

BECOMING PARTNERS:

A decade of progress in Aboriginal-industrial relations in BC

MAY 2015



Resource Works

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About the Resource Works Society

Resource Works is a not-for-profit society with a mandate to support a productive, respectful and informed public dialogue on resource development in British Columbia. The organization aims to support fact-based public discourse about the natural resource sector and its role in BC's future.

We recognize that BC has a long and proud tradition of resource development, one that includes constant innovation to expand economic benefits while reducing environmental footprints and social costs.

Resource Works is bringing together leaders from many different interest groups, broadly representing much of BC society, including a former premier; a former federal minister; First Nations; labour leaders, business and civic leadership; academics from the environmental and physical sciences, and economists. These individuals have come together as an Advisory Council to direct Resource Works' research into the economic impacts of resource development and to provide neutral, fact-based information to citizens and decision makers.

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Resource Works Governance

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A voluntary body that provides leadership and strategic advice to the Resource Works Society.

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Dan Miller is a former Premier of British Columbia. He also served as the minister for municipalities, for energy, mines and petroleum resources, for skills training and labour, and for forests.

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Foreword

As supporters of the Resource Works Society, we believe in the responsible development of BC's natural resources and that an indispensable part of that work is the meaningful participation of First Nations communities.

The report you are about to read is motivated by the idea that there has been a great deal of progress in aboriginal-industrial relations in BC that has not been widely reported. By nature, people are drawn more strongly to stories about things that go wrong than to stories where things go right, which can leave the impression that aboriginal-industrial relations in BC are largely dysfunctional.

But as this report shows, healthy, productive collaboration between resource proponents and aboriginal communities are happening in BC, thanks to growing mutual respect between partners, increased capacity in First Nations communities to participate in major projects, improvements in First Nations governance, and greater attention to environmental concerns.

This is not to suggest that no challenges remain. In fact, this report confirms and emphasizes many of the well-known barriers hindering First Nations participation in economic development. Our purpose is not to minimize these important issues. Rather, it is to support a part of the First Nations story that we feel has been neglected in BC – that industry and First Nations communities are making real progress in forming meaningful partnerships.

As we continue our efforts to improve relationships between First Nations, industry and government, it's worthwhile to step back and appreciate the progress we've achieved. While there's still much we can learn from what's gone wrong in the past, it would be a mistake to ignore those things that are working right today.

Doug Horswill, Chair
Resource Works Society



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Executive summary

Resource development in British Columbia has proceeded at an historic pace in recent years, and major projects in the planning stages point the way to continued growth. This boom has been facilitated by unprecedented co-operation between the resource industry and First Nations. While images of First Nation protestors continue to garner significant media coverage, the reality is that BC has entered a new era in relations between the resource industry and First Nations.

This report relies on insights from principals who have participated in agreements between First Nations and the resource industry. These participants provide first-hand observations into the developments that have paved the way for this watershed moment in First Nation/industry relations. Our participants are:

- **Lana Eagle:** Interim executive director, Industry Council for Aboriginal Business, and chair, Aboriginal Relations Committee, Association for Mineral Exploration BC
- **Bruce Falstead:** Manager, aboriginal initiatives, FortisBC
- **Roger Harris:** Former MLA and forestry minister, now a consultant with Harris Palmer
- **Tom Isaac:** Leader of the aboriginal law group at Osler, Hoskin & Harcourt LLP
- **John Jack:** Elected member of council for the Huu-ay-aht First Nations, board member of Alberni-Clayoquot Regional District, and representative to the LNG Project Development Panel
- **Blair Lekstrom:** Former MLA and mines minister, now an independent consultant whose clients include HD Mining International; also vice-president, business development, Duz Cho Group of Companies
- **Garry Merkel:** President and CEO of Tahltan Nation Development Corp.
- **Sally Thorpe:** Aboriginal relations manager with BC Hydro

Key findings

The participants who informed this study come from different backgrounds, and their comments demonstrate a diversity of expertise and opinion. And yet, strong themes emerged from their comments, illustrating trends in BC Aboriginal-industrial relations. Below are some of the major ideas covered in this report.

An awareness is growing among resource companies that First Nations are among their most important potential partners, which has led to better dialogue and more meaningful long-term relationships. These relationships have helped those First Nations that choose to engage in the resource economy develop significant and lasting capacity of their own.

Several project proponents have demonstrated that there are effective ways to approach what have long been seemingly intractable challenges. Unstable governance has been addressed in some First Nation communities through separation of business and politics, while industry has learned to take the long view and develop relationships that can withstand the ups and downs of election cycles.

Industry and First Nations have also found ways to reach development agreements despite unresolved and overlapping land claims that were once seen as a considerable barrier to doing business in British

Columbia. And recent partnerships have demonstrated that with respect and true dialogue, common ground can be found over concerns about the environment.

Despite this explosion in First Nations participation in the resource economy, challenges remain. While dozens of First Nations have reached partnership and benefit-sharing agreements with resource-development companies, many more continue to withhold their support due to concerns over threats to their cultural and environmental values. Many of those First Nations that are eager to participate in resource development lack the capacity to do so, both in terms of skilled labour and management expertise. Private industry, for its part, frequently complains that resource companies bear an unfair portion of the responsibility to consult with and accommodate First Nations.

What we've learned in recent years is that, while these challenges can seem daunting, they can be addressed, and progress is being made. We present these findings in hope that recognizing our accomplishments as well as the challenges that remain will help us accelerate the positive developments we are already seeing in BC.

In their own words

“Meaningful relationships mean taking the time to build a relationship... and because of changes in the current landscape First Nations can articulate that better now. Long before there are agreements to be negotiated, more and more First Nations are able to articulate their concerns about the environmental impact on their inherent rights.”

— Lana Eagle, Industry Council for Aboriginal Business

“When it comes to consultation, I would just consider the government to be absent. It's entirely left up to industry. The government basically says, Let us know when it's done.”

— Bruce Falstead, FortisBC

“The value the band will bring to the table by getting them to support you will save you millions in the regulatory process, both in the beginning and on the ongoing operation, because you're always needing a permit to do something. And having these guys as partners makes the government just go away.”

— Roger Harris, former forestry minister

“We have a lot of business leaders in BC doing all the right things. What's missing is a game plan that goes beyond an election cycle mind-set and takes a generational approach to how we achieve reconciliation and certainty.”

— Tom Isaac, Osler, Hoskin & Harcourt LLP

“We feel our involvement can help avoid obstacles that could create political or social problems in the design or approach of a project that could kill it. We can help them make decisions early on while still keeping the project viable. And we feel that’s going to be the template or the model for BC going into a post-Tsilhqot’in world.”

— John Jack, Huu-ay-aht First Nations

“A number of years ago some companies engaged with First Nations because the courts said you had to. Today I see they’re coming to First Nations enterprises because the quality matches that of non-First Nation companies. And they’re truly interested in helping bands grow their capacity.”

— Blair Lekstrom, former mines minister

“BC has a vision for the province that will never be realized if First Nations aren’t there as equal players. If a big chunk of the population are discouraged, or are not participating, it just doesn’t work.”

— Garry Merkel, Tahltan Nation Development Corp.

“As a commercial operator in BC and Canada, we need to seek reconciliation. That grounds us in that recognition of the past if we’re going to have a meaningful exchange with First Nations, if we’re really going to get to a place of partnership that we see as important to meeting our business needs and also building the relationships we want.”

— Sally Thorpe, BC Hydro

I - Introduction

“We’ve gone from a point where resource industries used to avoid First Nations for fear of what they might do to stop things from happening, to a point where First Nations and businesses are starting to get together and realize that they probably should, and from an economic perspective, work together in creating value from the land and find arrangements that are mutually beneficial.”

— John Jack, *Huu-ay-aht First Nations*

Resource development in British Columbia has proceeded at an historic pace in recent years, and major projects in the planning stages point the way to continued growth. This boom has been facilitated by unprecedented co-operation between the resource industry and First Nations. While images of First Nation protestors continue to garner significant media coverage, the reality is that BC has entered a new era in relations between the resource industry and First Nations.

The potential emergence of an LNG industry has played a big part in fostering this cooperation. The February 2013 agreement between Apache Canada and 15 First Nations to support the proposed 463-kilometre Pacific Trails pipeline marked a historic watershed, following the 2012 agreement between Apache, Chevron Canada and the Haisla Nation to pursue the development of the proposed \$4-billion Kitimat LNG export facility.

A resource-development boom in the northwest was facilitated by the 2014 completion of the 340-kilometre BC Hydro power transmission line, a major infrastructure project that wouldn’t have been possible without the cooperation of the Tahltan and Iskut First Nations.

In forestry, First Nations are not only active participants with private industry, but several have built their own logging and silviculture companies that are now among the biggest in the province. At least five major new-mine developments have been approved in recent years, each with the support of First Nations. And First Nations have become significant participants in the emerging clean-energy industry, with First Nations participating in 28 clean energy projects, including run-of-river, wind and geothermal facilities.

Despite this explosion in First Nations participation in the resource economy, challenges remain. While dozens of First Nations have reached partnership and benefit-sharing agreements with resource-development companies, many more continue to withhold their support due to concerns over threats to their cultural and environmental values. Many of those First Nations that are eager to participate in resource development lack the capacity to do so, both in terms of skilled labour and management expertise. Private industry, for its part, frequently complains that resource companies bear an unfair portion of the responsibility to consult with and accommodate First Nations.

Participants

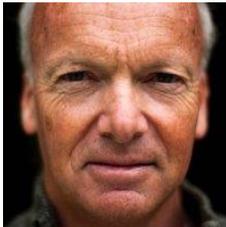
What we've learned in recent years is that, while these challenges can seem daunting, they can be addressed. This report points the way forward with insights from principals who have participated in agreements between First Nations and the resource industry. It does not strive for definitive conclusions or recommendations, but rather offers first-hand observations into the developments that have paved the way for this watershed moment in First Nation/industry relations, and points the way forward in coming years.



Lana Eagle, West Vancouver: interim executive director, Industry Council for Aboriginal Business; chair, Aboriginal Relations Committee, Association for Mineral Exploration BC. ICAB aims to bring corporations, provincial and federal governments and aboriginal communities together to further community and economic development.



Bruce Falstead, Vancouver: manager, aboriginal initiatives, FortisBC. Falstead is involved in current negotiations with Squamish First Nation regarding a proposed LNG plant in Howe Sound.



Roger Harris, Terrace: former MLA and forestry minister, now a consultant with Harris Palmer. Harris facilitated negotiations resulting in the Haisla Nation/Kitimat LNG agreement and the Pacific Trails Pipeline Trade Corridor Agreement between Apache Canada and 15 First Nations.



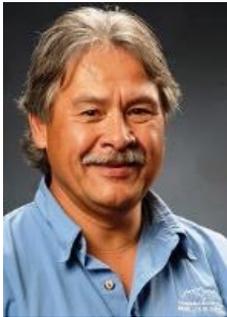
Tom Isaac, Vancouver: leader of the aboriginal law group at Osler, Hoskin & Harcourt LLP. Isaac has represented resource clients and governments and is the former chief treaty negotiator for the government of BC and former assistant deputy minister responsible for establishing Nunavut for the Government of the NWT.



John Jack, Port Alberni: elected member of council for the Huu-ay-aht First Nations, board member of Alberni-Clayoquot Regional District, and representative to the LNG Project Development Panel (an industry/First Nation panel exploring the potential construction of the \$4.5-billion LNG facility near Bamfield on Vancouver Island). Huu-ay-aht First Nations are party to the Maa-nulth treaty agreement with the provincial and federal governments.



Blair Lekstrom, Dawson Creek: former MLA and mines minister, now an independent consultant whose clients include HD Mining International; also vice-president, business development, Duz Cho Group of Companies, owned by McLeod Lake Indian Band.



Garry Merkel, Dease Lake: president and CEO of Tahltan Nation Development Corp., a group of construction, manufacturing and mechanical companies owned by the Tahltan Nation and employing between 200 and 500, with annual revenue between \$20 million and \$35 million.



Sally Thorpe, Vancouver: an aboriginal relations manager with BC Hydro. Thorpe participated in negotiations with First Nations regarding the construction of the 340-kilometre Northwest Transmission Line that was completed in 2014.

II - Laying the groundwork: Court decisions and government initiatives

“Relations between First Nations and the resource industry are improving, and some credit is due to the province. The last two political parties in power both understood that First Nations participation in the resource economy is critical. The New Relationship was an extremely smart move. BC has a vision for the province that will never be realized if First Nations aren’t there as equal players. If a big chunk of the population are discouraged, or are not participating, it just doesn’t work: especially when that population has land rights that are directly tied to our ability to develop lands.”

– Garry Merkel, Tahltan Nation Development Corp.

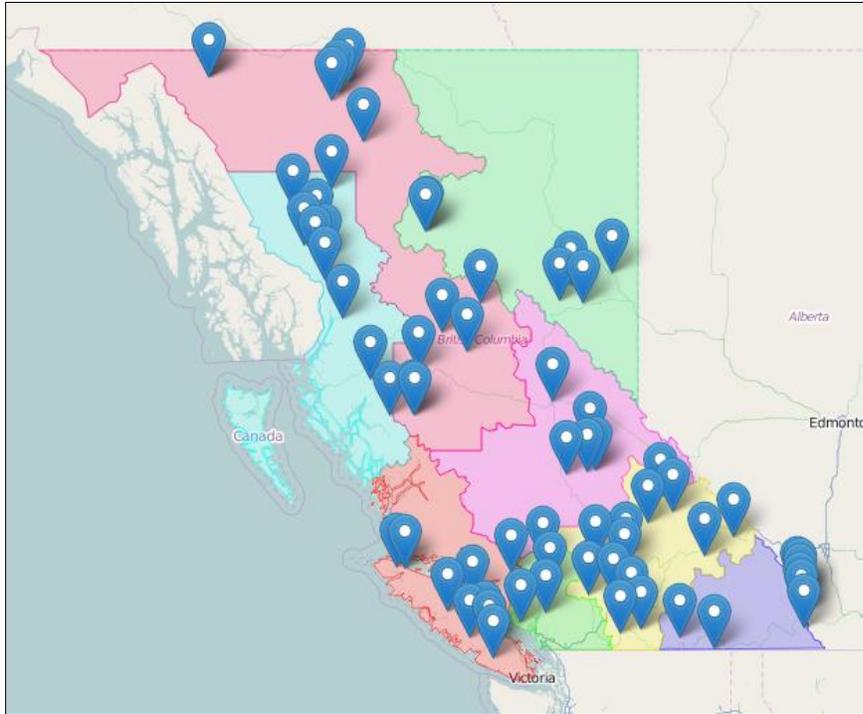
This new era in relations between resource industry companies and First Nations was facilitated by a number of court decisions and government initiatives. The ground-breaking legal precedent was set in 1997 with the Supreme Court of Canada’s judgment in the case of Delgamuukw versus British Columbia, where chiefs claimed ownership of 58,000 square kilometres of territory in northwest British Columbia, and the province argued that the First Nations had no right to the territory. The decision confirmed that aboriginal title does exist in British Columbia and that with regard to development of Crown land, the province must consult with and may have to compensate First Nations whose rights are affected.

The province’s duty to consult with First Nations was further confirmed in the 2004 Supreme Court of Canada decisions in which the Haida Nation and the Taku River Tlingit First Nation argued that the province does not have the right to allocate resource rights to private companies without first consulting First Nations. That decision confirmed that the province must consult with First Nations over allocation of resource rights, regardless of whether the First Nation has concluded a treaty or proven its claim in the courts.

The 2014 Supreme Court of Canada decision in the case of Tsilhqot’in Nation versus British Columbia can be seen as further strengthening the foundation for a new era of cooperation. It not only confirmed that aboriginal title exists, but granted the Tsilhqot’in First Nation title to 1,750 square kilometres in the Interior of BC

It was shortly after the Haida and Tlingit decisions that the province announced a new approach to relations with First Nations. In 2005 the Gordon Campbell government announced a “New Relationship” agreement with First Nation leaders, according to which the province would pursue “a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights.”

In subsequent years the province would enact a number of laws and initiatives giving First Nations fuller participation in resource development. The province announced in 2008 that it would be the first in



Projects in BC with aboriginal participation

Aboriginal participation is a key component of economic development in BC. The First Nations Economic Development Database (FNEDD.ca) lists 86 proposed and ongoing projects in BC with First Nations participation. This map shows BC projects that involve First Nations partners. Details for some of these projects are provided throughout this report.

Canada to share direct revenue generated from new mining projects with First Nations. In 2013 the first Economic Community Development Agreement was concluded, according to which the Tkemlúpste Secwepemcand Skeetchestn Indian Band would receive a portion of provincial revenue from production at New Gold's Afton mine near Kamloops.

The announcement that the province would share revenue from mining projects was followed by the province's introduction of Forest Consultation and Revenue Sharing Agreements, which not only commit government to sharing forestry revenue with First Nations, but give First Nations a greater say in the management of forest resources.

The Clean Energy Act of 2010 not only guarantees that the province will share revenue with First Nations, but it also established the First Nation Clean Energy Business Fund, aimed at ensuring First Nation participation in this emerging industry.

These government initiatives have had a profound impact on how resource industries operate in British Columbia. Participants in this survey report that concluding an impact/benefit agreement with First Nations is now standard practice for any company seeking to develop natural resources on Crown land. These agreements are often accompanied by joint-ventures and partnerships to develop projects together with First Nations.

III - First-Hand Perspectives: Insights from First Nations and industry

In the pages that follow, principals who participated in some of these agreements and partnerships share their insights into how negotiations and agreements are playing out in the boardrooms of private industry and in First Nation communities throughout the province. The agreements they participated in range from minor contracting agreements to impact and benefit agreements paving the way for major infrastructure projects.

Several key themes emerged. Perhaps the most significant is a growing trust and respect for sometimes conflicting viewpoints that is evident in comments from all participants. While no one pretends that all differences are resolved, the overwhelming consensus is that cooperation is the new normal, and that there's no reason to expect that to change.

1) Building relationships

“Businesses need to understand that First Nations approach business as a relationship, rather just as some sort of amoral deal. They have to have an understanding of who they're working with.”

— John Jack, *Huu-ay-aht First Nations*

Several participants spoke of the importance of building long-term relationships. Lana Eagle, from the Industry Council for Aboriginal Business, explains that the upshot of all the court decisions and government initiatives in recent years is that First Nations are finding industry more receptive to taking the time to listen to First Nations concerns outside of the narrow parameters of project timelines:

From an aboriginal perspective, meaningful relationships mean taking the time to build a relationship... and because of changes in the current landscape First Nations can articulate that better now. Long before there are agreements to be negotiated, more and more First Nations are able to articulate their concerns about the environmental impact on their inherent rights, which are hunting and fishing and gathering.

Developing these relationships requires understanding different perspectives, and ultimately respecting different cultures. As Sally Thorpe from BC Hydro explains, “One of the things we're trying to be much more open to is adopting the aboriginal perspective in our work. We find that ... a longer

Ajax Mine Advanced exploration agreement between Tk'emlúps te Secwepemc and KGHM International. Proposed open pit mine at the site of the former Afton mine near Kamloops.

Aley Niobium Project Framework agreement between Tsay Keh Dene and Taseko Mines Ltd. Proposed open pit niobium mine located 140 km north of Mackenzie.

Bonanza Ledge Gold Property Impact benefits agreement between Lhtako Dene Nation and Barkerville Gold Mines Ltd. Gold mine 82 km east of Quesnel.

engagement process, a longer consultation process, provides a richer input.” And the key to understanding that aboriginal perspective, Thorpe says, is acknowledgment of the past:

As a Crown corporation in particular, but also as a commercial operator in BC and Canada, we need to seek reconciliation. That grounds us in that recognition of the past if we’re going to have a meaningful exchange with First Nations, if we’re really going to get to a place of partnership that we see as important to meeting our business needs and also building the relationships we want.

Huu-ay-aht First Nations councillor John Jack adds that “companies and First Nations want to see the same thing happen; they want to see value generated off of land that doesn’t see value being generated yet.” How resources are developed is a technical question, he says, but “Why and whether it gets done is a question of will and communication and relationship-building.”

From his perspective spanning business objectives and First Nations culture, Jack explains what’s needed from both sides in order to build these relationships:

It’s comes down to the ability of one another to see it from the other’s perspective. For First Nations that means understanding how the resource industry is linked into the global economy, and that a lot of what companies have to do isn’t just because their owners want to do it for kicks; they need to do things in a certain way in order for them to be competitive in their industry.

Businesses, on the other hand, need to understand that First Nations approach business as a relationship, rather just as some sort of amoral deal. They have to have an understanding of who they’re working with.

For former forestry minister Roger Harris, failure to reach an agreement inevitably boils down to industry’s failure to take into account the importance of understanding First Nations culture. Success requires taking a business approach and understanding that securing First Nation participation in a project is worth taking whatever extra time and resources are required:

Industry continues to be frustrated because we still as westerners have not taken the time to really understand that you need to slow down. That doesn’t mean it takes forever, because at the end of the day the value the band will bring to the table by getting them to support you will save you millions.

Projects in BC with aboriginal participation

Eagle Rock Quarry Impact benefits agreement between Ucluelet First Nation, Hupacasath First Nation and Polaris Minerals Corp. Proposed gravel pit in the Port Alberni Inlet area.

Galore Creek Mine Impact benefits agreement between Tahltan Central Council and NovaGold. Proposed mine 90 km northeast of Wrangell, Alaska.

Gibraltar Mine Capacity Increase Impact benefits agreement between Williams Lake and Taseko Mines Ltd. Expansion of existing facility.

2) Establishing meaningful partnerships

“A number of years ago some companies engaged with First Nations because the courts said you had to. Today I see they’re coming to First Nations enterprises because the quality matches that of non-First Nation companies. And they’re truly interested in helping bands grow their capacity.”

— Blair Lekstrom, former mines minister

One of the biggest challenges cited by resource companies wanting to work with First Nations is their capacity to participate in development projects. A few First Nations communities have set aggressive targets for developing industrial capacity, but the vast majority of the approximately 200 First Nation communities in the province have no experience in resource development; some have chosen not to actively pursue developing that capacity, and those that have made it a priority face the daunting task of building industrial capacity from scratch.

Among the First Nations that have succeeded in building significant industrial capacity are the Tahltan Indian Band, the MacLeod Lake Indian Band and the Huu-ay-aht First Nations.

The McLeod Lake Indian Band has aggressively built its capacity in resource development, beginning with the formation of Duz Cho Logging in 1988. It is now the third-biggest logging company in the province, employing 60 full-time and seasonal employees and harvesting about a million cubic metres of timber annually. Duz Cho Construction, also band-owned, specializes in road-building and land clearing and has also worked in mining, wind energy and oil and gas. The Duz Cho group of companies recently entered a partnership with the business divisions of West Moberly First Nations, and Halfway River First Nations in order to pursue bigger contracts.

Blair Lekstrom, vice-president of business development for the Duz Cho group and a former mines minister in BC, attributes the companies’ success to hard work: “Many feel entitled to the work because they’re First Nation commercial entities. We’ve never taken that approach; we will earn the work through quality of work and competitive price.”

Projects in BC with aboriginal participation

Hackney Hills and Thunder Mountain wind energy projects
Memorandum of understanding between Halfway River First Nation and Aeolis Wind Power Corp. Proposed 300 MW wind park located east of Fort St. John.

Harper Creek Project Impact benefits agreement between Simpcw First Nation and YellowHead Mining Inc. Proposed copper-gold-silver mine near Kamloops.

Jamie Creek Hydroelectric Project
Impact benefits agreement between Xwisten, St’Ā;t’imc, Tsal’alh and Sequoia Energy. Proposed run-of-river hydroelectric project located 16 km west of Gold Bridge on Jamie Creek.

According to Lekstrom, the key to success both for First Nations aiming to build a commercial enterprise and companies wishing to do business with those enterprises, is recognizing the difference between business and politics, and keeping the two separate:

There's always been some concern that if the political influence is too strong over the commercial arm then things can go sideways. That's where we pride ourselves on having an independent board between us. It doesn't mean that the band doesn't know what's going on, but it gives more security to the industry that is working with the First Nations commercial entity.

To Garry Merkel, CEO of Tahltan Nation Development Corp., developing that capacity is a matter of choice, and it would be wrong to assume it's a top priority for every First Nation:

Our communities are evolving in every way and every community has to make choices about what it's going to focus on. Building an economy takes a lot of time and effort. Others might focus on building things like a government, or an education system, but the Tahltan community comes from a business culture, and building an economy made sense for us.

Procurement is usually part of an agreement between a First Nation and a resource company wanting to develop resources on land it lays claim to: the company will promise to hire the First Nation to do some of the work. A nation with advanced capacity, like the McLeod Lake or Tahltan, might simply provide that work themselves. Other bands might seek help from more established companies by entering a joint-venture.

Former forestry minister Roger Harris explains how establishing a joint-venture with an established company is one way a First Nation can develop business expertise and capacity more quickly than through organic growth:

Many First Nation communities don't have an economic development corporation or a business arm, or the financial capability, or they just don't have the expertise. So a good joint-venture partnerships brings in a partner that has that expertise. Ideally there will be a transfer over a fixed period time of that knowledge, expertise, certification and financial wherewithal. Typically there's a sunset clause where the First Nation has the ability to buy out the joint-venture partner, leaving a stand-alone First Nation company.

Projects in BC with aboriginal participation

John Hart Generating Station Replacement Project Impact benefits agreement between We Wai Kai Nation, Campbell River and BC Hydro. To replace the existing six-unit 126 MW generating station.

Kerr - Sulphurets - Nitchell Gold / Copper Mine Impact benefits agreement between Nisga'a and Seabridge Gold Inc. Open pit mine project, approximately 65 km northwest of Stewart.

Kitsault Mine Impact benefits agreement between Nisga'a Lisims Government and Avanti Mining Inc. Proposed open pit molybdenum mine 140 km northeast of Prince Rupert.

The key, Harris says, is for a band to focus on particular business areas and use joint ventures to develop a solid foundation in that business. He points to the example of the Kitsumkalum First Nation:

They decided they wanted to get into the aggregate business, so everything they've done has focused on aggregate and cement and the products that flow from it. They developed a very good aggregate operation and now they supply all of CN's rock, from Chetwynd to Fort St. John and into Alberta. And the jobs that flow from it are all high-tech. They manage their own business, they continue to build capacity and grow. They want to be the supplier for all the northwest.

Another First Nation that has been successful at building resource-development capacity are the Huu-ay-aht, who have successfully built forestry and fisheries enterprises. The prospect of participating in the development of a natural gas industry in BC, however, offers the First Nation the possibility of propelling its business arm into global markets. The Huu-ay-aht, one of the few BC First Nations that have concluded a treaty agreement, are currently in preliminary discussions with Steelhead LNG around the potential development of an LNG export facility on Huu-ay-aht land on Vancouver Island.

Huu-ay-aht First Nations councillor John Jack believes that forging a successful agreement with Steelhead could point the way forward, particularly in the aftermath of the Tsilhqot'in decision:

It has to start with economics, but we feel our involvement can help avoid obstacles that could create political or social problems in the design or approach of a project that could kill it. We can help them make decisions early on while still keeping the project viable. And we feel that's going to be the template or the model for BC going into a post-Tsilhqot'in world. We're kind of figuring it out as we go, like the Tsilhqot'in will inevitably be doing as well.

Projects in BC with aboriginal participation

Mclymont Creek Hydroelectric Project Impact benefits agreement between Tahltan Central Council and AltaGas. A run of river hydroelectric generating plant on Mclymont Creek tributary to the Iskut River.

Morrison Property Capacity funding agreement between Lake Babine Nation and Pacific Booker Minerals Inc. Proposed ore production for an open pit copper/gold mine 65 km northeast of Smithers.

Mt. Polley Mine Impact benefits agreement between Williams Lake and Mount Polley Mining Corporation. Proposed copper/gold mine southeast of Prince George is in exploration stages.

NaiKun Wind Power Project Partnership agreement between Council of the Haida Nation and NaiKun Wind Development Inc. Proposed wind power project on the Queen Charlotte Islands.

Nk'Mip Canyon Desert Resort Partnership agreement between Osoyoos Indian Band and Bellstar Hotels and Resorts and Watermark Asset Management. A 400 unit resort on the Nk'Mip Canyon Desert Golf Course.

Northwest Transmission Line Impact benefits agreement between Kitselas Nation and BC Hydro. A 340km transmission line between Skeena substation near Terrace and a new substation to be near Bob Quinn Lake.

3) Working toward stable governance

One of the biggest challenges facing a resource company seeking to engage with a First Nation community is the governance structure mandated by the Indian Act. In a community of a few hundred that must hold elections every two years, and where voter turnout can number in the dozens, it's easy for a few vocal protesters or an aggrieved family to affect a 180-degree policy reversal among band leadership.

That doesn't mean that proponents must sit idly by waiting for a sympathetic chief and council to take office, nor that a First Nation entrepreneur is powerless to pursue relationships with resource developers in the absence of a supportive chief and council.

As BC Hydro's Sally Thorpe acknowledges, "It's just a reality of that relationship-building component that sometimes you can have a political shift that maybe doesn't favour the project, but that's all part of the conversation." Hydro's response, she says, is to engage early, with the aim of establishing a long-term relationship that can ride out short election cycles:

We try to engage with First Nations as early as possible and to have that longer-term relationship, with a view to moving through several election cycles in the planning for a major project. We build a relationship that can weather those changes.

FortisBC's Bruce Falstead has seen that First Nations governance challenges can run deeper than short election cycles; they can run deep in a band's administrative structure:

The challenge is ... the fact they have an non-unionized work force in their administration. A lot of times they can be cleared out; people who have institutional knowledge and have been around for a while get shuffled out in favour of nepotism. We couldn't possibly do business if at Vancouver City Hall half the people got fired and other people got put in every four years. That's exactly what's going on and it's not being addressed.

Huu-ay-aht First Nations councillor John Jack suggests that those First Nations that have chosen to focus on economic development understand the importance of a stable administrative branch, and can take steps to establish that stability, regardless of election cycles:

Projects in BC with aboriginal participation

Red Chris Mine Impact benefits agreement between Tahltan Central Council and Imperial Metals. Open pit copper/gold mine 18 km southeast of the village of Iskut.

Ruddock Creek Framework agreement between Simpcw First Nation and Imperial Metals Corp. (Selkirk Metals Corp.) Proposed zinc-lead mine 155 km northeast of Kamloops.

Sandstone Town Centre - South Nanaimo Lands Partnership agreement between Snuneymuxw Nation and Northwest Properties. Proposed new neighbourhood expanding the southern boundary of Nanaimo.

Every time there's an election there shouldn't be fear in the administrative office, or some stress from having to change what the priorities might be. We try to ensure that we have a professional and arm's-length administration, one that isn't involved in politics but rather focuses on the civil service side of it. Having that corporate memory and having that knowledge and expertise regardless of who's in charge has an effect on our ability to keep track of things and keep projects moving.

Short election cycles and unpredictable administrations aren't the only governance issue affecting relations between First Nations and industry: there's a capacity issue as well. Some First Nations simply are not equipped to negotiate with resource companies. As Falstead puts it, "Often when I go up to a band, there's nobody to talk to." The solution, he says, can be for the project proponent to simply give the band money to hire that negotiating capacity:

You meet with chief in council, you bring up a proposal for funding, saying we realize our project is not a priority to your community, why should your community waste resources on engaging with us, or just have the ability to understand what we're doing? We can't possibly expect that, so we will pay you to hire the expertise that you need in order to engage with us.

But more realistically, Falstead says, First Nations need some help developing their own capacity to respond to the development proposals they're presented with. As he explains, engagement starts with what's called a "referral," where the proponent sends details of the proposed project to the First Nation. And some First Nations, he says, face a flood of referrals that they are ill-equipped to handle:

Out in Stolo territory around Chilliwack, some of those bands are getting 2,000 referrals a year.... When you get that many requests you can't effectively respond, so it creates a risk for the company, it creates a risk for the government, and First Nations don't get to be properly heard because they don't have the ability to respond.

One solution, Falstead says, would be for government to step in and help First Nations develop that capacity:

The government should put suitable resources around consultation with helping industry and helping the First Nation. The nation should be more engaged, should have more money or capacity to do this.

Projects in BC with aboriginal participation

Schaft Creek Mine Memorandum of understanding between Tahltan Band Council and Copper Fox Metals Inc. Project covers the Schaft Creek area 25 km northeast of the Galore Creek mine.

Spanish Mountain Project Framework agreement between Lhtako Dene Nation and Spanish Mountain Gold Ltd. Open pit mine located 70 km northeast of Williams Lake.

Trans Mountain Pipeline Impact benefits agreement between Whispering Pines/Clinton and Kinder-Morgan. Pipeline expansion along the existing Trans Mountain Line from Edmonton, AB to Burnaby, BC.

4) Moving beyond competing claims

A project with a large footprint, such as a pipeline, might span multiple unresolved land claims, and a single site might be subject to multiple overlapping claims. These kinds of situations can seriously complicate negotiations, but some recent mega-projects point the way forward in overcoming this challenge.

Former forestry minister Roger Harris is the consultant who facilitated two milestone agreements: one between 15 First Nations and Apache Canada regarding the 463-kilometre Pacific Trail natural-gas pipeline, and the other between Chevron Canada and the Haisla Nation regarding the proposed Kitimat LNG facility in Kitimat.

“Getting them into a room wasn’t that difficult,” Harris says. “The vast majority of them said we think this is coming and we think it’s an opportunity.” The challenge was isolating those issues unique to each project so that negotiations would not infringe on each First Nation’s rights in other negotiations:

Each First Nation said, We don’t want to give up our individual rights... but what is that thing we can work on as a collective that doesn’t jeopardize those other components around treaty table negotiations, and obligations for companies come and talk to us about other things? They finalized an area they could work on around equity and ownership of the pipeline. And because they could find agreement on that issue, of becoming a player in the project, it allowed them to find ways to work on procurement as a collective and on training as a collective.

Harris also explains that pipeline negotiations got over the challenge of recognizing overlapping claims by moving beyond arguments over boundaries:

If you start to draw lines on a map, where your territory ends there and ours begins here, you find yourself right in the middle of the argument over who owns what. So the decision was, let’s recognize everybody’s territory; let’s recognize it all. That changed the denominator, so in theory, instead of a one-mile pipeline, we now had a five-mile pipeline. Then we took the total benefits of what the project is, and divide it by the larger number, and then you pay everybody on their territory claims.

Projects in BC with aboriginal participation

Turnagain Nickel Project

Traditional Knowledge Protocol between Kaska Dena Council and Hard Creek Nickel Corp. Proposed nickel mine located 70 km east of Dease Lake.

Volcano Creek Hydroelectric Project

Impact benefits agreement between Tahltan Central Council and AltaGas. Proposed run-of-river project located on the Volcano Creek tributary.

Waneta Hydroelectric Expansion Project

Impact benefits agreement between Ktunaxa Nation Council Society and Columbia Power Corporation. A 335 MW expansion of the existing dam.

5) Meeting of the minds on environment

The ability to address environmental concerns has been a key component in agreements between industry and First Nations. FortisBC's Bruce Falstead says, "Environment is a very big issue," adding:

When we're dealing with a First Nation it's usually environment, employment and money, in that order.... If we get pushback anywhere, if there's what we call a show stopper, something that can stop a project, it's around the environment.

Industry Council for Aboriginal Business executive director Lana Eagle, however, points out that resource companies and First Nations continue to advance along a steep learning curve. Project proponents have learned that respecting environmental concerns is not simply a matter of ticking a series of boxes during the permitting process, but requires learning to respect a culture's inherent ties to the land. First Nations, on their part have learned to appreciate that not all resource-development projects are alike, that each must be assessed according to its unique characteristics:

It takes industry to understand what are the concerns when it comes to environmental impacts, especially on water, and it takes the local community to understand what is the scope of this project? What is the footprint, what is actually occurring?

Tahltan Nation Development Corp. CEO Garry Merkel explains that taking the time to find common ground with First Nations around environmental concerns will go a long way toward cementing a lasting relationship:

We feel our land needs to be taken care of. For the people we work with, it takes them time to come to this understanding, but those who do work with us will say it took a little while for us to build this relationship but as soon as they understand it, it's a very positive and powerful relationship. Once we get through the initial push and shove, we end up in a good relationship.

6) Constructive on-the-ground negotiations

In theory, the roles of government and industry in negotiating with First Nations is clear: it is government's responsibility to consult with, and potentially accommodate, the First Nation. In practice, however, project proponents say much of the responsibility for consulting and accommodating falls to private industry on a project-by-project basis.

Tom Isaac of Hoskin & Harcourt LLP notes that from his experience, "There's a great deal of uncertainty about exactly where government ought to play a role, and what role agreements [between industry and First Nations] should be playing in getting an approval for a project."

Some industry representatives say that when it comes to resource development on contested Crown land, responsibility for consultation, has been left entirely to industry. As FortisBC's Bruce Falstead says, "When it comes to consultation, I would just consider the government to be absent. It's entirely left up to industry. The government basically says, Let us know when it's done."

Former forestry minister Roger Harris observes that from his experience, provincial and federal governments have come to rely on industry to conclude land-use negotiations before they issue the required permits. He offers the example of the agreement reached between Chevron and the Haisla Nation around the proposed Kitimat LNG export facility:

Most people don't realize how fast Kitimat LNG went through the regulatory process. Once the Haisla and Kitimat LNG agreement was in place it was less than six months, by the feds and the province. The bureaucrats couldn't sign it off fast enough when they knew that there were no longer any First Nation issues to deal with.

His recommendation to industry proponents is to devote the required resources to resolving First Nations negotiations first, and government permitting will follow:

The value the band will bring to the table by getting them to support you will save you millions in the regulatory process, both in the beginning and on the ongoing operation, because you're always needing a permit to do something. And having these guys as partners makes the government just go away.

Lana Eagle, from the Industry Council for Aboriginal Business, suggests that while one-off agreements between industry and First Nations will not resolve bigger issues of land title, productive working relationships on the ground might pave the way for more comprehensive reconciliation:

I believe that reconciliation occurs in that middle ground, where we can work together. While it is not the only avenue, I think business opportunities do provide that because there's opportunity for aboriginal businesses to be very successful and to be part of the industrial development that's occurring on their land. And it's an opportunity for industry to look at localizing procurement and of course that has many advantages in terms of bottom line.

Tahltan Nation Development Corp. CEO Garry Merkel seconds that view, adding that while successful partnerships with industry go a long way toward improving the social and economic status of First Nations, only treaty negotiations with provincial and federal governments can resolve the bigger issue of formal recognition of First Nations as equal players:

Treaties are about clarity over rights to larger territory, ownership of land, sorting out governance powers and are tools toward becoming a formal recognized government in Canada. You can make advances without it, you can walk and talk like a duck, but without a treaty you're not a fully recognized government with legal self-governance powers in Canada.

IV – Where to go from here

It's clear that relationships between industry and First Nations have made substantial gains in recent years, but it's equally apparent this new era of co-operation is in its infancy. As both parties continue to feel out the nuances of expanded relationships, several challenges remain that can only be resolved over time.

An awareness is growing among resource companies that First Nations are among their most important potential partners, which has led to better dialogue and more meaningful long-term relationships. These relationships have helped those First Nations that choose to engage in the resource economy develop significant and lasting capacity of their own.

Several project proponents have demonstrated that there are effective ways to approach what have long been seemingly intractable challenges. Unstable governance has been addressed in some First Nation communities through separation of business and politics, while industry has learned to take the long view and develop relationships that can withstand the ups and downs of election cycles.

Industry and First Nations have also found ways to reach development agreements despite unresolved and overlapping land claims that were once seen as a considerable barrier to doing business in British Columbia. And recent partnerships have demonstrated that with respect and true dialogue, common ground can be found over concerns about the environment.

All the participants in this study were asked one concluding question: How do you see relations between First Nations and resource companies developing in coming years? And, as seems fitting for a report based on their insight, we give them the final word:

“I think it'll be driven by necessity and it'll be a bit of a struggle to get going. There's no desire on the part of government to give up any power, so First Nations have got to fight for everything.”

– Bruce Falstead

“Companies have just moved First Nations relations into their risk matrix. One of the risks is the regulatory risks, and what's the key component to that? Well, it's making sure that we have aboriginal partners in our business and going to First Nation communities and saying we will talk to you about all our projects and how we're going to do them.”

– Roger Harris

“We have a lot of business leaders in BC doing all the right things. What’s missing is a game plan that goes beyond an election cycle mind-set and takes a generational approach to how we achieve reconciliation and certainty. It’s not about a certain deal and whether someone paid too much or too little, but the fact that we don’t have an overall game plan on where we’re going. That’s the biggest challenge. A longer term pro-active public policy approach is required that will require tough decisions but that will point towards a future that truly leads to reconciliation.”

— Tom Isaac

“Unfortunately I think the next milestone will have to be something where the government has a better handle on how they treat First Nations, and how First Nations can use the resources available to them within the province. This is in the hands of both provincial and federal governments.”

— John Jack

“I’m an optimist and I think everyone wants the same thing, and that’s opportunity for their families and their children. And I think we’re getting to that. Although I work for a First Nation, they know I’m very clear on this: we’re in this together. This isn’t an ‘us’ or a ‘them.’ This is ‘we’ together.”

— Blair Lekstrom

“For Hydro, and for me personally as somebody who has worked in this sector for a while, I would really like to see a basis of trust and a basis of trusted partnership in everything that we do, and to seek out the opportunities to build that trust and that partnership. I think that we’re poised to get there, and it’s a very exciting time in terms of that intersection of world views. That can make Canada richer and I think we’re poised to get to that trusted partnership.”

— Sally Thorpe

“There are more and more good examples out there of First Nations achieving prosperity and creating healthy communities. Eventually more and more communities are going to aspire to that, and actually achieve it. I know that sounds a little pie in the sky, but it isn’t: it is really happening out there.”

— Lana Eagle