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# Aboriginal Rights and the Alberta Oil Sands

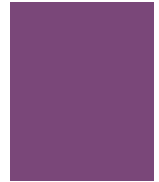
Larry Innes  
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UNPRI Canadian Oil Sands Briefing

# + Canadian Boreal Initiative

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Based in Ottawa, the Canadian Boreal Initiative brings together diverse partners to create new solutions for Boreal Forest conservation and works as a catalyst supporting on-the-ground efforts across the Boreal by governments, industry, First Nations, conservation groups, major retailers, financial institutions and scientists.

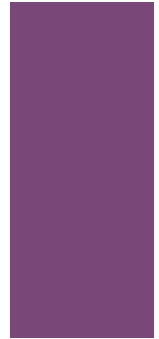


- The Canadian Boreal Initiative **supports Aboriginal initiatives** to protect traditional lands and ways of life and to assume leadership roles in land and resource planning decisions.
- We believe **planning based on scientific and traditional knowledge and grounded in local perspectives and values** is best way achieve the conservation of natural and cultural values.

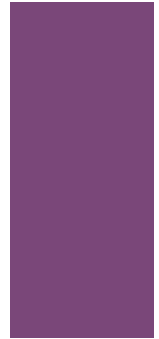




# Aboriginal Rights in Canada



# + Aboriginal Communities



# + Overview

- The duty of governments to consult with Aboriginal people prior to permitting development activities within their traditional territories is now well established in Canadian law, and is based on s. 35 of our Constitution.
- Aboriginal peoples are NOT being appropriately consulted in regard to oil sands development in Alberta.
- A growing number of Aboriginal communities people are seeking to halt new oil sands project approvals until they are more appropriately engaged in land use and resource management decisions.



# + reconciliation |,rekən,silē'ā sh ən (noun)

1. the ending of conflict or renewing of a friendly relationship between disputing people or groups
2. the making of two or more apparently conflicting things consistent or compatible
3. a sacrament whereby an individual's sins are absolved through confession and penance



## + Duty to Consult

- Arises when Crown (federal or provincial governments in Canada) is aware that Aboriginal and treaty rights exist, and is considering actions (such as a grant of development permits to a developer) that may adversely affect the rights of an Aboriginal group.
- Low threshold - impact of decision does not have to be obvious – consultation is required if impacts are reasonably foreseeable.
- SPECIFIC consultation measures are required—“honour of the Crown” not discharged by merely allowing Aboriginal people to engage in consultations otherwise offered to the general public.
- NO obligation on 3rd parties to consult, but as a practical matter, government may delegate certain elements of consultation to industry, or industry may choose to engage in consultations directly.





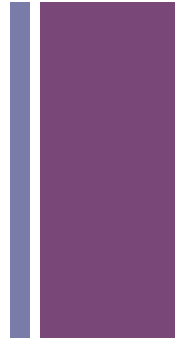
# + Duty to Accommodate

- To be meaningful, consultation must occur at strategic/planning level, not implementation level.
- Both the level of consultation and the corresponding duty of the Crown to ACCOMMODATE the rights of Aboriginal peoples will vary in proportion to the nature of the right, importance of the right to that particular Aboriginal group, as well as the level of infringement of that right by the proposed development.



# + Current Situation

- Government of Alberta's "Consultation Policy" has been rejected by the Chiefs of Alberta as being inconsistent with the government's constitutional obligations.
- Companies are being advised by government to 'consult', and to bring this record forward to the regulatory boards during the project approval phase.
- First Nations are increasingly dissatisfied with the lack of direct engagement with the Government of Alberta, and the focus only on project approvals, instead of regional issues (water quality, health, land use priorities, etc)
- Keepers of the Water Declaration Fort Chipewyan 2008: Chiefs directed to take "all steps in their power" to halt new development until these issues addressed.



## + Context

- Leaders in affected Aboriginal communities are overwhelmed and severely under-resourced.
- Communities are young and under stress.
- Health and social conditions deteriorating dramatically.
- Pace of development far ahead of the capacity of affected communities to address it.



## + Current legal challenges

- A judicial review (Chipewyan Prairie) is considering whether applications granted without any consultation can proceed – if successful, the applications may be voided by the courts.
- A larger case (Beaver Lake) is seeking to have the court interpret the language of the original treaties which promised that FN could live as they previously did (e.g. fishing, hunting, trapping) and to consider evidence that with over 16,000 development permits issued within the Beaver Lake territory, such rights are now rendered worthless as they can no longer be exercised.



## + Issues for Investors:

- Growing legal consensus that the Government of Alberta has failed to meet obligations to consult and accommodate Aboriginal peoples in permitting developments.
- Aboriginal peoples are taking legal action to halt further developments.
- If successful, companies holding development permits may find those permits voided by government failure to consult.
- There may be absolute limits on how much development can occur within the region, given existing rights guaranteed under treaties with Aboriginal peoples.



