

A New Path Forward For Resource Development – And Reconciliation

By Robert Walker and Dave Porter

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High profile resource development controversies – from BC's Northern Gateway pipeline to hydraulic fracking in New Brunswick – have dominated in Canada for years, and continue to do so as companies struggle to get a shovel in the ground without protest, community opposition and legal action. At the heart of most of these major disputes are Aboriginal rights, consultation and consent.

But it need not be that way. There is a solution that is emerging as a way forward that is in everyone's interest: the embracing of the concept of free, prior, and informed consent.

The Boreal Leadership Council (BLC) – a unique collection of solutions-oriented resource companies, financial institutions, environmental organizations and Indigenous groups – is convinced that gaining consent is both possible – it is already starting to happen – and desirable.

In its latest report – *Understanding Successful Approaches to Free, Prior, and Informed Consent in Canada* – the BLC advances FPIC as the key to responsible development, and calls on governments and industries to build on a rapidly evolving set of best practice tools and guidelines and on new partnerships being established by Indigenous communities and companies across Canada.

Free, prior, and informed consent (FPIC) is a short-hand expression to describe the right of Indigenous peoples to offer or withhold consent to developments that may have an impact on their territories or resources.

The United Nations has adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) setting an important standard for the treatment of Indigenous people that incorporates FPIC in many of its provisions.

Groups as diverse as the International Finance Corporation, the Forest Stewardship Council and the International Council on Mining and Metals are also working to understand, advance and implement FPIC.

In Canada, where Aboriginal rights are protected under the federal Constitution, the Supreme Court's recent *Tsilhqot'in* decision has underscored that Aboriginal title to land confers possession and ownership of land and resources in certain circumstances. Companies seeking to develop resources on these lands are best advised to obtain consent. In this day and age, FPIC can be seen as a critically important foundation of the balanced and sustainable land use that will yield economic, social and ecological benefits.

The Truth and Reconciliation Commission report has further demonstrated the need to reconcile a dismal past with a positive future based on mutual respect, trust and partnership. Resource development and FPIC are at the heart of this journey.

Quite simply, this is the 21st Century and the time to recognize rights, develop genuine respect and trust, and work together as equal partners is long overdue.

FPIC-related processes are becoming an increasing part of the landscape, but as the BLC report identifies, it is a rapidly evolving field that needs to be advanced on at least three fronts.

First, the federal government can focus on developing with Indigenous governments a legal framework for decision-making, and provide consistent funding to strengthen the land stewardship capacity of Indigenous communities.

Second, industry can engage with Aboriginal communities to understand and support their preferred engagement protocols, their cultures, values, and rights as the foundation for relationships to guide project development, protect Aboriginal rights and ensure benefits flow to impacted communities.

Third, Aboriginal communities can aim to establish FPIC frameworks that provide clear expectations regarding the development process.

The good news is this work has already begun. In dozens of communities significant progress has been made on a variety of major projects that can be advanced through a more active exchange of lessons learned, both good and bad.

Yet we still have to overcome lack of trust and inconsistent government practice if we are to succeed in truly moving away from using resource negotiations merely to get a deal and in placing FPIC at the core of negotiation and reconciliation.