

## 14. Business Needs More Clarity Regarding Its Role In Reconciliation With Indigenous Peoples

### Issue

The Prime Minister's mandate letters to all Cabinet ministers include the statement, "It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership." The mandate letter of the Minister of Indigenous and Northern Affairs includes more specific direction in her priorities, i.e., "to implement (the) recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples" ... and to ...

"Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights."

Canadian businesses see opportunities in the government's commitment to a renewed relationship with our indigenous peoples and believe they have a role to play in its accomplishment. It is clear that indigenous peoples see agree.

Recommendation 92 of 2015's Truth and Reconciliation Commission's report is a call-to-action for Canada's businesses to:

"... adopt the United Nations Declaration on the Rights of Indigenous Peoples\* as a reconciliation framework ... This would include, but not be limited to, the following:

1. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
2. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
3. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism."

\*Article 19 of the Declaration states: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adoption and implementing legislative or administrative measures that may affect them."

Canada's businesses are willing to do more in the interests of their projects moving forward. However, it is not clear to businesses what reconciliation means and what is required of them to participate in the reconciliation process, as well as the impacts and outcomes they can expect as a result.

Canadian governments have a constitutional duty to consult and accommodate indigenous peoples when proposed developments have the potential to impact their constitutionally protected rights (e.g., land, hunting and fishing, etc.). There is confusion in the business community regarding its role in the duty to consult process and lack of clarity regarding businesses' responsibilities to indigenous peoples has become more obscured in light of the government's commitments. These include:

- What does the government's commitment to "implement" the United Nations Declaration on the Rights of Indigenous Peoples actually mean?
- What is the scope of the "full review of laws, policies, and operational practices" in the Minister's mandate letter?

- Will Canadian laws be changed so that obtaining indigenous peoples' "consent" equals their right to "veto" projects?
- What resources will be available to businesses – particularly SMEs – to fulfill the obligations in recommendation 92 of the Truth and Reconciliation Commission report?

This lack of clarity can lead to the failure to pursue, delay or cancellation of private sector projects that have the potential to provide long-term economic and social benefits to indigenous communities and all Canadians including:

- education and training;
- employment;
- aboriginal business development;
- health care;
- housing; and
- the means to sustain cultural priorities including language, traditions, etc.

The federal government – as the primary interlocutor between our indigenous peoples and other constituencies – needs to lead the way.

## **Recommendations**

That the federal government – by mid-2017 – establish the framework and timelines for a process for reconciliation with indigenous peoples that includes:

1. Examining international best practices, and
2. Seeking the perspectives of a broad range of stakeholders including businesses and indigenous communities to share ideas and provide greater clarity regarding:
  - a. The meaning of its commitment to "implement" the United Nations Declaration on the Rights of Indigenous Peoples
  - b. The scope of the "full review of laws, policies, and operational practices" and its intentions for amending current laws, including the meaning and potential implications of Free, Prior and Informed Consent
  - c. Tools to be available to businesses and indigenous communities to help both – as well as government – fulfill the obligations required of them, including guidelines for engagement to seek the level of cooperation and trust required as a foundation for reconciliation.