

CHANGING DYNAMICS OF ABORIGINAL RELATIONS IN MINING.

Presented to the Manitoba Prospectors and Developers Association
July 6, 2016
Canad Inn at Polo Park
St. Mattethews
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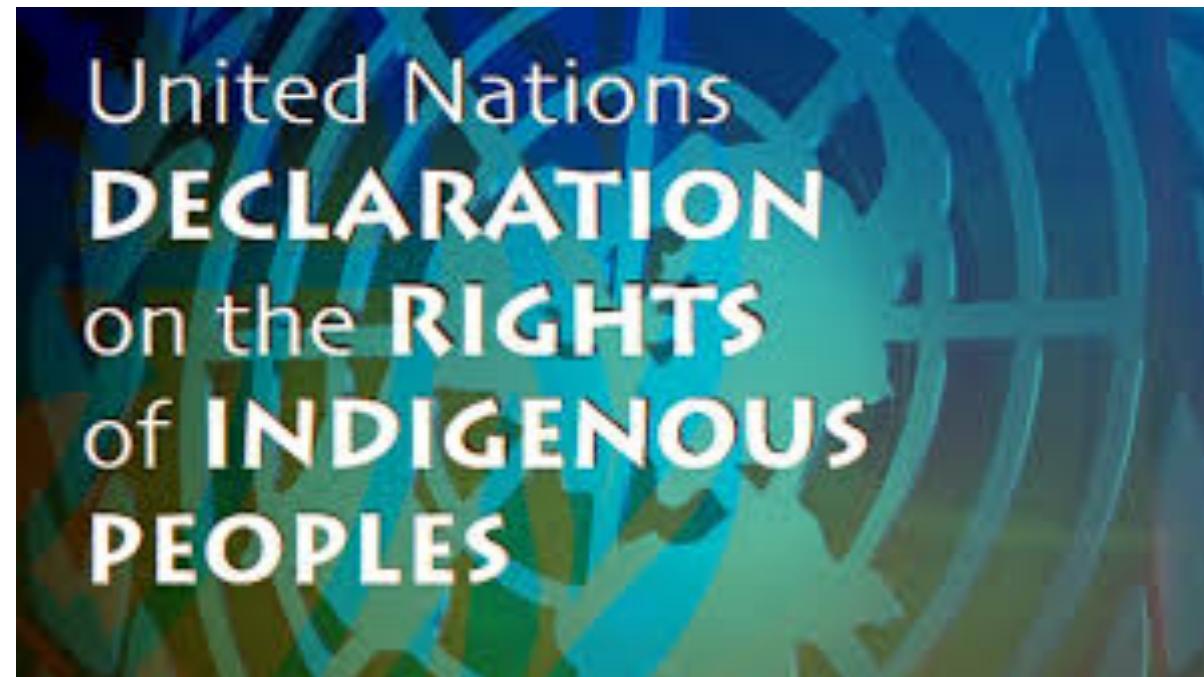
Outline

- Stakeholders, governments both public and First Nation have come to expect more from the mining and metals sector in securing in the Social License to Operate.
- Today's presentation will focus on the UN Declaration on Aboriginal Rights (UNDRIP), What is FPIC and the Canada's endorsement of the Charter.
- A brief history on Manitoba's Aboriginal Engagement/consultation
- Fraser Institute Duty to Aboriginal Peoples Report will be discussed

CBC Headlines from Two Months Ago...

- Canada officially adopts UN declaration on rights of Indigenous Peoples
- Standing ovation at UN greets Indigenous Affairs Minister Carolyn Bennett's announcement
- May 10, 2016
- <http://www.cbc.ca/news/aboriginal/canada-adopting-implementing-un-rights-declaration-1.3575272>

September 13, 2007
UNDRIP Adopted



Free Prior and Informed Consent (FPIC)

- The PDAC and the Mining Association of Canada have been working and guidelines to assist industry on working within the ethic of FPIC.
- With Canada's support for UNDRIP we are going to have to wait to see how its implemented.
- http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

UNDRI^P

- There are 46 complementary articles that make up the UN Declaration of the Rights of Indigenous Peoples.;
- Biodiversity, land use and resource development are contained in many of those articles;
- One common theme is the wording on the need to adopt the principle of Free Prior and Informed Consent often referred to as FPIC.
- This is a UN Declaration and here is reference to some matters that many special relevance to developing nations but not Canada.

UNDRI^P

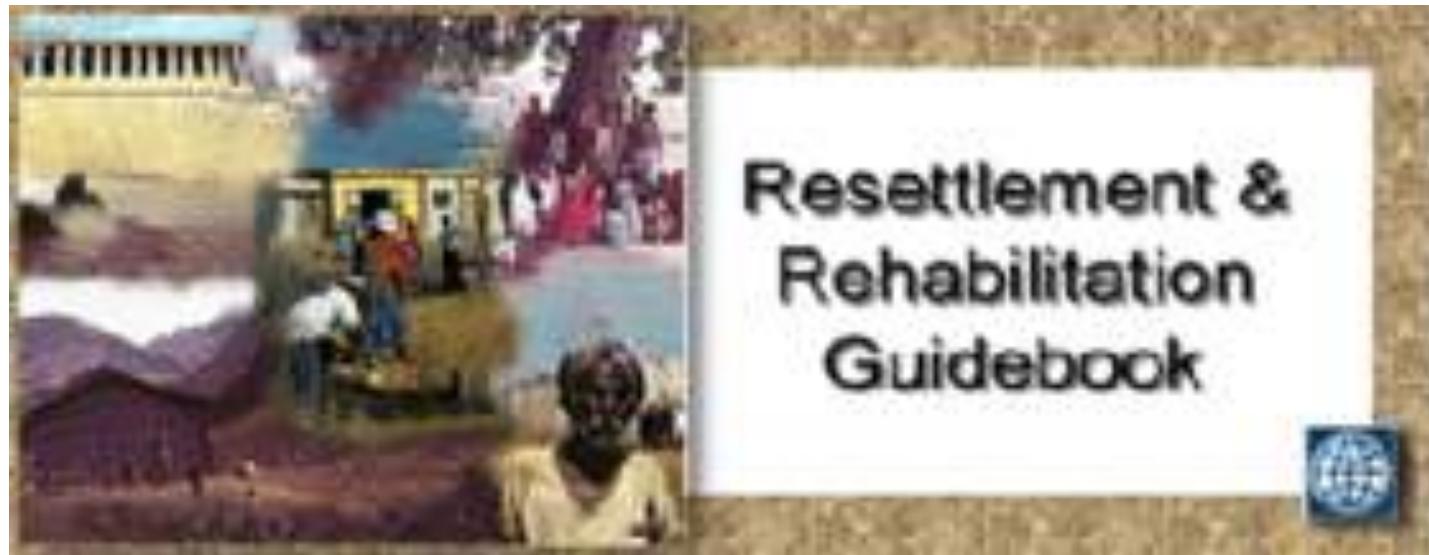
Some of the Articles are intended for developing nations where indigenous rights are not clear.

Article 10 for instance states:

- Indigenous people shall not be forcibly removed from their land or territory . No relocation shall take place without the free prior and informed consent of the indigenous people concerned and offer agreement on just and fair compensation and where practical, with the option to return.
- The World Bank has guidelines on involuntary resettlement

International Finance Corporation “World Bank”

<http://www.ifc.org/wps/wcm/connect/22ad720048855b2588ocda6a6515b18/ResettlementHandbook.PDF?MOD=AJPERES>



Some of Manitoba's efforts

- Consultation on Sustainable Development Implementation process (COSDI) final report issued 1991 adopted in 2001;
<https://www.gov.mb.ca/conservation/susresmb/cosdireport.html>
- Submissions about the inadequacy on consultation were raised;
- Manitoba Minerals Guidelines 1999
<http://www.manitoba.ca/iem/busdev/guideline/index.html>
- Provinces Draft consultation polices in several departments and approaches about 8 years ago;
- http://www.gov.mb.ca/ana/crown_consultations.html

Manitoba Mineral Resources Draft Efforts

- <http://www.manitoba.ca/iem/mines/procedures/index.html>
- **Procedures for Crown Consultation with Aboriginal Communities (draft)**
- **Procedures for Crown Consultation with Aboriginal Communities on Mineral Exploration (draft)**
- **Procedures for Crown Consultation with Aboriginal Communities on Mineral Development (draft)**

Fraser Institute: The Duty to Consult with Aboriginal Peoples: A Patchwork of Canadian Policies May 2016

— Published on May 26, 2016

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- Section 35 of the Canadian Constitution states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”. In an attempt to provide greater clarity the constitution defines “treaty rights” as rights that now exist by way of “land claim agreements or may be so acquired”. It is through this constitutional provision that the duty to consult has been constructed by Canadian courts. The department of Indigenous and Northern Affairs Canada estimates that the legal duty to consult is triggered for some provinces over 100,000 times per year and for the federal government over 5,000 times per year.

<https://www.fraserinstitute.org/studies/duty-to-consult-with-aboriginal-peoples-a-patchwork-of-canadian-policies>

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- Over the past decade, the Supreme Court of Canada has attempted to define how provincial and federal governments are to put into practice their duty to consult with First Nations. They have done this through various judgments including: *Haida Nation v. British Columbia*, *Taku River Tlingit First Nation v. British Columbia*, *Mikisew Cree First Nation v. Canada*, and *Tsilhqot'in Nation v. Canada*. In an effort to address the Crown's legal obligation to consult with aboriginal groups, provinces have created consultation guides for their departments and project proponents. However, these guidelines are vastly different depending on which jurisdiction a project is in. This creates a patchwork of consultation policies across the country.

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Recommendations

- British Columbia, Manitoba, Ontario, and Quebec could provide additional certainty to First Nations and project proponents by finalizing their “draft” consultation guidelines.
- British Columbia, Manitoba, and Quebec could outline the roles and responsibilities of First Nations during the consultation process. The rest of the jurisdictions analyzed for this paper have clear expectations of engagement from First Nations communities.
- Timelines around the consultation process to ensure the duty to consult is implemented in a timely way is another improvement jurisdictions could adopt. Timelines will help guide project proponents who are undertaking procedural aspects of the duty to consult and it will also provide First Nations a clear indication of how long they have to engage in the consultation process. First Nations’ capacity to engage in the consultation process should be taken into consideration when developing timelines.
- **Manitoba could improve their process by including clear offloading provisions in their duty-to-consult policy and highlighting what, if any, procedural duties can be offloaded to project proponents in the consultation process**

Procedural Delegation of the Duty to Consult

- The Haida decision made reference to a “procedural delegation”.
- Manitoba was single out by the Fraser Institute for not having such a policy.

Questions?

- Thank you for the opportunity to provide a presentation on this evolving topic.