of British Columbia*, [1973] S.C.R. 313

2. Increasing Potential for Meaningful Involvement of Indigenous Women

Christine Charles noted that in recent years, Australian public attitudes have swung strongly toward supporting acknowledgement and reconciliation of historical wrongs done to the country’s Indigenous people in the course of colonization, settlement, and development.⁷ Ms. Charles referred to the work of “Reconciliation Australia,”⁸ a not-for-profit, non-governmental organization established in 2001. She noted that Reconciliation Australia operates independently, with funding provided through corporate⁹ and government partnerships as well as private donations, to provide an on-going national focus for monitoring and supporting progress toward reconciliation with its Aboriginal history and communities.

Demographics and the Business Case

Christine Charles pointed to a strong parallel between Canadian and Australian population patterns for Aboriginal people: both are highly diverse and are growing faster than the general population. She added:

“Fifteen years ago, Australia’s Aboriginal population was 1.5 per cent of the national total; today that Aboriginal percentage is 2.4. The picture is more dramatic in the Northern Territory (NT). Twenty eight per cent of NT’s total population is Aboriginal; for students, that percentage increases to 40, and will reach 50 per cent within 10 years.

Mining companies are facing the pressures of replacing an aging workforce for major operations in remote locations. Retention of the increasingly Aboriginal local population as key source of labour is becoming a high priority for the industry.”

⁷ See: Human Rights and Opportunity Commission, *Bringing Them Home – Community Guide, Terms of Reference (a) Tracing the history*, “The histories we trace are complex and pervasive. The actions of the past resonate in the present, and will continue to do so in the future. This time line provides a brief account of the laws, practices, and policies of forcible removal and some of the context in which they were developed.” http://www.hreoc.gov.au/bth/text_versions/timeline/

See: The Guardian, October 22, 2003, *Massacre history “should be taught.”* “Aboriginal leaders and politicians have called on the federal government to ensure schoolchildren are taught the ‘true’ history of the nation’s shameful past. The call came at an emotional ceremony deep in the remote Australian outback to mark the 75th anniversary of one of the nation’s most recent Aboriginal massacres.

In a remarkable act of reconciliation, descendants of those killed last month met and embraced relatives of the police officer who led the punitive killings. ‘It’s not about payback,’ ATSIC acting

Chairman Lionel Quartermaine said. ‘It’s about acknowledging what took place and how best we can go forward.’

The Coniston massacre of 1928 has been told and retold among generations of Aborigines in Central Australia, but many other Australians are still unaware of the brutal events. Mr. Quartermaine said Australia needs to face up to its ‘shameful history’ for true reconciliation to occur. ‘Australian children need to be taught about the history so this country can move on and be at peace with itself. Only the truth can set this country free,’ he said.” <http://www.cpa.org.au/garchve03/1160massacre.html>

⁸ See: <http://www.reconciliationaustralia.org/aboutus/whatis.html>

⁹ Ms. Charles’ business card notes that Newmont is “A proud partner of Reconciliation Australia.”

Convergence of Needs May Open the Door to Change

Ms. Charles then observed:

“A more inclusive and gender-neutral approach may result from the combination of the mining companies’ pressing need for reliable local labour and local community support¹⁰ on the one hand, and the emergence of greater numbers of educated and confident Aboriginal women on the other. Alongside this growing convergence of needs, there is increasing industry awareness of the importance of positive, open relationships with all stakeholders, leading to making balanced decisions. In other words, there’s movement away from short-term, tactical thinking toward longer-term, strategic thinking. That bodes well for the prospects to be faced by tomorrow’s Indigenous women.”

Kez Hall used the following example:

“We are growing the next generation of Aboriginal women leaders. My daughter operates her own development company, ‘SkeiRise’ which is helping to develop small business enterprise for Indigenous people. I am employed by SkeiRise on contract to Newmont. Apart from this arrangement, my family have privately owned land and we want to be able to leverage our opportunities to create more sustainable futures for Kungarakany and other Indigenous people.”

Open Floor Discussion

An audience member asked Christine Charles “Does your ‘convergence of needs’ mean that there are real job opportunities for Indigenous women in Australian mining today, or are you still at the ‘capacity-building’ stage?”

Ms. Charles replied:

“We’re not there yet. The ‘whole spectrum’ approach to strategic thinking is still a work in progress, but encouraging progress is being made through organizations like the Minerals Council of Australia and some of its progressive Committees¹¹. Making real progress on the ground will take time. We’re pushing for major change and trying to operationalize a sustainable integrated ‘triple bottom line’¹² approach to impact assessment and planning. As that assessment and planning cycle extends through mine closure into community planning for the next generation, the planning perspective will naturally engage strong, thinking women – who bring strong hope for the future.”

¹⁰ i.e.: “Social license to operate”

¹¹ Ms. Charles is a member of the MCA’s Sustainable Development Committee, and chairs both its Women and Mining Group and Sustainable Development Skills Development Group.

¹² ‘Triple Bottom Line’ refers to the balancing of economic, environmental and social values in performance assessment and planning. The term was coined by noted sustainability thinker John Elkington in his 1998 book, *Cannibals with Forks*. See: <http://www.newsociety.com/bookid/3657>

Kez Hall added:

“Exciting new relationships are developing, opening a whole range of new possibilities. Newmont is taking on the challenge and I see this in their performance in Kungarakany country.”

Gary MacDonald asked:

“What needs to be done to get there?”

Kez Hall responded first:

“More Aboriginal women need to be involved in mining sector decision-making – both inside mining companies and dealing with them as suppliers of goods and services.”

Christine Charles addressed two mining company perspectives:

“Internally, there’s a big gap between ‘understanding’ and ‘capacity’ in cultural competence. To take the fluffiness out of the issue, we need to engage the whole company – from the boardroom to the ground. In some parts of Australia, mining companies have more leverage and carry less baggage than governments. Plus, companies can move faster, are more flexible, and can earn trust more easily than governments. We shouldn’t be waiting for government leadership for cultural change; progressive mining companies can seize the initiative, as our industry leaders are in the process of doing.”

Jennifer Hinton, a PhD student in mining engineering and a member of UBC’s Sustainability Working Group, indicated that she attended an international conference on mining and women in Papua New Guinea in 2003. Delegates from twenty countries overwhelmingly agreed that women are the stakeholder group least involved in and most impacted by mining operations. “How can that pattern be broken in communities where women don’t have a traditional voice?” Ms. Hinton asked.

Kez Hall answered:

“Usually it’s mining’s patriarchal culture that has been imposed on the community. Whether Aboriginal or non-Aboriginal, communities need to tap into their strong women and female youth – inspiring them to exercise their inherent rights and powers. Also, communities must use the leverage they have to push back as they deal with the mining companies.”

Christine Charles continued:

“It’s not just mining at play; usually there’s a lingering residue of colonial culture underlying such situations. We all need to keep working to sweep that residue out of the way.”

Dave Tuccaro of the Mikisew Cree First Nation pointed out that a great deal can be done without government direction. He noted that Syncrude targets Aboriginal representation in its work force to match the local population – about 13 per cent, and asked, “Does Newmont have such a target for its mines?”

Christine Charles replied:

“While about 20 per cent of our Northern Territory work force is Aboriginal, we are reluctant to tie our objectives to quotas. We try to focus on addressing the aspirations and needs of the community – for example, its priority may be to seek greater economic involvement in our supply chain.”

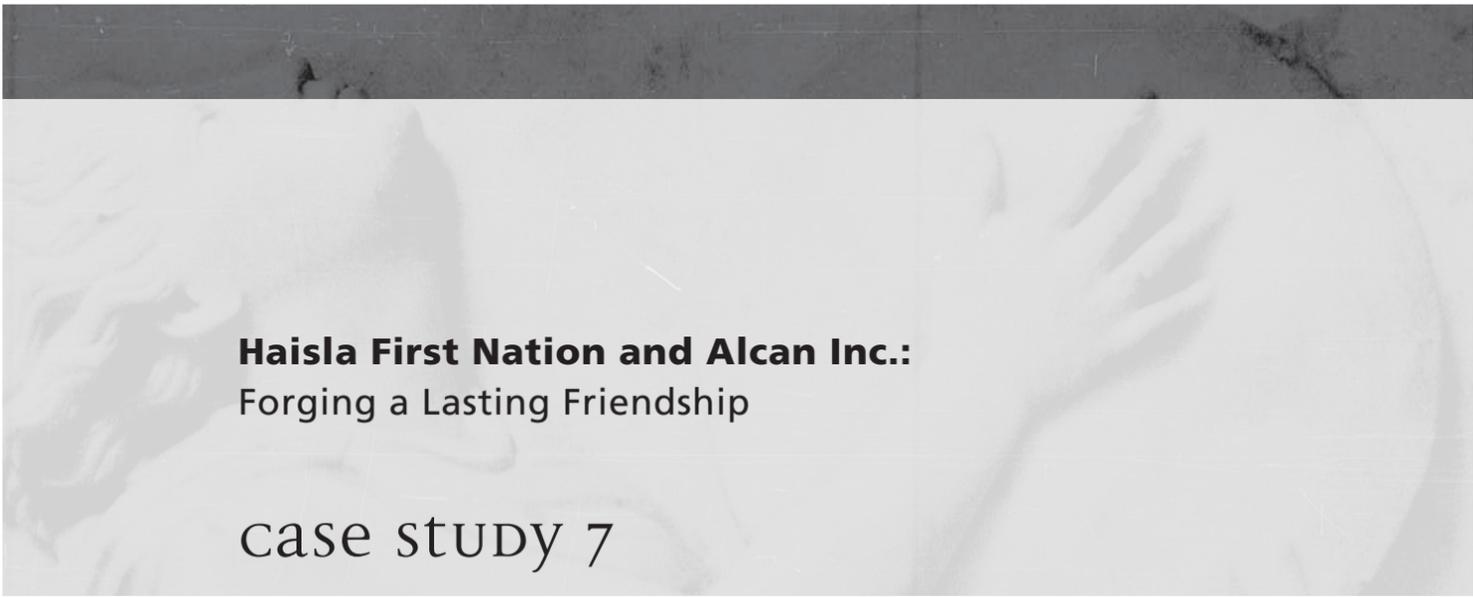
A member of the Tseil-Waututh First Nation quoted a statement as often used by Leonard George: “The longest distance to travel is from the head to the heart.” She went on to say that real reconciliation can only come from “heart to heart communication” and asked, “How do we help business leaders to find the necessary courage to lead their companies down the road we can travel together?”

Christine Charles answered:

“Leadership is needed, but we can’t rely on the character and courage of individual leaders. Companies need to ‘systematize’ cultural awareness: by building performance standards and incentives that reflect cultural sensitivity, and by raising the level of understanding and commitment through the company. Cultural training workshops are useful. Face-to-face work with strong Aboriginal leaders and communicators is valuable – finding ways to distil their learning and then bring it into the understanding of the people of the company.”

Ms. Charles concluded:

We don’t need to achieve unanimity, but ‘difference’ needn’t mean ‘inequality.’”



Haisla First Nation and Alcan Inc.: Forging a Lasting Friendship

case study 7

Introduction and Overview

Alcan Inc. is one of Canada's largest companies. From its humble beginning in 1902 as the Northern Aluminum Company, a subsidiary of Alcoa and operator of a sole aluminum smelter in Shawinigan, Quebec, Alcan Inc. has grown to become a global leader in aluminum production, packaging, and aluminum recycling. With 75,000 employees and operations in more than 60 countries, Alcan has the largest share of low-cost production capacity in the world.

In 1954, Alcan opened its aluminum smelter operation on the northwest coast of British Columbia (Kitimat Works), in the heart of the traditional territory of the Haisla First Nation. With a rated production capacity of 275,000 tonnes per year, Kitimat Works has been one of British Columbia's largest industrial complexes for half a century. In 2003, Alcan sold 241,100 tonnes of aluminum produced at Kitimat Works, generating estimated earnings of US \$387.9 million, all in foreign exchange to the Canadian and B.C. economies.¹ Also in 2003, Alcan spent \$53.1 million on goods and services supplied by northwest B.C. businesses, 64 per cent of which went to businesses in the Kitimat area.²

Today, Kitimaat Village is home to 800 of the of the Haisla First Nation's total population of nearly 1,600 members. For thousands of years Haisla ancestors have occupied a traditional territory spanning 8,000 square kilometers, extending from the headwaters of the Kitimaat River south to Kemano and the Kitlope watershed.

The communal and cooperative qualities of traditional Haisla culture were shaped by the demands of living through the millennia in a vast wilderness, dominated by extreme geography and climate. Each Haisla member belongs to one of four matrilineal Clan houses. "Haisla Num-Yum," the laws and ways of life, teaches that "the Community must work as one to survive" and teaches the Haisla people "... the importance of

¹ Eric Vance, *Kitimat Works' Contribution to the Economy of British Columbia: 2003* (Vancouver: ¹ Eric Vance & Associates, Planning and Management Consultants, April, 2004) 2

² *Ibid*, 5

caring for one another and the value of co-operation.” The Haisla crest depicts the Eagle, Beaver, Raven, and Fish Clan Houses linked in a circle of unity.³

Representing Alcan B.C. in this case study was Colleen Nyce, Manager of Corporate Affairs and Community Relations. A long-time resident of northern B.C., Ms. Nyce’s wide career experience includes public relations and communications management, financial-banking-investment management, human resource and community event management.

The Haisla First Nation was represented by Steve Wilson, who was first elected Chief Councilor 2001. Chief Wilson also serves as President of the Coastal First Nations Turning Point Initiative, and as Director of the Northern Development Initiative Trust. As President of the Turning Point Initiative, Chief Wilson leads a group of B.C.’s central and north coast First Nations, including Haida Gwaii, in a campaign to promote ecologically sustainable alternatives to industrial practices, developing strategies in forestry, fisheries, shellfish aquaculture, marine use planning, land use planning, tourism, and capacity development.

Simon Fraser University’s Learning Strategies Group (LSG) was represented by Mark Selman, LSG’s Executive Director. Having developed previous innovative continuing education programs, Mr. Selman also led the design and implementation of SFU’s MBA program for Alcan employees and employees of other Kitimat businesses.

Serving as moderator was Lori Bamber, author of eight books on personal financial planning and investment, a regular television and radio commentator, and a 15 year veteran of the financial industry. Ms. Bamber set up the discussion’s main theme as a review of the relationship-building experience shared by the Haisla First Nation and Alcan, focusing on the consultation and engagement process that led to the signing of their comprehensive Relationship Protocol Agreement.⁴ She promised discussion of some of the concrete outcomes achieved so far, and of the important role that the Haisla-Alcan relationship plays in the advancement of sustainable development for both the Haisla First Nation and Alcan.

Background Context for the Relationship Protocol Agreement

Lori Bamber kicked off the discussion by noting the great diversity in range of perspectives that has existed within and between the Haisla and Alcan communities over the course of the more than 50 years of their relationship. She stressed the importance of learning how to harness the potential inherent in that diversity, declaring, “That’s

where the power is.” In her opening question to Alcan’s Colleen Nyce, the moderator asked, “What motivated Alcan to formalize a Relationship Protocol Agreement with the Haisla First Nation?”

Ms. Nyce observed that whenever a major industrial development is introduced, there will be some disturbance and dislocation imposed on pre-existing ecosystems and communities. Characterizing the early years of Alcan’s relationship with its First Nation neighbours as “mostly cordial but sometimes strained,” she then noted, “We went through a major corporate repositioning several years ago that included a commitment to build more strategic alliances for future growth.”

After referring to an agreement that Alcan signed in late 1980’s to implement B.C.’s first preferential Aboriginal hiring policy, Ms. Nyce said:

“A major improvement in Alcan’s relationship with the Haisla First Nation began four or five years ago, coinciding with Steve Wilson’s arrival as Chief. Steve Wilson approached Alcan with an intriguing, forward-looking perspective, telling us that his Haisla administration wanted ‘engagement and opportunities, not hand-outs.’ This positive and open approach motivated Alcan to refocus on improving our relationship with the Haisla First Nation.”

Chief Steve Wilson then laid out the fiscal context underlying the Haisla approach to re-defining the Haisla-Alcan relationship in general, and to the Relationship Protocol negotiations in particular:

“When our Band administration took office, we inherited a \$1.9 million operating deficit, \$2.9 million in accounts payable, and \$1.3 million borrowed from the investment account; we were two years behind in our capital projects; and we owed \$720,000 to the local School District. We soon realized that the status quo wasn’t working, and that we needed a major shift in the management of our affairs. We resolved to find ways to become less dependent on government support, and to realize the full economic and employment potential of the Haisla people. We’ve come a long way. As of our last audit, we showed a budget surplus of \$1.9 million; the School District debt was gone; we were 95 per cent caught up on capital projects; our accounts payable was reduced to \$900,000; and we had repaid \$800,000 to our investment account.

As a starting point, we knew that we had to declare our First Nation’s vested interest in the resources within our traditional territory as the context for our engagement with Alcan. We were determined, but we knew that those discussions would be difficult.”

³ See: <http://24.244.66.135/haisla/>

⁴ “Haisla Nation and Alcan Inc. Agreement to develop and sustain a long-term mutually beneficial relationship” dated October 10, 2002.

The Protocol Negotiations: Perspectives, Priorities, and Process

Lori Bamber opened this discussion with the proposition that an inherent paradox challenges every negotiation process: “If reality must be perceived before it can be understood, and if perception must be subjective, then at least two realities are at play in every negotiation.” She then asked for comments from our presenters.

Chief Steve Wilson replied:

“Successful negotiation must embody relationship-building. A protocol provides a useful reference point and benchmark, but the real progress comes through the process of expanding and developing relationships. Relationship-building opens dialogue doors that otherwise stay closed; long-term growth is the result of that dialogue.

Colleen Nyce agreed, and noted that that a true dividend of the Protocol negotiation process was Alcan’s improved understanding of Haisla values and priorities – apart from and beyond the actual issues being negotiated.

Chief Wilson continued on the negotiation process:

“There were many attempts by Haisla representatives and Alcan representatives to create a Relationship Protocol Agreement. Early meetings just didn’t progress. At one of those meetings, both sides caucused; when we reconvened, both sides said, ‘...We need a mediator...’

That was a real turning point. Both sides were both committed enough and brave enough to admit that we needed to ask for help in finding common ground. That broke the ice. Suddenly, each side started to realize that we weren’t necessarily in disagreement; maybe we just didn’t understand the other side’s cultural dialect.”

Lori Bamber asked for elaboration on the mediation aspect of the negotiation process.

Chief Steve Wilson responded by expanding on his ‘cultural dialect’ metaphor. He recalled the following conversation from a dinner meeting with Alcan and the Mediators:

Alcan: “What does the Haisla First Nation really need?”

Haisla/ Steve Wilson: “We really need a huge influx of cash.”

Alcan Representative and Mediators: “We’re not a charity, we are a business. We can’t do that.”

Haisla/Steve Wilson: “No, you’re not listening to what I’m saying. We want to have procurements where we cover our costs and factor in a profit margin. What we do with the profits is our business, but for argument’s sake, we will invest it in our community’s needs. You spend \$90 million purchasing goods and services and less than one half of one percent of that in my community. I’m asking you to spend money in my community too!”

Alcan Representative: “Well, that we can work with.”

Chief Wilson described that moment as a true breakthrough:

“We learned from that session that we were both speaking different dialects of English. We had similar interests but expressed them differently. Once we understood that communication challenge we were able to put the past behind us and begin to look forward.”

Colleen Nyce elaborated on the involvement of the Mediator:

“Milton Wong was the key link in the chain. As Chancellor of Simon Fraser University (SFU), and as a Director of Alcan Inc., he was able to convince SFU’s Learning Strategies Group (LSG) to become involved. Alcan and LSG were already working together on a number of projects – a customized MBA program for Alcan employees and some business development work with Kitamaat Village, for example. LSG’s involvement led quickly to recognition of the importance of capacity-building to the attainment of Kitamaat Village’s business development goals. Once that understanding was clear to Alcan as well, we were on our way to building solutions together, instead of butting heads.”

Visions of Sustainability

Lori Bamber shifted the focus from operational to philosophical by asking, “Did Alcan and the Haisla First Nation have different visions of sustainability?”

Colleen Nyce responded first. She started by noting that Alcan’s corporate sustainability vision is built upon the core commitment to strive to meet the needs of today’s stakeholders without compromising the ability of future generations to meet their own. Ms. Nyce then reviewed Alcan’s operational approach to sustainability:

“Alcan’s pursuit of sustainability as its core value is embedded in Alcan’s Integrated Management System (AIMS). Rolled out through our company world-wide during 2002-2003, AIMS integrates economic performance with environmental and social values through three powerful programs: MaxValue, EHS FIRST, and Continuous Improvement. MaxValue’s goal is to double the value of our company every five years, through pursuit of opportunities to create value and to eliminate waste. EHS FIRST, launched company-wide in 2003, aims at reducing our environmental footprint and protecting the health and safety of our employees. Continuous Improvement (CI) was also rolled out company-wide in 2003, and together with EHS FIRST, represents the largest commitment to employee training in Alcan’s history. CI combines the pursuit of quality and consistency with determination to eliminate inefficiency and waste – in all facets of our business practices and operations. The AIMS commitment to sustainability is the bond that unifies these three wide-ranging programs.”

Ms. Nyce stressed Alcan’s commitment to building its business on a truly sustainable foundation:

“Great importance is placed on practising our core values, and strengthening our key stakeholder relationships is one of those core social values.

The real significance of our Relationship Protocol Agreement with the Haisla First Nation lies in its built-in agenda for regular dialogue. By conducting that dialogue, we continue to build mutual trust and understanding. Alcan is prepared to embrace the Haisla vision for sustainable development of its community alongside our own, and the understanding we’ve gained through negotiating and implementing the Relationship Protocol Agreement fortifies our shared commitment to bring that vision into reality.”

Chief Steve Wilson added:

“The Haisla vision of sustainability is grounded in the values and practices embedded into our daily lives by our traditional culture. ‘Sustainable development’ has been our way of life for thousands of years. ‘Going fishing’ involves much more than throwing a line or a net in the water. Fishing entails many different responsibilities and activities, spread throughout the community and over the course of the year. Harvest targets are planned; stinging nettles are gathered⁵; nets are mended; small spruce trees are cut and set in stream bed spawning grounds to collect roe; and harvested salmon are smoked and dried for storage.”

⁵ Stinging nettle fibre is used to make and to repair traditional fishing nets.

Culture Crossover

The moderator asked Colleen Nyce to comment on the extent of Haisla influence on Alcan’s corporate culture.

Ms. Nyce opened by noting that while progress has been made, more work needs to be done to communicate the Haisla vision for sustainable development through the ranks of the Alcan’s nearly 1,600 Kitimat Works employees. She then outlined several positive steps that are underway:

“Steve Wilson will be leading a program of Haisla cultural sensitivity training throughout the Kitimat Works organization.

A four year Environmental Internship Program has been launched, whereby Haisla interns are brought into the Alcan organization as employees for technical training and experience. Year One is nearly complete, and will end with the intern receiving exposure to other parts of our global operation, likely in North America or in Australia. Alcan has committed to four internships – one per year for four years.

The Haisla First Nation is represented on Alcan’s Public Advisory Committee, which brings together a broad cross-section of Alcan’s stakeholders to review the on-going environmental impacts of our Kitimat Works operation, and to identify potential pollution reduction projects.”

Ms. Nyce noted that Alcan is just on the threshold of garnering the significant gifts of insight and learning to come from the company’s commitment to engage fully with the Haisla First Nation and its other Aboriginal neighbours. “Progress is a process,” she concluded.

Chief Steve Wilson stressed the significance of the linkage of the completion of the Relationship Protocol Agreement in 2002 and the Kitimaat Village capacity-building work done with SFU’s Learning Strategies Group (LSG):

“We’ve made great progress in working with Alcan and LSG. We have eighteen major projects in the works and will be creating 400 jobs over the next five years. We are working with 12 companies to develop joint ventures and we can clearly identify the signing of the Protocol Agreement as the start of the success. The next companies to approach us were referred by Alcan managers and one thing led to another.

Over the longer term, we're looking beyond local issues. As we refine our capacity, gain experience, and develop contacts, we will offer the use of our 'Haisla tool box' to other industries and to various branches of government."

Open Floor Discussion

Jane Peruniak of B.C.'s Ministry of Sustainable Resource Development asked Chief Steve Wilson whether the Haisla First Nation's historically rocky relationship with Eurocan Pulp and Paper has benefited from the Haisla's successful relationship-building experience with Alcan.

Chief Wilson's response was emphatic:

"Our Alcan experience helped us a great deal in our dealing with Eurocan. Very recently we settled a 35 year old dispute between the Haisla Nation and Eurocan for the pollution of the Kitimat River and tainting of our eulachon. The agreement deals with a range of issues, including:

- Compensation for historical damage;
- Funding for habitat rehabilitation;
- Procurement opportunities;
- Education support; and,
- Establishing a dispute resolution mechanism."

Steve Wilson concluded:

"The enduring legacy of the Haisla Nation's successful experience in re-defining its relationship with Alcan is simply that the Haisla perspective has been forever changed. Our Haisla team now realizes that we do have capability to be successful but we must be open to recognize the opportunities and then find the solutions to achieve them. That is one gift from the Alcan negotiations that does not show up on a balance sheet, because it is social capital. We learned a great deal and can apply that success to other opportunities."

A member of the audience asked whether SFU's involvement in mediating the Haisla-Alcan Relationship Protocol negotiations and in Kitimaat Village capacity-building is an isolated case of university involvement in Aboriginal capacity-building.

Mark Selman, Executive Director of SFU's Learning Strategies Group, replied:

"While Aboriginal capacity-building work is a relatively new field for universities, this is not an isolated case. SFU's Learning Strategies Group has worked with a number of B.C.'s First Nations bands, and other universities are getting involved – notably the University of Saskatchewan. This capacity-building work shouldn't be viewed as Aboriginal support in isolation, but rather as an element of supporting sustainable development. After all, what is sustainable development but truly paying attention to the consequences of business and taking responsibility for our actions?"

Roberta Stewart of the Justice Institute of British Columbia advised that the Institute has recently established the credentials for a new Aboriginal Leadership Diploma program⁶, available for 60 credits upon lateral transfer to other academic institutions. She asked Mark Selman whether SFU would be interesting in partnering such a program.

Mark Selman replied that SFU might well be interested, and is looking for appropriate Aboriginal programs (i.e., an Aboriginal MBA program) to offer in partnership with other institutions. He stressed that such programs must have the support of both First Nation and business communities if they are to be viable, and that SFU's first order of focus is to address needs defined by First Nations themselves.

Chief Alphonse Gagnon of the Wet'suwet'en First Nation asked Colleen Nyce to comment on Alcan's perspective on the need for reconciliation with First Nations regarding the long term impacts of its B.C. installations.

Ms. Nyce responded that Alcan is focused on building positive, forward-looking relationships with its First Nation neighbours. She referred to the Relationship Protocol Agreement that Alcan reached in 2000 with the Cheslatta Carrier First Nation, from Grassy Plains – located south of the Nechako Reservoir.⁷ Ms. Nyce also noted:

"In 2003, Alcan began to forge closer relations with the Nee Tahi Buhn Indian Band and the Skin Tyee First Nation, two other First Nation bands in the Nechako Reservoir area."

Finally, she referred to an agreement Alcan reached in 2003, permitting the Aboriginal harvesting of budworm-infested timber on Alcan lands in the reservoir area:

"Alcan and three First Nations signed an access and harvesting agreement that saw the First Nations benefit from timber harvest, rid Alcan of a liability (bugwood), and create a community legacy fund by way of royalties from the harvest."

⁶ "The new program, which is scheduled to start in March 2005, respects the traditional and contemporary values held by Aboriginal communities, recognizing the diversity of cultures, ceremonies, and traditions among individuals and communities. The comprehensive curriculum is designed to maximize the individual's personal and professional growth while providing a positive impact on the community." See: <http://www.jibc.bc.ca>

⁷ Water reservoir for Alcan's Kemano Powerhouse hydroelectric facility.

Chief Steve Wilson added:

“It is important to recognize the gap that exists between the awareness that business needs to build good relationships with First Nations, and the realization of those relationships. Building relationships with First Nations is important and difficult work, full of opportunities for both success and failure. There is no template. Each First Nation and each situation is unique.”

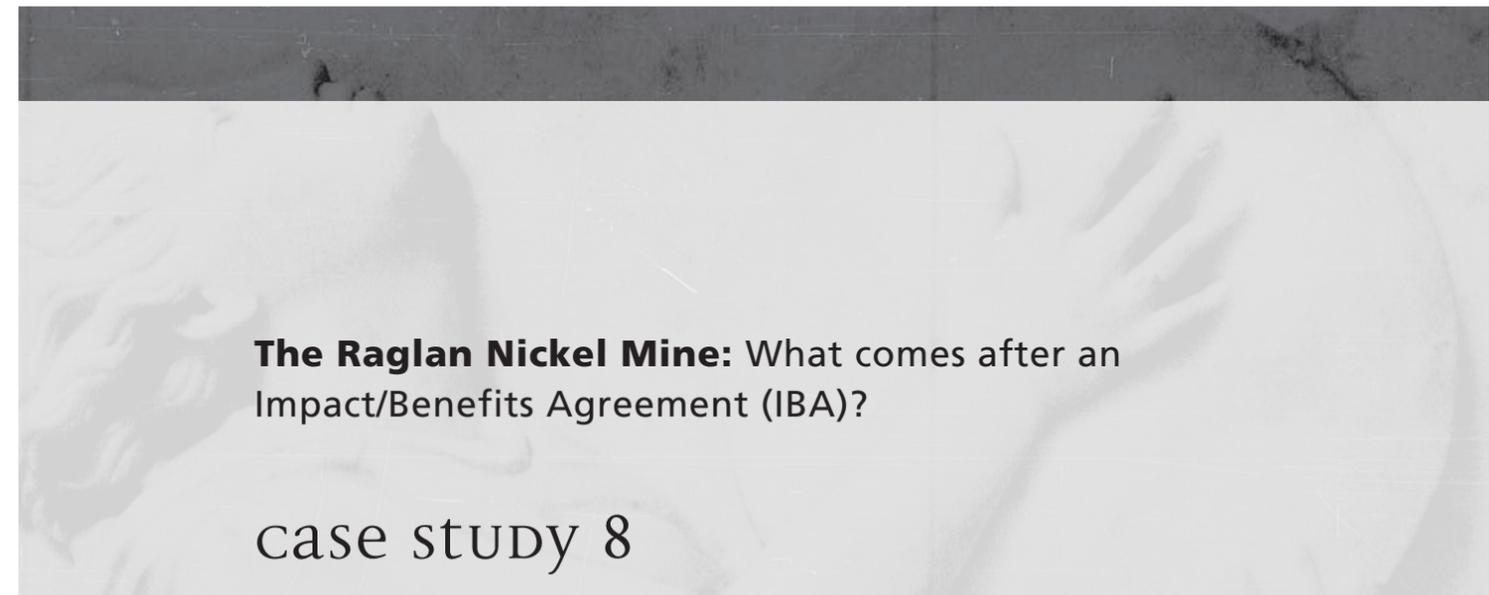
Chief Wilson concluded with a few words of advice to business:

“Take your time, learn the players and the cultural protocols, and build on a base of earned respect and trust.

Also, realize that First Nations have become pretty good at the law business over the years. We know our rights and we do our homework. The Courts tend to support us when we claim that resource development is proceeding on our traditional territory on the basis of faulty or inadequate consultation and accommodation. So, it’s good business to accommodate our interests, because it is more cost-effective to engage us in the first instance.”

Alcan’s Colleen Nyce closed the session:

“Businesses must ensure that their people in the field have respect for First Nations, and that they approach Aboriginal engagement with sincerity. Lip service will be seen and dismissed for what it is.”



The Raglan Nickel Mine: What comes after an Impact/Benefits Agreement (IBA)?

case study 8

Introduction and Overview

Raglan lies about 1,800 kilometres north of Montreal, deep in the Nunavik territory of northern Quebec. Fifty-five kilometres from east to west, the Raglan property is marked by a series of remarkably rich ore deposits along its length – holding proven and probable reserves of 15.8 million tonnes of high-grade nickel and copper ore. Although the Raglan ore-bodies were discovered in the 1930’s, commercial production didn’t begin until April, 1998, more that half a century and an investment of CAN\$800 million later.

Nunavik has been occupied by the Inuit for more than 4,000 years. A nomadic people, the Inuit did not settle into permanent villages until the early 1950’s. Today, Nunavik’s 9,200 Inuit live in 15 villages along the coasts of Ungava Bay, Hudson’s Strait and Hudson’s Bay, all between 1,000 and 1,900 kilometres north of Montreal.

Various mining companies that pursued intermittent exploration of the Raglan property were absorbed into Falconbridge Limited (Falconbridge) by the mid-1960’s. Today, the Raglan project is 100 per cent owned by Falconbridge through the Société minière Raglan du Québec (SMRQ). Falconbridge is one of Canada’s largest mining companies, employing 7,000 people in 13 countries, and generating 2003 revenue of US\$2.1 billion.

Central to the various challenges that Falconbridge had to overcome in developing the Raglan property was its remote, sub-Arctic location. The climate is severe and cold, with an average annual temperature of about minus 10 Celsius, and permafrost extending to depths exceeding 400 metres.¹ Economic, environmental, socio-economic and logistical barriers were all formidable, combining to make development of a greenfield smelter and refinery unviable, and delaying serious consideration of building a mine until the late 1980’s and early 1990’s. By then, several significant issues had converged to make the prospects for development much more attractive, including:

¹ Robert Telewiak, Vice President Environment, Falconbridge Limited, *Keys to Building Successful Relationships with Inuit Communities at Raglan*, Presentation to Prospectors and Developers Conference, March 13, 2001

- The settlement of the historic 1975 James Bay and Northern Quebec Agreement (the James Bay Agreement)²;
- The emergence of new, commercial ice-breaking ships that doubled the traditional four month marine shipping season;
- The availability of new, modular buildings that greatly reduced construction cost and labour requirements for on-site housing and other mine support facilities;
- The construction of an airstrip for each village under the James Bay Agreement, making it feasible to fly Inuit workers in and out of the Raglan site; and,
- The discovery of additional ore bodies and the recovery of base metal prices from their 1970's collapse.³

Falconbridge's landmark 1995 agreement (the Raglan Agreement) with Makivik Corporation (Makivik)⁴ was crucial to the decision to proceed with Raglan. The Raglan Agreement was signed on behalf of SMRQ, Makivik, the Qarqalik Landholding Corporation of Salluit, the Nunaturlik Landholding Corporation of Kangiqsujuak (Wakeham Bay) the Municipality of Salluit, and the Municipality of Kangiqsujuak – constituting Canada's first Impact and Benefit Agreement (IBA) between a mining company and the Aboriginal people to be affected by a mining project.

Falconbridge was represented in this case study by Robert Telewiak, Vice President, Environment, Health and Safety (EHS). With 20 years of wide-ranging experience at Natural Resources Canada, Mr. Telewiak joined Falconbridge in 1996 as Director of Environmental Affairs, and was appointed Vice President of EHS in 1999. His responsibilities include corporate and operational policies and strategies in the areas of environment, occupational health, safety and industrial hygiene.

Robert Lanari is Project Director for Makivik, and has been with the Corporation for 25 years, holding responsibilities for many major development projects in Nunavik. Mr. Lanari was involved in negotiations with Hydro-Quebec regarding the Great Whale River Hydroelectric Project and the diversion of a major river to build the James Bay Hydroelectric Project, and he represented Makivik in Raglan negotiations with Falconbridge.

This case study's moderator was Dan Jepsen, Executive Director of the B.C. and Yukon Chamber of Mines (BCYCM) and a Registered Professional Forester with 25

years in the resource sector. Before taking up his current BCYCM responsibilities in August, 2002, Mr. Jepsen was Manager, Aboriginal Affairs and Environment for Western Forest Products Ltd., where he oversaw the company's relations with 32 First Nation bands, and led the successful delivery of ISO 14001 and Canadian Standards Association (CSA) independent certification for 41 forestry operations. In setting up the discussion, the moderator noted that this panel featured exceptional depth and balance, and that he anticipated a compelling review of some the key dynamics of the Raglan Agreement – both in its lengthy consultation and negotiation stages, and in the on-going process of its implementation. Mr. Jepsen also observed that it was interesting, and perhaps symbolic, that Makivik's Inuit leaders had chosen to send a non-Aboriginal representative to this *Aboriginal Engagement and Sustainability Conference*.

Presenters' Discussion

1. The Raglan Agreement – Preparation, Consultation, and Negotiation

Robert Lanari began by outlining the origin and purpose of Makivik:

“Makivik Corporation was formed in 1978 to carry out the mandate created for it by the 1975 James Bay Agreement: representing the interests of the Inuit people of Nunavik Territory, addressing the ecological and social needs of the region, and ensuring that the Government of Quebec lives up to the terms of the James Bay Agreement.”

He turned to the issue of consultation, noting that early discussions between Falconbridge and the Inuit were not fruitful, or even promising:

“In 1992, after about 30 years of exploration, Falconbridge took its preliminary decision to develop Raglan. The company went to see the two closest Inuit villages – Wakeham Bay⁵ (500 people) and Salluit (800 people), to inform the communities of the Raglan development decision, and to ask, ‘How can we contribute to your community?’ It quickly became clear that Falconbridge's initial approach to community support involved a narrow and limited focus on civic improvements.

The communities were not happy with this rather limited approach to consultation, and they asked Makivik to intervene on their behalf. Senator Charlie Watt, Makivik's President at the time, led the Inuit in negotiations with

² “The James Bay and Northern Quebec Agreement (JBNQA) was signed in 1975 as part of a commitment by the Canadian Government to deal with land issues dating back to the 1800's. The Agreement was one of Canada's first modern land claim settlements and includes as its major components a land regime; environment and social protection; local government provisions; education; hunting, fishing and trapping provisions; economic development; health and social services; and the role of the federal government.”
See: <http://www.atns.net.au/biogs/A001581b.htm>

³ Robert Telewiak, Vice President Environment, Falconbridge Limited, *Keys to Building Successful Relationships with Inuit Communities at Raglan*, Ibid, 4-5

⁴ “Makivik Corporation was created in 1978 pursuant to the signing of the James Bay and Northern Québec Agreement (JBNQA). Makivik is the recognized Inuit Party to the Agreement. It is a non-profit organization owned by the Inuit of Nunavik. Its central mandate is the protection of the integrity of the JBNQA, and focuses on the political, social, and economic development of the Nunavik region.” See: <http://www.makivik.org/>

⁵ Now known as “Kangiqsujuak”

Falconbridge. An Agreement-in-Principle (AIP) was reached in 1993, setting out four discussion points to form the basis for negotiating a comprehensive agreement. Those points were:

- Environment;
- Employment;
- Training; and,
- Compensation.”

Mr. Lanari went on to note that two years of intensive negotiations around the AIP framework followed, leading to the signing of the Raglan Agreement on February 28, 1995.

Robert Telewiak opened his remarks by pointing out that Falconbridge started exploring the Raglan property in 1957, more than four decades before the Raglan Mine opened in 1998. He noted:

“Falconbridge’s perspective on issues involving environmental stewardship and Aboriginal consultation has changed greatly over the years. By the early 1990’s Falconbridge was looking seriously at Raglan, and knew that the capital investment required to develop the mine would exceed \$600 million. Community support was an essential pre-condition for the development decision.

During the early phases of detailed exploration, Falconbridge hired a local advisor to provide a liaison between the company and the neighbouring communities of Salluit and Kangiqsujuaq (formerly known as Wakeham Bay). Formal consultations with the communities were part of an official approval process set out in the James Bay Agreement, mandating review of development projects by the Kativik Environmental Quality Commission. The process brought together personnel from all levels and departments of the company, villagers, their mayors and councils, the Kativik regional government and Environmental Quality Commission, Makivik Corporation, the federal Coast Guard, and Quebec provincial ministries responsible for mining and environment. Through these contacts, it became clear that the main concerns of the local people centred on:

- The environment;
- Employment; and,

- The influx of southern people to their lands.

While many expressed an interest in expanding into a wage economy, they did not wish to abandon their traditional pursuits of hunting and fishing which are central to their culture. They were also concerned that economic diversification not come at the expense of the environment.”

Mr. Telewiak outlined some of the Inuit benefit highlights of the Raglan Agreement:

- “Priority of employment for qualified Inuit for the two closest communities to the project, the region as a whole, and other Inuit from Nunavik;
 - The mine has created roughly 1,200 direct and indirect jobs, of which 350 are full-time on site positions. Twenty per cent of these on site positions are to be filled by Inuit employees;
- Priority in awarding contracts to competitive Inuit enterprises for work required during the ‘operating phase’ of the mine by direct negotiations with qualified Inuit enterprises;
 - For example, Falconbridge signed a \$50 million joint venture agreement with an Inuit enterprise for open pit mining. We also entered into a \$12 million contract with a local trucking company that hauls concentrate to Deception Bay, as well as fuel and supplies to the site. The experience gained by the contractors will also help to get other contracts in the North;
- Monetary compensation and profit-sharing payments to be made to the signatories of the agreement for the benefit of Salluit, Kangiqsujuaq and Nunavik region inhabitants;
 - The Raglan Agreement requires Falconbridge to provide compensation payments to Makivik and to a trust fund for the local Inuit in the form of guaranteed payments, which could total more than \$70 million over 18 years;
- The establishment of the Raglan Committee, a permanent committee responsible for overseeing implementation of the agreement and reviewing any outstanding environmental issues;
 - The Raglan Committee has six members: one from each of the neighbouring communities and Makivik, and three from Falconbridge. The committee

meets at least once every quarter for the first five years, and at least twice annually thereafter;

- Additional mitigation, monitoring of the environment beyond regulatory requirements, and the results of all monitoring to be reported to the Raglan Committee on a regular basis;
 - For example, we deliberately shorten the shipping season to avoid icebreaking activities during certain months. This minimizes the impact on marine migratory patterns and Inuit hunting seasons.
- Should mitigation measures not be acceptable to the Agreement’s parties, an arbitration process would be pursued with a mutually acceptable arbitrator.

2. Raglan Agreement Implementation Issues

a. Environmental Protection

Robert Lanari stressed that the same issues that made environmental protection the over-riding negotiation issue also dominate Makivik and Inuit priorities for implementation of the Raglan Agreement:

“The environment is always the crucial concern for the Inuit. Their lives revolve around the land, sea and air; not just for their own subsistence, but as the heart of their traditional culture. The Inuit see themselves as stewards of their harsh and delicate environment and of the living things that rely on it as habitat – like the hundred thousand Arctic char that depend on the water downstream from Raglan.”

Robert Telewiak confirmed that Falconbridge understands the importance of the environment to the Inuit. He noted that the Raglan project is one of the few mining operations in Canada to achieve ISO 14001 certification⁶, and added:

“Raglan’s top environmental priority is the monitoring and maintenance of water quality. We have a 100 per cent mill effluent recycling program. Also, tailings are filtered to remove most of the waste water and then the residue is deposited in a fill area, to be covered with inert rock and frozen by the permafrost.”

Mr. Lanari responded by noting that Makivik has concerns about the stockpiling of tailings. He then advised:

“Makivik and Falconbridge are sponsoring research to examine whether rising air and ground temperatures may increase the risk of acid leaching from the tailings, and to search for ways to render the tailings material inert to reduce the impact of leaching in any event.”

b. Inuit Employment

“Falconbridge’s long-term vision calls for significant Inuit participation in Raglan’s operation and management,” said Robert Telewiak, noting also that the Raglan Agreement calls for Inuit staffing of 20 per cent of the mine’s on-site jobs. He added:

“Improving both the quantity and quality of Raglan jobs performed by Inuit continues to be one of our biggest challenges. Currently we’re at about 15 per cent, and too many of those jobs are at entry level. A number of issues are at play, including:

- Location and distance – the mine site is 150 kilometres from the closest village, with no connecting road;
 - Separation from family and community is very difficult for Inuit workers, especially during key hunting and fishing seasons;
 - § Falconbridge has implemented flexible scheduling for Inuit workers, but more solutions need to be found;
- Education – testing indicates that Nunavik education standards are up to two years behind southern standards in grade level proficiency;
 - Inuit students and young workers lack the skill base for the technical job training they will need at Raglan’s very modern operation;
- Cultural Differences
 - Falconbridge is a modern, global company. There are significant cultural differences to bridge in bringing inexperienced Inuit workers into the Raglan operation. This cultural bridging takes time and tremendous effort, but we will achieve success with our Inuit partners. In our Dominican Republic operation, almost all of our employees are Dominican, including management. In New Caledonia, we have a joint venture owned 51 per cent by the local Indigenous community, and 49 per cent by Falconbridge.

⁶ The ISO 14001 standard involves rigorous independent assessment of a company’s environmental management system, focusing on what the organization does to minimize the harm its operations cause to the environment, and what it does to achieve continual improvement of its environmental performance. See: <http://www.iso.org/iso/en/iso9000-14000/index.html>

We know it can be done, and we are committed to working together with Makivik and the Inuit people to find the solutions for Raglan.”

Robert Lanari acknowledged that the Raglan employment challenges are significant, but was adamant as he continued:

“After seven years of removing the resource from the land, we have to do better than this. Inuit still only hold only nine per cent of the on-site permanent jobs – 15 per cent if we include temporaries and trainees.

It’s not enough to look for ways to help the Inuit to adjust to working in this state-of-the-art mining operation. The reality is that Raglan is almost 2,000 kilometres north of Montreal, in the heart of Nunavik Territory, where Inuit people have lived and worked for thousands of years. Falconbridge and the Raglan Mine must work harder to adapt, too. Much more than ‘flex-scheduling’ can be done, and must be done, to integrate Raglan into the habitat and lives of its Inuit neighbours.”

Dan Jepsen then recalled one of his most vivid “Lessons Learned” in cultural adaptation:

“I went into a remote First Nation community for a first meeting on behalf of Western Forest Products. The boss thought it would be more efficient for me for to fly in for the meeting in the company’s new helicopter.

So, I arrived to quite a welcoming committee. They were certainly impressed by my grand entrance. We visited, and then got down to business. I explained that we were looking forward to working with them in their territory, and I asked, ‘So, is there anything you need in your community that we could help you with?’

The Chief nodded, turned and pointed, ‘We could use that helicopter, and two pilots.’”

c. Business Opportunities

Robert Lanari noted that because mining’s time frame is inherently short-term, Makivik’s development focus must be long-term:

“We concentrate on Inuit procurement opportunity and capacity development. Real progress is being made. We have two joint venture companies operating under Raglan service contracts, and we are using our Raglan Agreement compensation funding as seed capital for new development.⁷

⁷ “The Inuit of Nunavik have received various payments as compensation arising from a number of agreements with government and corporations for activities having an impact on the traditional territory of Nunavik. The compensation received to date exceeds \$100 million (investment portfolio now worth over \$140 million – no individual payments ever made). The Makivik Corporation has always treated these monies as a “heritage fund” and its financial policies have been aimed at ensuring that funds are available for future generations of Inuit. An Investment Review Committee establishes criteria for

investment and monitors the performance of the fund. The revenue generated by the investment capital has been dedicated to promoting the welfare and economic advancement of the Inuit. Grants have been made to Inuit non-profit (furniture assembly, Illuapiit structure, housing) and cultural organizations and recreational facilities have been built in each of the 14 Nunavik communities. In addition, investment revenue has also been used to create several subsidiary, for-profit companies.” See: http://www.firstpeoples.org/land_rights/canada/mining_agreements/mininglrc.htm

Open Floor Discussion

A member of the audience asked Robert Telewiak, “When Falconbridge operates internationally, do you meet with the colonizing powers, or with the local Indigenous peoples?”

Mr. Telewiak responded:

“Falconbridge is deeply committed to being recognized and sought out as a ‘Developer of Choice.’ We were approached by the Kanak people of New Caledonia⁸ about developing a mining property in their territory. They came to see Raglan and to meet the Makivik people. After over 350 meetings, Falconbridge entered a joint venture agreement to develop a mine in New Caledonia: with 51 per cent local ownership.”

Jo Render, an independent consultant, asked, “What is the protocol for Inuit communities’ communication with Falconbridge?”

Robert Telewiak replied first, noting that the Raglan Agreement calls for quarterly meetings of the Raglan Committee, and for on-going Committee communication on a range of issues, notably environmental matters.

Robert Lanari continued:

“The Raglan Committee has six members – Falconbridge’s Directors of Operations, Human Resources and Environment, a representative of Makivik (currently, that’s me), and a representative of each of the two closest Inuit communities, Wakeham Bay (now known as Kangiqsujuaq.) and Salluit. The Committee meets at least three or four times a year, and conducts frequent tele-conferences on all manner of issues and concerns. The real weakness of the Raglan Committee is its lack of a dedicated budget. Without independent funding, the Committee lacks independent capacity.”

Michael McPhee, President of the Mining Association of B.C., asked, “Is there an amendment or adjustment mechanism for the Raglan Agreement, and has the Agreement been changed over its 10 years of operation?”

Robert Lanari replied:

“There is an amendment mechanism, and the Agreement has been amended once since 1995 – to permit Falconbridge to exploit a number of new sites on the Raglan property.”

⁸ A French colony in Melanesia (islands of the South Pacific).

Janice Keyes noted that Raglan Agreement negotiations went on for two to three years, and wondered what ‘power dynamic’ highlights of that process might be shared in this discussion.

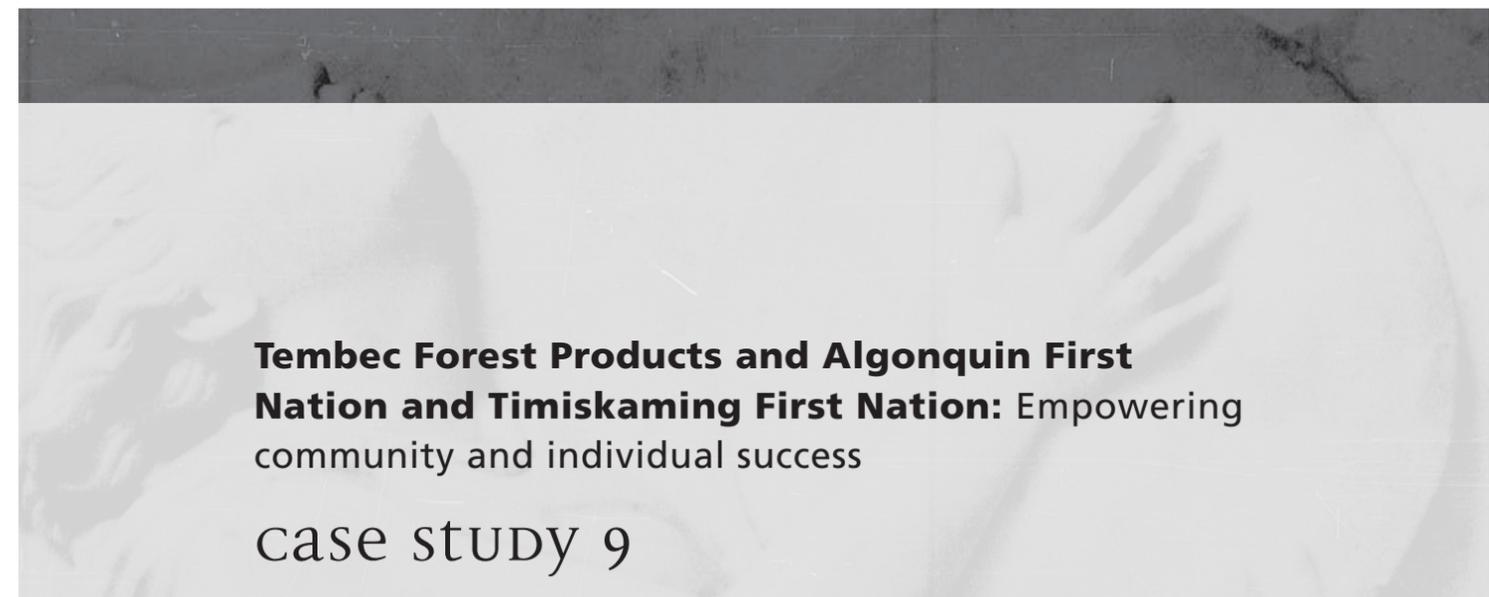
Robert Lanari responded first:

“The Inuit position was weakened by the fact the Raglan property was not on Inuit land, as settled by the 1975 James Bay Agreement. However, the Inuit also had two aces in their hand. First, Falconbridge needed a provincial Environmental Assessment Certificate for Raglan. Inuit opposition to that application could have seriously jeopardized its chances. Second, the Inuit had off-shore claims pending for Hudson’s Bay and Hudson’s Strait. Falconbridge’s lawyers feared that a settlement might be reached that could give the Inuit off-shore jurisdiction – threatening the secure passage of Falconbridge shipping.”

Robert Telewiak remarked that Falconbridge knew that they needed Inuit support for the Raglan project, regardless of whether the Raglan property was technically within the jurisdiction of the James Bay Agreement.

Robert Lanari closed the session:

“However impressive the Raglan Agreement may be, it’s still just a piece of paper. What really matters is the attitude of the parties – after the Agreement is signed. With Raglan, certainly there have been (and continue to be) problems to solve, but the attitude on both sides has remained very positive, seeking solutions instead of finding obstacles.”



Tembec Forest Products and Algonquin First Nation and Timiskaming First Nation: Empowering community and individual success

case study 9

Introduction and Overview

The Tembec story is made for Hollywood, or at least for the National Film Board of Canada.¹ The story that led to the birth of this remarkable company began in January, 1972, when International Paper (IP) announced its decision to close its small pulp and paper mill in Temiscaming, Quebec. The mill’s six senior managers and union representatives of its 350 employees were told that shutdown would take place in 90 days, eliminating about 1,500 regional jobs.

In June, 1973, after IP’s Temiscaming mill had been closed for a year and Unemployment Insurance benefits were running out for its workers, an almost unbelievable series of events unfolded², leading the Governments of Quebec and Canada to join the townspeople of Temiscaming in supporting the bid of the mill’s former employees to buy the mill from IP. Led by four former managers, including mill Superintendent Frank Dottori (now Tembec Inc.’s President and CEO), the employee buy-back went through and Tembec³ was born.

By October, 1973, the mill was back in production. In its first year of operation, Tembec’s 350 employees generated sales of \$35 million, from assets of \$2.5 million in one site. By 2003, Tembec’s over 10,000 employees were generating sales of over \$4 billion, from assets of \$4 billion in 55 sites across Canada, the United States, France and Chile.⁴

Representing Tembec’s leadership was Charles Gagnon, Vice President, Corporate Culture and Social Responsibility. Mr. Gagnon joined Tembec in February, 1974 as a general labourer at the Temiscaming mill. Over the years he pursued intensive studies in Human Resources and Executive Management and held positions of increasing responsibility in the areas of Human Resources Management and Public Relations. He was appointed Vice President, Corporate Relations in 1996, and assumed his current responsibilities in October, 2004.

¹ *Temiscaming, Quebec – A Town That Wouldn’t Die* is a 1975 National Film Board of Canada film. To view the trailer, See: www.tembec.com/DynamicPortal?key=web&lng=en-US&crit=about_ourhistory&page=tpl_about

² For a very entertaining review of those events, see: Bruce Macfarlane, *From ghost town to boom town*, Telegraph Journal, www.nben.ca/environeews/media/mediaarchives/98/boomtown.html

³ The name ‘Tembec’ was drawn from the new company’s roots in Temiscaming, Quebec.

⁴ Frank A. Dottori, *Closing Keynote Address to 84th International Management Conference – PIMA*, New York City, New York, June 29-July 2, 2003.

Also representing Tembec was Norman Young, Coordinator, Aboriginal Relations. What some may see as an element of corporate strategy or due diligence, Mr. Young sees simply as the building of good working relationships between neighbours. Aboriginal engagement is literally second nature to this life-long Temiscaming resident, a member of the Wolf Lake First Nation⁵ and Algonquin Nation, and a long-time local entrepreneur. Mr. Young joined Tembec in 1995 and was instrumental in developing the company’s Aboriginal Relations Department, which he represented on this panel.

Representing the Algonquin Nation was Grand Chief Jimmy Hunter. Elected Chief of the Long Point First Nation at the age of 22, in 1990 he was elected Grand Chief of the Algonquin Council of Western Quebec. After returning to his home community in 1993 and serving two further terms as Chief, in 1997 Jimmy Hunter was elected Vice-Grand Chief of the Algonquin Anishnabeg Nation Tribal Council. He became Grand Chief by acclamation in 2001.

Also on the panel was Steve King, an Algonquin member of the Timiskaming First Nation. Mr. King has served as a councillor in his community of Notre Name Du Nord for many years, and as a Board member for several local institutions. He is now the sole proprietor of several local businesses, including the Timiskaming First Nation’s largest employer, King Konstruction and Forestry. Mr. King shared his business perspective on Tembec – forged by his almost 15 years of business dealings with the company.

This case study was moderated by Julia Ewing, Manager of Northern Affairs for Cameco Corporation. Prior to joining Cameco in 1998, Ms. Ewing worked with the Métis Nation of Saskatchewan as manager of the Clarence Campeau Development Fund. Ms. Ewing has over 20 years of experience in Aboriginal business development, and has worked extensively in Saskatchewan, Northwest Territories and Nunavut.

In turning the session over to the panel, Ms. Ewing pointed out that Tembec has active business relationships with 47 separate First Nations – evidence in itself of a strong commitment to Aboriginal engagement. She noted that the speakers would apply their very different backgrounds and perspectives to many years of overlapping experience in Aboriginal engagement.

This case study demonstrated that the heart of the story behind Tembec’s incredible growth lies in the strength of the company’s commitments to and from people. The panel discussion provided some strong examples of the potential that can be unleashed through sustained commitment to relationship-building in Aboriginal and stakeholder relations – for companies, communities, and individuals.

⁵ “Wolf Lake First Nation is a member of the Algonquin Nation and is a direct successor to the Dumoine and Grassy Lake Band.” See: <http://www.algonquinnation.ca/wolflake>

Panellists’ Discussion

1. Tembec’s Philosophy and Culture

Charles Gagnon opened by stating the business imperative is sometimes overlooked in CSR⁶-focused discussions:

“For a business to survive, never mind succeed, it has to make money. Tembec is in business to make money, and the special circumstances surrounding the origin of the company help us to remember that, every single day. When International Paper closed our Temiscaming mill in 1972, it looked like we were finished – our business, our jobs, our town and our region. We were closed for nearly two years, and when we re-opened for business as Tembec, every one of our 350 employees had to invest \$1,000 in the new company. I had to go to the bank and borrow a thousand bucks to invest and back in 1973 that was a lot of money. People were averaging \$3.40 an hour.

That investment was a huge source of commitment for all of us – responsibility, risk, pride, fear ... all great sources of motivation. Those special qualities of commitment and motivation have remained core Tembec attributes as we’ve grown over the years. They drive our efforts to deliver on our Tembec vision: ‘A Company of People Building their own Future.’”

Mr. Gagnon went on to note that Tembec has worked hard to define its corporate mission, and to develop a set of nine principles and guidelines to help the company and its employees “to walk Tembec’s talk.”⁷

2. Tembec’s Approach to Aboriginal Engagement

Mr. Gagnon then turned to Norman Young and credited him for much of Tembec’s success in its efforts to define its Aboriginal engagement talk and then to walk it:

“In the early 1990’s Norm owned a Temiscaming taxi company. One day as he

⁶ Corporate social responsibility

⁷ “Tembec’s corporate mission is to be a low-cost, profitable integrated forest products company converting forest resources into innovative and competitive quality products for customers while protecting the environment and creating positive long-term social, cultural and economic benefits for the region and its people, employees and shareholders ... The following principles and guidelines were established to guide Tembec in accomplishing its mission.

Financial: To manage the Company in an effective and prudent financial manner so as to ensure increasing shareholder value and long-term growth and stability.

Employee Participation: To create an environment in which all employees can contribute to their maximum ability and maintain high performance standards, effective training, open and honest dialogue and active participation in problem solving and entrepreneurship. To provide employees with a non-discriminatory, safe and healthy work environment, and with the opportunity to participate and share in the growth and financial success of the Company through share ownership and participation in profits.

Customer Service: To meet customers’ expectations in an evolving market with consistently competitive quality products and superior service and to treat our customers as long-term partners.

Supplier relationship: To develop vendor partnerships which consistently meet our quality, service and price requirements, and to build partnerships on trust, mutual benefit and understanding of each other’s expectations.

Product quality: To dedicate our employees to developing competitive products through sound capital investments, an emphasis on creativity and a continuous improvement of processes.

Social responsibility: To dedicate a minimum of 1% of pre-tax profits to promote health, education, culture and recreation that contribute to improving the individual and collective quality of life and to be supportive of employee involvement in the community and in professional group activities.

Environmental responsibility: To establish policies and guidelines in all phases of our operations which provide for responsible stewardship and sustained yield and development of our resources, while protecting the health and safety of employees, customers and the public.

Ethics: To conduct business and relationships with respect, openness and integrity.

Creativity and innovation: To foster creativity by encouraging and rewarding open-mindedness at all levels, being receptive to suggestions, supplying the tools, time and atmosphere to create, as well as providing understanding when ideas fail and support when they succeed.” See: www.tembec.com

was driving Tembec’s CEO, Frank Dottori, Norm asked Frank, ‘What is Tembec doing to improve its Aboriginal engagement?’ Frank then asked Norm for his suggestions. Well, the response occupied the rest of the trip, and then Frank asked Norm to write down his ideas in memo. Norm did, and his memo became the blueprint for Tembec’s Aboriginal engagement policy.”

Norm Young began his remarks by observing that Tembec’s policies and strategies for Aboriginal engagement parallel much of the content and process of this conference. He outlined several core elements of Tembec’s Aboriginal engagement policy:

“First, an ‘open-door’ and ‘Chief-to-Chief’ approach to leadership communication is crucial. Mutual respect is the foundation for any good relationship in the long run, and open dialogue between leaders really demonstrates that respect. The open door also means that many small irritants and misunderstandings are caught and resolved early, before they can build into more dangerous conflict.”

Second, when considering new initiatives, it’s important to engage early, before positions and plans are set. There’s a big difference between ‘disclosure’ and ‘consultation.’ To be sincere, and to be effective, consultation must include willingness and ability to change direction in response to input from the other side.

Third, Tembec focuses on building the capacity of the Aboriginal communities that we deal with. Partnerships are stronger when all members of the partnership are stronger. Ten per cent of Tembec’s employees at our Temiskaming site are Aboriginal. We are open to secondment of our Aboriginal employees to Aboriginal communities we are working with – to share their skills and to build community capacity.”

Mr. Young identified several strengths that First Nations bring to the table:

“Modern First Nation communities contribute serious entrepreneurial capacity to partnerships. Increasingly, First Nation businesses exploit their tax-exempt status to buy valuable equipment and then to deliver winning bids for Tembec service contracts. Listuguj First Nation is a good example: this Mi’gmaq First Nation invested \$2 million to buy a portable wood chipper, and created full-time employment for 14 Mi’gmaq members to operate the chipper in Tembec’s wood yard under a long-term service contract – a true ‘Win-Win.’

Joint ventures and partnerships with First Nations build valuable business certainty – particularly in B.C.’s volatile land claims and treaty environment. Also, First Nations are valuable allies for dealing with NGOs⁸ and government agencies.

Finally, Tembec values its First Nation partners for their contribution to long-term labour force stability and retention. Most of our operations are in remote locations, where First Nations often make up a significant proportion of the local population. Aboriginal communities are young and fast-growing, looking for local opportunities.”

In flagging some of the internal challenges faced by Tembec on Aboriginal engagement issues, Norm Young noted:

“Sometimes our front line people are a little rough around the edges. They’re not always ‘people-people,’ and need training on Aboriginal culture and issues.

While good progress has been made in our Forest Products Group, Tembec’s Pulp and Paper Group is farther behind in developing open attitudes toward Aboriginal workers. Also, we need to keep working with the unions – sensitizing them regarding the need to share jobs with First Nation members.”

Charles Gagnon stressed that an inclusive and sharing approach to Aboriginal relationships is embedded in Tembec’s ‘cultural DNA’:

“Tembec understands that we don’t own the forest lands. We are privileged to be invited to operate on the land, and to develop mutually valuable working relationships with our Aboriginal neighbours in that regard. We are pushing the Government of Ontario to develop protocols for sharing resource revenue with First Nations.

Tembec has made a strong start, but much more needs to be done. Today’s youth in industry and First Nations represent the real key to lasting progress. We’re cutting the trails, but it will be up to them to pave the road.”

3. Timiskaming First Nation and Tembec

Steve King opened his remarks by noting that King Konstruktion and Forestry (KKF) opened for business 18 years ago, doing local infrastructure work. KKF’s first Tembec contract came four years later, involving the training of Timiskaming First Nation members as heavy equipment operators. Today, KKF is the largest employer in the community, doing \$10 million of contracting work with Tembec annually, with 85 per cent of its 50 to 60 jobs filled within the Aboriginal community. Mr. King credited Tembec’s on-going support as an important element of KKF’s success in expanding its operations far beyond its local community.⁹

⁸ Non-governmental organizations

⁹ Steve King noted that KKF operations now extend from wireless communications in Halifax to forestry management and contracting with B.C.’s McLeod Lake Indian Band.

Noting that over the years KKF has done business with all of the forestry operations within 250 miles of the Timiskaming reserve, Steve King added:

“We have been fortunate to build a special relationship with Tembec. Our 2001 Memorandum of Understanding (MOU) was very significant – formally harmonizing Tembec’s forestry operations with the traditional activities and values of Timiskaming First Nation. That MOU confirmed our capacity, and has given us profile and credibility to leverage in expanding our business.”

4. The Algonquin Nation and Tembec

Grand Chief Jimmy Hunter defined the Tembec quality that separates it from other forestry companies:

“The commitment of Tembec’s leadership to ‘open door and Chief-to-Chief’ communication with First Nations is special. A current Algonquin conflict with another forestry company makes that contrast very dramatic.

Several months ago our community was visited by Frank Dottori, Tembec’s CEO. After our wide-ranging discussions, he promised to return in March. We sincerely appreciate Tembec’s commitment to leadership communication at the local level. That community-specific approach to dealing with the diverse interests of the many Algonquin communities gives Tembec a great advantage over its competitors.”

Open Floor Discussion

Cliff Atlee, Jr. referred to a Lac St. Anne¹⁰ First Nation’s ongoing conflict with Domtar, and asked Charles Gagnon to comment on the business case for good Aboriginal relations.

Charles Gagnon responded:

“There can be no doubt that Tembec has been able to strengthen its social licence and to expand its market share by striving to ground its policies and activities in basic CSR principles. Open and respectful communication with our Aboriginal neighbours and partners is a key element of that approach. Some major companies clearly continue to focus on short-term shareholder return; whereas Tembec believes strongly in building long-term value by embracing community and human values.”

¹⁰ The County of Lac St. Anne is north-west of Edmonton, bisected by Highway 43. See: <http://www.gov.lacsteanne.ab.ca/>

Another audience member noted that almost all of northern Ontario’s wilderness areas are now bordered by logging roads, and asked for Tembec’s view of the impacts of logging on wildlife habitat.

Norm Young replied by stressing that a core Tembec priority is to minimize the impacts of its forestry operations on wildlife, and noted that Tembec leads the country in Forestry Stewardship Council (FSC)¹¹ certification of its operations.

Charles Gagnon added:

“With the support of the World Wildlife Fund, Tembec has now certified 55 per cent of the forestlands under our management to the FSC standard, and is on track to reach our goal of having all of our forestry operation FSC-certified by the end of 2005.¹²”

Mr. Gagnon went further to point out that Tembec has been concerned about forest conservation for many years:

“In 1979, Tembec’s CEO sent a letter to Quebec’s Minister of Forests, warning of the long-term dangers posed by allowing too high an annual allowable cut. Too often, government thinking is driven by short-term priorities, allowing political and bureaucratic pressures to prevail at the expense of vision.”

Don Manson of UNBC’s Community Development Institute commented that, in his view, a unifying theme running through many of these Aboriginal Engagement and Sustainability Conference case studies has been the demonstration of need for Aboriginal engagement capacity-building in the forestry-related professions. He asked for response on behalf of Tembec.

Mr. Gagnon agreed:

“We need to see improved cultural sensitivity and capacity in the Aboriginal engagement efforts of business, government and the general public. Tembec wants to do what it can to provide support and direction in that regard.”

Myrna Khan, CBSR’s Vice President and General Manager noted Mr. Gagnon’s distinctive title¹³, and asked him to comment on the process that led to the creation of such a CSR-focused position of responsibility in Tembec’s senior management ranks.

Charles Gagnon replied:

“About a year ago, I had a fairly serious operation, and was off work for four

¹¹ FSC is an international not-for-profit organization founded to support environmentally appropriate, socially beneficial and economically viable management of the world’s forests through independent forest management certification and marketplace labelling of certified forest products. More than 45 million hectares of forestlands have been certified globally according to FSC standards. See: www.fsc.org

¹² Canadian Business Resource, *Corporate Profile – Tembec* See: <http://www.cbr.ca/CompanyProfile.aspx?CompanyID=2576>

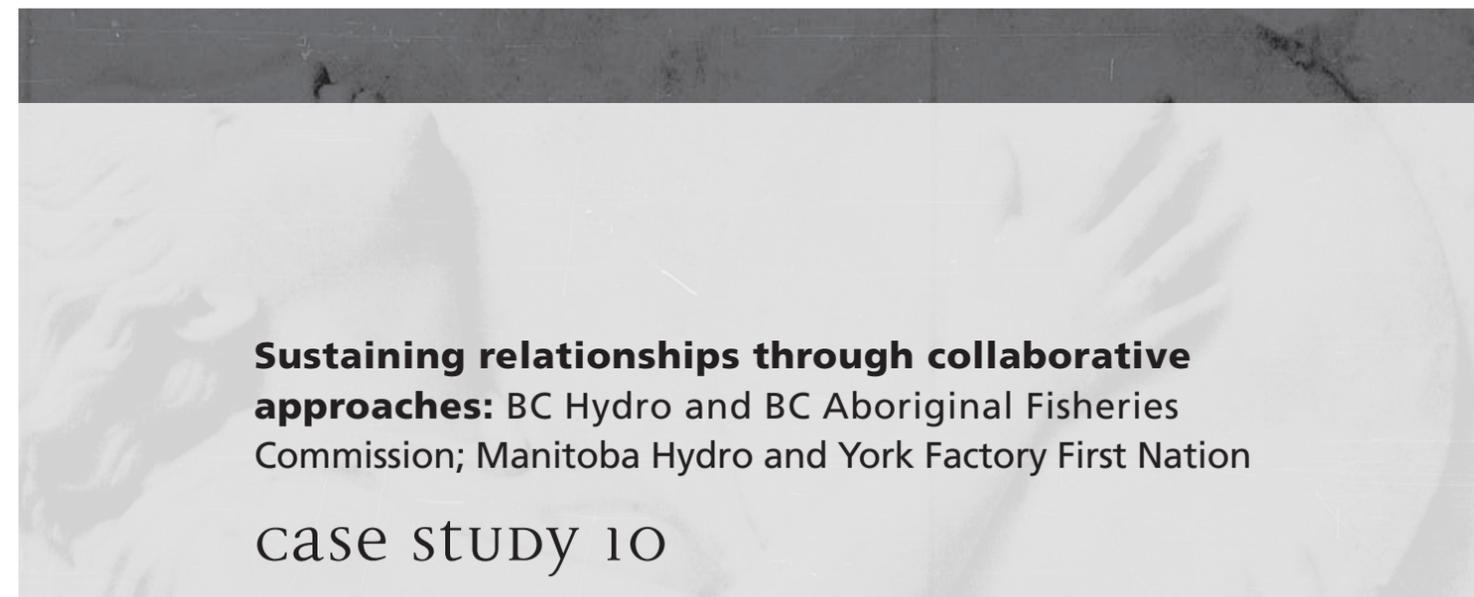
¹³ “Vice President, Corporate Culture and Social Responsibility”

months. That gave me a lot of time to think. I became very concerned as I realized that our CEO¹⁴ and I are both getting close to retirement, and that much more needed to be done to entrench Tembec's CSR-based values in the company's operational protocols. Not long later I relayed that concern to Frank at a company retirement party. He immediately said, 'I agree. Why don't you write yourself a new job description and we'll present it to the Board.'

So, I did that, and the Board blessed it. Now, I have my dream job: five years to work hard to imprint these CSR values so deeply and widely in Tembec's DNA that it will be impossible to undo what we've all begun together since 1973."

In close, Mr. Gagnon explained:

"Investment funds want to talk to us to find out more about our CSR values Tembec's early efforts to do the right thing were never driven by a strategy to 'build social licence' or 'brand value.' Tembec's unique history simply made it obvious to us that treating people fairly, and making them true stakeholders in our business, would build commitment, loyalty and motivation. We just believed then what we know now: those qualities are the true building blocks of long-term business value."



Sustaining relationships through collaborative approaches: BC Hydro and BC Aboriginal Fisheries Commission; Manitoba Hydro and York Factory First Nation

case study 10

Introduction and Overview

Although the provinces of British Columbia and Manitoba present very different faces and outlooks to the world, two strong parallels are evident: an abundance of hydroelectric production; and the need to reconcile the historical footprints and operational impacts of that hydro production with the rights, needs and aspirations of Aboriginal peoples. Almost invariably, the utilities' dams, generation facilities, reservoirs, access roads and transmission lines encroach on territories traditionally utilized by Aboriginal peoples for a range of purposes, including spiritual, sustenance, cultural, economic and recreational activities.

This case study featured two of Canada's largest and cleanest public utilities: Manitoba Hydro and BC Hydro. Presenting with them were two First Nation bodies actively engaged with these utilities in programs directed at reconciliation of hydroelectricity generation impacts on Aboriginal peoples: the York Factory Learning Institute (YFLI) and the BC Aboriginal Fisheries Commission (BCAFC). The session was divided into three sections:

1. Manitoba Hydro and YFLI, addressing The Wuskwatim and Keeyask Training Consortium's *Hydro Northern Training and Employment Initiative*, a strategy designed to prepare northern Manitoba's Aboriginal residents to participate more equitably in the employment and economic opportunities projected to accompany major hydroelectric project development over the next decade;
2. BC Hydro and the BCAFC, examining their collaborative efforts in the BC Hydro's Water Use Planning process, and illustrating the application of some resulting lessons learned in the development of BC Hydro's 2004 and 2005 Integrated Energy Plans; and,
3. Open Floor Discussion.

¹⁴ Frank Dottori was Mill Superintendent when International Paper closed its Temescaming in 1972. Mr. Dottori has been Tembec's CEO since 1979. See: www.nben.ca/vironews/media/mediaarchives/98/boomtown.html

Manitoba Hydro was represented by Shawna Pachal, Manager of Generation Strategic Relations, responsible for developing policies and strategies for managing relations between power supply, regulatory, legislative, Aboriginal and institutional entities regarding hydro export and development issues. A 19 year veteran of Manitoba Hydro, Ms. Pachal currently focuses on working with the Power, Planning and Development Team that is negotiating with Cree Nation peoples in the vicinity of three hydro generating stations proposed for development in northern Manitoba. The YFLI was represented by Jeff Beardy, its Director for the past two and a half years. Adopted and raised by his grandparents, Mr. Beardy was elected to York Factory First Nation Chief and Council at the age of 21, becoming the youngest Councillor in the history of the York Factory First Nation.

BC Hydro’s case study representative was Rick McDougall, Acting Manager for Aboriginal Relations. A member of BC Hydro’s Aboriginal Relations Department since 1996, Mr. McDougall was involved in the start-up of BC Hydro’s Water Use Planning Program, and has led a number of major project consultations and province-wide Aboriginal policy issues for BC Hydro. BCAFC’s perspective was presented by its Special Advisor, Cheryl Brooks, a member of the Sto: lo Nation, and principal of Cheryl Brooks Consulting Ltd. since 2001. Prior to that, Cheryl was an Associate Deputy Minister of B.C.’s Ministry of Energy and Mines, and she held several other senior positions in Aboriginal organizations, government and the corporate sector. She recently led Aboriginal engagement on the review of the federal moratorium on offshore oil and gas review off the British Columbia coast, and authored the resulting report, “Rights, Risk and Respect – a First Nations Perspective.”

This case study was moderated by Dr. Judith Sayers, Chief of the Hupacasath First Nation for over 10 years. Before coming Chief, Dr. Sayers had already gained broad experience in her 18 years of legal practice, working with international forums, lobbying governments and other agencies for the promotion and protection of First Nations’ rights and title.

In setting up the panel discussion, Chief Sayers observed that this case study combines water use and hydro generation issues from two very different provinces, revealing both potential for cooperation and inherent tension. She said that water is regarded by many Aboriginal peoples as the source of strength, life and power. Noting that the slogans of BC Hydro and Manitoba Hydro are “the power is yours,” and “the power is within,” respectively, she then smiled just a little in pointing out that a modern First Nation’s slogan might well be “the power is ours.” Dr. Sayers also outlined the China Creek run-of-the-river hydro project currently being developed by the Hupacasath, with the support of the federal Departments of Indian and Northern Affairs and

Western Economic Diversification. She indicated that the Hupacasath First Nation is proud to be able to be a small part of the solution to the global challenge of greenhouse gas emissions.

1. Manitoba Hydro and York Factory First Nation Learning Institute (YFLI): Wuskwatim and Keeyask Training Consortium: *The Hydro Northern Training and Employment Initiative*

Shawna Pachal opened the panel discussion with a briefing on Manitoba Hydro and two proposed new hydroelectric projects:

“Manitoba Hydro is a Manitoba Crown Corporation and the province’s largest utility, with capital assets in service at original cost exceeding \$10 billion. Currently generating 98 per cent of its total capacity of over 5,000 megawatts¹ from 14 hydroelectric projects on the Nelson, Winnipeg, Saskatchewan and Laurie Rivers, Manitoba Hydro is planning to build three new hydroelectric projects in northern Manitoba over the coming decade.² Relevant to this Case Study are: the Wuskwatim Project, planned as a partnership between Manitoba Hydro and the Nisichawayasihk Cree Nation (NCN); and the Keeyask Project³, proposed as a partnership involving Manitoba Hydro and up to four First Nations – Tataskweyak Cree Nation, (TCN) War Lake First (WLFN) Nation, Fox Lake Cree Nation (FLCN) and York Factory First Nation (YFFN).”

Ms. Pachal highlighted the significance Manitoba Hydro attaches to supporting and promoting Aboriginal community development, and outlined the four main areas of opportunity associated with the proposed hydro developments:

- Equity ownership (i.e., in the Wuskwatim and Keeyask projects);
- Procurement and other business opportunities – comprehensive scoping work is currently underway regarding targeting of Aboriginal opportunities related to Manitoba Hydro’s pending major projects;
- Employment; and,
- Training.

Ms. Pachal noted that Manitoba Hydro supports Aboriginal community development with numerous programs and initiatives in facilities construction and in ongoing

¹ One megawatt is 1,000 kilowatts, or 1 million watts.

² “The proposed Wuskwatim generating station would be built on the Burntwood River in Northern Manitoba and would generate 200 MW of power, with the earliest in-service date being 2010. The Gull (Keeyask) generating facility is another potential generating site. The Keeyask station would produce about 620 MW of power. Construction of the Gull facility would also require the construction of a transmission line to deliver power to Southern Manitoba. The combined cost of these two generating projects, as well as the required transmission facilities, is approximately \$4 billion.

Another option under active consideration is the development of the Conawapa site. This 1,250 MW generating facility project would be similar in magnitude to Manitoba’s Limestone facility, currently the largest generating station in the province.” See: the 2004 Manitoba Budget, The Economy, A13, at <http://www.gov.mb.ca/finance/budget04>

³ Often referred to as the proposed “Gull Generating Station.” As the Cree name for ‘Gull’ is ‘Keeyask’, the project will likely carry that name if it proceeds. *Manitoba Hydro-Electric Board 53rd Annual Report*, 34 http://www.hydro.mb.ca/about_us/ar_2003/ar_2003_report.shtml

business operations. She also noted that the focus for this case study was provided by employment and training opportunities related to the construction of the proposed new generating stations:

“Pre-project training for the proposed projects began in 2000 with a few communities. As more communities began to participate, the Wuskwatim and Keeyask Training Consortium (the Consortium) was established in 2003-2004. Along with Manitoba Hydro, the Consortium consists of Tataskweyak Cree Nation, War Lake First Nation, Fox Lake Cree Nation, York Factory First Nation, Nisichawayasihk Cree Nation, the Manitoba Keewatinook Ininew Okimowin, the Manitoba Métis Federation and the Province of Manitoba. The Consortium administers the Hydro Northern Training and Employment Initiative (the Northern Training Initiative) to facilitate the training of Northern Aboriginal people, enabling them to take advantage of employment and economic opportunities on the proposed Wuskwatim and Gull (Keeyask) hydroelectric projects and related activities in Northern Manitoba.

Under the Northern Training Initiative, more than 1,000 Northern Aboriginal people will receive training in a variety of areas over five-years to prepare them for a wide range of employment and economic opportunities. Nearly \$13.5 million has been invested to date to prepare northern Aboriginal people for future hydroelectric employment opportunities, and \$60 million has been committed for the five year program – \$30 million from the Government of Canada, \$10 million from the Government of Manitoba, and \$20 million from Manitoba Hydro. A key feature of the Northern Training Initiative is that each participating Aboriginal community decides what training is needed for its community, and then designs, develops and delivers that training.”

Jeff Beardy opened his remarks with background on York Factory First Nation (YFFN):

“YFFN is a community of 945 members; 535 of whom live on the York Landing Reserve at Split Lake and the Aiken’s River, 73 air miles east of Thompson. The Crees of York Landing were originally from the region now known as York Factory, Manitoba, a community that was located on the west shore of the Hayes River, approximately six miles inland from the coast of Hudson Bay. York Factory was established in 1671 as one the newly incorporated⁴ Hudson’s Bay Company’s first fur trading posts. Competition for the fur trade industry was fierce between the French and the English and it led to the fort changing hands a few times over the years. In the end, the English established superiority and reclaimed the post at York Factory. The Hudson’s Bay Company closed its doors

at York Factory in 1957, after more than 250 years of trading in the area. The closure of the Hudson’s Bay Store has been cited by the federal government as the major reason it forced the relocation of York Factory Cree to the settlement now known as York Landing. The community of York Landing did not receive reserve status until 1989.”⁵

Mr. Beardy turned to the circumstances leading to the 1977 Northern Flood Agreement (NFA) and its implementation:

“In the 1960’s, Canada, Manitoba and Manitoba Hydro entered a series of agreements calling for the building of hydroelectric stations on the lower Nelson River, the diversion of Churchill River, and the regulation of Lake Winnipeg. Although the two governments, Manitoba Hydro, and five First Nations (the Cross Lake, Nisichawayasihk Cree, Norway House Cree, Tataskweyak Cree, and York Factory First Nations) signed the Northern Flood Agreement in 1977, the implementation process has been contentious, and some elements are still unresolved. In general, we can say that all but the Cross Lake First Nation now have implementation agreements in place, which provide the respective First Nations with the authority and resources to address a range of social, economic, environmental and community development issues at the local level.”⁶

Mr. Beardy then began to speak about the Hydro Northern Training Initiative:

“First Nations have long recognized the many values of community-based training. We see training opportunities associated with upcoming hydro projects as a chance to move to a comprehensive approach to community-based training. The York Factory Learning Institute was established to ensure training stayed in the community to the greatest extent possible. As such, it is building both collective and individual capacities for the York Factory First Nation and its members. And, that approach is already showing results.

Our focus is on building permanent capacity, assets and infrastructure. We are using the opportunities and responsibilities associated with Hydro projects in our traditional territory to move our community and our members from being marginalized to becoming mainstream economic partners and individual participants in our regional economy – with the emphasis on the long run.”

⁴ Incorporated by Royal Charter on May 2, 1670

⁵ See: http://york_factory_fn_304.tripod.com/YorkFactoryFN.html

⁶ For a compelling account of the arduous and protracted Northern Flood implementation process from the NFC perspective, see: <http://tataskweyak.mb.ca/HISTORY/nfa.pdf> “... The Implementation Agreements have provided the Northern Flood Agreement First Nations with direct and ready access to those resources promised in the Northern Flood Agreement, under the control of each First Nation ...” (p. 9)

See also: http://www.ainc-gc.ca/pr/info/bacman_e.html for DIAND’s [now known as Indian and Northern Affairs Canada, (INAC)]’s *Background – Manitoba Northern Flood Agreement:*

Implementation “... The four NFA Implementation agreements effectively place decision making authority and the resources to effect change, directly in the hands of the respective First Nations. The positive results achieved via this approach are being felt directly at the community level with the establishment of ongoing arrangements for the implementation of various NFA obligations involving: four-party environmental monitoring committees, future hydro development activities, resource management and provision of fee simple lands, which the First Nations chose for their economic development potential.”

Turning particularly to YFFN capacity-building under the Northern Training Initiative, Jeff Beardy stressed that the stakes are high. He noted that the York Factory First Nation is creating a new history with its efforts:

“Making history isn’t easy, and it’s almost always messy. But if you don’t make history when the chance arises you will always live by someone else’s history. It’s time we made our own. The degree of community participation and success in training programming will have great bearing on the long term viability of the York Factory community and its people.”

Outlining the York Factory Learning Institute’s educational and training programs and activities that are now underway or planned for the near future Mr. Beardy noted:

“We are supporting and strengthening the diversity of our community and fulfilling the aspirations of our members through that programming. We are offering a wide range of training and capacity building including: training for managers and entrepreneurs, heavy equipment operation and maintenance, construction trades, computer and professional development workshops, apprenticeship programs, child care worker training, counsellor training and many other areas.”

Mr. Beardy closed his comments with a focus on the future:

“Our York Factory community members are preparing for much more than the immediate employment and economic opportunities associated with local hydroelectric construction projects and related activities. We are collaborating with Manitoba Hydro and others as true partners on a number of long range fronts, including infrastructure joint ventures and long-term employment. We are enabling our members to build skills and develop capacities that will encourage, enable and empower them to earn meaningful employment in every aspect of modern society. And, we are building the capacity and confidence needed to create our own history of a future full of new opportunities.”

Judith Sayers noted that this presentation provides an inspiring example what can happen when First Nations and governments to work well together – using creativity and mutual good will to overcome the considerable potential for conflict.

2. BC Hydro (BC Hydro) and the BC Aboriginal Fisheries Commission (BCAFC): Collaborating in the Water Use Planning Process

BC Hydro’s Rick McDougall opened his presentation by thanking the Musqueam, Squamish and Tsleil-Waututh First Nations for their hospitality in welcoming this conference onto their traditional lands. He pointed out that BC Hydro is both a B.C.

provincial Crown corporation and a public utility: accountable to its shareholder, the provincial Government on behalf of all British Columbians, and regulated by the BC Utilities Commission. Commenting that BC Hydro is both strengthened and challenged by the broad scope and attentive scrutiny of its many stakeholders, Mr. McDougall noted that BC Hydro’s mandate is to provide “reliable power, at low cost, for generations,”⁷ and that its vision is “to be North America’s most sustainable public utility.”⁸ He continued:

“Over 90 per cent of BC Hydro’s annual generating capacity of over 11,000 megawatts is provided by its integrated network of 30 hydroelectric projects on 27 watersheds spread throughout the province. Our mandate, our vision and our generation realities all drive us to embrace meaningful and open Aboriginal engagement as a core element of our business strategy. Since the early 1980’s, Aboriginal Relations has been an established component of BC Hydro management.”

Rick McDougall then stressed that BC Hydro regards its approach to Aboriginal engagement as separate from and parallel to its commitment to stakeholder engagement:

“We run 2,000 kilometres of transmission line through 500 First Nation reserves. Many of our facilities impose significant impacts on First Nations’ traditional territories and rights. Understanding the lasting significance of those realities is a key driver behind BC Hydro’s commitment to make Aboriginal engagement a meaningful element of our long range planning.”

Water Use Planning

Mr. McDougall introduced the BC Hydro’s Water Use Planning (WUP) process as the pursuit of inclusion in balancing power generation needs with a wide range of other interests in the use of B.C.’s abundant water resources, and continued:

“When BC Hydro and the federal Department of Fisheries and Oceans started to work together to develop the framework for WUP in the late 1990’s,⁹ from the very early stages it was seen clearly that Aboriginal communities have historic and ongoing interests in the use of provincial water resources. The BC Aboriginal Fisheries Commission (BCAFC) was approached about facilitating the WUP process, and an agreement was reached to work together.”

⁷ B.C. Hydro Service Plan See: <http://www.bchydro.com/info/reports/reports857.html>

⁸ Bruce Sampson, BCH Vice President, Sustainability, PowerPoint Presentation for *The Business Case for Sustainability Conference*, November, 2003. See: <http://www.cbsr.bc.ca/files/ReportsandPapers/BruceSampson-Panel1.ppt>

⁹ “Water Use Planning was developed in 1998 in response to increasing demands on the province’s water resources. The overall goal is to find a better balance between competing uses of water such as domestic water supply, fish and wildlife, recreation,

heritage and electrical power needs, that are environmentally, socially and economically acceptable to British Columbians ... Those involved in developing a water use plan will assess competing alternatives and address these interests to create recommendations for water management at BC Hydro facilities. Each water use plan, once authorized under British Columbia’s *Water Act* will set the conditions for the operation for each licensed facility. The plan will also be reviewed by the federal Department of Fisheries and Oceans (DFO) who may provide authorizations, as appropriate.” See: <http://www.bchydro.com/environment/wateruse/wateruse1775.html>

Cheryl Brooks advised:

“The BCAFC was established in 1984 for the purpose of protecting and preserving Aboriginal fishing rights in B.C., regarding access to, use and protection of fisheries resources and habitat. There is wide diversity among the province’s 197 First Nations, but reliance on fish for food and for social and ceremonial significance is a common and uniting thread.”

Noting that BC Hydro’s facilities and operations have large and negative impacts on many fisheries issues, Ms. Brooks then said that the Aboriginal understanding of sustainability is grounded in traditional culture, and has several dimensions:

- “To maintain our culture and our identity;
- To protect the resources that sustain the community; and,
- To include the members of the community in the decision-making and governance processes.”

Rick McDougall addressed the impact of the release of the *Delgamuukw*¹⁰ decision of Supreme Court of Canada on the WUP process:

“Because *Delgamuukw* came down in December, 1997, right after BC Hydro contracted BCAFC to review the draft Water Use Planning Guidelines among its members, discussions and negotiations began almost immediately to expand Aboriginal involvement in the WUP process. It was later agreed that a BCAFC representative would bring a First Nation perspective to the WUP Management Committee. First Fred Fortier and then Arnie Narcise (as successive Chairs of BCAFC) represented that organization on the WUP Management Committee. Both brought a broad First Nations perspective, but did not represent any First Nation per se. First Nation representatives, from their respective Bands or Tribal Councils, participated on the First Nations Water Use Planning Committee, which was chaired by the First Nations representative on the WUP Management Committee. This was a negotiated arrangement resulting from the WUP Guidelines consultation, and represented a very new innovation in the governance of this type of initiative.

It was also agreed that BC Hydro would fund an independent and broad legal review of the WUP guidelines, and that BC Hydro would fund a further study to consider the inclusion of Traditional Ecological Knowledge (TEK) in WUP.”

Reporting that 24 of the province’s 25 Water Use Plans are now in place, Mr. McDougall described the WUP consultation and negotiation process:

“Certainly getting WUP established and underway has been an expensive and time-consuming process, but I would characterize it more as an excellent investment in relationship-building than as an expense. Through the collaborative work of planning and implementing WUP’s throughout the province, BC Hydro has built significant trust with many Aboriginal communities, which may pay real dividends down the road.”

Cheryl Brooks continued with a review of the BCAFC perspective on the WUP process:

“I would agree with Rick that residual trust and good working relationships have been developed, both between the organizations and between individuals. I would also note several challenges that have handicapped the process.

First, BC Hydro’s status as both a Crown corporation and a regulated utility is a constant source of complexity. There’s a significant profit expected by the Government as sole shareholder, along with “reliable power, at low cost, for generations” of tax-paying, voting citizens. Then there are the oversight issues important to the BC Utilities Commission, along with all the sustainability and stakeholder issues. It’s a very complex mixture of business, politics, and governance. Those complexities continue to affect the Integrated Energy Planning process.

Second, I must note a major frustration to BCAFC and to Aboriginal communities. BC Hydro’s refusal or inability to address historical footprint issues in the course of the WUP process left unresolved some of the most important questions of social justice and compensation. It may well be administratively convenient to separate the historical and operational damage caused to the environment, to wildlife and fish habitat, and to Aboriginal communities and culture. But, to many Aboriginal people, those issues and accompanying damage are intertwined.

Third, the role of the Comptroller of Water Rights is very complex under the Water Act and the Water Use Guidelines¹¹ – requiring that many competing interests be lumped together and balanced. The very inclusive nature of the WUP consultative committee process, combined with the scope of judgment and discretion required of the Water Comptroller, can create impressions of unfairness: for example, the perception that recreational or commercial uses may be given equal footing to Aboriginal uses.

¹⁰ In *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 507, the Supreme Court enshrined the concepts of Aboriginal rights and title, and defined the duties of consultation and accommodation that are triggered by infringement on those rights and title. For a clear and strong discussion of the continuing significance of *Delgamuukw*, see the Supreme Court’s recent decision in *Haida Nation v. British Columbia*, 2004 SCC 74, Para’s 24-42

¹¹ Section 39(1) of the provincial *Water Act* allows the Comptroller or other designated authority to determine what constitutes the beneficial use of water, with the assistance of experts as required. (p.10 of the *WUP Guidelines*.) The *Water Use Plan Guidelines* empower the Comptroller to conduct an inquiry under the *Water Act* “... to resolve a conflict, ensure that a licence reflects actual practice, or review compliance with a WUP, with respect to ... [seven items]”(p. 42) “In addition, there is

a legal obligation on the Comptroller to determine if the granting of licence or licence amendment will infringe on aboriginal rights.” (p. 45) “At the provincial level, approval of a WUP will require a review and decision by the Comptroller.”(p. 43) See: <http://www.bchydro.com/environment/wateruse/wateruse1775.html>

Finally, the timing of the process was difficult, because Aboriginal community consultation is almost always time-consuming.”

Rick McDougall added a comment on the “equal footing” issue:

“The planning processes used, particularly the consultative committee process, allowed various users to have equal opportunity to put forward their views. In addition, special processes were used in many WUPs to solicit Aboriginal views, including separate meetings, capacity funding, technical assistance, and heritage studies. It does not mean that various uses were given equal weight in the final analysis of options. The options recommended by the consultative committee were ones that – on the whole – attempted to meet everyone’s interests and maximize values. It was then the Water Comptroller’s responsibility to review the results on a WUP by WUP basis, and to make decisions within the context established by the WUP guidelines, and the applicable law.”

Integrated Energy Planning

Rick McDougall outlined the strategic and policy elements of an Integrated Energy Plan (IEP)¹²:

“An IEP is a long-term plan that outlines how we will meet anticipated customer needs, using a combination of existing and new energy resources, and energy conservation programs such as Power Smart. An IEP ensures that we meet our obligation to supply reliable electricity to customers at a reasonable cost, while factoring in key environmental and social considerations.”

Mr. McDougall noted that BC Hydro’s perspective on Aboriginal involvement in the IEP process was informed by its recognition of the success of the inclusive approach to Aboriginal and community consultation developed for WUP. He continued:

“BC Hydro approached BCAFC to suggest a consultative approach for engaging First Nations in IEP discussions. A similar process of hiring an independent First Nations facilitator, combined with regional IEP meetings in 2004 and 2005, has provided very successful results. In addition, four First Nations representatives have been appointed to the IEP Steering Committee to ensure that Aboriginal issues are considered in this strategic planning initiative.

BC Hydro has made a significant leap in terms of involving Aboriginal people in long-term strategic planning – initially through the WUP process, and now through the IEP process. It is a very major shift forward in the relationship between the company and First Nations, and hopefully will be followed by others.”

¹² See: <http://www.bchydro.com/info/epi/epi8970.html>

Open Floor Discussion

Chief Judith Sayers asked Shawna Pachal to explain what led Manitoba Hydro to integrate Aboriginal capacity-building into its hydroelectric development process.

Ms. Pachal highlighted several factors:

“The current NDP Government’s strong support for Aboriginal participation, a strong First Nation and Métis lobby, and widespread recognition within Hydro of the value (and vulnerability) of its social licence to operate – these were all contributing factors.”

Chief Sayers then asked Jeff Beardy to comment on the significance of being involved in the planning process, from the Aboriginal community perspective.

Mr. Beardy explained:

“York Factory First Nation’s meaningful and early involvement in the planning process meant community empowerment. It allowed for the meaningful use of TEK¹³, which meant listening to and respecting the advice of our elders and community members. The acknowledgement by others, including Hydro and governments of the value and importance of the Aboriginal perspective was long overdue. It reinforced what we already knew and the way we were applying our knowledge to our education and training programs and activities. Community-based training is a powerful social force for Aboriginal communities. Seeing high participation and completion rates is very rewarding to those responsible for planning and managing the training.”

Shawna Pachal added:

“Aboriginal partners have told us that they feel that they have a real voice – for the first time.”

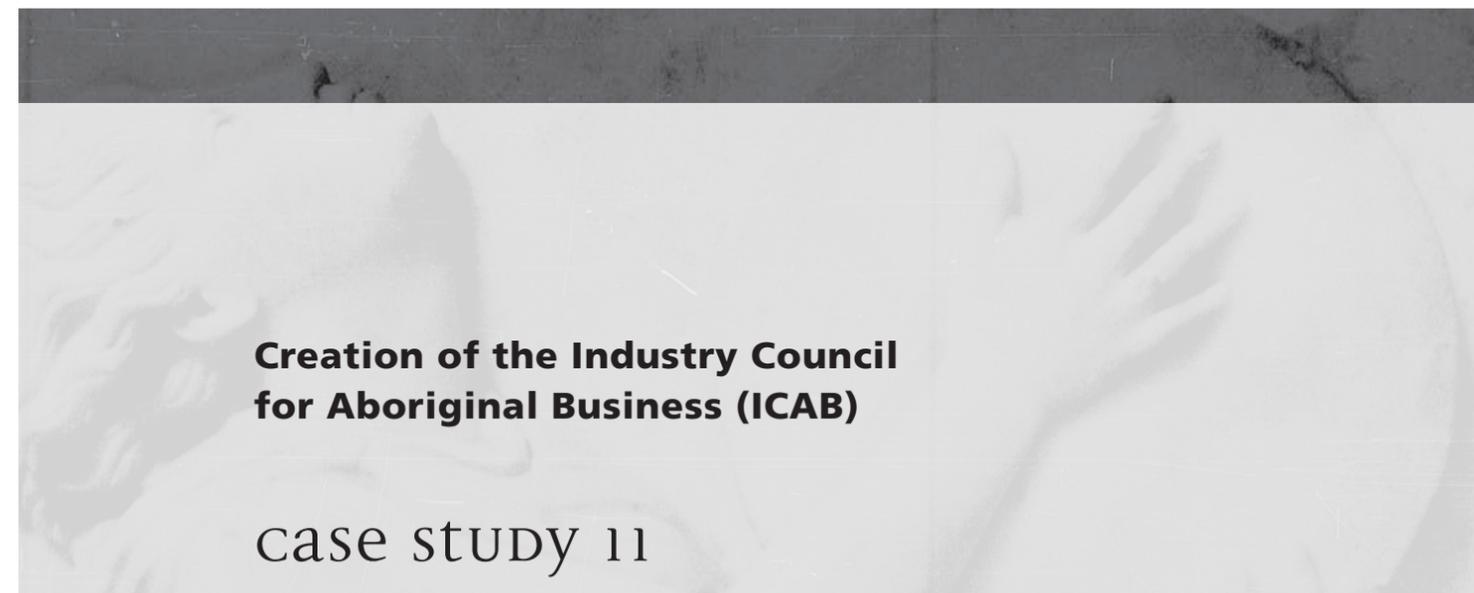
Keith Mathew of the Shuswap First Nation made a strong opening statement, declaring that deep frustration is felt in many Aboriginal communities as a result of BC Hydro’s continuing refusal to address its responsibility for historical footprint damage caused by the building of its mega-projects. He referred to the displacement of entire communities, and to losses of traditional territories, archaeological treasures and ancestral remains to flood waters. He noted that as a former BC Hydro employee, he had worked on numerous WUP committees, and said that this issue was a major concern in nearly every Aboriginal community that came forward during the WUP

¹³ Traditional Ecological Knowledge – broadly describes systems of understanding one’s environment, based on detailed personal observation and experience, and informed by generations of elders. TEK is recognized and used around the world as an important environmental assessment tool. See: BC and Yukon Chamber of Mines, *Mining and Aboriginal Community Engagement: A Guidebook for Minerals Exploration and Mining*, January 2005 – DRAFT, p. 130.

process. He then asked, “Why can’t BC Hydro follow the more progressive examples being provided by Manitoba Hydro and Hydro Quebec?”

Rick McDougall responded:

“The WUP process simply never had the mandate to address historical issues. That has been frustrating for many people. Parallel to the WUP process, BC Hydro has been, and continues to be, deeply involved in a number of negotiations of damage claims regarding historical footprint issues – both in litigation and in the treaty process.”



Creation of the Industry Council for Aboriginal Business (ICAB)

case study 11

Introduction and Overview

Sometimes organizations are born to address needs, and sometimes to pursue opportunities. As this case study demonstrated, some of the most exciting organizations emerge when need and opportunity converge through informed and focused dialogue.

Incorporated late in 2004, the Industry Council for Aboriginal Business (ICAB) “... works to increase economic opportunity by fostering successful working relationships between industry and Aboriginal business.”¹ As a business association directed at stimulating economic development, ICAB builds bridges of information, ideas and resources at ground level – focusing on B.C. and the Yukon Territory.² ICAB states its business case very simply:

“The environment in which businesses and Aboriginal people operate is ever changing. Resources are limited and the issues are increasingly complex. ICAB offers opportunities for organizations with similar interests to benefit from sharing information, ideas and resources to reach common ground quickly and within limitations.”³

ICAB was represented by Laureen Whyte, Chair of its Planning and Operations Committee. Ms. Whyte, principal of Arbutus Consulting, has over 15 years experience in providing advice and support in community-Aboriginal relations and community economic development. Previously, she led the successful efforts of a professional staff at Duke Energy (and its predecessor, Westcoast Energy), establishing the company as an innovative leader in the development of focused community engagement initiatives.

Already ICAB has made significant progress in building meaningful connections with Aboriginal communities: four Aboriginal people serve on its Board, including two First Nations’ representatives. The nearly 4,000 members of the Cowichan Tribes, forming

¹ Industry Council for Aboriginal Business, www.icab.ca

² For a clear explanation of ICAB’s core principles, organized around its four values (Leadership, Commitment, Respect, and Vision), see: www.icab.ca

³ *Ibid.*

six communities in Vancouver Island’s Cowichan Valley, are represented on ICAB’s Board (and in this case study) by Ted Williams.

For the past 12 years Mr. Williams has played a key role in the conception and development of several successful operating companies owned by Khowutzun Development Corporation (KDC), a management company owned by the Cowichan Tribes community. After several years of independent work experience, Ted Williams pursued further training in Business Management and Community Economic Development, returning to become KDC’s Business Development Officer.

This case study provided clear insights into some of the key elements of ICAB’s emerging role as a catalyst for the creation and growth of partnerships and joint ventures between Aboriginal and non-Aboriginal businesses. There was also spirited discussion – exploring the background of KDC’s role in the remarkable economic revitalization of the Cowichan Tribes; and demonstrating the significance of early support from an influential corporate ally.

Moderating this case study was Paul Perkins, Vice President, Policy and Planning for Weyerhaeuser Canada. Bringing broad marketing and international sales experience from Macmillan Bloedel, Mr. Perkins joined Weyerhaeuser Canada in 1979 and became Vice President, Sales and Distribution in 1984. After several other Vice Presidential appointments, he assumed his current post in 2003. As a past President of the Canadian Wood Council, past Chairman of the Sustainable Forestry Certification Working Committee, and the Team Leader for Weyerhaeuser’s issue team in the softwood lumber dispute, Mr. Perkins brought a broad and informed industry perspective to the discussion.⁴

In his introduction of the presenters, Mr. Perkins noted that it seems fitting that our final case study should feature two very different speakers and organizations, each demonstrating commitment to sharing and applying some of the key partnership principles running through this conference.

1. The Industry Council for Aboriginal Business (ICAB)

Laureen Whyte began her remarks by describing the heart of ICAB’s approach to supporting communication between Aboriginal and non-Aboriginal businesses as “networking facilitation.” She outlined the two components of that approach:

“ICAB works to find, support and strengthen bridges between two very different cultures, and to enhance capacity for effective engagement within the respective communities. Those bridges are anchored by respect – one of ICAB’s core values.”⁵

Ms. Whyte reviewed two tools that ICAB has prepared for its current and future members:

“*Making the Grade: A Guide to Success for Corporate-Aboriginal Initiatives*⁶ is a ‘toolkit’ intended to assist both Aboriginal and non-Aboriginal businesses with developing and building effective relationships by drawing from the current experiences of 13 corporate-Aboriginal initiatives in B.C. and the Yukon. It identifies the business cases, elements of successful relationships, and effective practices of corporate and Aboriginal organizations in achieving these relationships.

On March 15 and 16, 2005 ICAB will host ‘On Common Grounds,’ an intensive forum of speakers, workshops, and opportunities for focused networking. Highlights will include BC Treaties Commissioner Mike Harcourt’s review of the status of the treaty process, an address on leadership issues by Leah D. George-Wilson, Co-chair of the First Nations Summit, and a presentation by Jerry Lampert, President and CEO of the Business Council of B.C., reviewing a number of Aboriginal/non-Aboriginal partnership success stories, including: Haida/Golder Associates (Haida Environmental), Tsleilwaututh/Kuok Group (Takaya Development), Osoyoos Indian Band/Vincor (N’kmip Cellars), Kaska Dena/Teck Cominco (Kukz Ze Kayah), ACCESS/Grant Thornton (Destinations), Fort Nelson First Nation/Ensign Drilling (Eht’oni), and Khowutzun Development Corporation/Terasen.

‘On Common Grounds’ has received generous support by a group of strong sponsors.⁷ ICAB will hold its first annual AGM in the spring of 2005 and plans to provide networking events and workshops to its members on an on-going basis.”

2. The Cowichan Tribes and KDC/Terasen (formerly Westcoast Energy)

Ted Williams set up his presentation by sketching the impact on his perspective made by the circumstances of his upbringing on the Cowichan Reserve:

“I was born in 1955. As I was growing up, everybody in our community worked

⁴ Mr. Perkins’s work on Weyerhaeuser Canada’s Aboriginal engagement file was featured in *BC Business and First Nations at the Sustaining Table*, A Summary Research Brief released by CBSR at *The Business Case for Sustainability Conference*, November, 2003.

⁵ “**Respect** ICAB was inspired through an open dialogue between business and Aboriginal representatives who understand that, to be successful, we must work together toward common needs, desires and goals. ICAB understands that initiatives emerging from thoughtful discussions that focus on proactive results will produce meaningful and lasting mutual benefits. ICAB provides its members with focused and practical means to establish relationships on the basis of informed dialogue.”

See: www.icab.ca/brochure/pdf

⁶ www.icab.ca/Making.pdf

⁷ BC Ferries, Duke Energy, BC Hydro, BC and Yukon Chamber of Mines, Business Council of BC, EnCana Corporation, Indian and Northern Affairs Canada, NorskeCanada, Royal Bank of Canada, Teck Cominco and Terasen.

in fishing and logging. But, by the early 1980's, both those industries were hit hard by recession, and unemployment was rampant. The Cowichan community was devastated and powerless to respond: we suffered 48 suicides in 1980-81. Many marriages collapsed, child care and foster care were very poor, and our young people saw no reason for hope or community commitment. That crisis had a huge impact on me as a young man: it made me very determined to try to improve my skills and to broaden my experience. I was self-employed for the next 11 years in a range of ventures, eventually moving into the natural gas industry – starting absolutely at ground zero. I remember thinking that natural gas was a liquid that flowed through a pipeline, like petroleum.”

Mr. Williams noted that a pivotal moment for the Cowichan Tribes arrived in 1989, when it became apparent that Westcoast Energy needed to build a gas pipeline through Cowichan lands:

“Chief Dennis Alphonse decided to talk to Westcoast Energy’s leader about linking land access to job creation. At that time, 85 per cent of our population of nearly 4,000 was unemployed (even today, with the encouraging progress we’ve made, our unemployment rate is still 75 per cent). Westcoast Energy was not prepared to enter a joint venture, and told us that we didn’t yet have capacity to carry their gas on our own. But they did undertake to find us a suitable partner, and they followed through on that undertaking.

In 1991, the Cowichan Tribes and Northern Pipeline Limited, an American natural gas distributor, formed a joint venture called Khowutzun Pipeline Constructors Ltd. (KPC). The joint venture agreement was for a five year term, and provided the Cowichan Tribes with a buy-out option.

The true turning point was our decision to exercise that option in May, 1996 and to go on our own in the natural gas distribution business as Khowutzun Mustimuhw Contractors Limited Partnership (KMCLP). Here too, Westcoast Energy was very supportive. When their customer (Centra Gas Vancouver Island) expressed concern about the leadership capacity of the new company that was emerging to deliver their natural gas, Art Willms, CEO of Westcoast Energy, stepped in. He provided a crucial vote of confidence, and persuaded Centra Gas Vancouver Island to give KMCLP a chance. They did; we delivered the gas; and KMCLP won the bid for renewal of that contract – holding it to this day.”

Shifting gears, Ted Williams then explained the impetus for the establishment of the Cowichan Tribes’ management company:

“By 1993, it had become apparent that the Cowichan Tribes needed a management company to oversee and support its emerging group of businesses. The Khowutzun Development Corporation was incorporated on May 12, 1993.”

Ted Williams took pains to point out that the Cowichan Tribes’ learning and earning curves weren’t uniformly positive:

“Through the 1990’s, Westcoast Energy tried to warn us that the gas industry is volatile, and that the Cowichan Tribes should diversify. We were excited about our growth, and we didn’t listen. KPC, our gas pipeline construction business, went from an employment high of 150 jobs down to 10 employees by the winter of 1999.

As is so often the case, it really wasn’t that hard to see what we needed to do, once we knew what to look for. With almost 4,000 members, the Cowichan Tribes make up the largest single First Nation community in British Columbia. We have a significant labour force, and the sheer size of our community creates significant demand for essentials like housing, urban infrastructure and services, and support for traditional education and culture. So, we went to work, identifying our needs and trying to build our capacity to meet those needs within the Cowichan community – plugging the economic leaks.”

Mr. Williams described another demonstration of support by Westcoast Energy:

“Westcoast commissioned a study that contrasted KMCLP’s strong performance with that of other contractors in the natural gas delivery realm. Westcoast Energy built on the conclusions of that study to generate the model and template for further business development by the Cowichan Tribes. The development model provided by Westcoast has been the template for the Cowichan Tribes’ business growth through to the present day.”

Mr. Williams described KDC’s progress since that bleak winter of 1999:

“KDC now manages the work of 325 people, providing overall financial management, business development services, and communication services for the five operating companies that it serves: KMCLP, Khowutzun Millwork and Joinery, Khowutzun Forest Services Limited Partnership, Quw’utsun’ Cultural and Conference Centre, and Cherry Point Vineyards.

KMCLP is the largest of our operating companies, with 225 employees and five divisions: the Natural Gas Pipeline Division, the Structural Division, the Civil

Division, the Engineering Services Division, and the Truss Plant. KMCLP supplies all the band’s housing needs, and is a growing presence in the Cowichan Valley and beyond. For example, KMCLP is the construction manager for a current Ucluelet condominium project, building 60 units of high-end housing.

Khowutzun Millwork and Joinery is a thriving kitchen cabinet and bathroom vanity business, with a retail outlet in Duncan and production on Cowichan Tribes land. Quw’utsun’ Cultural and Conference Centre works closely with the local school district to develop and implement traditional curriculum material and supporting resources – celebrating and preserving our Hul’qumi’num’ language and culture.⁸ The Quw’utsun’ Vineyard Development Corporation recently purchased Cherry Point Vineyard, with a three year commitment from the previous owners to continue to develop the winery and to pass on their knowledge and skill.⁹

The demand for services sparked by the growth of our core businesses has fuelled new business development opportunities for us. For example, KMCLP’s needs led directly to the creation of our construction aggregates, vehicle leasing, and traffic control businesses.

Today, the Cowichan Tribes, including KDC, is the third largest employer in the Cowichan Valley. One of the goals of the KDC is to surpass the annual revenue generated by the Cowichan Tribes Band Administration Office.”

Describing the mandate of KDC as “the re-creation of the Cowichan Tribes’ traditional self-sufficiency with modern tools,” Ted Williams noted that KDC’s statements of vision and mission¹⁰ have been defined with care:

Vision Statement for KDC Group

KDC will be an international, diversified, and self sustaining corporation that fulfills the economic objectives and expectations of the Cowichan Community. KDC will be the first choice employer of the tribe’s members because of its focus on training, education, and the creation of wealth for its community. Sustainable employment is the driving force behind this focus. The company is professionally managed at all levels by Tribe members and is setting standards for indigenous peoples globally, and is the leader for First Nations in Canada.

As owners of our traditional lands, we will manage resources sustainably, ensuring the protection of the environment and fostering the health and well being of our people. We embrace the use of leading edge technology while preserving our culture and heritage, and promoting our community learning and utilizing our traditional language.

KDC is a company viewed by its partners and competitors as a ‘Successful Corporation’ not just a ‘Successful First Nations Corporation’. Our community leaders will be active participants and supporters of our endeavors and be knowledgeable with respect to our application of technology.

KDC Mission Statement

Khowutzun Development Corporation will initiate, develop and manage business opportunities available to the Cowichan Tribes which are compatible with economic and spiritual well being of the Cowichan; their land, its inhabitants and its economic resources. KDC shall strive to maximize the long-term benefits to all Cowichan for training, employment, management and entrepreneurial opportunity in the social economic community of Canada and abroad.

KDC will develop investment criteria with the following priorities:

- Social and Economic impact through ownership and strategic partnerships
- Generate meaningful employment
- Generate management expertise
- All profits must be reinvested in development projects to build KDC’s economic base.”

Ted Williams pointed out that an application of KDC’s broad vision is its willingness to share its experience and resulting knowledge with other First Nations interested in creating their own opportunities for economic development. After noting that BC Gas had acquired Centra Gas from Westcoast Energy and then about 18 months ago, amalgamated its various gas delivery operations into Terasen Inc., Mr. Williams went on to describe the link between KDC and ICAB:

⁸ See: <http://www.schoolnet.ca/aboriginal/cowichan/index-e.html>

⁹ “We have been considering this for some time and see it as an opportunity to participate in the growing agri-tourism and recreation sector in the Cowichan Valley,” said Francine Peter, General Manager of KDC. “Key to the development of the area is establishing a relationship with an existing vineyard and winery. This provides a solid base from which to develop additional vineyards and related support activities.

“We are very fortunate to have reached agreement with the Ulrich’s, the founders of Cherry Point. As part of the agreement, the Ulrich’s will continue to be involved in the development of

the vineyard for the next three years. We will greatly benefit from their expertise and wisdom,” said Ms. Peter.

The immediate focus is ensuring the continued development of Cherry Point as one of the premier vineyards and estate wineries on Vancouver Island. “We are pleased that the ownership will remain local, and equally, we are proud to be working with KDC as they move forward, supporting the entire region,” said Helena Ulrich. Cherry Point Vineyards – Cowichan Valley Wines Press Release, November 15, 2004. See: http://www.cherrypointvineyards.com/press_room.php

¹⁰ <http://www.khowutzun.com/about.asp>

“In reviewing their files on the Cowichan Tribes and KDC, Terasen became very interested in our history. Terasen studied the success of our diversification and capacity-building strategies, and began to promote the development of a facilitative forum for sharing information and learning arising from our experience, and from similar experiences elsewhere in B.C. and the Yukon. ICAB has emerged as that venue.”

As his final comment, Mr. Williams displayed the confidence and entrepreneurial drive that underlies KDC’s remarkable growth:

“We are well-positioned for continued expansion, and are not waiting for growth to come to us. KDC is actively looking for both appropriate growth opportunities and suitable partners to collaborate with in pursuing those opportunities. KDC and its owners believe strongly that ‘sustainable development’ and ‘growth’ are not contradictory – they can and should be pursued together, and in harmony. We see sustainability as a matter of culture, as a matter of respect for nature, the environment, and people, and as a matter of commitment to our values. As we achieve success on our own terms, we will grow, sustainably.”

Open Floor Discussion

Cliff Attlee, Jr. directed his question to Ted Williams:

“How do you incorporate Indigenous values into business growth?”

Ted Williams replied:

“Firstly, KDC’s Board of Directors provides its ongoing scrutiny and governance support, seeking to ensure that the company’s decisions and actions reflect the values set out in its Vision Statement and Mission Statement. As we discussed earlier, our Vision Statement expressly commits the company to honouring our traditional values.¹¹ Secondly, KDC is wholly owned by the Cowichan Tribes, and is accountable to the Chief, the Band Council, and the members of the community.”

Tim Lowe of DIAND [now known as Indian and Northern Affairs Canada, INAC] asked, “Does ICAB have plans to welcome new members?”

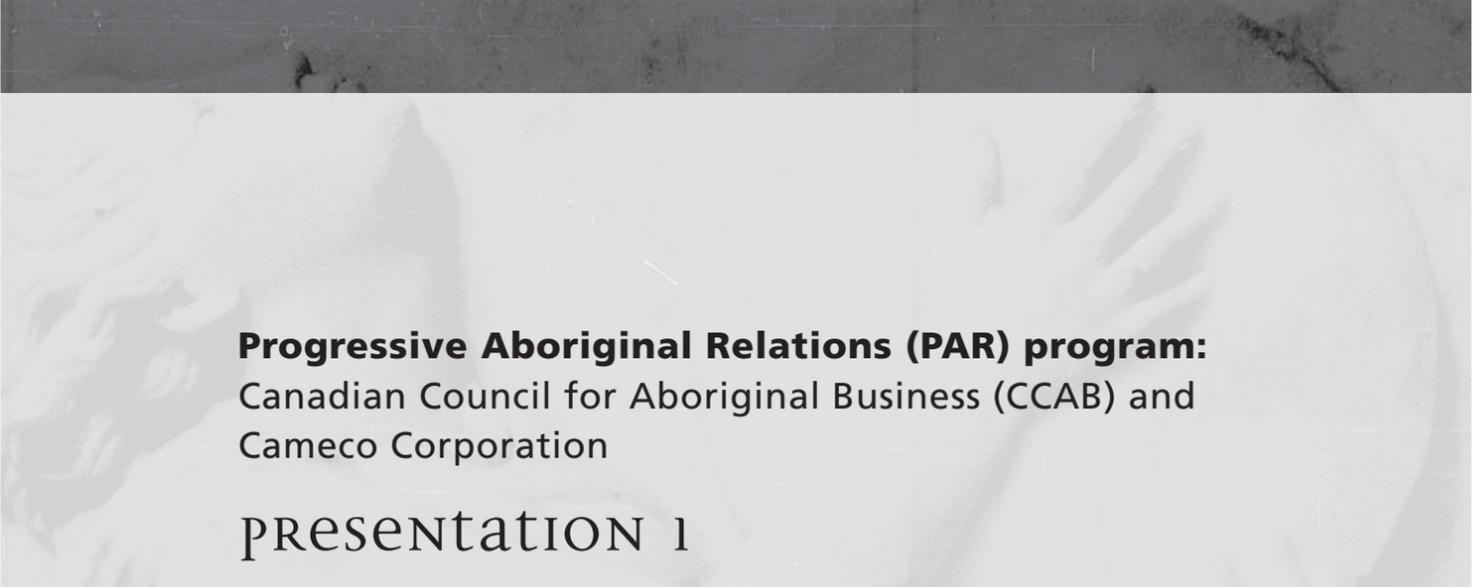
Laureen Whyte answered:

“ICAB already has a strong base of support, with companies like Duke Energy, EnCana, BC Hydro, Terasen and Hayes Forest Services, and First Nations including McLeod Lake Indian Band and the Cowichan Tribes. Also, next month’s ‘Finding Common Grounds’ Forum will be a very important opportunity for ICAB to draw interest and, hopefully, to attract new members.”

Moderator Paul Perkins closed the session:

“As the process of truly inclusive consultation goes from ‘best practice’ to ‘common practice’ in B.C. and the Yukon, the work of organizations like ICAB will gain profile and ‘traction’ farther afield. ICAB, its members, and its sponsors deserve real credit for standing tall and exercising leadership during a moment in history when a difference truly can be made.”

¹¹ “As owners of our traditional lands, we will manage resources sustainably, ensuring the protection of the environment and fostering the health and well being of our people. We embrace the use of leading edge technology while preserving our culture and heritage, and promoting our community learning and utilizing our traditional language. See: <http://www.khowutzun.com/about.asp>



Progressive Aboriginal Relations (PAR) program:
Canadian Council for Aboriginal Business (CCAB) and
Cameco Corporation

PRESENTATION 1

Introduction and Overview

While communication is a vital element in the process of engaging the Aboriginal and business communities in meaningful dialogue, ultimately, true progress must be driven by commitment to action. That commitment is a core quality of both organizations featured in this presentation.

Canadian Council for Aboriginal Business (CCAB) was formed in 1984 as a national not-for-profit organization dedicated to promoting the full participation of Aboriginal businesses and communities in the Canadian economy. Supported by more than 200 Aboriginal and non-Aboriginal businesses from all parts of the country, CCAB enjoys the distinction of being the only national Aboriginal organization in Canada that “neither seeks nor accepts operational funding from any level of government.”¹ CCAB has defined its vision and mission clearly and simply:

“CCAB’s vision is the full participation of Aboriginal people in the Canadian economy.

Our mission is to broker business relationships between the corporate sector and the Aboriginal community. We do that by providing the private sector with the resources it needs to engage Aboriginal people, businesses and communities.”²

Four National Programs are currently being delivered by CCAB to drive that mission:

1. **Circle for 2015** is a CEO-level networking opportunity that brings together Aboriginal and non-Aboriginal leaders to showcase the economic and business opportunities that exist within Aboriginal communities.
2. **PAR (Progressive Aboriginal Relations)** is a program that allows companies to benchmark their performance and earn the right to use a hallmark that

¹ See: www.ccab.com/about.htm

² See: www.ccab.com/mission.htm

recognizes their achievements in implementing positive relations with Aboriginal people, businesses and communities.

3. **FAAY (Foundation for the Advancement of Aboriginal Youth)** is a scholarship program dedicated to developing the future generations of Aboriginal leaders. Over the past 10 years, through the generous support of corporate sponsors, FAAY has awarded almost \$1.5 million to 1,000 Aboriginal students.
4. **Aboriginal Business Hall of Fame** celebrates the first generation of great Aboriginal business leaders. ESS Support Services Worldwide, a division of Compass Group Canada, is its founding sponsor. In addition to paying tribute to outstanding business leaders of the past and the present, CCAB's new Aboriginal Business Hall of Fame will serve as an example of excellence for young people thinking about a career in business. The two first laureates of the Hall, announced in February of 2005, are Dr. Billy 'Chief' Diamond, a Cree from Northern Quebec and Irvin Goodon, a Métis from Manitoba.³

The PAR program was the focus of discussion in this session, led by a high energy presentation delivered by Jocelyne Soulodre, President and CEO of CCAB. A Métis from St. Boniface, Manitoba, Ms. Soulodre is a former journalist and broadcaster who has held senior positions in both the public and not-for-profit sectors. She is the past President of the Board of Directors of Anishnawbe Health Toronto, a culture-based healing centre for Toronto's 65,000 Native people, and is the founding Vice-Chair of the Métis Nation of Ontario Cultural Commission.

The other presenter in this session was Jamie McIntyre, Director of Sustainable Development for Cameco Corporation, the world's largest uranium company. Headquartered in Saskatoon, Saskatchewan, with its mining operations concentrated in northern Saskatchewan⁴, Cameco controls more than 65 per cent of the world's known new uranium production. With 50 per cent Aboriginal representation in the workforce for its northern Saskatchewan mining operations, Cameco is widely recognized for its leadership in integrating Aboriginal people into its mining operations.⁵ As Cameco's Director of Sustainable Development, Jamie McIntyre is responsible for the company's Aboriginal relations program. He has held a number of senior management positions in human resources and corporate training since joining Cameco in 1991, as Manager of Northern Affairs.

Margaret Floyd, CBSR's Director of Advisory Services, served as moderator for this presentation. Her CBSR responsibilities include business development, overseeing

and managing a pool of consultants, client relations, project management, and quality control for all of CBSR's consulting projects.

CCAB's Progressive Aboriginal Relations (PAR) Program

Jocelyne Soulodre opened by noting that PAR's launch in 2001 marked the beginning of an Aboriginal engagement program that is unique in the world. Funded entirely by the private sector, PAR is a self-administered program of goal-setting and results benchmarking, directed at enabling performance improvement over time. Ms. Soulodre described the PAR program as "the creation of a bridge to span the gap between the aspirations and needs of Aboriginal communities and the corporate sector's performance in building sustainable relations with Aboriginal communities." She also emphasized that business rationale drove both the conception and the design of PAR:

"Aboriginal youth make up Canada's fastest growing population segment. With the value of land claims and other Aboriginal settlements expected to reach about \$200 Billion over the next decade, an Aboriginal marketplace is emerging that is identifiable, unique and largely untapped. Addressing the needs of that marketplace requires improving performance, and that is the key to PAR's self-measurement and self-assessment tools. In business, what gets measured gets done!"

She outlined the four PAR quadrants used in benchmarking results:

1. Employment – number, advancement, type and retention
2. Business development – building capacity of Aboriginal suppliers and contractors
3. Individual capacity development – improving access to education and training
4. Community relations – corporate and community partnerships.

In sketching PAR's mechanics, Ms. Soulodre stressed that participating companies focus internally:

"Participants self-assess against the goals they have set in each of the four sectors, measuring their performance against their own goals, not against the goals or performance of other companies. Self-assessments are verified by independent assessors during on-site visits, with community feedback included in the process."

³ See: <http://www.ccab.com>

⁴ Cameco also has operations in the United States, Australia, and Kazakhstan

⁵ See: <http://www.commerce.usask.ca/specialaboriginalCEDconference/program.shtml>

She went on to outline the independent verification that is undertaken as part of the PAR process once the company has completed its self-assessment:

“National Quality Institute (NQI) is Canada’s leading authority on the development and sustainability of excellence through quality and healthy workplace environments. NQI participated in the development of PAR, and is now CCAB’s field partner in PAR assessment, training and promotion. The NQI-verified company assessments then go to the PAR Jury⁶ for final approval.”

While the ‘on-the-ground’ mechanics of PAR are self-directed, self-administered and self-assessed by participants, the verified results of those assessments are used in a national hallmarking program – recognizing companies that have achieved significant progress in implementing sustainable business and economic development with Aboriginal communities. Ms. Soulodre outlined the various levels of the PAR hallmarking program: Bronze, Silver and Gold Achievement Levels. She noted that Cameco Corporation achieved a Gold level in 2002, one of the first two mining companies in Canada to achieve the highest hallmark of PAR.⁷ Cameco was re-certified at the Gold Level in 2005. Ms. Soulodre also pointed out that at the Gold level, companies are asked to step back every couple of years to re-evaluate their Aboriginal self-assessment – demonstrating commitment to and transparency in the ongoing processes of goal-setting and performance assessment.

Ms. Soulodre concluded by characterizing PAR as a powerful tool for sustainable development:

“PAR shows corporations the kinds of things to offer, shows Aboriginal communities the kinds of things to ask for, and provides a roadmap to win-win relationships. PAR helps companies to get what they want (stability and profit) by giving Aboriginal communities what they want (development and involvement). Creating opportunity on both sides of the equation, PAR is a framework for sustainable development that will ensure the full participation of Aboriginal people in the Canadian economy.”

Cameco Corporation (Cameco) and Aboriginal Engagement

Jamie McIntyre began by noting that for Cameco, Aboriginal engagement means relationship-building over the long term:

“Operating four mines in northern Saskatchewan, Cameco deals with 25 Aboriginal communities – including 12 different First Nations and Métis organizations. In such a complex environment, PAR is a valuable tool for developing and maintaining systematic rigour.”

Margaret Floyd asked Mr. McIntyre to comment on the business case for PAR in Cameco’s operations. He responded by reiterating that because Cameco’s major mining operations are located in northern Saskatchewan, surrounded by significant Aboriginal populations, commitment to quality and consistency in the company’s dealings with Aboriginal communities is very important.

Mr. McIntyre highlighted the risk management significance of maintaining good Aboriginal relations with a strong example:

“One disaffected community wanted to blockade a Cameco access road, and sought support from the other Aboriginal communities in the region. All 24 communities opposed the proposed direct action. That expression of political support was far more valuable to Cameco, and far more effective in the circumstances than a Court order or injunction ever would have been. Cameco had earned the trust of its Aboriginal neighbours through its conduct over time, and that social licence was the key ingredient of the early and successful resolution of a high-risk situation.”

Mr. McIntyre noted that Cameco’s commitment to successful Aboriginal engagement goes beyond relations with its neighbours; it is an important internal issue too:

“Seven hundred of Cameco’s employees are Aboriginal – 50 per cent of our mining operations positions in northern Saskatchewan are staffed by Aboriginal people. Aboriginal realities and issues are mainstream human resource issues to Cameco.”

Jocelyne Soulodre picked up on that “mainstreaming” point:

“A huge PAR strength lies in the simple fact that the systematic process of monitoring and evaluating progress toward goals provides reliable information to support strategic thinking and action. Once companies are able to assess their strengths and weaknesses, and identify their Aboriginal engagement weak links, they are able to focus their resources and efforts strategically.

Over time, Aboriginal engagement will become embedded in the core values and practices of the business world – like safety.”

⁶ The PAR Jury is currently chaired by Albert Diamond, and comprises the Honourable Perrin Beatty, Wayne Dunn, Cynthia Bertolin, Chief Roy Whitney and Kelly Lendsay. Source: CCAB PowerPoint Presentation delivered to the *Aboriginal Engagement and Sustainability Conference*, February 8, 2005.

⁷ Along with Syncrude Canada Ltd.

Ms. Soulodre cautioned businesses against looking at their PAR feedback too narrowly, or in isolation:

“PAR is a holistic program – all four quadrants⁸ must be addressed.”

Jamie McIntyre concluded by pointing out that one of the great strengths that PAR provides to a company is the ability to measure its front line performance:

“PAR’s four quadrants enable companies to track actual performance against consistent and common criteria, in different operations, locations and time frames. Indigenous people around the world expect the same things: PAR identifies them, and then delivers both the mechanism and the incentive for measuring performance on the ground.”

Open Floor Discussion

A member of the audience noted that PAR is still unknown in her community, and asked Jocelyne Soulodre what CCAB is doing to ensure that PAR is extended from the board room to the ground.

Ms. Soulodre replied:

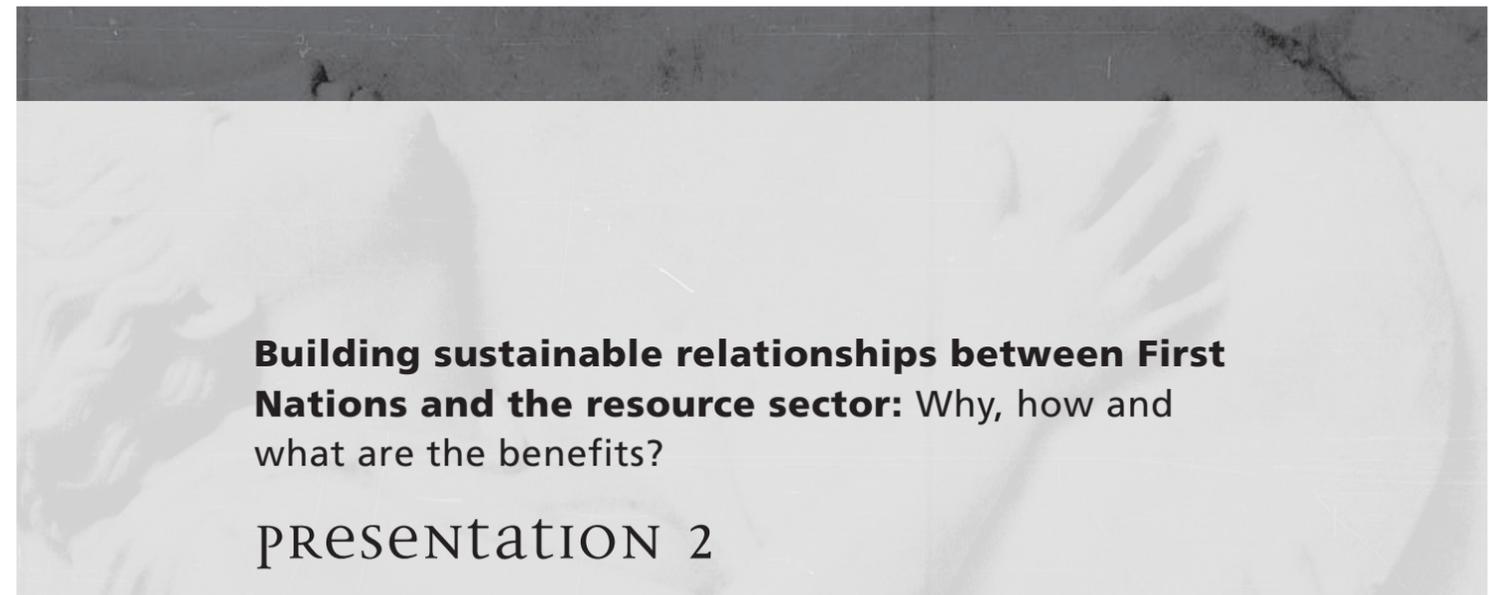
“CCAB is doing its best, but implementing PAR requires more than commitment and desire – time and money are needed too. We’re making good progress, and over time we’ll get there.”

Bob Purdy of the Fraser Basin Council asked Jamie McIntyre to comment on the difficulties of getting investors to look beyond short-term share value to see the long-term value of Aboriginal engagement.

Mr. McIntyre responded by emphasizing the linkage between risk management and social licence to operate:

“Investors and customers are risk-averse. We must focus investors’ attention on the fact that a strong social licence reduces risks of reputation damage and of supply interruption. I would repeat something Jocelyne said earlier: PAR and effective Aboriginal engagement must be holistic, or multi-faceted. Building and maintaining a strong social licence requires more than employment. Building individual and community capacity and protecting the environment are important too.”

⁸ Employment, business development, individual capacity development, and community relations.



Building sustainable relationships between First Nations and the resource sector: Why, how and what are the benefits?

PRESENTATION 2

Introduction and Overview

From the earliest days of the European presence in Canada, relations between resource industries and First Nations have been marked by misunderstanding and friction. As many of the case studies presented at this conference have shown, considerable progress has been made in recent years to rebuild relationships that were often rooted in a dark history. Usually, that progress has been achieved on the strength of bold initiatives of change, followed by persistent efforts to share the learnings gained.

This session featured a strong example of that process of change and learning. In January, 2005 the BC and Yukon Chamber of Mines (BCYCM or the Chamber) released its draft Mining and Aboriginal Community Engagement Guidebook (the ACE Guidebook). More than two years in the making, the ACE Guidebook combines history, background, case studies, practical pointers and a corporate best practices checklist. Its purpose and perspective were summarized by the Guidebook’s authors:

“This Guidebook will attempt to provide some background, perspective, and guidance on Mining and Aboriginal community engagement. While our primary focus will be minerals exploration, we hope this work will capture the interest of a much wider audience. Successful Aboriginal community engagement is an open process, requiring active commitment, mutual respect and informed communication on all sides.”¹

The presentation of the ACE Guidebook at this conference as a working draft is an application of that open process, explained BCYCM’s Executive Director and Chief Operating Officer, Dan Jepsen:

“We are seeking the input of a broad representation of Canada’s Aboriginal communities before we prepare further drafts of the Guidebook. Our intention

¹Bruce McKnight, Bob Joseph, Bill McIntosh and Dan Jepsen, *Mining and Aboriginal Community Engagement: A Guidebook for Minerals Exploration and Mining*, Vancouver: BC and Yukon Chamber of Mines, January, 2005, p. 4

is to ‘practise what we preach,’ by making early and meaningful Aboriginal consultation a significant element of the creative process employed in the development of the ACE Guidebook.”

BCYCM was established in 1912 and is based in Vancouver, along with the head offices of more than 900 mining companies. Currently the Chamber has over 2,800 members – including local prospectors, junior mining and exploration companies, service and supply companies, Indigenous peoples, and national and international mining companies. Dan Jepsen represented BCYCM for this presentation. Before becoming the Chamber’s Executive Director in August, 2002, Mr. Jepsen was Manager, Aboriginal Affairs and Environment for Western Forest Products Ltd., where he oversaw the company’s relations with 32 First Nation bands, and led the successful delivery of ISO 14001 and Canadian Standards Association (CSA) independent certification for 41 forestry operations.

Joining Dan Jepsen in reviewing the background and rationale of the ACE Guidebook was Bob Joseph, a member of the Gwa-wa-aineuk Nation and the founding President of Indigenous Corporate Training (ICT). Through ICT, Mr. Joseph has provided strategic counsel and training on Indigenous or Aboriginal Relations to governmental, corporate, and not-for-profit organizations since 1994. A certified Master Trainer who was recognized by the American Society of Training and Development in “Training: New Guard in 2001”, Mr. Joseph is an Associate Professor in the Indigenous Corporate Relations program at Royal Roads University.

This session was moderated by Chris Robertson, owner and principal of Co’Se’Ma, an established and respected consulting practice based in Gibson’s Landing on the Sunshine Coast. Mr. Robertson has over 15 years of experience specializing in community, economic and organizational development, professional management, public and media communications, strategic planning, governance, and lands and resources support with First Nation communities, governments and businesses.

Resource Industry Aboriginal Engagement – Challenges_Cultural Awareness

Dan Jepsen began by observing that while real progress has been made in recent years, the Canadian mining industry still tends to suffer from a cultural awareness “blind spot” when dealing with local Aboriginal communities:

“Most mining companies will do considerably more Indigenous research in preparing for consultation and negotiations for an overseas exploration project

than for a domestic project. The same complexities exist at home: 197 of Canada’s 605 First Nations are located in British Columbia. It is believed that as many as fifty distinct Aboriginal languages were being spoken in British Columbia at the time of European contact. Each First Nation had its own language, culture, social structure, legal system and political system.”

Mr. Jepsen stressed that cultural diversity must be understood and prepared for in advance of negotiations with Aboriginal communities in Canada (and particularly B.C.):

“The diversity and distinctness of First Nations can be seen in the number of Aboriginal language families throughout the country. Canada is home to eleven distinct Aboriginal language families, of which seven exist in British Columbia. Sixty four percent of Canada’s unique Aboriginal languages exist only in British Columbia, making this province’s Aboriginal population the most diverse in the country! I’ve been fortunate to attend several of Bob Joseph’s “Cultural Sensitivity” training sessions, and one of his strongest lessons is that you must never generalize First Nations’ interests or cultures. First Nations are unique, and in many cases, as diverse in heritage and culture as Europeans are to Asians.”

Noting that the traditional business approach of preparing for a negotiation meeting by exchanging background documents and agreeing on a formal agenda “won’t fly,” Mr. Jepsen advised:

“Spend some relaxed, quality time getting to know people in the community. Two or three days spent talking and listening in the coffee shops and on street corners, visiting with elders and kids, and generally showing interest and respect for the community, will pay real dividends later. This is a combination of diplomacy and research. You’ll learn a lot about local issues and priorities. You’ll learn who are decision-makers, power brokers, and nay-sayers. You’ll gain respect in the community by giving it.”

Consultation: What is It?

Dan Jepsen noted that this was probably the most controversial topic on which he would be commenting:

“Discussion of the nature, purpose and ingredients of effective consultation has occupied the Courts for many years, and has filled many scholarly pages. I don’t intend to try to summarize even the leading Court cases here – please refer to

our draft Guidebook² for that. My headline here is that business and government have a lousy track record in Aboriginal litigation. Avoid it unless absolutely necessary and then still try to avoid it! Litigation does not bring about business certainty in the First Nations world. Even if business does win the lawsuit, the resulting relationship damage likely will foreclose future opportunities.

Legalese aside, ‘consultation’ means what First Nations say it means. Ultimately, it’s about early, respectful and meaningful dialogue, giving and seeking input on issues that matter to the Aboriginal communities you’re dealing with.”

Mr. Jepsen also cautioned industry against relying on the “government responsibility for consultation” direction provided by the Supreme Court of Canada in its recent *Haida* and *Taku River Tlingit* decisions.³ He noted that while the Court confirmed that legal responsibility for consultation rests with government and cannot be delegated to third parties:

“It is a mistake for industry to turn over the keys to the Government for getting you through the consultation and accommodation process. While I am careful about making generalizations around First Nations, I have yet to meet a Band that has huge respect for Government. The other challenge is that governments have limited ability to deliver the jobs, procurement contracts, and project input that many Bands want.”

Dan Jepsen shared an anecdote from his forestry days, describing a First Nation negotiation he conducted where \$1 million had been budgeted by the forestry company to “get to Yes.” He concluded:

“By spending time listening to the Band explain what it really needed and wanted, instead of talking about what the company wanted and was prepared to give, we discovered that the community’s wish list was more about process than money, and was very manageable: two canoe logs, 26 basketball uniforms, and four entry level jobs!”

He went on to note that as the company’s relationship with the Band developed, many more community benefits were provided – including the building of a Band office and a Longhouse, the creation of 20 full-time jobs, and the creation of opportunities to participate in a number of joint ventures.

Consultation: Why? and How Do We Get There?

Mr. Jepsen outlined the “10 Principles of Sustainable Relationships between the Mineral Sector and First Nations,” adopted by BCYCM to guide its positions on all activities and issues related to Aboriginal communities:

1. “recognize the asserted traditional territories and areas of cultural or heritage interest of Aboriginal Communities;
2. recognize that Aboriginal Communities have overlapping or shared traditional territories;
3. support the conclusion of fair, affordable and reasonable treaties (support the respect, recognition, and reconciliation process between Canada, British Columbia, Aboriginal People and First Nations.);
4. respect the diversity of interests and cultures among Aboriginal Peoples;
5. respect the internal affairs of Aboriginal Communities;
6. have a common commitment to sustainability and respect for the land and its resources;
7. recognize that Aboriginal Communities have varying interests and objectives in relationships and cooperative ventures;
8. acknowledge that there is a shortage of capital to involve Aboriginal bands in cooperative ventures;
9. encourage the enhancement of Aboriginal capacity to develop training, employment and business opportunities in the resource sector; and
10. support Aboriginal aspirations in securing economic development.”⁴

Noting that the 10 Principles were originally developed in consultation with 32 coastal First Nations and Western Forest Products Ltd., and were subsequently edited and adopted by the Chamber, Mr. Jepsen stressed their potential impact:

“Adopted and committed to at a very high level, the 10 Principles can lay the foundation for an organization’s positive relations with First Nations. These principles are more than words – they signify commitment to values, and must have clear buy-in from all levels of the organization if you expect results.”

²ACE Guidebook, Ibid, “Major Court Cases: the Supreme Court Leads the Way,” p. 25

³ For discussion, please see pages 34-44 of the ACE Guidebook.

⁴ See: <http://www.chamberofmines.bc.ca/firstnations.htm>

In relating the 10 Principles to the question “Why Consultation?” Dan Jepsen made four observations:

1. “Treaties are many years away;
2. Industry wants to explore and develop resources;
3. Negative relations with local First Nations do not bring business certainty; and,
4. Positive relations can bring business certainty.”

He concluded:

“I do not think that you can develop a major industrial project anywhere in the world today without the support of the local Aboriginal and non-Aboriginal communities.”

Sharing the Benefits

Mr. Jepsen concluded his presentation by noting that the modern reality of resource development is that success depends on a simple truth, carrying powerful implications:

“All parties must benefit. First Nations, industry, and government are each capable of being deal-breakers. For development to proceed in the world of today and tomorrow, there can be no losers. determining what benefits are to be shared, and how, requires a great deal of creativity, patience, and most important, the desire to listen. If you can’t do it, say why, and be clear about it. If you can do it, then make sure that you do. There can be no template: every group and every situation is unique, calling for flexibility and willingness to compromise. Some common deal ingredients to be considered for sharing include: economic benefits, training, jobs and government assistance. Beyond that, be creative and listen!”

Bob Joseph took the opportunity to acknowledge the satisfaction he has experienced in his work with BCYCM on the ACE Guidebook over the past couple of years. He credited Dan Jepsen’s leadership for driving the process:

“Dan has pushed hard to advance the cause of Aboriginal engagement, first in forestry, and now in mining. He’s taken some serious heat along the way, and hasn’t flinched.”

Mr. Joseph urged members of the audience to read the draft Guidebook closely, and to forward their impressions and suggestions to the Chamber of Mines. With that, he indicated that the priority for the balance of the session was to seek feedback from the floor.

Open Floor Discussion

Don Manson of the University of Northern British Columbia said that spending enough time in the Aboriginal community to convey sincerity and respect is a pre-condition for successful engagement. He then asked when the Guidebook will be launched.

Bob Joseph replied that the ACE Guidebook is on schedule for release in June, 2005, following incorporation of feedback from participants at this conference and a number of other events.

A member of the audience noted that she appreciated the “History-Practical Pointers” duality of the structure and approach of the draft ACE Guidebook. She then asked both presenters to comment on the keys to making Aboriginal engagement succeed in practice, on the ground as well as in the boardroom.

Bob Joseph responded first, paraphrasing a comment by Abraham Lincoln:

“If you really want people to be on your side, convince them that you’re on their side.’ Leadership by example is critical. In a session earlier today, we heard about the Eagle Rock Materials joint venture being developed by Polaris Minerals with the Hupacasath and Ucluelet First Nations – to ship construction aggregates from Port Alberni to San Francisco and Los Angeles. Bold projects like that provide inspiration and create momentum. Still, progress demands patience. The changing of habits and values is an incremental process.”

Dan Jepsen added:

“Change is in the air. At last month’s Roundup Conference for the minerals exploration industry, we had almost 300 people attend a breakout session on Aboriginal engagement.”

Chief Norm Leech of the Lillooet First Nation referred to the tremendous spike in mineral claims registrations experienced following the recent launch of the provincial Mineral Titles Online system. He noted recent B.C. government comments to the effect that those new claims are not encumbrances on Aboriginal title, and asked the presenters for feedback.

Bob Joseph replied by noting that economic certainty and risk management are closely related concepts, and that both are at play here:

“Governments may well issue permits, but it will be First Nations who guarantee them. Any one wanting to rely on such permits would be wise to seek out affected First Nations and work to gain their support.”

Tom Green of the Rainforest Solutions Project asked both panellists to comment on whether “sustainability” is measured by a different time line for First Nations than for industry.

Bob Joseph referred to a comment made by Leonard George in his opening prayer for the conference:

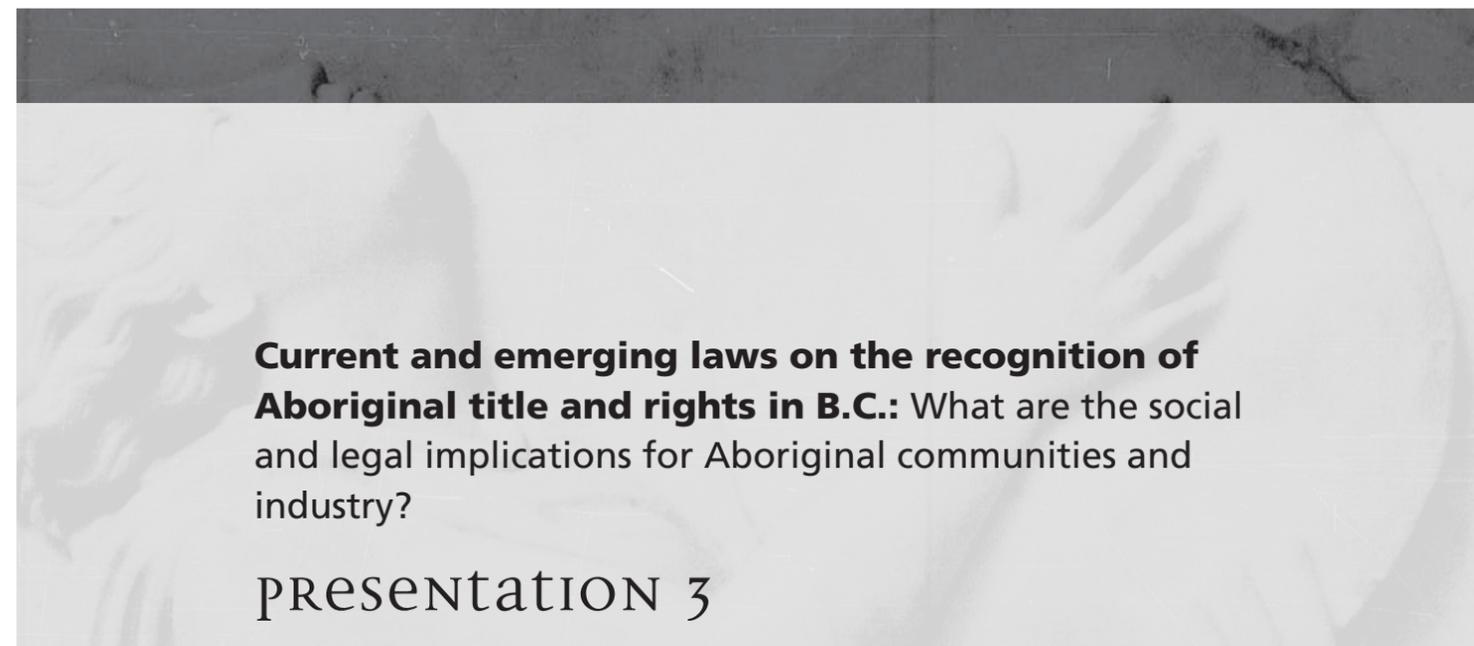
“Sustainability means that we’re not just working for money; we’re working for our children too. That long run perspective also applies in the business case for sustainability. If a business is determined to push ahead with a development in the face of community opposition, that development will be exposed to significant risks. The long-run perspective makes for good stewardship AND good business.”

Dan Jepsen added that it is encouraging to note that significant efforts are being made in a number of mines currently operating in B.C. to create enduring community legacies for the post-closure period.

Keith Mathew of the Shushwap First Nation described the apparent position of the B.C. government that the new Mineral Titles Online claims registration system has no bearing on Aboriginal title as “a recipe for conflict, with the potential for disaster.” He invited comment from the panel.

Dan Jepsen expressed his disappointment that the exploration rights conferred by permits issued under the on-line claims registration system are even referred to as “Mineral Title.” He added:

“Companies registering claims that I’ve talked to are fully committed to meaningful Aboriginal consultation. They understand the practical reality that First Nations must provide their approval before a development project can go ahead and be successful.”



Current and emerging laws on the recognition of Aboriginal title and rights in B.C.: What are the social and legal implications for Aboriginal communities and industry?

PRESENTATION 3

Introduction and Overview

On November 18, 2004 the Supreme Court of Canada handed down its highly anticipated judgments in the companion cases of *Haida Nation* and *Taku River Tlingit*¹. In so doing, the Court removed much of the uncertainty that has clouded understanding of the duties of consultation and accommodation since the release of its landmark ruling in *Delgamuukw* in December, 1997.² Both the *Haida Nation* and *Taku River Tlingit* judgments were written by Chief Justice Beverly McLachlin, and led to unanimous decisions (7-0) by the Court. While much has already been said and written about *Haida Nation* and *Taku River* from a legal and non-Aboriginal perspective³, there have been fewer interpretations published from Aboriginal points of view.⁴

This presentation by Herb George provided an Aboriginal leader’s inside account of the background to *Delgamuukw* that was both technically sophisticated and personally fascinating. His assessment of *Haida Nation*’s implications was penetrating and blunt, provoking sober reflection for those audience members who might have seen this Supreme Court ruling as a simple exemption of industry from any duty to consult with First Nations.

Herb George (Satsan) is a Wet’suwet’en Hereditary Chief of the Frog Clan, and a long-time Speaker for the Wet’suwet’en Nation. Mr. George is an Adjunct Associate Professor in the School of Public Administration at the University of Victoria, where he has taught for several years in the Administration of Aboriginal Governments Program. A key figure and strategist in the *Delgamuukw* case, he has advised First Nations across British Columbia and Canada on the affirmation and recognition of Aboriginal rights

¹ *Haida v. British Columbia*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia*, 2004 SCC 74.

² *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010.

³ For two clear and concise commentaries by leading legal practitioners in the field of Aboriginal rights and title, see: Charles F. Willms and Kevin O’Callaghan, *The Supreme Court of Canada Decisions in Haida and Taku: The Final Word on the Duty to Consult*, in “Aboriginal Bulletin,” Vancouver: Fasken Martineau, November, 2004, see www.fasken.com; and

Tom Isaac and Tony Knox, *The Crown’s Duty to Consult and Accommodate Aboriginal People: The Supreme Court of Canada’s Decisions in Haida Nation v. B.C. and Weverhaeuser and Taku River Tlingit First Nation v. B.C.*, in “Legal Update,” Vancouver: McCarthy Tetrault’s Aboriginal Law Group, January, 2005, see www.mccarthy.ca

⁴ For the perspective of the Haida Nation’s legal counsel on the *Haida* decision, see: http://www.eaglelaw.org/litigation/featurecases/haidatf139home/haidatf139casesummary/document_view

and title, and Treaty rights. Mr. George recently completed his second three-year term as the elected B.C. Regional Chief for the Assembly of First Nations, and is presently Chair of the First Nations Governance Centre, a First Nations controlled initiative designed to help First Nations achieve their inherent right to self government.

Delgamuukw Background

In 1984, 35 Gitksan and 13 Wet’suwet’en Hereditary Chiefs asked the Supreme Court of British Columbia to recognize their ownership of 57,000 square kilometres of land in north-western B.C., to confirm their right to govern their traditional territories, and to award compensation for loss of their lands and resources. The Gitksan and Wet’suwet’en elected to proceed with trial by judge alone (rather than by judge and jury) and submitted an enormous body of oral and written evidence (the Court transcript covered 369 days of proceedings) regarding the nature and duration of their use and occupation of their traditional lands. Counsel for the Gitksan and Wet’suwet’en presented a legal argument that has been described as “the most extensive ever mounted in an Indigenous rights case.”⁵

In his Reasons for Judgment released in 1991, Chief Justice McEachern left open the possibility that Aboriginal rights may arise through the use and occupation of specific lands for Aboriginal purposes for an indefinite (and lengthy) period prior to British sovereignty. However, he ruled that in any event, the Crown had extinguished any such Aboriginal rights by its imposition of complete dominion over the Colonial territory prior to joining Confederation in 1871.⁶ The Gitksan and Wet’suwet’en appealed.

In 1993, the B.C. Court of Appeal reversed much of the lower court’s decision and ruled instead that the Gitksan and Wet’suwet’en peoples **do** have “un-extinguished non-exclusive Aboriginal rights, other than a right of ownership,” to much of their traditional territory. In addition, the appeal court Justices strongly recommended that the scope and content of those rights would best be defined through negotiation rather than litigation. British Columbia appealed to the Supreme Court of Canada.

On December 11, 1997, a unanimous Supreme Court handed down its landmark *Delgamuukw* ruling, providing some important description and definition of Aboriginal title, confirming the legal validity of Aboriginal oral history, and clarifying the nature of the Crown’s duties of consultation and accommodation in the context of infringement of Aboriginal rights.

Aboriginal Title

Chief Justice Lamer’s judgment for the Court in the *Delgamuukw* ruling provided the most comprehensive Supreme Court description of Aboriginal title seen to date:

“[A]boriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title. (at para. 117) What aboriginal title confers in the right to the land itself. (at para. 138) [A]boriginal title encompasses the right to exclusive use and occupation of land; second; aboriginal title encompasses the right to choose to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of aboriginal people; and third, that lands held pursuant to aboriginal title have an inescapable economic component. (at para. 166)” (emphasis in original)

Justice Lamer pointedly outlined implications of that “inescapable economic component” that cut both ways: on the one hand, it means that the need to develop natural resources can, in principle, justify infringement of Aboriginal title by the Province⁷ (raising the duty to consult and accommodate); on the other hand, it means that an Aboriginal group can choose economic uses for its land that are not confined to its culture or historical practices.⁸

The Court then set out three components as the basis for a successful claim of Aboriginal title:

- The land must have been occupied prior to European sovereignty (in British Columbia, that was 1849);
- If the proof of pre-sovereignty occupation to be relied upon is “current possession,” then there must be continuity between pre-sovereignty and present occupation; and,
- At the time that European sovereignty was established, Aboriginal occupation must have been exclusive, or with provision for shared exclusivity.⁹

The Court stated that Aboriginal title cannot be surrendered to the Province: where it has not been surrendered to or otherwise extinguished by the federal government, it remains an encumbrance on Provincial Crown title.

⁵ Michael Jackson, *A Legal Overview – The Case in Context*, in “COLONIALISM ON TRIAL: Indigenous Rights and the Gitksan and Wet’suwet’en Sovereignty Case,” Don Monet and Skanu’u (Ardythe Wilson), Philadelphia/Gabriola Island: New Society Publishers, 1992, x.

⁶ See: Christopher McKee, *TREATY TALKS IN BRITISH COLUMBIA*, 30-31.

⁷ For discussion see: Willms and Kearns, *The Haida Nation v. Weyerhaeuser*, *ibid.*, 2.

⁸ See: McKee, *TREATY TALKS IN BRITISH COLUMBIA*, *ibid.*, 89 “The judgment pointed out mining, lumbering, and oil and gas extraction as possible land-related activities that can be pursued by Native peoples on their Aboriginal lands. However, the Court made it clear that this right to choose the uses of the land should

be consistent with the Aboriginal group’s attachment to the area. For example, if hunting practices were shown to be evidence of attachment to or occupation of land claimed as Aboriginal title land, the relevant Native group could not strip-mine the area.”

⁹ *Ibid.*

Oral History

In a significant clarification of the Canadian law of evidence, Chief Justice Lamer ruled that the trial judge erred in refusing to take into account the Aboriginal oral histories presented to the court by the Gitksan and Wet’suwet’en to establish use and occupation of their traditional territories, and concluded:

“The trial judge’s treatment of the various kinds of oral histories did not satisfy the principles I laid down in *Van der Peet* ... The trial judge, after refusing to admit, or giving no independent weight to these oral histories, reached the conclusion that the appellants had not demonstrated the requisite degree of occupation for ‘ownership’. Had the trial judge assessed the oral histories correctly, his conclusions on these issues of fact might have been very different. (at Para. 107)”¹⁰

Infringement of Aboriginal Rights and the Crown Duty of Consultation

The Court confirmed its ruling in *Sparrow*¹¹ that Aboriginal title is not absolute and may be infringed upon by both federal and provincial governments, provided that the two-part *Sparrow* justification test is met:

- (i) The government must be acting pursuant to a valid legislative object; and,
- (ii) The government’s actions must be consistent with its fiduciary duty toward Aboriginal peoples.

In elaborating on the implication and weight of that special fiduciary duty of the Crown to look after the best interests of Aboriginal peoples, the Supreme Court also addressed the issue of consultation:

“The fiduciary duty between the Crown and Aboriginal Peoples may be satisfied by the involvement of Aboriginal peoples in decisions taken with respect to their lands. There is always a duty of consultation. Whether the Aboriginal group has been consulted is relevant in determining whether the infringement of Aboriginal title is justified ... The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to Aboriginal

title ... The minimum acceptable standard is consultation [that] must be in good faith, and with the intention of substantially addressing the concerns of the Aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an Aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands.”¹²

The Court went further to note that the “inescapable economic component” of Aboriginal title referred to earlier means that compensation will be required when that title is infringed. The amount and nature of the compensation required will depend on the context – i.e., on “... the nature of the Aboriginal title affected, the severity of the infringement, and the extent to which Aboriginal interests have been accommodated.”¹³

Herb George on Delgamuukw

Mr. George began his discussion by noting that while the *Delgamuukw* case may well be viewed as a landmark in the advancement of Aboriginal rights and title, the political and legal struggle to redress old wrongs and to resist new ones has been central to the lives and culture of the Wet’suwet’en and Gitksan peoples for generations. He recalled listening to his grandfather describe his futile protests before the McKenna-McBride Commission in 1913, which forced the re-location of the Wet’suwet’en people onto smaller reserves. He mentioned the famous Fishing Cases, the successful campaign to stop the Kemano Completion Project, battles with CN over plans to twin-track through Wet’suwet’en territory, and wars with the forestry companies over clear-cutting.

Herb George recounted a tale of a memorable public meeting held in a high school gymnasium in the early months of 1998 shortly after the *Delgamuukw* decision was rendered by the Supreme Court of Canada:

“Several hundred very angry non-Aboriginal people were ready and waiting for me as I walked out to explain what implementing *Delgamuukw* would mean in creating hope and opportunity in our communities. Before I could say ‘Hello’, people were standing and shouting at me. It was a true torrent of abuse.

I held my hand to my ear and shouted back, ‘I can’t hear you. Can you shout louder?’ So, they did. Again I said, ‘I still can’t hear you. Can’t you be louder?’ Finally, people seemed to sense how they appeared and sounded. They quieted, and took their seats. ‘Good,’ I said, ‘it’s important to get that anger out of your

¹⁰ The Gitksan First Nation rightly attach great significance to this oral history ruling, as they argue, “This is an important ruling for future *Delgamuukw* action, and for all future First Nation court cases, in that oral history will now be given as much weight as written evidence.” See: <http://www.gitksan.com/html/delga.html/delgamuukw/oralhistory> and see also *Delgamuukw*, Ibid at Para 87: “Notwithstanding the challenges created by the use of oral histories as proof of historical facts, the laws of evidence must be

adapted in order that this type of evidence can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents.”

¹¹ *R. v. Sparrow*, [1990] 1 S.C.R. 1075

¹² *Delgamuukw*, Ibid., para. 168 For a good analysis of “The Scope of Constitutional Protection of Aboriginal Title,” see: McKee, *TREATY TALKS IN BRITISH COLUMBIA*, Ibid., 90-91

¹³ McKee, *TREATY TALKS IN BRITISH COLUMBIA*, Ibid., 91

hearts and off your chests. I know you feel better now. But, I want you to know something, too. I'm still here, and I'm still standing. I'm not afraid of you, and I'm not going away.”

Satsan then asked, “So, why was the *Delgamuukw* decision so important then, and why is it still so important today?” First, he addressed the issue of oral history:

“The Supreme Court’s validation of our oral history tradition was vital for two reasons. First, it made the job of proving our Aboriginal title to our traditional territories much easier. It’s our oral history that demonstrates the strength and duration of our connection to our lands, and that enables us to meet the burden of proof set out by the Court.¹⁴ Second, it restored pride and honour for the Gitksan and Wet’suwet’en Elders who had revealed their sacred adaawks and kungaxes¹⁵ during the original trial before the Supreme Court of British Columbia, only to have them devalued and dismissed by Chief Justice McEachern.

As the Supreme Court recognized and affirmed, our connection to our lands, our sense of community and our culture are interwoven, and are very different from yours. Everyone is involved; everyone has a role and a place; and everyone knows exactly what their role and place is, from small children to elders. The sense of stewardship for the land and water blends with the sense of family responsibility, and with the sense of community governance. Our traditional approach to governance is very different from the rigid roles and competitive chemistry of the elected Band Council protocol that was imposed on us under the Indian Act – broader and deeper.”

Turning to the constitutional and legal rights enshrined by *Delgamuukw*, he continued:

“The Court certainly confirmed that Aboriginal rights and title have legal force and effect, and cannot be extinguished by provincial actions or laws. However, it is important for everyone to remember that rights were not created, and title was not conveyed by the *Delgamuukw* decision. Principles and protocols of proof were set out, providing the framework for future negotiations, or future litigation. While the Gitksan and Wet’suwet’en First Nations have made it clear that we favour the negotiation path, and while negotiations were resumed under the B.C. Treaty Commission process following the Provincial Government’s

return to the table in 2001, progress has been slow, and much remains to be done. Political will and good faith must be invested in this process if a resumption of litigation is to be averted. We continue to prefer negotiation over litigation, but we are well prepared for both. Our patience is long, but it is not unlimited.

Then there is the whole matter of ‘consultation.’ Nearly everyone now understands that First Nations must be consulted about matters that involve infringement on Aboriginal rights and title. In the years since the *Delgamuukw* decision was handed down, a great deal of energy has been spent on improving lines of communication between industry and First Nation leaders, and on establishing Aboriginal consultation protocols as part of the permitting process. Somehow, along the way some people have forgotten the real point and purpose of ‘consultation’: respect for and inclusion of the people who make up the communities so affected by resource development.

It’s not enough to cultivate good relations with a First Nation’s leaders and spokesmen. ALL of the community must be consulted on matters that affect the community, its lands and its resources. ALL of the community must be heard. This is something that Aboriginal leaders must remember too: no one can speak for the entire community. Leaders who forget this will be reminded forcefully.”

Herb George on Aboriginal Engagement

Looking around the full room, Mr. George began:

“This conference is an important opportunity to share engagement stories and to learn from the engagement successes and disappointments of others. The Aboriginal people here today appreciate that so many non-Aboriginal people have chosen to show their respect and interest by their attendance. But, it is important to remember that we did not come to be together here by accident.

Over many decades, Aboriginal communities across this great country have fought for recognition and respect. Through direct action, negotiation, and most importantly, through relentless litigation, we have changed the laws of the land. Our inalienable rights and title have been recognized and enshrined by the Supreme Court and by Parliament.¹⁶ History and injustice have damaged and weakened our societies and our people almost beyond imagination. But, we are still here, and we are growing stronger.”

¹⁴ See p. 4 above for the three components of proof of Aboriginal title set out by the Supreme Court in *Delgamuukw*.

¹⁵ Chief Justice Antonio Lamer provided a very clear explanation of the cultural and legal significance of the adaawk and kungax at Paras. 93-94 of his judgment for the unanimous *Delgamuukw* Court: “93 The adaawk and kungax of the Gitksan and Wet’suwet’en nations, respectively, are oral histories of a special kind. They were described by the trial judge, at p. 164, as a “sacred ‘official’ litany, or history, or recital of the most important laws, history, traditions and traditional territory of a House.” The content of these special oral histories includes its physical representation totem poles, crests and blankets. The importance of the adaawk and kungax is underlined by the fact that they are

‘repeated, performed and authenticated at important feasts’ (at p. 164) ... 94 It is apparent that the adaawk and kungax are of integral importance to the distinctive cultures of the appellant nations. At trial, they were relied on for two distinct purposes. First, the adaawk was relied on as a component of and, therefore, as proof of the existence of a system of land tenure law internal to the Gitksan, which covered the whole territory claimed by that appellant. In other words, it was offered as evidence of the Gitksan’s historical use and occupation of that territory. For the Wet’suwet’en, the kungax was offered as proof of the central significance of the claimed lands to their distinctive culture. As I shall explain later in these reasons, both use and occupation, and the central significance of the lands occupied, are relevant to proof of aboriginal title.”

¹⁶ Section 35 of the Constitution Act, 1982 provides: “35(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed.

(2) In this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit, and Métis Peoples of Canada.

(3) For greater certainty, in subsection (1), “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.”

Herb George on a Vision for the Future

Satsan asked, “So, why are we still here, and what do we want?” He then referred to the Wet’suwet’en “Three R’s”¹⁷:

“The Wet’suwet’en vision incorporates three beginning principles – recognition, respect and reconciliation. These have always been the Wet’suwet’en Nation’s beginning principles. These principles have guided our approach at the Treaty table from its establishment. We believe that recognition, respect, and reconciliation are what our negotiations with Canada and British Columbia are all about.

The first principle is ‘Recognition’: of our lands, of responsibility for harmful policies of the past, and of imbalance of power.

The second principle is ‘Respect’: for our government, for our relationship with our lands, and for our differences.

The third principle is ‘Reconciliation’: requiring a commitment to negotiate, and a mutual desire to rebuild and renew relationships.”

Herb George on *Haida Nation*: Reconciliation, and Honour of the Crown

Mr. George’s handling of *Haida Nation*¹⁸ was brief, but pointed. Cutting to the heart of the Supreme Court’s ruling that both the federal and provincial governments of Canada owe duties of consultation and accommodation to First Nations (and that those duties cannot be delegated to third parties), he focused on the duties’ underlying foundation: ‘reconciliation’ and ‘honour of the Crown.’ Chief Justice McLachlin’s judgment uses several strong statements to establish this foundation:

“The government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples ...It is not a mere incantation, but rather a core precept that finds its application in concrete practices. (at Para.16)

The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the

Crown must act honourably. Nothing less is required if we are to achieve “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown”: *Delgamuukw* (at Para. 17) ...

Put simply, Canada’s Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the *Constitution Act*, 1982. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests. (at Para. 25)”

Herb George didn’t mince words:

“The Supreme Court of Canada spoke loudly and clearly in *Haida Nation*, and so must I. For almost 150 years, British Columbia governments have ignored, denied and resisted First Nations’ claims for return of their lands, restoration of their powers of self-government, and compensation for wrongs and damages that cannot be undone. After finally commencing Gitksan-Wet’suwet’en treaty negotiations in the 1990’s, they walked away from the table to concentrate on the *Delgamuukw* litigation. Although the Liberal government agreed to resume negotiations in 2001, progress has been slow – hampered by their decisions to refuse to discuss governance issues, and to hold a provincial vote on minority rights that was described as a ‘treaty referendum’.

The Supreme Court of Canada has been very blunt in laying out its expectations for governmental conduct that reflects and serves the ‘honour of the Crown.’ In my view, the honour of the Crown is under challenge in the province of British Columbia! Much depends on how the Provincial Government chooses to conduct itself in the coming months.”

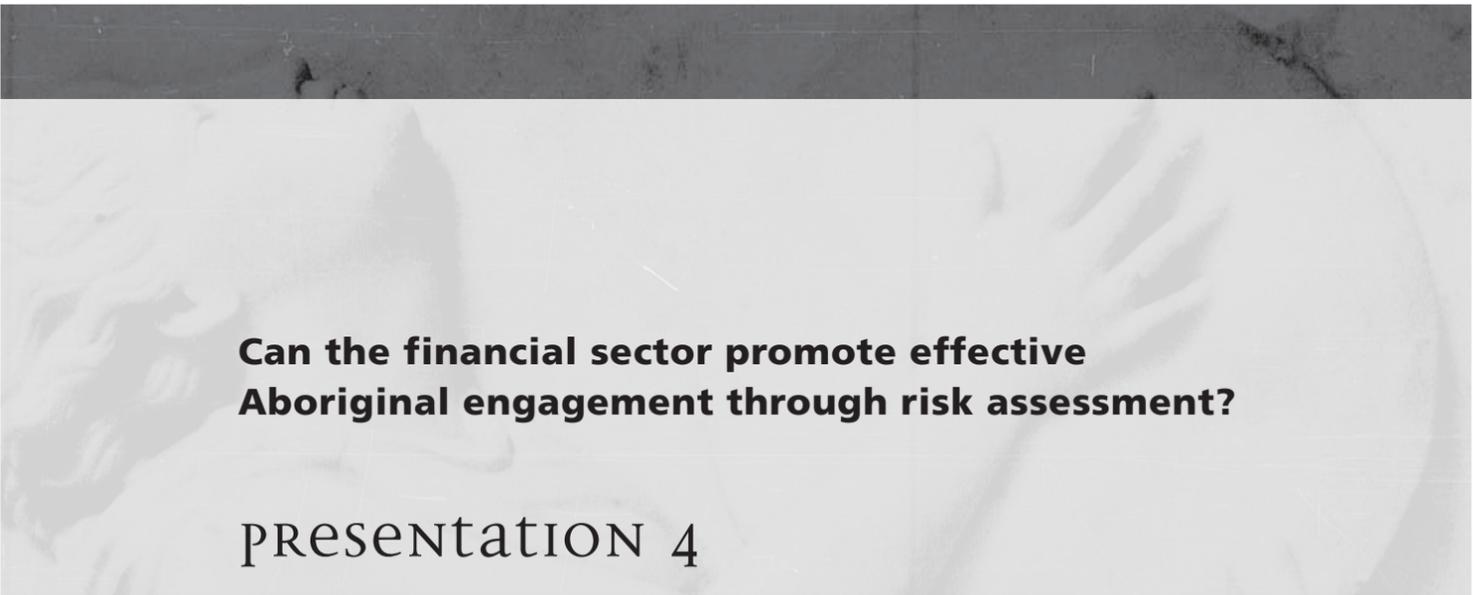
Herb George closed with two messages of advice for the business community:

“First, recognize the leverage that the current state of uncertainty creates for you, and use it to negotiate business arrangements with First Nations on terms that provide for fair sharing of opportunities and rewards. This conference has provided a number of strong examples of what can be done.

¹⁷ “The Wet’suwet’en Vision of a Treaty with the Crown” was prepared by the Wet’suwet’en Treaty Office from a speech given by Satsan (Herb George), Speaker of the Wet’suwet’en Nation, at the Wet’suwet’en Treaty Negotiations Opening Session. See: <http://wetsuweten.com/treaty-negotiation/47/the-wetsuweten-vision-of-a-treaty-with-the-crown>

¹⁸ Please refer to page 1 of this Brief for the case citation, and for links to several good commentaries.

Second, don't rely on government to consult for you. For the same reasons that compelled the Supreme Court to spell out in *Haida Nation* that government cannot delegate its duties of Aboriginal consultation and accommodation to industry, you should be very reluctant to delegate conduct of your Aboriginal business interests to government."



**Can the financial sector promote effective
Aboriginal engagement through risk assessment?**

PRESENTATION 4

Introduction and Overview

Some people might be surprised that Canada's largest financial institution, as measured by market capitalization and assets, is also the country's leader in the field of Aboriginal banking. Yet, this is the case with the Royal Bank of Canada (RBC), which employs more than 60,000 people in serving over 12 million personal, business and public sector clients throughout North America and around the world.¹ RBC's National Aboriginal Banking Group provides a wide range of services tailored for Aboriginal communities and needs through seven branches, three agency outlets and one sub-branch located on reserves, and through six branches located "North of 60," including three branches in Nunavut. RBC Royal Trust is Canada's only financial institution to have established a national Aboriginal Services Group for trust, investment, and land claim services.² RBC is the only Canadian financial institution to give formal recognition to Aboriginal rights and title, and to publicly support the Aboriginal consultation and accommodation process.³

"Risk assessment" is usually thought of as a tool of prudence and restraint, not as a catalyst for progressive development. That is what makes both the subject of this presentation and the identity of its presenters so interesting.

Gail Murray is RBC's Manager of Aboriginal Banking for B.C. and the Yukon. She advises the bank's senior management on strategic priorities and direction for Aboriginal issues, and provides sales management consultation to the RBC Aboriginal champions within B.C. and the Yukon. A registered Métis of Plains ancestry, Ms. Murray has considerable hands-on First Nations experience, within the treaty environment, as a negotiations liaison, and in administering employment and training programs for communities.

Bob Joseph is a member of the Gwa-wa-aineuk Nation and is the founding President of Indigenous Corporate Training (ICT). Through ICT, Mr. Joseph has provided

¹ Royal Bank of Canada, *First for You*, 2004 Annual Report, "Corporate Profile," Inside Front Cover. See: www.rbcroyalbank.com

³ Gail Murray, Manager of Aboriginal Banking – B.C. and Yukon, RBC, Speaking Notes for Presentation to CBSR's *Aboriginal Engagement and Sustainability Conference*, February 9, 2005.

² See: <http://www.rbcroyalbank.com/aboriginal/>

strategic counsel and training on Indigenous or Aboriginal Relations to governmental, corporate, and not-for-profit organizations since 1994. A certified Master Trainer who was recognized by the American Society of Training and Development as part of Trainings New Guard in 2001, Mr. Joseph is an Associate Professor in the Indigenous Corporate Relations program at Royal Roads University.

Through a provincial program known as the Aboriginal Employment Partnership Initiative⁴, Bob Joseph and Gail Murray conducted cultural awareness sessions in 20 locations throughout British Columbia for several hundred RBC employees in 2004. In the course of that work, Mr. Joseph developed an assessment tool for evaluating business risk on a range of Aboriginal engagement issues.

In their joint presentation, Gail Murray laid out background and perspective for RBC’s pro-active approach to Aboriginal engagement, and Bob Joseph reviewed the ICT risk assessment tool currently being used by RBC.⁵ Both presenters then discussed some business risk implications of Aboriginal engagement, and considered how the inclusion of various Aboriginal engagement issues in RBC’s risk assessment protocol might spark improved awareness and performance in the business community.

Serving as moderator was Kathrin Bohr, CBSR’s Manager for Central and Eastern Canada. Holding an MBA with a specialization in Sustainability from York University’s Schulich School of Business, Ms. Bohr brought a broad sales and marketing background earned through her work in both the public and private sectors.

Gail Murray’s Presentation

After thanking the Musqueam, Squamish and Tsleil-Waututh First Nations for their hospitality, and acknowledging the various conference hosts and sponsors for their support, Ms. Murray opened her presentation by referring to a comment made by Chief Steve Wilson of the Haisla First Nation earlier in the day: “There are no instruction manuals or templates for success in Aboriginal engagement.” She continued:

“While we have seen significant progress in improving the quality and extent of Aboriginal engagement in recent years, much remains to be done. Landmark Supreme Court cases have played a leading role, but credit really must go to the

⁴As the Métis Provincial Council of B.C. announced on July 10, 2003, “More aboriginal people will have the potential to find sustainable employment through a new partnership reached today between the provincial government, aboriginal organizations and RBC Royal Bank, said George Abbott, Minister of Community, Aboriginal and Women’s Services. ‘RBC Royal Bank is the first financial institution and second private-sector employer, to take part in the Aboriginal Employment Partnership Initiative which helps organizations in recognizing employment trends and prepares aboriginal people to fulfill those needs,’ said Abbott. ‘By helping to link organizations with potential employees, we are acting on our New Era commitment to support aboriginal communities to materially improve their quality of life.’

Through this initiative, RBC Royal Bank will inventory the needs of its workforce to identify the potential for short-, medium- and long-term job opportunities. Aboriginal organizations use the

information to develop training programs to assist members of their community in identifying and preparing for future job and career opportunities within the company.

The program is administered and delivered by the Métis Provincial Council of B.C. in partnership with the Ministry of Community, Aboriginal and Women’s Services. Provincial funding support for the Aboriginal Employment Partnership Initiative of \$300,000 per year for three years is being provided by the Economic Measures Fund, which is managed by the Treaty Negotiations Office.” See: http://www.mpcbc.bc.ca/aepi/aepi_july10_2003.html

⁵ “Indigenous Corporate Training (ICT) Tools for B.C. Business” is also available for commercial use. See: <http://www.indigenouscorporatetraining.com> for ICT contact information.

many individuals and organizations that challenged the status quo and stood by what they believed was right. Now, the challenge is to take pro-active and sensitive Aboriginal engagement from the realm of corporate ‘Best Practices’ to ‘Mainstream Business.’”

Why RBC?

Gail Murray surveyed several factors that contribute to the leading role played by RBC in the advancement of the Aboriginal engagement over the past decade – across Canada in general and throughout B.C. in particular:

“To begin with, we have a long history of supporting First Nation communities. Ten years ago, our most senior executives stepped forward and said, ‘The cost of doing nothing is far too great, and is a cost that we are not prepared to take.’ Therefore, RBC became the first bank in Canada to establish a bank on reserve and continues today as the leading Financial Services provider for Aboriginal B.C.

Second, RBC places great importance on CSR⁶ principles and practices, and was recognized for its efforts in 2004 as a recipient of the Dow Jones Sustainability Index Award (for the fifth year in a row, and as the only financial institution Canada to be so honoured). Also in 2004, for the tenth consecutive year, the annual KPMG/Ipsos Reid poll named RBC as Canada’s top corporation in the Corporate Social Responsibility Category.⁷ In July, 2003, RBC became the first financial institution in Canada to adopt the Equator Principles⁸, a set of environmental guidelines for large project financing in developing countries. RBC sees practising and promoting high standards of Aboriginal engagement as an extension of its CSR commitment.

Third, RBC maintains very strong relations with the B.C. business community, and is in the fortunate position to be able to support the development of goodwill among its broad client network. RBC views its efforts to foster the advancement of Aboriginal engagement in the business community in that light. Raising the general business community’s level of Aboriginal engagement understanding and commitment improves everyone’s capacity: to provide proactive advice to clients and customers and to identify possible Aboriginal engagement risks and issues in advance – averting crises instead of triggering them.”

⁶ Corporate Social Responsibility

⁷ See: http://www.rbc.com/aboutus/20050125most_respected.html

⁸ See: <http://www.equator-principles.com>

Can the Financial Sector Promote Effective Aboriginal engagement Through Risk Assessment?

Ms. Murray answered her own question with an emphatic “yes,” and proceeded to explain how RBC has already begun to strengthen its own Aboriginal engagement practice by making the Bank’s approach to Aboriginal engagement assessment more positive and pro-active, and by integrating Aboriginal engagement issues into its existing risk assessment protocol:

- “1. First and foremost, the most important step is to acknowledge the reality of Aboriginal rights and title. In order to discuss business implications of rights and title, we first need to admit that they exist. To date, RBC remains the only financial institution in Canada to have taken this crucial step. That acknowledgement paves the way for focusing the Bank’s resources and efforts on educating Bank staff at all levels regarding operational implications of Aboriginal rights and title issues. For example, immediately after the Supreme Court of Canada handed down its *Haida Nation*⁹ decision last November, the Haida Nation’s legal counsel briefed RCB’s senior executives on the implications of the judgment – reinforcing the significance of the Bank’s prior acknowledgement of Aboriginal rights and title. RBC employs a range of tools to improve understanding and practice of Aboriginal engagement throughout the organization – including conference calls, newsletters, web-based and individual cross-cultural training.
2. RBC conducts its own form of consultation to identify community needs and to confirm where the Bank’s support may be required. Our ultimate goal is to lever our strong relationships with both the Aboriginal and business communities to create a “Win-Win-Win.” Strengthening communication and relationships between our client communities is how we are able to position ourselves successfully. Ultimately, we are only successful in that positioning effort if our clients in both communities are successful.
3. RBC provides resources. Depending on the circumstances, our role could vary from simply providing meeting space for remote communities, to working actively within an overall Community Plan to identify social investment opportunities for our Royal Bank Foundation and other sponsorship groups.
4. RBC is addressing Aboriginal engagement issues within the Bank’s existing risk assessment framework. We are in the final stages of preparing an Aboriginal Rights Questionnaire (ARQ) for completion in the course of any and all business banking transaction requests. From a banking perspective, the ARQ will look and work

much like an Environmental Risk Questionnaire – presenting a series of questions for “Yes,” “No,” or “Not Applicable” responses. Depending on the subject matter and context, a “Yes” or “No” response may trigger a request for further detail to be concluded as an Addendum to that response. For example, a question might be: ‘Are the processes of Aboriginal consultation and accommodation currently taking place?’ If the context indicates any current or potential contact with Aboriginal rights issues, “Yes” and “No” responses would both trigger requests for further detail.

As with the rest of our due diligence considerations surrounding a financing application, the Bank’s purpose and perspective for the ARQ will be to identify foreseeable Aboriginal engagement risks, and then to work with our client to eliminate or mitigate those risks. In the course of that work, we will be requesting and supporting improvement in Aboriginal engagement practices – particularly regarding consultation and accommodation. Those improvements will reduce risks of direct action, litigation, or other forms of conflict and relationship stress. Promoting improved quality of Aboriginal engagement is consistent with the Bank’s internal obligation to assess and reduce re-payment risk, and its external duties to serve the best interests of both its non-Aboriginal and Aboriginal business clients. At the end of the day, everybody benefits from improved Aboriginal engagement – it’s simply the right way to go.

5. Finally, we need to continue to introduce new ideas, tools and ways of doing business. The introduction of the ARQ tool in the coming weeks will support RBC’s field staff, particularly in situations where they may be receiving conflicting information. For example, government, industry, and community interests may all have different views on the adequacy of the consultation and accommodation being performed in a particular case.

The ARQ that Bob Joseph and ICT have developed for us will enable RBC staff and our particular client(s) to assess quickly the key variables to determine whether, in any scenario, the work that is being undertaken is satisfactory from a community consultation and accommodation perspective.”

With that, Gail Murray turned the floor over to Bob Joseph.

⁹ *Haida Nation v. British Columbia*, 2004 SCC 73. This powerful Supreme Court ruling clarified the Canadian law on Aboriginal rights and title, focusing on the Crown’s duties of consultation and accommodation of those rights and title, whether claimed or proven. For discussion, please refer to *Aboriginal Engagement*

and *Sustainability Conference Presentation*, “Current and emerging laws on the recognition of Aboriginal title and rights in B.C.: What are the social and legal implications for Aboriginal communities and industry?”

**Bob Joseph Presentation:
Indigenous Corporate Training (ICT) Tools for B.C. Business**

Mr. Joseph began by noting the sense of sacred trust that Herb George alluded to in his presentation earlier in the day:

“The purpose of working to improve the effectiveness of Aboriginal engagement is to restore the worth and dignity of Aboriginal people to full and natural value, not to make non-Aboriginal people feel better. While we can all feel good that we are participating in this very positive conference, we should remember that there is a great deal of work still to do.”

He then addressed the non-Aboriginal business community, using the recent *Haida Nation* case to highlight the importance of viewing Aboriginal engagement as an element of business risk management, rather than as an exercise in diplomacy:

“There is still a conservative school of thought that approaches Aboriginal consultation and accommodation as matters of protocol and due diligence – respecting the constitutional guarantee of Aboriginal rights and title confirmed by Section 35 of the Constitution Act, 1982¹⁰, while expediting project development. If that protocol approach leads a business to rely on the strict letter of the Supreme Court’s *Haida Nation* ruling¹¹, then that business runs a greater risk of seeing its project delayed by direct action, media campaigns, and litigation.

Getting in early with a sincerely consultative approach not only reduces risk of delaying project approval (or worse); early and effective consultation also builds trust and rapport. Strengthening those qualities builds stronger relationships over the long-term – enhancing prospects for future business opportunities.”

Open Floor Discussion

Darrell Mousley of the Shushwap First Nation asked whether the Bank has taken steps to address the chronic First Nation financing problems created by the *Indian Act’s* restrictions on the pledging of reserve property as security.

Gail Murray responded:

“RBC has had to find innovative ways of financing, within Section 89 of the *Indian Act*. Some of the products we have developed include On Reserve

Housing Programs and Agency Banking, which permit Aboriginal communities to operate their own banking operations, supported by RBC systems, technology and training.”

Chief Alphonse Gagnon of the Wet’suwet’en First Nation asked whether RCB has ever rejected a financing application on an issue of Aboriginal engagement.

Ms. Murray replied:

“Not yet, but we are moving in that direction. RBC has not only embraced Aboriginal engagement and the need for meaningful consultation as Bank policy; it has executed that policy in launching the risk assessment questionnaire I have outlined today. As implementation proceeds, we should expect to see some financing applications rejected, as the particular facts warrant.

Bob Joseph closed the session on the issue of “community-inclusiveness”:

“It is important for business to recognize that sincere and effective consultation is about engaging with the entire community – addressing collective community rights and issues. As Herb George said earlier, meaningful consultation must be inclusive, going beyond Chief and Council to the broader community. This can be a subtle process, not to be confused with interfering or taking sides in local politics. The point is to ensure that the entire community has ample and meaningful opportunity to review a project proposal in the early stages, and to raise community concerns for resolution.”



CANADIAN BUSINESS FOR
SOCIAL RESPONSIBILITY

¹⁰ Section 35 of the Constitution Act, 1982 provides: “35(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed.”
 (2) In this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit, and Métis Peoples of Canada.
 (3) For greater certainty, in subsection (1), “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.”
¹¹ The narrow interpretation of *Haida Nation*, *Supra*, is that the duty to consult and accommodate lies solely with the Crown, and cannot be delegated to third parties. See Paragraphs 53 and 54 of Chief Justice McLachlin’s judgment for the basis of that interpretation.

Acknowledgements

Canadian Business for Social Responsibility (CBSR) wishes to thank the *Building Sustainable Relationships: Aboriginal Engagement & Sustainability* conference **Advisory Committee**. These inspiring leaders guided the development of the conference agenda, ensuring the themes, formats and topics were culturally respectful, engaging, innovative, and practical – reflecting our shared vision for sustainable relationships.

Chair: Bob Joseph, Gwa-wa-aineuk Nation; President, Indigenous Corporate Training

Philip Bousquet, Director, Sustainability, Prospectors and Developers Association

Billy Garton, Partner, Bull Housser Tupper

Leonard George, Tsleil-Waututh Nation; President, Chief Dan George Centre for Advanced Education

Ray Gerow, Manager, Aboriginal Business Development Centre

Dan Jepsen, Executive Director, BC & Yukon Chamber of Mines

Tim Low, Manager, Opportunities and Partnerships, Economic Development and Business Partnerships, Indian and Northern Affairs Canada

Claire Marshall, Aboriginal Relations Coordinator, BC Hydro

Rick McDougall, Acting Manager, Aboriginal Relations, BC Hydro

Jamie McIntyre, Director, Sustainable Development and Aboriginal Affairs, Cameco Corporation

Brian Murphy, Executive Director, Corporate Land and Resource Governance Division, BC Ministry of Sustainable Resources Management

Steve Perrault, Senior Business Officer, Sustainable Communities, Western Economic Diversification Canada

Richard Prokopanko, Director, Corporate Affairs, Alcan Inc.

Chris Robertson, Gitksan Nation; President, Co'Se'Ma Communications

Marco Romero, President and CEO, Polaris Mineral Corporation

Rick Sabiston, Advisor, Economic Development and Business Partnerships, Indian and Northern Affairs Canada

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Barbara Shumsky, Manager, Government and Public Affairs, Syncrude Canada Inc.

Jocelyne Soulodre, President & CEO, Canadian Council for Aboriginal Business

Ian Tait, stél'mexw siiyá'y, 2010 LegaciesNow Society

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