TIME TO CHANGE THE FOCUS OF THE CONVERSATION BETWEEN FIRST NATIONS AND MINING COMPANIES, FROM A POSITIONAL BASED APPROACH TO AN INTEREST BASED APPROACH.

by

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Abstract

Due to the growing interest of resource extraction in Northern British Columbia, specifically in the mining industry, Canada is poised to benefit with an increase in mineral exports; while leaving the First Nations people where the resources are being extracted from, living in poverty like conditions. Many of the First Nations communities are located in remote regions and are experiencing socio economic conditions that are hindering their community's growth. Even though efforts to include the First Nations people are steadily improving; however the research indicates that the focus of the conversation is limiting the potential of the opportunity to utilize the extraction of resources to reverse the effects in First Nation communities. Therefore, the purpose of this paper is to examine the literature of mining proponents who support the involvement of First Nations communities in extraction activities to learn why this approach afforded the First Nations the tools to reverse the social and economic conditions while maintaining their role as stewards of the land.
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Acknowledgement and Dedication

There are many people who have provided support to me throughout the duration of the MBA program. When I first began at the MBA Boot-camp in 2011, at the end of day one I was wondering what I got myself into. Since I already announced my intentions on FACEBOOK, it seemed highly unlikely that I should quit after the first day; I am grateful I didn’t.

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CHAPTER 1

1.1 Introduction

The mining industry plays a key role in the economic success of the Canadian economy by exporting minerals to other countries. A mining company’s operation also contributes an economic boost to local, regional and provincial economies (Minerals and Metals Policy of the Government of Canada 2012). The majority of these mining activities take place in many of the country’s First Nations traditional territories; yet many of the First Nations communities in the northern region are experiencing socio economic conditions that leave them living in poverty like conditions.

In an effort to learn why, is best described by utilizing an observation made by Peter Eggleston who said: “Aboriginal people living in a region where a mining activity was taking place, were [for] all intensive purposes ‘invisible’ to the development of mining activities, the developments by-passed them and brought little by way of benefits to them (2002).” The term “invisible” is clarified by Chartier (2001) as “duty to consult.” This meant that initially both the mining proponent and two levels of government (BC and Canada) did not need to consult with a First Nations to proceed with planning and approving a mining activity (Chartier 2001).

Eggleston (2002) also observed that the extra pressure of legal, economic, public, and political pressure for the Aboriginals to approve mining activities in their traditional territories, further “politicalised Aboriginal issues into escalating conflict situations with competing land users (Eggleston 2002)”. His research offers evidence for the proposal section of this paper which observes that to include Aboriginals yields better results for all participants involved in the extraction of mineral resources (Eggleston 2002).
Therefore, the purpose of this paper is to examine the literature of mining proponents who support the involvement of First Nations communities in extraction activities to learn why this approach afforded the First Nations the tools to reverse the social and economic conditions while maintaining their role as stewards of the land.

In the first chapter I will demonstrate the need and elaborate on the research question that will guide the exploration of research, and offer my hypothesis. In chapter 2, I describe the methodology used to gather the resources, limitations of the research, and suggest areas for additional study. In Chapter 3, I will describe who is involved and what role they play. In chapter four, I will describe findings from the literature review, by comparing and contrasting both the level of inclusion and focus of the conversation to identify why the present process is not capable of achieving the intent of reversing the social and economic conditions in a First Nation community. In the sixth chapter, the proposal, I will introduce two models from a similar situation in Australia that affords the Aborigines (who are experiencing the same socio economic conditions in rural Australia), and the model used to reach an agreement with the Haisla First Nation from BC, called the Haisla Nation-RTA Legacy Agreement¹. These agreements provide the communities with the means to rebuild their community utilizing the extraction of resources.

1.2 Need

Although efforts by both government and mining proponents to include First Nations in the conversations are leading to better agreements intended to address the social and economic challenges in their communities, they are not enough (Galbraith et.al. 2007). Robert Anderson (1998) observed that even under the best conditions to include First Nations; the First Nations were left out of the process. Anderson’s research indicates that many Aboriginal communities

are not directly involved in the mining industry activities and therefore are minimal benefactors of the extraction of resources from their traditional territories (1989). As a result “the Aboriginal People of Canada are understandably un-happy with their current socio-economic circumstances and are striving to identify avenues to improve them (Anderson 1989).” An indicator that even though efforts to include First Nations in the conversation have improved since 1989; they are still in need of refinement to improve the social and economic conditions being experienced in a First Nations community.

Anderson utilized data from the 1991 Census, specifically the statistics pertaining to First Nations such as: collecting welfare, the living conditions on reserve, and the unemployment levels on and off reserve. Anderson (1989) includes the following statistics in his paper: 42% of Aboriginal people living on reserve received social welfare, as opposed to 8% of the Canadian population; 65% of Aboriginal people on a reserve are living in substandard housing conditions; un-employment rate of 24% for off reserve First Nation as opposed to 10.5% for the rest of non-aboriginal people.

In 1991, Anderson predicted that this trend of high unemployment would continue and says: “as bad as these conditions are now, the prospects for the future are worse.” This prediction has been confirmed by a report prepared for the Labour Statistics department of Canada (Usalcas 2010). The report, was prepared by Jeannine Usalcas, titled “Aboriginal People and the Labour Market: Estimates from the Labour Force Survey, 2008-2019” (see table 1). By comparing the two columns, it is evident that after 19 years, these high unemployment rates are still a cause for concern.
Table 1: Comparison between 1991 & 2010

<table>
<thead>
<tr>
<th></th>
<th>1991 Canada Census</th>
<th>2010 Labour Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unemployment rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>off reserve First Nation</td>
<td>24%</td>
<td>14.30%</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
<td>10.50%</td>
<td>7.90%</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>on reserve</td>
<td>90%</td>
<td>86%</td>
</tr>
</tbody>
</table>

Table 1: Comparison of unemployment statistics

One of the root causes, as explained by Joan Kendall, indicates that the rate of unemployment stems from underdevelopment that are numerous and complex (2001). Kendall reports that some of the more complicated reasons include: loss of land, sovereignty, cultural genocide, lack of education, and job market distinction (2001). She states that the “complexity arises from a plethora of factors involved including: the fact that there is a large number of different First Nations people and cultures, either living on or off reserve, and one First Nations’ problems are not necessarily the same as another” (Kendall 2001).

Making a decision to approve or not approve a mining activity is not an easy task for a First Nations community. It will require extensive consultation amongst their community members in an effort to reach a decision (Galbraith, Bradshaw et al. 2007). One of the challenges that scholars Galbraith et al. suggest is that the First Nations believe that if they agree to resource extraction they are contravening their role as stewards of the land. Galbraith et al. observed that First Nations group will have to review the proposed mining plan, consider the environmental concerns, and utilize their traditional knowledge of the land and cultural beliefs in order to make a decision (2007). Another factor that scholars, Sosa and Keenan (2001), describe that makes a decision more difficult for the First Nation group is the fact a mining projects can have enormous social, cultural and environmental impacts on local communities. In addition, they report that the
activity can generate a whole host of problems like social tension, economic inequalities that disrupt family and community life, and generate pollution that affects wildlife/crops (Sosa and Keenan 2001).

Another consideration that both Sosa and Keenan express as an area of concern is misconstruing a First Nations participation in either an Impact Benefit Agreement (IBA) or Environmental Impact Assessment (EIA), as an approval by the First Nations of a mining activity (2001). This concept is supported by another scholar, Courtney Fidler (2010), who states "even though these two mechanisms offer the [First Nation] an opportunity to shape and inform the direction of the project, most times they fail to provide the First Nation the time to review the information, and make a qualified opinion, and in many situations the First Nations participation is considered an approval (2010)." Fidler also makes the following observation that these two instruments, IBA and EIA are two different kinds of agreements (Fidler 2010).

An IBA, as Sosa and Keenan (2001) describe is used to minimise negative impacts of mining projects and ensure benefits to the local community and people. It is a voluntary process between the industry proponent and Aboriginal group (Fidler 2010). Sosa and Keenan (2001) elaborate further that an IBA can be viewed as a formal relationship that can address the adverse effects on local communities and environments from a mining activity, and ensure that First Nations receive benefits from the development of the mineral resources.

The EIA, as Fidler describes, is governed by legislation and overseen by federal and provincial agencies (2010). Fidler says: "the EIA is a universally recognized predictive tool that highlights potential environmental and social impacts early in the design and design stages of development, thus enhancing the prospects for sustainable development (2010)."
While these two processes are typically used concurrently, they are separate agreements, thus leading to different outcomes.

In Canada and elsewhere around the world, Indigenous Peoples are struggling to rebuild their nations and improve the socioeconomic circumstances of their people (Hindle, Anderson et al. 2005). “First Nations people do recognize the changes happening in regards to resource extraction and will need to rely heavily on their community cohesion that remains while managing the desire to rebuild their communities on a traditional and culturally grounded foundation (Anderson, 1989). Anderson (1989) says that in order to achieve this “the indigenous people need to have their rights to land recognized.” Anderson’s findings support the idea that land is integral to reversing unemployment and under development of a First Nation community (1989).

1.3 Research Question

The purpose of this paper is to examine the literature of mining proponents who support the involvement of First Nations communities in extraction activities to learn why this approach afforded the First Nations the tools to reverse the social and economic conditions while maintaining their role as stewards of the land. Thus, the research question is: “Is the current aim of a mining project and the degree of cooperation from a First Nation community capable of reversing the socio economic conditions in their communities? By posing this research question I am in fact asking three questions. The first is who are the players in the present process? The second is why has the present aim not been capable of reversing the social and economic conditions? The third question; what kind of strategic intent will it take to reverse the socio economic conditions in a First Nations community? Answering these three questions will
provide the qualitative evidence that will allow me to use inductive reasoning to answer the research question.

In chapter Six, I will describe the findings of the literature review that offers insight as to why the current process is not capable of reversing the socio economic conditions in a First Nations community; in effect answering the second question. In the discussion section I will: i) describe Interest based negotiation process, ii) describe what is necessary for a First Nation to approve a mining project, iii) review literature of two models used in Australia and one in BC, and in the conclusion I will reiterate some of the key findings from the research and offer concluding thoughts of the model.

1.4 Hypothesis

Hypothetically, First Nations that have the opportunity to be directly involved in the extraction of minerals through limited partnership will have a better chance of reversing the social and economic conditions in their community. This will be achieved by expanding the aim from a Positional-Based Negotiation to an Interest-Based Bargaining approach between a First Nations and a mining proponent. This will afford the First Nations an opportunity to learn and benefit from a direct relationship with a mining proponent, and will utilize the connection to procure joint business ventures with other service industry partners that specialize in delivering services and goods to a mining activity. For the mining proponent the agreement offers an opportunity set aside any past differences, establishes a commitment to work together, and encourages a cooperative relationship focusing on the future.

In the next section, Methodology, I will explain my reasoning for the development of the research question and what kind of methods I intend on using to answer the question(s).
CHAPTER 2

2. Methodology

The research is rooted in a qualitative approach that recognizes and utilizes the findings within cultural, social, historical and legislative contexts. It recognizes the importance of the four participants: First Nations, mining company, federal and provincial governments coming together as equals to construct within them, agreements that can reverse the socio economic conditions of a First Nations community. Then, utilizing the qualitative information gathered from the research by other scholars to understand the need for a new model- that will be capable of reversing the economic and social conditions in a First Nations community. In the discussion section I will discuss the following: i) describe Interest Based Bargaining, ii) describe what it will take for a First Nations community to approve a mining project, and iii) literature review of the two models in Australia and one model from BC and in section iv) of the proposal.

At present there are no scholarly articles available or case studies where First Nations have been recognized as a limited partner in a mining activity in Canada. Partial ownership in a mining activity is going to be a new area of research for scholars. In the next sections the first of the three questions will be answered.

CHAPTER 3

3. Who is involved in the present process?

The different segments of federal & provincial governments, mining proponents and First Nations in the present process have different perspectives on the inclusion of First Nations in a mining activity. This section will explore the four players and the different perspectives each have in the present process.
3.1 First Nations

The Aboriginal peoples of Canada are defined under the Constitution Act adopted in 1982 as “Indian, Inuit, and Métis peoples of Canada (Curry, Donker et al. 2009). Curry et al. (2009) specify in their paper that there are 30 to 40 aboriginal ethnic groups in British Columbia. Curry et al. (2009) share that First Nations people live on designated land called “Reserves” that are under federal jurisdiction with agreements between the Canadian Government and a Band Council (primary unit of governance) to disburse community services. The Band Councils are a unit of governance and administration, similar but not identical in nature to village or municipal governments in a non-First Nations context (Curry et al. 2009). The structure of the Band Council is usually comprised of a “Chief Councillor” and depending on the size of the community other elected representatives (Curry et al. 2009).

Curry et al. (2009) indicate in their findings that land holds a significant place in the culture of First Nations people. They reflect work from other scholars like (Russell 1997) who stated “there are few areas of human community in which tradition is more important and involves a more complex confusion of the secular and the sacred, than land. First Nations tradition and culture is tied to the land in ways that most non-First Nations cultures have long forgotten.” Fisher (1977) describes the depth of First Nations efforts to retain the initial contact between the First Nations and Europeans that resulted in economic partnerships. Fisher (1977) observation that this partnership changed when land settlers and land users arrived, thus changing the relationship, and leaving the First Nations marginalized in their traditional lands. Curry et al. (2009) conclude with the idea that “this considerable accumulation of traditional knowledge of the land needs further exploration and may hold the tenant of a new model of entrepreneurship at an enterprise, community and regional level of development."
3.2 Federal Government

The Federal Government acting in three roles- has different departments with different goals. For instance, under the Indian and Northern Affairs Department-this department acts as a fiduciary agent\textsuperscript{2} for First Nations; their goal is to ensure the First Nations have been adequately consulted. The Ministry of Minerals and Metals\textsuperscript{3} ensures that the mining proponent has both identified and initiated controls to mitigate any and all environmental concerns. And finally, the Government of Canada ensures their guidelines for mineral extraction, budgets, and policies are followed to encourage the economy to continually growing\textsuperscript{4}.

The Canadian Government adopted the Minerals and Metal policy to institute regulatory efficiency to achieve public policy objectives that ensure the efficiency and effectiveness in achieving Canada’s environmental, economic and social objectives (Mineral Policy 1996). The purpose of the Minerals and Metals policy is intended to guide the Canadian Government’s role, objectives and strategies for sustainable development of Canada’s mineral and metal resources (1996). The policy further describes that the minerals and metals are of vital interest to Canada and are relevant to federal policies and programs because of their substantial contribution to Canada’s social and economic well-being (Minerals and Metals Policy 1998).

The policy has six major objectives (summarized): international competitiveness, sustainable development in federal decision making, advancing the concept of sustainability both domestically and internationally. Effectively making Canada a world leader in resource

extracts, while promoting Aboriginal involvement, and providing a framework for the
development and application of science to enhance competitiveness and environmental

The policy was developed as a guide for industry to: achieve sustainable development;
maintain the awareness of the importance of environmental process; capitalize on the economic
opportunities from mineral extraction and exploration; understand the social considerations; and
recommending that all these consideration must be taken into account as early as possible in the
decision making process.  

3.3 Provincial Government

British Columbia (BC) is a national leader in mining and mineral production. The BC
Government recently released its Mining Strategy in May 2012. The BC Government
recognizes that mineral exploration and mining are important economic drivers. The report
further states “Mine development and mineral exploration has been a cornerstone of our
economy for generations. It takes place in every region of the province (Mineral and Exploration
Strategy 2012).” The key goals for the strategy include: enhance BC competitive edge,
streamline regulatory processes, ensure the health and safety of our workers, protect the
environment, build partnerships with First Nations, and develop a skilled workforce. In addition
to these goals, the present BC policies ensure that mining’s benefits are maximized in a
sustainable way so communities can prosper for the long term, with economic and social benefits
extending from local to national level (Mineral Exploration and Mining Strategy 2012).

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rncan.gc.ca>.

Minerals tax revenues for 2011/12 were valued at more than $400 million, as the report alludes to supporting essential infrastructure and social programs that benefit British Columbians (Mineral Exploration and Mining Strategy 2012). In addition the report shares that the mining industry supports job creation, provides opportunities for business growth, skill transfers, and public institutions like education and other services (Mineral Exploration and Mining Strategy 2012). The combination of these strategic goals sends a clear message that the BC minerals and exploration projects are poised to capitalize on global demand and the high commodity prices (Mineral Exploration and Mining Strategy 2012).

### 3.4 Mining Companies

The Mining proponent is considered in business as the economic actor and the companies activities can act as a catalyst. The mining company plays a key role by doing the required environmental review, lobbying two levels of governments, and building relations with local First Nation groups (Hipwell et al. 2002). In a report prepared by Pricewaterhouse Coopers in 2012 for the BC Mining Association; it predicts that the BC mining revenues will increase by 25% from the previous year from 7.9 billion to 9.9 billion for 2012/13. Hipwel et al. report that mining industry has evolved in recognizing that the reconciliation of Aboriginal title is a work in progress, and that the industry supports government to government negotiations to resolve jurisdiction and ownership in an effort to ensure inclusion of First Nation communities (2002).

Many First Nations people believe that it will be business and not government that has the most impact in improving the lives of First Nation people (Jacobs 2005). The research indicates that when mining companies consider inclusion of First Nations, they in effect are recognizing the existence of indigenous rights to land, resources, and some form of self-government (Anderson et al. 2006). Anderson et al. (2006) observe that this is a key factor for the First
Nations achieving societal change. They also recognize that recognition of rights to land and resources is only one aspect of a larger formula, the other significant part of the formula is how receptive the two level of governments will be in developing more finite policies to support the relationship building between the First Nations and mining proponent (2006).

CHAPTER 4

4. Why has the present aim not been capable of reversing the social and economic conditions?

In this section we will utilize the findings from the literature review to describe and understand Positional Based Bargaining, involvement of First Nations in the past process, the present level of involvement of First Nations, the source of the decision to include First Nations, and a summary in an effort to answer the second question.

4.1 Positional Based Bargaining

The implications from the literature review reveals that under the present Positional Based Bargaining process the level of involvement of a First Nations through the Environmental Assessment (EA) is a prelude to the IBA-which is meant to provide adequate compensation or the affected First Nations. The EA as described in the BC Mining Strategy (2012) is the mechanism for reviewing mining projects to assess their impacts on the environment. The assessment process ensures two goals, first to ensure the project meets the goals of the environmental, economic and social sustainably. The second is to provide opportunities for the public, First Nations, stakeholders, and government agencies concerns and issues are considered (BC Mining Strategy 2012).
The level of involvement in an EA is a good indicator of the type of IBA a First Nations will receive through negotiations. Even though this process is considered an attempt to compensate the First Nations, the design of the process does not achieve the intended result. The type of negotiation is founded on a “positional approach”, that is determined by the strength of an Aboriginal or Treaty right (Charter 2001). The stronger your land claim, the more input in the ERA, and is reflective in the larger settlement from an IBA (Charter 2001).

4.2 Historical Involvement of First Nations

Historically, First Nations were excluded from any meaningful input when resource development occurs on their traditional territory. All decisions pertaining to the specific parameters for development have been left up to both the federal and provincial governments and the proponent (Campbell 1996). To expand on this concept Campbell (1996) says “this lack of input is the most critical issue facing First Nations and has a significant negative economic and social impact on Aboriginal communities.” Utilizing research from Whiteman and Maman (2002), six years later indicates that despite being the traditional managers of local ecosystems-Indigenous Peoples usually find themselves outside the margins of most mining projects. Even though six years had passed they found that First Nations had little or no consultation/participation in decisions that may significantly impact their lives and land (2002).

Whiteman and Maman (2002) offer the following perspectives that contribute to the lack of consultation with First Nations: lack of land rights for the First Nations people, divergent beliefs on land and resource management, and lack of community access to information about proposed or existing mining operations. They further add that in order to correct this imbalance the original inhabitants (First Nations) and other users of the land need to be included earlier into the process (2002).
4.3 Present Involvement of First Nations

There have been significant changes to the consultation process and different mechanisms for including First Nations people in decision making about a mining activity (Hipwell et al. 2002). The primary reason for the shift is a ruling by the Supreme Court of Canada that states: Aboriginal people whose Aboriginal rights may be infringed should-at a minimum-be consulted (2002). Hipwell et al. convey in their paper that mining policies and regulations have undergone an apparent shift towards principles of sustainable development, and a more inclusive process (2002). Research done by Baker and Donahue (2005) indicate that efforts to include First Nations in either consultation or negotiation have improved. Especially in regards to resource extraction; primarily because in the early years aboriginal or treaty rights were not recognized (Baker Donahue 2005).

4.4 Source of the decision to include First Nations

First Nations communities where mining projects have undergone formal approval by government enter into negotiation with a mining company based on the ability to prove their inherent aboriginal or treaty right to reduce the predicted impact of a mine on their traditional territory. In order to explain this in more detail we will utilize the work of Melanie Charter, who described the findings of The Sparrow Decision resulting in the “Sparrow Test”\(^7\). It is intended to be used as a barometer to assist government regulators, industry and First Nations identify if an activity is in fact infringing on First Nations aboriginal rights, the test must be used each time government(s) consider issuing a permit for extracting resources (Charter, 2001).

The Sparrow Test derived from the court case reads as follows:

A) Is there an aboriginal right?

\(^7\) See Chartier 2001 pg 8, R v Sparrow, [1990] 1 S.C.R 1075
B) If so, does the proposed government activity interfere with the right because it:
   a. Is unreasonable;
   b. Imposes undue hardship;
   c. Prevents the holder of the right from using the preferred means of exercising it?
C) If the aboriginal right is interfered with, is the interference justified because:
   a. There is a valid objective, such as conservation; and
   b. The action is consistent with the integrity and honour of the Crown because:
      i. In the case of the right to fish or hunt for food, after conservation measures are taken, priority is given to First Nation;
      ii. There is little infringement possible;
      iii. In the case of expropriation there is fair compensation;
      iv. There has been consultation?

As stated by the Supreme Court of Canada, this constitutional obligation arises only in the event of an infringement of an Aboriginal Treaty Right (Charter 2001). Whiteman and Maman cite the cause is a power imbalance that puts both the mining companies and two levels of government on one side and the First Nation on the other.

4.5 Environmental Review

Baker and Donahue (2005) elaborate in their paper that the British Columbia government recognizes the need to avoid infringement on aboriginal property rights during resource developments. In response to the need, they indicate that the environmental assessment process in British Columbia “ideally” provides an avenue for First Nation participation (2005). Their paper reviewed the effectiveness of BC environmental assessment policies for First Nations participation in mine development in northern British Columbia, to evaluate how First Nations were integrated into the decision making process. Their findings, based on their research for participation of First Nations, indicate that the environmental review process failed. They report that the process failed “procedurally, substantively and trans-actively.” Baker and Donahue state that since it failed to meet these requirements, the overall policy effectiveness for the inclusion of First Nations people did not achieve intended goals (2005).
4.6 Impact Benefit Agreement

Sosa and Keenan (2001) define an Impact Benefit Agreement (IBA) as a volunteer negotiation process intended to secure the First Nations economic benefits for affected communities. Sosa and Keenan (2001) study on Impact Benefit Agreements (IBA) indicates that the process follows a Positional Based Bargaining approach, meant to offer some concessions to a First Nations community. Sosa and Keenan observed that these concessions included: lump sum payments, opportunities for business start-ups, and direct employment (2001). One of the difficulties of this process is that the level of engagement with a First Nations is based on the strength of either their Aboriginal or Treaty right (Hipwell et al. 2002). However, since the negotiation process is based on positional bargaining, the efforts can be categorized as a short run solution, and will not be capable of reversing the social and economic conditions in their communities (Sosa Keenan 2001).

4.7 Summary of the reasons why the present process is not working

The reason the process failed was because the shifting focus of the aim from no involvement to participation on a project committee did not afford the First Nations direct involvement (Sosa Keenan 2001). Barker and Donahue (2005) findings support the research from Sosa and Keenan (2001), that the revised aim to include First Nations as members of an ERA project committee or negotiation for an IBA did not provide the First Nations the kind of input or tools to reverse the economic conditions in their community.

Sosa and Keenan describe that the strength of ERA defines the type of IBA a First Nations could expect (2001). Even though the process evolved from no inclusion to partial inclusion the implications are that more involvement of First Nations are necessary, especially when both these discussions are happening concurrently (Sosa Keenan 2001). They further added, “When it
came to the IBA, the intent was to provide the First Nations remuneration and opportunity, and not focused on working with the First Nations to address the economic conditions (Sosa Keenan 2001).” In addition, Barker and Donahue (2005) said: “First Nations require not only the choice of methods that provide access and opportunity for their participation, they also require [authority, adequate funding necessary to take advantage of the opportunity], and a significant role in the decision-making process (2005).”

The question then is how to utilize mineral extraction to reverse the social and economic conditions in their community. This will be further explored in the next section, and a new model will be introduced utilizing work and concepts from Australia, and one recent agreement in Canada.

CHAPTER 5

5. Discussion Section

5.1. What will it take to reverse the socio economic conditions in a First Nations community?

Even though the conversation has improved to include the First Nations, they are still treated as a “third-party” under the present process. In this section we will review: i) Interest based bargaining, ii) the necessary circumstances for First Nation approval, iii) the literature reviews of the two models in Australia and one from BC, and iv) utilize the findings from the literature review to formalize the proposal.

5.1 Interest Based Bargaining

An Assistant Superintendent for Employee Relations, Richard Majka, observes “Interest Based Bargaining (IBB) is a negotiations process developed through the Harvard Negotiation
Project. Their findings indicate that settlements between two parties can be better developed under this process. The process calls for originality, creativity, in fashioning both solutions and resolutions which address each group's concerns (Majka 2000).

Interest Based Bargaining is a multi-step process which attempts to identify the interests of each party clearly, rather than identifying positions. Determining the interests of the parties and working from that basis can result in solutions which serve all participants. Since it is a new approach to reaching agreements, it was found that both trust and training were necessary as a starting point. Without either the process fails (Majka 2000).

Although this paper and the early usage of IBB focused on labour relations between an employer and employee, the merits of the process are worth exploring. For instance, the process relies on openness, utilization of subcommittees, trust, and is proving to be a good process to resolve difficult issues. Putting all the concerns on the table fosters an environment for development of resolutions to areas of mutual concern, without negativity, antagonism, or threats (Majka 2000). Majka observed that the IBB opens many layers of communication between parties to address and resolve their areas and concerns on an ongoing basis, as opposed to only talking during renewal of contracts (2000).

5.2 The necessary circumstances for First Nations approval

Under the right circumstances and conditions some First Nations would approve a mining project; provided their input and concerns of the environment were met. Frances Abel explains that Aboriginal people have the same interest as non-aboriginals in developing a just, secure, and inclusive social architecture; but have a different approach founded on inclusiveness (2004). As Tracy Campbell observes the following point in her paper: “the reasons for supporting aboriginal participation in the management and development of land- [is because] aboriginal communities
are inextricably and historically tied to the land (1996).” In this section the literature from past and present scholars supports the idea of First Nations involvement.

Many scholars like Verbos and Gladstone agree that First Nations people have a unique and unexplainable connection to the land that they refer to as their traditional territory (2011). It is often the reason why many First Nations refer to themselves as stewards of the land. The scholars describe the connection to the land as “a deep spiritual relationship with the earth, which is the source of their resiliency, and the means to end their cycle of poverty (2011).” By delving deeper into this subject, Anderson, Honig and Peredo explore how First Nations intend on utilizing this connection to the land to reverse the socio economic circumstances in their communities (2006). Anderson et al. report that First Nations believe in utilizing these same economic forces that are driving the industrialization happening in their traditional territories to achieve change reverse the social and economic conditions (Anderson, Honig et al. 2006).

In 1996, Tracey Campbell’s research highlighted the implications for a First Nations making any kind of agreement with a mining company to extract resources could go against their role as stewards of the land (1996). In order to effectively answer this concern it is best to distinguish it into two parts, from a philosophical and ethical perspective. The philosophical aspect offers insight into the difficulty of the decision before a First Nation community to utilize the land to rebuild their communities. The ethical challenge is that even though the intentions are sound, any decision to extract resources will not be easy (Anderson, 1996).

From the philosophical perspective we will utilize the works of Annie Booth and Norm W. Skeleton, who said “Natural resources exploitation has significant consequences for indigenous peoples, particularly for those choosing to maintain a traditional relationship with the land (2010).” Booth and Skeleton report that even though there was substantive case law and rights
afforded under the Canadian Constitution through section 35 for First Nations. They said: "little has been done to remediate a process that seems destined to extirpate indigenous people from their lands and eliminate their cultures (2010)." Another scholar made a similar statement 14 years earlier; Campbell (1996) who wrote the paper "Co-management of Aboriginal Resources" said that "historically First Nation people have been excluded from any meaningful input into how, where, or why resource development occurs on traditional territory (1996)." Anderson, Dana and Dana report that the land is the place of the nation and is inseparable from the people; and many First Nations understand that possibly utilization of resources are the key to rebuilding both the economy and socioeconomics of their people (2006).

This question from an ethical point of view can be best described utilizing work done by Joan Kendall. Kendall's research led her to the Assembly of First Nations and the vision of a sub-committee. In their report, tabled in 1999, the Chiefs Committee on Economic Development stated that "development aimed at improving the quality of life for [Aboriginals] must not do so at the expense of traditional values and beliefs (2009)." Kendall argues that many of the values associated with Aboriginal cultures are far more consistent with sustainable development than that of European culture (2009). Kendall's paper, "Interrupting the Cycles of Disadvantaged" highlights the need for strategies for economic development are dictated by the actual goals of such development (2009). Strategies like business creation, ownership, creation of alliances, joint ventures, that specifically focus on the need for First Nations control (2009). Kendall states that these would be the only circumstances a First Nations would support in the extraction of resources (2009).
The area where both studies converge is that in order for an approval to take place, the First Nations should have significant input to ensure the lands that are used to sustain their food source, culture, and lifestyle can be maintained (Booth Skeleton 2010, Campbell 1996).

5.3 Findings of literature review for two models from Australia and one from BC

5.3.1 Rural Hybrid model in Australia

The first model comes from research conducted by the Director for Aboriginal Economic Policy Research Center, J.C. Altman published in 2007. Australia, like Canada, is recognized as a Commonwealth country, with many similarities in government, including challenges on how to address the social and economic conditions for the Aborigines living in remote regions of their country.

Altman (2007) begins by saying “While Australia is one of the world’s richest countries in both absolute and per capita terms, many of the Indigenous people live in poverty.” One of the aspects for this is that in Australia their approach to Indigenous economic development can only be achieved by mainstreaming (Altman 2007). As a starting point he identified two distinct points that anchor the model. The first is need for many of the people who were primarily hunters and gatherers to understand the nature of an economy as a necessary foundation for moving forward. The second and most important need was acceptance by all levels of government that the remote Indigenous communities and people did not need to be “mainstreamed” in order to contribute and benefit from the economy (Altman 2007). Altman (2007) identified three areas for an alternate model to alleviate the poverty in remote regions of Australia.
By studying the remote region Altman (2007) identified that there is in fact signs of an active economy, he described it as having three sectors: the public/state, the non-market (or customary), and the two-sector private/public market. This is a key component for the model presented in his paper. The new model that highlights the inter-linkages between these three sectors is important to providing full time employment for the local people. For instance an aborigines’ person could possibly spend time hunting and gathering then sell his/her products to the local market, and then work for the Community Development Employment Scheme all on the same day or within a work week. Altman (2007) implies that when this concept, along with training and workshops from professionals to improve the knowledge of economic forces, will frequently make for a new economy in the remote regions of Australia, strong enough to improve the social and economic conditions (Altman 2007).

In order to achieve this he says “the government’s policies surrounding the delivery and eligibility of state welfare need to be adapted for rural Indigenous people (2007).” In other words if a person is on welfare that they can still go out unto the land harvest, transform the harvest into a saleable item for the market, and also go and work part time for the local regional development corporation and still collect a portion of welfare. Altman (2007) believes that people participating in this system, can continue to harvest traditional food or animals for sale, then go to work at the local market making products for sale for tourism and still be eligible for direct assistance from the local government, will develop a better economy for the rural regions in Australia.

This model came about after a policy discourse in Australia that sought to address Indigenous poverty via a re-enactment of the modernisation paradigm. Australia’s initial policy attempts; founded on the idea of moving people from remote Indigenous communities to
employment opportunities, failed to achieve the desired effects. Instead, Altman identified an alternative model that identified avenues to accept the notion that there was an economy in rural Australia that needed a slight change in policies to reverse the social and economic situation in their communities.

5.3.2 Landmark Agreement in Australia between Indigenous people and a Mining Proponent

The next model comes from a historic landmark agreement between Indigenous people along the coast of Australia and a subsidiary company of RIO Tinto, Hamersley Iron Pty Limited (Hamersley). Peter Eggleston, a Group Coordinator for Sustainable Development, is an employee of Rio Tinto Group (Parent Company of Hamersley). He shares an insight that “RIO Tinto recognizes that mining proponents are now in an environment where Aboriginal rights have radically altered the development environment and need[ed] to alter their approach (2002).”

Eggleston reports that the subsidiary company of Rio Tinto embarked on a new systematically, carefully planned unconventional approach, which accomplished two significant achievements. First it provided the company unimpeded access to the resource, while for the local Indigenous peoples numerous benefits. For example, inclusion in the design stage of the mining activity and real business procurement rights (Eggleston 2002). The implications of this new kind of agreement, specifically the business procurement rights afforded the Indigenous groups opportunities to enter into partnerships with vendors, suppliers and service providers while building both the railway line and the mine itself (Eggleston 2002). Eggleston says “this approach has since been applied around the Rio Tinto Group to reach agreements with Indigenous peoples in other parts of the world (2002).”
Eggleston (2002) begins by sharing the first step of the subsidiary Hamersley substantially changed its approach from an adversarial to a collaborative one by instituting a suite of proactive programs to repair relationships. Second, they negotiated a Land Use Agreement recognizing the value of the $700 million dollar project, with a view of providing long term Aboriginal community benefits from the development. As a result of these two significant changes the local Indigenous communities and people were active participants in the design, building, and execution stages of the project through their business procurement rights (Eggleston 2002).

As Eggleston (2002) shares in his paper, achieving this task was not easy. For example, the mining project was located in the interior of Australia. Thus, requiring the company to build a 150km railway where the company can move their product from the interior to the coast where it will be loaded into ships (Eggleston 2002). The difficulty was competing interests of other land users, the four different Indigenous groups along the route, and the highly charged political environment surrounding Aboriginal rights (Eggleston 2002). The solution was to develop a new structured process that needed to be organic, sincere, and complete (Eggleston 2002).

As Eggleston indicates in his paper the following six phase model was used to generate the agreement between local indigenous groups and Helmsley: step 1) early consultation and planning, 2) the decision to negotiate, 3) social mapping, 4) establishing a negotiation framework, 5) formal negotiations, and 6) closure. After conclusion of the six phases, a formal agreement was signed between the Aborigines and Hamersley (Eggleston 2002).

The resulting agreement known as “The Yandicoogina Land Use Agreement” is a bipartite regional agreement between 13 registered Indigenous parties and Hamersley that sets the stage for a long-term collaborative agreement (Eggleston 2002). Eggleston (2002) describes the benefits and requirements for both distinct groups. He states the “Aboriginal parties agree: to
support the project by granting all requisite titles and approvals, support future project title requirements, grant of exploration titles, regional site clearance procedures, the benefits satisfying any compensation entitlements with respect to the Yandicoogina project, participate in an ongoing Monitoring and Liaison Committee (2002)." Hamersley agrees to the following: “payments over the life of the project to independent Public Benevolent Trusts established for specific purposes of enhancing: business development; education and training; community development and infrastructure needs; protection of culture; and the long-term welfare of the Bunjima, Niapali and Innawonga communities. In addition a requirement that a portion of the funds be invested to address the needs of future generations of Indigenous groups (Eggleston 2002). Eggleston (2002) goes on to describe that that the Indigenous groups will receive training on equipment that will be used on the job to build the railway and mining operation, assistance with contracting opportunities, in-kind assistance community development, employment opportunities for Indigenous people in the higher level positions that have the right qualifications, and ensuring the Indigenous people have access to the non-operational areas of the mining project and involvement on the environmental and protection committees, and the development of a heritage site (Eggleston 2002).

Eggleston (2002) said that the lessons learned were: “a collaborative approach to working with local interests, building lasting and structured relationships underpinned by investments in community relationship programs; a willingness to negotiate a legally binding, long term, Land Use Agreement with Aboriginal interests; commitment to communicate in a personal and open manner with a view to understanding differences, aligning company’s values, and managing expectations on both sides; and consistent and thoughtful involvement of senior management. “Eggleston (2002) noted that in order to achieve the intentions of the agreement it required trust from all parties in the agreement.
Although difficult, Eggleston (2002) said “it was necessary to build multiple and timely coalitions, directing internal and external communications, and managing community and government interactions in a strategic way.” Eggleston (2002) adds “mistakes were frequently made” and guidance was often sought directly from the Aboriginal people themselves (Eggleston 2002). This system proved useful for Rio Tinto, which signed a similar agreement with the Haisla of BC in 2012, which will be explored in the next section.

5.3.3 Haisla Legacy Agreement

Mark Selman from the Carold Institute examined the development of an indigenous community in Canada, specifically the Haisla Nation. Selman starts by describing the Haisla people’s lengthy heritage as a trading nation. Although they fought when necessary, the Nation prospered primarily through harvesting rich resources and trading along the Pacific Coast. The community is located near the head of Douglas Channel, a 90 km long inlet that leads from the Pacific Ocean, and a 15km drive from the municipality of Kitimaat (Selmon 2007).

The leadership in the community, holds hope for the future and believes positive community development will take place through the right kind of land use agreement with Rio Tinto, which can provide the First Nation with key tools to improve the economic base of the community (Selman 2007). Selman shares aspects of their strategy through economic development partnerships with successful existing businesses and the creation of an economic develop corporation that would operate independently from elected council, with significant input from hereditary chiefs (2007). Economic plans include a focus on ecotourism, land-use management, forestry, and aquaculture (2007). He shares that the Haisla “wisely focused on three major objectives.” Selman further reports that the keys to development are “building relationships with partners, which includes major employers, companies with proposed projects...
in the area, and educational providers, who can support capacity building; capacity building itself-developing the internal resources to manage services, governance, and economic development projects; separating politics and economic development through the creation of an economic development corporation with some autonomy from the band council (2007)."

As a result, in a report released by RIO Tinto in 2009, the company and the Haisla Nation signed the Haisla-Nation-RTA Legacy Agreement. The purpose was exploring opportunities for the Haisla Nation to be more engaged in the Kitimaat Modernization Project (KMP). The agreement affords the Haisla procurements for business, employment and training, establishment of a Legacy Trust Fund to be used for community growth and developments, and annual payments towards environmental stewardship, elder recognition, training and capacity development. The procurements of business opportunities affords the Haisla Nation direct awards for all ancillary services allowing the Haisla to partner with other business intending on supplying of products or services for the KMP project. This is essential to provide the Haisla more opportunities to learn about various other businesses in the mining industry.

Nelson Bennet, a reporter from the Vancouver Business journal, interviewed the Chief Councillor. In his interview he confirmed that the band signed a Legacy Agreement with Rio Tinto Alcon that afforded the First Nation procurement opportunities, employment and training, and capacity building. Thus, affording the Haisla the opportunity of entering into multiple business agreements (tools), each capable of reversing the social and economic conditions in their community.

5.4 Proposal

To recap this section there are four unique concepts that can be taken from the previous examples. The first is that in all three incidences there was acceptance that the First Nations were
intent on staying and utilizing the land in traditional ways. Next, resource extractors took an interest in learning what the issues were in the communities: this required two of the proponents hiring or assigning Community coordinators to improve the knowledge of business practices and procurements. Then instead of a Positional Based Approach, the industry utilized an Interest Based focus to generate the new type of agreements. The only aspect that is different is the last one involving the Haisla, by receiving direct procurements allowed them to leverage these benefits into joint ventures with companies providing services or supplies to the Kitimaat Modernization project. It is under these circumstances that afford a First Nations the right tools to reverse the social and economic conditions in their communities.

The concept of direct procurement awards like the previous paragraph described has some merit since the challenge in First Nations communities is to utilize the economic forces of a mining activity to rebuild their communities.

Canada and the British Columbia will need to also refine their policies in an effort to support the inclusion of First Nations as actual partners in a mining activity. Rather than just state that the mining proponent only needs to consult with a First Nations, both levels of government need to refine their policies to be more direct. Instead of merely suggesting inclusion it should be a requirement to have a First Nation as a limited partner or be designated procurement rights that they can leverage into joint ventures with other suppliers.

The mining proponent would be more like the private/public sector in the hybrid model described by the Australian model. By shifting their aim to include First Nations as a limited partner, they will be send a positive message to the First Nations that this is not an ordinary project, but an investment in assisting the First Nations reverse the socio economic conditions in their community.
CHAPTER 6

6. Conclusion

The next stage in the evolution of the engagement process that will provide First Nations people the means to rebuild their communities is partial ownership of a mining project. Under the right circumstances a mining activity will continue to be one of Canada's economic drivers for the government, province, northern BC region and a First Nation community.

Imagine the positive implications of reversing the social and economic conditions for a First Nations community. This can be achieved by changing the intent of the bargaining process from a Positional Based Position to an Interest Based Approach. Combined with policy changes by both the Federal Government and BC Government the stage will be set for a new era for all involved.
Bibliography


