

INDIGENOUS ENGAGEMENT IS A BUSINESS AND MORAL REQUIREMENT OF FORESTRY COMPANIES —INCLUDING CONTRACTORS

By Rob Miller



Photo: TLA staff



The nature of the relationship between Indigenous peoples and the private sector in Canada has shifted dramatically over the past decades. This change has been influenced by increasing legal and political recognition of Aboriginal rights and title, rooted in the immemorial occupation, use, and stewardship of lands and resources by Indigenous peoples. Indigenous nations that have asserted or proven Aboriginal rights and title (including treaty rights) exercise an ever-increasing degree of control over their lands and resources within this framework.

Recognition of the importance of these rights has steadily increased within British Columbia's resource sectors. In the courts, landmark decisions like *Tsilhqot'in* and *Haida* have demonstrated that Indigenous self-determination includes the right of Indigenous nations to manage and control natural resources on their lands according to their own customs and traditions. In practice, the right of self-determination and consultation requirements have meant that resource companies have been hard at work developing relationships with Indigenous

groups that seek to share the benefits of development and generate support for extractive activities.

Social and political shifts in Canada have also reflected an increasing emphasis on relationship-building with Indigenous communities. The provincial government has shifted its focus away from traditional treaty-making towards broader and more flexible reconciliation initiatives. The federal and provincial governments have both moved towards adopting the United Nations Declaration on the Rights of Indigenous Peoples. The adoption of the Declaration, which recognizes the right of Indigenous nations to exert meaningful jurisdiction and control over natural resources, further emphasizes the need for forward-looking private sector companies to consult and cooperate in good faith with Indigenous communities when seeking to develop resources.

All of this makes sense because the stakes, and the costs of getting it wrong, have never been higher. There are numerous examples of major infrastructure and development initiatives being delayed or cancelled as a result (at least in part) of

Indigenous opposition—including Trans Mountain pipeline, Northern Gateway pipeline, and the New Prosperity mine. Coastal GasLink pipeline, which has support of many impacted *Indian Act* bands, has also been in the news recently for not obtaining the support of traditional governance structures. The forest industry is far from immune—in fact, many of the leading legal cases about the duty to consult and protection of Aboriginal rights and title arise in the context of forestry, including *Haida* and *Tsilhqot'in*.

Why Timber Harvesting Contractors Should Engage Indigenous Nations

There are three primary reasons why timber harvesting contractors need to engage Indigenous nations.

First, recognition of Indigenous jurisdiction over lands and resources will continue to increase in British Columbia, as will the harvest volume controlled by Indigenous nations. As licence holders and resource owners, these nations control access to harvesting contracts and are likely to expect contractors to help build Indigenous economies through meaningful partnerships and to abide

by best forestry management practices. Contractors who seek to bid on contracts with this growing class of Indigenous licensees will be required to maintain good Indigenous relationships, and to adopt new business structures and practices.

Second, at the same time as the number of Indigenous licensees is growing, major licensees are starting to follow the model of engagement developed by the mining industry and entering into Impact Benefit Agreements (IBAs) with Indigenous nations. IBAs can ensure that licensees within a Nation's territory are harvesting with the Nation's support and with consideration for its preferred forestry management practices. Importantly, IBAs often include procurement provisions, and truck loggers who have developed relationships with Indigenous parties to an IBA are more likely to be considered for related contract or supply chain opportunities. Here, meaningful Indigenous participation will increasingly be a prerequisite to getting work from non-Indigenous major licensees that have signed IBAs.

Third, the social landscape in Canada has shifted. The Truth and Reconciliation Commission Calls to Action have flagged reconciliation as a responsibility of Canadian businesses, calling on the private sector to commit to the building of respectful relationships with Indigenous peoples and to seek their free, prior, and informed consent prior to proceeding with development projects. Canadian businesses are expected to play a leadership role in reconciliation with Indigenous nations—and forestry contractors are no exception.

Given all of these legal, political and social trends towards greater inclusion of Indigenous people in the resource economy, it is clear that securing future service and supply chain opportunities will depend on positive relationships with the Indigenous nations.

Who Should be Engaged within Indigenous Nations?

But who should contractors engage with? Band councils? Treaty organizations? Hereditary chiefs or traditional governments? To provide a simple (and unsatisfying) answer to a complex question: it depends.

Aboriginal rights and title are collectively held and their holders have the right to determine the appropriate entity



Photo courtesy of Homako First Nation

to represent them. This can include a band council, a treaty or tribal council, or any customary system of self-governance. Correctly identifying the appropriate mandate-holding entity to engage with can be challenging without guidance. Band councils, while often having some role in administering a Nation's rights and title, may not always be the appropriate entity to deal with in a given community. Hereditary systems can be difficult to understand from the outside. There may even be controversy within any given community about the identity of the proper rights holder.

Thankfully, despite all of this ambiguity, there are practical steps that can be taken. First and foremost, when there is a lack of certainty regarding who should be engaged within a given Nation, one should seek to understand the community. Open communication and investment in relationships can go a long way to answering the "who to engage with" question and are the foundation of almost every successful Indigenous-industry relationship.

Understanding your business case for engagement is also helpful. For example, if your objective is to work with an Indigenous

group to access more opportunities with a licensee, understanding which Indigenous group actually holds preferential access to contracts will help point you in the right direction.

Legal, political, and social trends all point to one conclusion—that future access to contract opportunities in the forest industry will require strong relationships with local Indigenous groups. This means that contractors looking to maintain or grow the scope of their business in the coming years should be creating strategic engagement plans that identify how they will be developing respectful relationships with Indigenous nations and which groups they will be engaging. In today's environment, developing these relationships makes good business sense and is the only defensible strategic approach to shifting legal and political realities. But just as importantly, it is a modern moral and ethical requirement of doing business in sectors that have traditionally relied upon land and resources owned (at least in part) by Indigenous nations. Bluntly put—it is the right thing to do.▲