

EFFECTIVE APPROACHES TO ABORIGINAL RELATIONS

“Increasing Project Certainty through Respectful, Honest and Trusting Relations”

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Introduction

One of the first things we tell a potential new client is that they have only one chance to make a first impression with an Aboriginal community; all future communications and engagement will be predicated on that first impression. The key components of this critical meeting are not your power point presentations, your maps, or your draft plans for exploration or development – instead they are a genuine, evident and clear demonstration of a sincere desire to develop a positive relationship that is based upon respect, consideration and understanding of local communities and their culture, needs and desires.

Relationship building is the foundation for interacting with Aboriginal communities and the tone is set with the first meeting. This is how Aboriginal Peoples conduct all their affairs. Just as they will need to learn about the mineral industry and your plans, you will need to learn how to communicate with them and establish their trust. The key objective of your interaction is to deliver the required business certainty to commit the resources to proceed with the project and to address as best as possible the concerns, needs and desires of local Aboriginal communities.

The time to commence engagement with local Aboriginal communities should be pursued as early as possible in the planned exploration program. Certainly not when you have defined a significant resource and you are asking for support for your project. The value of

building positive, respectful and trusting relationships with local Aboriginal Peoples is that it boosts Aboriginal, government and public support, increases investor confidence, improves the chances of government project approval and supports the certainty that business requires.

Junior exploration companies can fully expect that the large mining companies that have the resources and expertise to bring a resource project to fruition will have a deep interest in clarifying the relationship with local Aboriginal communities. Companies that have engaged in a respectful manner and have secured the support of local Aboriginal Peoples are more likely to close a deal and can expect a premium to be paid for their hard work and efforts.

Access to Land is Critical

Land access and tenure certainty for mineral exploration and mine development is critical to sustaining the industry. Without access or if there is a lack of certainty about gaining access to the resource, the confidence to invest in mineral exploration or mining will be severely eroded. We all understand that substantive investments are required to increase the possibility of discovering, defining and developing new mines. The development of positive relationships based on a shared commitment of understanding, mutual respect and trust by Aboriginal Peoples and the mineral sector are critical for gaining and maintaining access to land.

Consultation and Accommodation

Consultation and accommodation are the most challenging and often controversial topics within the realm of Aboriginal community engagement. Consultation is required with Aboriginal Peoples whose existing or potential rights may be impacted by a decision the provincial or federal governments propose to make. This is clearly an important role for these governments, but third parties like resource development companies are also required to consult. It has only been recently that legal requirements have started to include accommodation by governments and third parties.

During the past decade in Canada there have been many important and complex court cases before the Supreme Court of Canada intended to clarify the rights and duties on the part of Aboriginal Peoples, governments and business.

In the Calder decision, the Supreme Court of Canada ruled that Aboriginal title is rooted in the “long time occupation, possession and use” of Aboriginal Peoples traditional territories. As such, title existed at the time of original contact with Europeans, regardless of whether Europeans recognized it or not. The three aspects to Aboriginal Title are listed below:

- Aboriginal Title encompasses the right to exclusive use and occupation of the land;
- Aboriginal Title encompasses the right to choose to what uses the land can be put to, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of Aboriginal Peoples;
- That the lands held pursuant to Aboriginal Title have an inescapable economic component.

Recognition of Aboriginal Rights started with the Calder Case, but since then there have

been numerous Supreme Court decisions that have further codified Aboriginal Rights. There are three main categories of Aboriginal Rights:

- Autonomy Rights: these focus on the right of Aboriginal Peoples to determine the way in which they live and control their social, economic and political systems;
- Identity Rights: these are related to the right to exist as distinct peoples with a distinct culture;
- Territory and Resource Rights: these encompass such things as land entitlements, the right to the resources of that land and the use of those resources.

The Haida Nation and Taku River Tlingit decisions respectively provided some additional clarity around “how much” consultation is required, and “how much” duty there is to accommodate, and perhaps most importantly, that the Canadian government has an important role in the consultation and accommodation process. It is, however, not prudent business practice to rely on governments to take the lead role in consultation and accommodation on the behalf of a specific project. Aboriginal communities that have huge faith and confidence in government’s ability to deliver the needs and wants of their communities are a rare find. It is also worthy to note that governments have a limited ability to deliver many of the things that Aboriginal communities want, such as training, employment and business opportunities.

While there is no template that defines how much consultation is enough, and if accommodation has been delivered, one thing is clear, all parties — the company, governments (federal, state or provincial) and Aboriginal Peoples — should share the risks and the benefits of development projects. Reaching a consensus requires keeping an open mind, carefully listening to the community, and having a commitment to explore what can and cannot be done. Companies must be patient, respectful,

honest and trustworthy in their discussions, meetings and negotiations with Aboriginal communities. If you cannot deliver a key request from an Aboriginal community, you should be prepared to clearly explain why; in contrast, if you can deliver a request or need from a community, you should ensure that it is delivered and properly communicated to the community. In other words, **if you cannot do it, say why, and if you can do it, make sure you do it.**

Litigation is a fallback position for business but it should be avoided unless absolutely necessary. Historically, the resource sector's track record of Aboriginal litigation is dismal. Litigation has rarely led to increased business certainty on Aboriginal traditional territories, and is not the foundation of positive, respectful relationships. A corporate philosophy that embraces negotiation over mediation and mediation over litigation will pay important dividends. The truth is that most court cases have ultimately provided more questions than answers, have significantly delayed projects and decisions, and are unlikely to deliver business certainty. Whether you win or lose a legal case with a local Aboriginal community in which your development is proposed, the relationship is sure to be negatively affected and the ability to move forward with the development will include increased uncertainty and risks.

Building Positive Relationships

The mineral sector faces many challenges in regard to the effort and commitment that is required to build positive relationships with Aboriginal Peoples. There is a general distrust of the resource sector in many Aboriginal communities. In many cases this reflects a negative history related to resource developments on their traditional territories. The root solutions to addressing these challenges lies in ensuring that Aboriginal communities do benefit from resource developments, and building positive relationships by recognizing and understanding the unique cultural differences that exist between Aboriginal Peoples and the business

community. Frequently, companies that work in jurisdictions outside Canada put a great deal more effort into preparing for the engagement process in a foreign country than they do at home. It is equally as imperative that cultural differences be acknowledged and respected at home as they are when seeking business opportunities in other countries.

Any company wishing to undertake a resource development project within Aboriginal traditional territories must be prepared to make a dedicated effort to understand the cultural differences, acknowledge them and make sincere attempts to reflect these differences in business approaches, dealings and project planning. It is, after all, business that is asking to undertake an activity within the backyard of an Aboriginal community. The traditional business approaches and relationships that one understands and incorporates with one's contractors, legal counsel, investors and board are generally not the best approach for Aboriginal Peoples. There is no doubt that the language of "business" is drastically different than the language of respectful, trusting Aboriginal engagement.

The mineral sector must be committed to fostering positive relations with Aboriginal peoples to increase the business certainty it requires to encourage investment. On the flip side, negative relations with local Aboriginal Peoples will decrease certainty, reduce shareholder value and lead regulators to require more time to process development permits.

C3 Alliance Corp developed and adopted the following set of ***Principles of Aboriginal Relations*** which can be used to set the foundation to building positive relations with Aboriginal Peoples. We adhere to these principles in all our communications and interactions, and encourage our clients to adopt them as part of their corporate philosophy.

Principles of Aboriginal Relations:

Recognition of Traditional Territories

Companies have the duty and responsibility to consult, and in some cases accommodate, Aboriginal Peoples concerns, issues and desires. Therefore, when activities are planned, companies need to determine which Band, or Bands, they must consult with. The question then becomes in whose traditional territory is the proposed activity within? By asking these questions, the company is recognizing that Aboriginal communities have resided on, or have interests in, these lands that the company wishes to consult in regard to the proposed project. As earlier mentioned, business must understand the concept that they are basically knocking on a neighbour's door when asking to undertake some activity in an Aboriginal backyard.

Accept Overlapping or Shared Territories

Do not fall into the trap of "these bands do not even know where they live." In British Columbia, a popular myth is that BC Aboriginal Peoples claim 110 percent of the province. The main reason for overlaps is intermarriage over the centuries between local bands, creating shared territories.

Support Conclusion of Treaties

In many areas of the world treaties have not been settled. In some cases treaties are not fair. One result is that Indigenous Peoples remain upset and business and governments will not get the certainty they have been seeking.

Respect the Diversity of Interests and Cultures

The cultures and interests of the 605 bands in Canada are as diverse in culture and heritage as Europeans are to Asians. Many C3 clients wish to have one comprehensive "deal" with all effected Aboriginal Peoples –

Principles of Aboriginal Relations

- 1) **Recognizing traditional territories and areas of cultural or heritage interest.**
- 2) **Accepting that Indigenous Peoples can have overlapping or shared territories.**
- 3) **Supporting the conclusion of fair, affordable and reasonable treaties.**
- 4) **Respecting the diversity of interests and cultures among Indigenous Peoples.**
- 5) **Respecting the internal affairs of indigenous governments.**
- 6) **Sharing a common commitment to sustainability and respect for the land and its resources.**
- 7) **Recognizing that Indigenous Peoples have varying interests and objectives in relationships and cooperative ventures.**
- 8) **Acknowledging there is a shortage of capital to involve Indigenous Peoples in cooperative ventures.**
- 9) **Encouraging the enhancement of Indigenous Peoples' capacity to develop training, employment and business opportunities in the resource sector.**
- 10) **Supporting Indigenous Peoples' aspirations in securing economic development.**

we support that this would be the most effective outcome. However the huge diversity, cultural differences, often long and perhaps confrontational history between Bands coupled with differing needs, wants and desires from these communities will often make the one deal option virtually impossible to deliver.

Respect the Internal Affairs of Aboriginal Governments

Do not get involved in internal band conflicts, play favorites or seek to isolate supporters or critics of your project.

Commit to Sustainability and Respect for the Land

This is self-explanatory, but it is surprising that many Aboriginal communities do not believe that business shares this commitment.

Varying Interests and Objectives

There is no standard template for building successful relationships. Successful relations take time, commitment, trust and respect.

Shortage of Capital

In most cases, Aboriginal Peoples and communities do not have access to capital to contribute to joint ventures, purchase equipment and supplies to bid on contracts and undertake work. Therefore, the idea that the company is prepared to share the project benefits if the Band buys an excavator, truck, catering business or stake in the company, is unlikely to happen.

Enhance Capacity for Training, Employment and Business

There are many funding opportunities available for companies and Aboriginal communities. Joint funding approaches presented to government can often result in securing funding to offset training and productivity challenges during the development of a new labor force.

Support Aspirations to Secure Economic Development

Training, employment and business opportunities are often one of the areas of most interest in local communities.

Fitting Engagement to the Size of Project

The mineral sector has a wide variety of projects that vary in size, type and complexity. Projects cover the spectrum from an individual prospector hiking around on open ground trying to discover an interesting rock, to large advanced exploration projects, to a large mine with hundreds of employees on a long term mining lease. Clearly at one end of the spectrum the mine has a long term vested interest in the land it is using and the communities around it. While at the other end of the spectrum, the prospector's foot prints on the land and the interactions with communities could be very limited.

The following information explains how an advanced exploration project or mining operation can consult and engage with Aboriginal Peoples. Smaller projects will need to heed this advice while adjusting their approach to reflect their more limited resources and the more limited impact on the land.

For those of you running smaller projects, including prospectors, the value of your property can be enhanced by positive First Nation relations or the value can be possibly dramatically reduced by negative relations. Therefore, those prospectors, geologists and companies working on smaller projects do need to invest efforts to prepare the way for successful projects to advance to the next stage with Aboriginal Peoples support.

How Can Your Company Build a Relationship with An Aboriginal Community?

Every resource development project has unique characteristics as does every community. The business community has a desire for a template for developing and maintaining relations with Aboriginal communities. From the business perspective, it would be ideal if a timeline showing what steps to take when and what to do at each interval existed to guide the process of relationship building. The unfortunate reality is there is no one way for successful consultation. There are, however, common considerations that should be kept in mind. Remember that credibility and trust are built over the long term and can be lost in a day.

Commit your organization to:

- Common courtesies,
- Honesty and integrity in all dealings,
- Open and consistent communication, and
- Maintaining good business practices.

Commit to communicate regularly regarding:

- Company plans in a way they can be understood,
- Project updates, including delays, and
- Current and future opportunities and benefits from the project.

Listen carefully to questions and make sure there is an understanding of the answer. A commitment to clear understandable communications is critical to earning community trust and support for the project.

Other benefits from good communications are managing expectations, reducing rumors about planned and proposed activities, and allowing the company's management team to incorporate local concerns and knowledge into the project plans.

Consultation is more than an element of public relations or due diligence, and entails more than developing good relations with band leadership:

- Consultation entails communication with the entire Aboriginal community/ies likely to be affected by the development, thereby ensuring the broader community/ies are briefed on the risks, opportunities and potential positive and negative impacts of the project.

Recognize that building a relationship takes time:

- Do not arrive with maps, plans and a timetable.
- Aboriginal communities are not receptive to engaging in consultation if it appears as if the plans are already completed.
- Aboriginal culture is orally based, sensitive and intuitive regarding body language and facial expressions; they will have a good sense if a company speaks the truth and can be trusted.
- Plan to spend three or four, two day visits to a community to meet with Council, Elders and Chiefs to allow them to develop an understanding of you and your plans; this time will also provide insights to the issues and challenges the community perceives about your project.

Commit to learning firsthand the concerns, issues and thoughts of local Aboriginal Peoples, and most importantly, how to deal with these concerns:

- Find out what band leadership and community/ies think are the cultural and heritage issues,
- Ask "what do you wish for your children" and pursue discussion around that theme,

- Learn availability and interest of local labor forces and services,
- Learn the availability of training programs.

How to Engage

There are a number of steps to follow in engaging Aboriginal communities. They involve both the preparation necessary for positive interactions to result and the way to engage to best respect Aboriginal cultures and their relationship to the land.

A key point to remember is that early engagement is critical. You wouldn't like a person or company coming into your backyard without speaking with you first. The same logic applies to Aboriginal communities and their traditional territories. You should always be aware that:

- Persistence and patience are essential,
- Your timeline is not their timeline,
- You are requesting entrance to their backyard,
- Rushing can lead to challenges, conflicts and resistance.

Before Contact:

- Learn the locations and names, including how to pronounce them, of all Aboriginal communities impacted, or potentially impacted, by the mineral exploration or development project,
- Collect information regarding the Aboriginal people likely to be affected by the mineral exploration or development project, including asserted traditional territory maps, Aboriginal community WEB pages, Tribal Council affiliations, etc.,
- Learn the location of any local Indian Reserves and clarify if those reservations are off limits for resource access or entry,
- Learn accepted and asserted boundaries of traditional territories – in some cases local

family interests and trap lines are important,

- Learn about areas of cultural sensitivity – be aware that some communities do not wish to share and/or disclose these areas,
- Ensure all crews, contractors and suppliers are notified of local issues, concerns, cultural areas to avoid and access issues,
- Learn the names of all Band or Council Chiefs, Hereditary Chiefs, key leaders and influencers,
- Learn the Bands' preferred and practiced decision making processes and governance structures, elected councils, Hereditary Chiefs and whether the Band has a matriarchal or patriarchal structure,
- Learn who has influence within the community,
- Learn community priorities,
- Learn any local history, and in particular, any negative and/or positive community experiences with resource developers,
- Learn important and sensitive local issues,
- Understand recognized Aboriginal consultation requirements – legal and otherwise,
- Understand that the government regulators, as part of the Crown's duties related to consultation and accommodation, need to be advised of company/community engagements including:
 - ❖ Any resulting agreements and accommodations;
 - ❖ Conflicts and disputes;
- Industry failure to provide permit sensitive information and the resulting failure of the Crown duties to consult and accommodate may expose the development to future legal consequences that could delay or curtail permits indefinitely.

Making Initial Contact:

- Make all initial contacts in person, if possible,
- First contact should be made with the Aboriginal community leadership, and if possible, by the senior company representative – in other words, the equivalent to the Chief,
- Meet early and often – do not wait until the project is well defined and plans are harder to change,
- Be aware that meetings can be delayed or disrupted by community events, such as a death or sports competition in the community or traditional activities, such as hunting, fishing, berry picking or a potlatch.

What to say at Official Meetings:

- Express gratitude for being welcomed into their traditional territory,
- Acknowledge they have resided in this area since time immemorial,
- Communicate and act with respect, courtesy, transparency and openness,
- Acknowledge the company “hopes” to undertake activities on their traditional territory,
- Avoid any conflicts,
- Explain the company’s vision for the region and for the project,
- Set out tentative timelines - being sure to explain how various factors can delay or stop projects,
- Identify approximate areas of proposed activities,
- Minimize the use of technical maps, plans and reports – simple clear presentation of the project will pay dividends, lead to better input and assist in developing a better project plan,

- Do not give the impression the plan and program is already complete,
- Outline potential environmental issues and measures to manage these issues,
- Listen attentively to the input received, watch for clues to attitude from body language.

Ongoing Contacts:

- Be consistent in your approach and live up to commitments you make,
- Meet people from all the concerned communities,
- Consider a community walkabout – chat and consider informally meeting with local Elders and other band members,
- Avoid traditional, formal business form letters and communications where possible,
- Ensure that sincere efforts are made to engage with the broader community,
- Support collaborative approaches to resource management, community stability and prosperity,
- Be prepared to change plans to address concerns,
- Make the effort or offer to include traditional knowledge in the project planning,
- Provide financial support to the Aboriginal community to engage in the review process.

Aboriginal Leaders - Typically Fully Occupied

A resource developer should expect that in most Aboriginal communities the limited and often stretched Band personnel resources will be focusing on issues other than reviewing resource development proposals. These are issues such as housing, social programs, government funding and health care. It is also important to note that it is extremely rare that a Band will have the staff with the educational background to properly and effectively evaluate

proposals to reflect the best interests of their community members.

For more advanced projects and mining operations, the industry proponent can consider a few strategies:

- If appropriate, consider providing financial resources to the band to review the proposals to help avoid significant delays. In some situations government programs are available. Sometimes a lack of band resources can open the door to non-government organizations (NGOs) providing “review” resources on behalf of the Band,
- Many bands will have increased trust and emotional buy in with the development plans if they have had some influence in the selection of the contractors and consultants undertaking the work,
- All projects carrying out field or site work should hire local Aboriginal peoples whenever possible. They are an obvious labor pool with the advantage of being local. They are often very knowledgeable about surrounding conditions and understand local culture and heritage concerns. Their involvement in the project results in both the company and the band having much more knowledge about all aspects of the project and can produce ideas to resolve challenges.

Conclusion

In Canada, as with most other jurisdictions in the world, mineral exploration and mining projects often take place on Aboriginal traditional territories. Aboriginal consultation and engagement therefore is a necessity. Resource development and industrial projects will be challenged anywhere in the world if local Aboriginal Peoples and communities do not embrace the project or have major concerns. The private sector and Aboriginal Peoples can work together to overcome the challenges of their cultural

differences and develop projects that bring benefits and certainty to both parties.

Businesses should be committed to creating mutually beneficial relationships with Aboriginal communities which will address local concerns, share the project benefits and help bring certainty to those communities.

Successful Aboriginal community engagement incorporates Aboriginal goals of respecting land and resources, and conducting activities in economically, socially and environmentally responsible ways to ensure long-term sustainability.

There is no project partner that is more powerful than local Aboriginal leaders and communities.