

Idle No More: Aboriginal activism as an opportunity for Canada's extractive sector

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- A tiny bit of Canadian history (It is Canada Day after all!)
- Mining, the Canadian economy and government policy
- The *Idle No More* movement and its demands
- Implications for Canada's mining industry

Canada's unique historical context



- Canada's indigenous inhabitants welcomed the first Europeans – French and British explorers, missionaries and traders from the 1500s onwards
- Early traders and settlers relied on the goodwill and assistance of the native population to learn the skills required to survive in the harsh unfamiliar climate.
- In contrast to other colonies, in Canada, there was no battle for land and land was never surrendered.
- Treaties and less formal agreements were made between the British “Crown” and many of the sovereign indigenous nations of Canada outlining how the land was to be shared.
- As the number of white settlers grew, the indigenous peoples were marginalized as part of official government policy

Who are Canada's Indigenous People?



Canada has 3 main groups of indigenous people:

- First Nations (some 650 unique communities)
- Inuit, and
- Métis
- The term “Aboriginal” came into common use after 1982.
- It has legal significance and is used to refer to all three groups.

- Since Canada became a country in 1867, government policy was clearly aimed at eliminating the “Indian problem”
- Indian people were moved to small remote reserves where land was not useful for agriculture
- Incentives to give up status in exchange for work, education, right to vote, etc.
- Children of women married to a white man lost status
- Most damaging policy was the residential school program which took children for years in order to “civilize” them

Canada repatriated its Constitution from Britain in 1982, adding a Charter of Rights and Freedoms

- After extensive lobbying and protests, the rights Aboriginal peoples were added to the Charter of Rights and Freedoms, but were not instantiated:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

- Since 1982, rulings by the Supreme Court of Canada have given content to the concept of Aboriginal Rights.
- Supreme Court of Canada ruled in 2004 that under Section 35, Aboriginal communities have a right to meaningful consultation whenever a proposed development/change in land use has the potential to impact upon their Aboriginal rights to the land
- Any negative impact must be compensated

The extractive sector plays a major role in Canada's economy;

- employing thousands directly,
- hundreds of thousands indirectly and
- contributing a large share to public coffers through taxes and royalties.

Thus, the impact of project delays and overruns has a ripple effect across most other sectors, weakening national GDP.

Delay avoidance is a government concern.

- Major petroleum industry centred in Alberta – huge factor in Canadian economy
- Heavy bitumen must be upgraded before refining - production costs are higher than for conventional oil
- Lack of refinery and pipeline capacity mean
 - Limited market for product
 - Oil is discounted
- Government policy is to grow industry and expand access to markets
- Pipeline has been preferred mode of transport

- Plans to construct pipelines have hit snags as communities and environmental groups have demanded substantive answers to questions of risk reduction and mitigation
- Delays have exceeded government expectations
- In 2012, the Conservative Party won a majority and was able to table legislation to short-circuit the environmental assessment process required for major projects, including pipelines, mines, etc.
- Bills C45 and C38 removed protection from 97% of Canada's lakes and rivers

Aboriginal Concerns



- Impacts of any development on Aboriginal communities had been considered under Canadian Environmental Assessment Act reviews
- New laws meant removal of many projects/reduction in reviews – lack of consultation
- Close relationship to land makes environmental protection of particular importance to Aboriginal peoples

Idle No More

- A grass-roots group of young, educated Aboriginal women created a *Facebook* group to inform others of their concerns over the new legislation.
- Protests, flash-mob round dances in cities occurred throughout December & January



- Leaders of *Idle No More* movement made the connection between environmental legislation and Section 35 Aboriginal rights to consultation
- They link Aboriginal rights to traditional land use to protection of water, air and land
- They also cited the UNDRIP provisions to Free, Prior and Informed Consent (FPIC) and have demanded that Canada respect this

Our argument in a nutshell



Risk mitigation requires respectful relationships with affected communities. Canada's *Aboriginal peoples* have special Constitution rights that enable them to challenge threats in Court.

Industry has an opportunity to build the trust that underlies respectful relationships by lending its support to calls for reinstatement of the *Navigable Waters Protection Act* and the *Canadian Environmental Protection Act*.

We believe that the delays and costs associated with full-panel environmental assessment will be dwarfed by the delays and costs of litigation promised by *Idle No More*.

Implications for Industry

- Restoration of the Canadian Environmental Assessment Act and the Navigable Waterways Protection Act would impact industry by placing more projects under scrutiny
- Removal of the new 2 year limit on the EA process heralds possibility of longer environmental assessments

Trade-offs

- Longer timelines but greater certainty –
- Higher EA costs but reduced legal costs
- Trust

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Questions?