



The State of Industry-First Nations Relations in BC – Part I

Introduction

Over the past thirty years, and accelerating over the last decade or so, industry in British Columbia has increasingly engaged directly with First Nations to build the conditions for investment certainty in resource project development. The business case for doing so is clear – Section 35 aboriginal rights and title have proven challenging to define, and the Crown, for a variety of reasons,¹ has been unable to comprehensively meet all of its consultation and accommodation obligations to First Nations. Nor should government necessarily have to shoulder all of the work related to post-colonial economic engagement with First Nations.

As right and title holders on the land base, relations between First Nations and industry can stand on their own accord as a foundation for successful economic development. Moreover, when this relationship-building is done effectively, all parties stand to benefit. First Nations can gain from productive economic exchanges with the private sector – forging the critical economic connections that lead to own-source revenue, capacity development and jobs, along with stronger linkages to activities that impact (and support) First Nations' rights and title interests. Industry, for its part, benefits as project certainty is enhanced through partnerships and as proponents gain access to First Nations' local knowledge, workforce and business ventures.

As a result of this evolving relationship between First Nations and industry, through both formal and informal means that have been validated by legal precedents,² various aspects of First Nation consultation have been delegated by government to companies seeking to undertake natural resource and infrastructure development in BC (and elsewhere).³ During roughly this same timeframe, resource industries have also perceived a growing need to secure a community based 'social licence' to operate, which typically involves nurturing both broadly-based and specific local and regional support for resource development activities.

In combination with greater legal clarity on the nature of aboriginal rights and title, these twin trends of delegated consultation (to business) and obtaining community based 'social licence' have resulted in increasingly comprehensive forms of engagement between industry and First Nations. Nowhere has this process become more central to natural resource development than in British Columbia. With over 200 First Nations (approximately one-third of the total in Canada), few treaties in place, and significant natural resource development opportunities, British Columbia has been at the forefront of cultivating these new economic relationships.

¹ These reasons include a combination of both practical factors – in many instances, it simply makes more sense for the company to undertake the consultation; and legal/capacity factors – in some cases the Crown has not had sufficient capacity or a mandate to engage comprehensively. Overall, the practical factors tend to be predominant in BC; generally the provincial Crown has both the mandate and the toolkit to engage comprehensively.

² The courts have repeatedly upheld the Crown's ability to delegate procedural aspects of consultation to industry.

³ This engagement is now well established; see the various Proponent Guides on the Ministry of Aboriginal Affairs and Reconciliation website:

<http://www2.gov.bc.ca/gov/topic.page?id=8CF98F756A984198AFD80AEA0E472F05&title=Consulting%20with%20First%20Nations>.



One welcome consequence of greater economic engagement has been hundreds of agreements between First Nations, government and resource developers. These agreements⁴ have been discussed, negotiated, signed and implemented across a wide range of activities – forestry, mining, energy projects, aquaculture, resort/tourism/land development – that have both real and perceived impacts on aboriginal rights and title interests.⁵ The results of this process are an array of industry-First Nation agreements that can both complement government consultation and accommodation requirements and stand on their own as a part of successful economic development in the BC context.

In practice, First Nations consultation processes and agreement frameworks are well advanced in British Columbia. A growing body of both literature and practitioner activity now exists to guide and shape relationship development.⁶ However, much work remains to be done to further the goal of economic reconciliation in British Columbia.

In this paper – the first of a 3 part series on First Nations economic development in BC – we explore the state of First Nations–industry relations from the perspective of knowledgeable industry practitioners. Drawing on a first-ever survey of the Business Council’s Aboriginal Affairs Committee, we summarize the views of business leaders working both day-to-day and in corporate headquarters on economic relationships with First Nations in BC.

Survey Design

The inaugural survey of industry practitioners in First Nations engagement was completed by 43 respondents drawn from all natural resource-related sectors, including legal/commercial agreement specialists. It was designed to provide both trend analysis and qualitative commentary on the state of First Nations–industry relations. The survey was completed in the spring of 2014.⁷

Overall, the survey respondents have a high degree of content knowledge, with over 40% of respondents having been involved in more than 10 official agreements with First Nations. All of the other respondents have also had experience with engagement processes and in completing agreements. As the respondents cover the spectrum of natural resource industries, the breadth of industry-First Nations interactions across the province can be described as extensive and indeed unprecedented.

Note that the survey questions are attached as Appendix 1 to the paper.

Results Summary

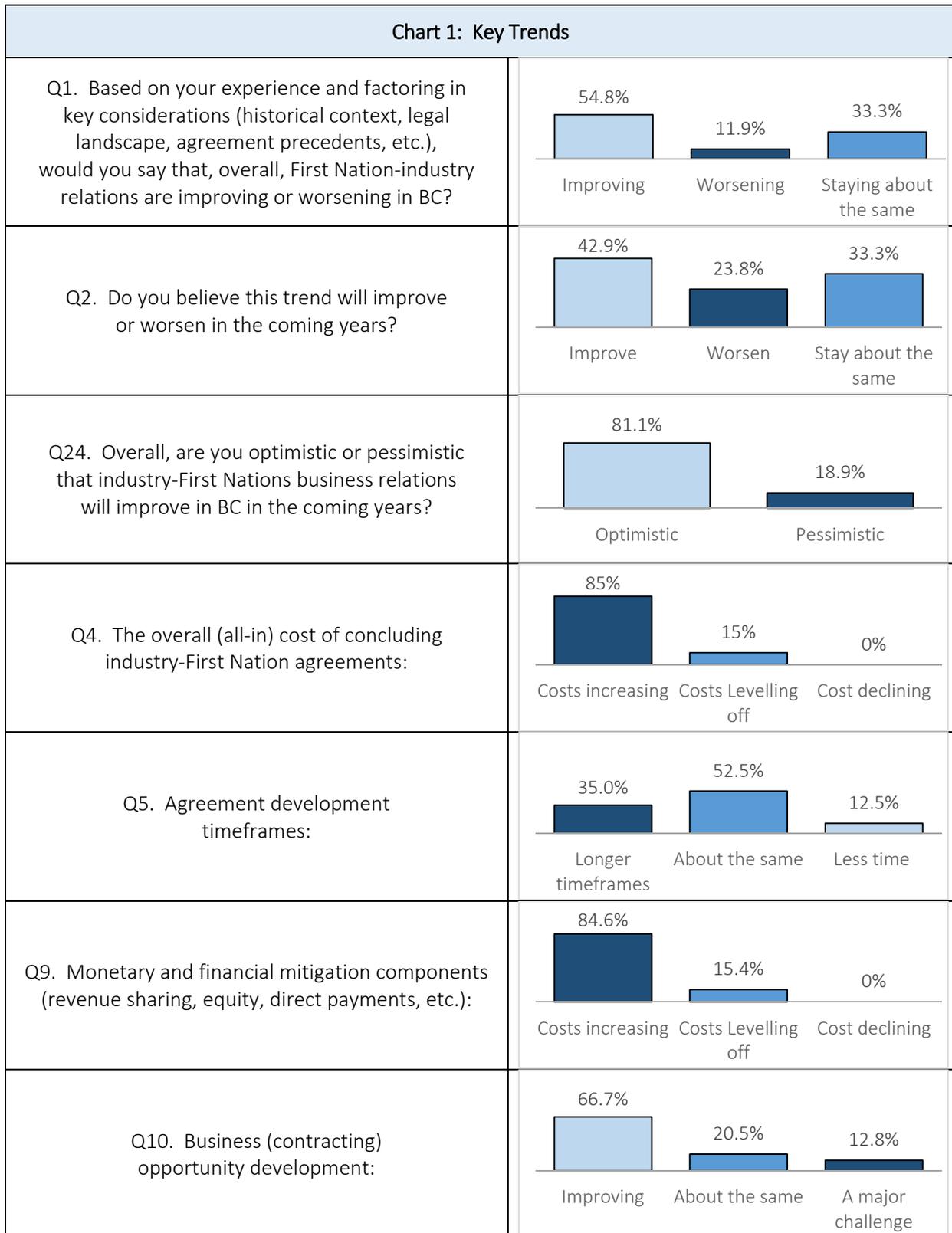
In the two charts below, the results from the key quantitative survey questions are summarized.

⁴ For a summary of these agreements, see the following Business Council paper on the subject:
<http://www.bcbc.com/content/745/PPv20n1.pdf>.

⁵ See part II of this series. The estimate is also based on data from the Department of Indian Affairs and Northern Development.

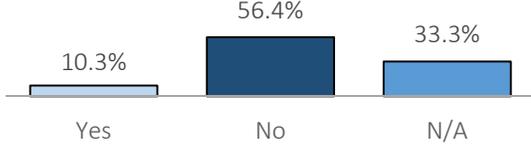
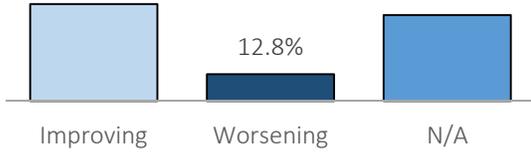
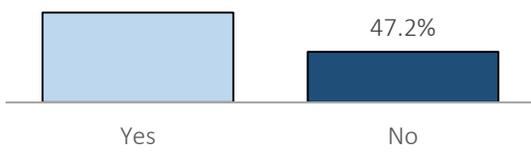
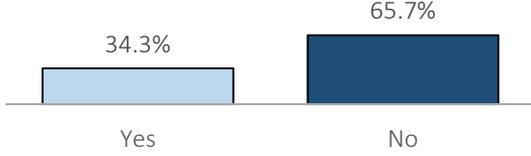
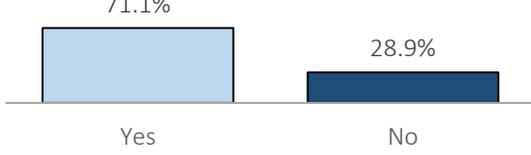
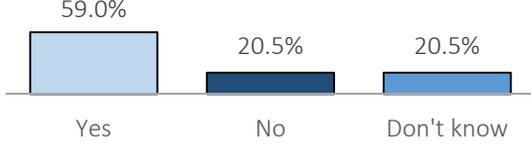
⁶ Examples include: the IBA Community Toolkit – www.ibacommunitytoolkit.ca/; “Benefit Sharing Agreements in British Columbia: A Guide for First Nations, Businesses and Government” Woodward & Company. “Negotiating and Structuring Business Transactions with First Nations. – Drafting Impact Benefit Agreements” Paul C. Wilson and Charlene Hiller, Fasken Martineau DuMoulin LLP. Continuing Legal Education (CLE) Society of BC, November 2011.

⁷ Note that a decision was made not to revisit the results in the immediate aftermath of the Supreme Court of Canada’s Tsiqhot’in decision. The Business Council survey will be replicated again in 2015 to assess any major changes.



<p>Q11. Employment opportunities for First Nations:</p>	<table border="1"> <tr> <td>Improving</td> <td>53.9%</td> </tr> <tr> <td>About the same</td> <td>17.9%</td> </tr> <tr> <td>Challenges remain significant</td> <td>28.2%</td> </tr> </table>	Improving	53.9%	About the same	17.9%	Challenges remain significant	28.2%
Improving	53.9%						
About the same	17.9%						
Challenges remain significant	28.2%						
<p>Q23. Overall, what statement best describes your view of how well the mix between public and private roles in aboriginal consultation and accommodation is working in BC?</p>	<table border="1"> <tr> <td>Well</td> <td>16.2%</td> </tr> <tr> <td>Satisfactorily</td> <td>75.7%</td> </tr> <tr> <td>Poorly</td> <td>8.1%</td> </tr> </table>	Well	16.2%	Satisfactorily	75.7%	Poorly	8.1%
Well	16.2%						
Satisfactorily	75.7%						
Poorly	8.1%						

<p>Chart 2: Government Initiatives</p>							
<p>Q6. Consultation protocols and the ease of developing initial First Nation-industry engagement:</p>	<table border="1"> <tr> <td>Improving</td> <td>48.7%</td> </tr> <tr> <td>Worsening</td> <td>18.0%</td> </tr> <tr> <td>About the same</td> <td>33.3%</td> </tr> </table>	Improving	48.7%	Worsening	18.0%	About the same	33.3%
Improving	48.7%						
Worsening	18.0%						
About the same	33.3%						
<p>Q7. Legal framework:</p>	<table border="1"> <tr> <td>Increasingly challenging</td> <td>38.5%</td> </tr> <tr> <td>About the same</td> <td>53.8%</td> </tr> <tr> <td>Increasingly certain</td> <td>7.7%</td> </tr> </table>	Increasingly challenging	38.5%	About the same	53.8%	Increasingly certain	7.7%
Increasingly challenging	38.5%						
About the same	53.8%						
Increasingly certain	7.7%						
<p>Q8. Environmental impact assessments:</p>	<table border="1"> <tr> <td>Greater process certainty</td> <td>18%</td> </tr> <tr> <td>About the same</td> <td>48.7%</td> </tr> <tr> <td>Less process certainty</td> <td>33.3%</td> </tr> </table>	Greater process certainty	18%	About the same	48.7%	Less process certainty	33.3%
Greater process certainty	18%						
About the same	48.7%						
Less process certainty	33.3%						
<p>Q12. Looking at the BC government's accommodation policies, including those available through various forms of Crown resource revenue sharing but also including other measures such as economic development agreements and interim agreements, are these policies leading to greater certainty for business development?</p>	<table border="1"> <tr> <td>Yes</td> <td>46.2%</td> </tr> <tr> <td>No</td> <td>25.6%</td> </tr> <tr> <td>Don't Know</td> <td>28.2%</td> </tr> </table>	Yes	46.2%	No	25.6%	Don't Know	28.2%
Yes	46.2%						
No	25.6%						
Don't Know	28.2%						
<p>Q14. Looking at the BC government's consultation guidelines for industry proponents, are these guidelines providing greater or less clarity for proponents?</p>	<table border="1"> <tr> <td>Greater</td> <td>51.3%</td> </tr> <tr> <td>Less</td> <td>28.2%</td> </tr> <tr> <td>N/A</td> <td>20.5%</td> </tr> </table>	Greater	51.3%	Less	28.2%	N/A	20.5%
Greater	51.3%						
Less	28.2%						
N/A	20.5%						

<p>Q15. If you are active in multiple locations across BC, would you say that the BC government’s consultation guidelines are implemented consistently across the province?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>10.3%</td> </tr> <tr> <td>No</td> <td>56.4%</td> </tr> <tr> <td>N/A</td> <td>33.3%</td> </tr> </tbody> </table>	Response	Percentage	Yes	10.3%	No	56.4%	N/A	33.3%
Response	Percentage								
Yes	10.3%								
No	56.4%								
N/A	33.3%								
<p>Q16. Is consistency improving or worsening?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Improving</td> <td>46.2%</td> </tr> <tr> <td>Worsening</td> <td>12.8%</td> </tr> <tr> <td>N/A</td> <td>41%</td> </tr> </tbody> </table>	Response	Percentage	Improving	46.2%	Worsening	12.8%	N/A	41%
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<p>Q17. Does the government currently provide adequate information to industry with respect to which First Nations to consult?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>52.8%</td> </tr> <tr> <td>No</td> <td>47.2%</td> </tr> </tbody> </table>	Response	Percentage	Yes	52.8%	No	47.2%		
Response	Percentage								
Yes	52.8%								
No	47.2%								
<p>Q18. Does government currently provide adequate information to industry with respect to overlap/shared territory considerations?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>34.3%</td> </tr> <tr> <td>No</td> <td>65.7%</td> </tr> </tbody> </table>	Response	Percentage	Yes	34.3%	No	65.7%		
Response	Percentage								
Yes	34.3%								
No	65.7%								
<p>Q19. Have you ever had to address shifting First Nation territorial boundaries?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>71.1%</td> </tr> <tr> <td>No</td> <td>28.9%</td> </tr> </tbody> </table>	Response	Percentage	Yes	71.1%	No	28.9%		
Response	Percentage								
Yes	71.1%								
No	28.9%								
<p>Q20. Is the increasing availability of consultation and capacity funding – from government, industry and self-sourced – resulting in better industry-First Nation relationships and greater certainty?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>59.0%</td> </tr> <tr> <td>No</td> <td>20.5%</td> </tr> <tr> <td>Don't know</td> <td>20.5%</td> </tr> </tbody> </table>	Response	Percentage	Yes	59.0%	No	20.5%	Don't know	20.5%
Response	Percentage								
Yes	59.0%								
No	20.5%								
Don't know	20.5%								

The Business Council survey also included a significant number of qualitative questions that gave respondents an opportunity to elaborate on and share their views and experiences on various issues. To capture these findings, Appendix 2 to this paper provides a summary of these qualitative responses, without attribution to any respondent. The qualitative summary is divided into categories looking at challenges and risks, as well as positives and opportunities.

Overall, the survey results correspond closely to an overarching theme emerging from the Business Council’s ongoing research on First Nations economic engagement in BC, a theme that suggests we are at a turning point: while there is robust support for economic reconciliation, and a foundation is



being laid to support a generally positive view of future relations between industry and First Nations, there are also serious challenges and risks to the process that require action from all parties.⁸

Owing to the necessity of addressing past actions that largely left First Nations out of the economy, it is inevitable that stepped-up economic engagement increases some of the direct costs and redistributes “economic rents” from land-based economic development, while (hopefully) delivering greater outcome certainty and improved project execution on the flip side. As development complexity increases in many areas, the path forward is likely to demand deeper, better coordinated and more sustained forms of engagement to realize the benefits of land-based economic development in the province. An important lens through which to view the findings of the survey from an investment perspective centers on the question of certainty and the “on the ground” results that flow from increased engagement.

On a positive note, the survey results confirm that some of the key benefits of working closely with First Nations – meeting workforce needs, achieving better project design and helping to provide a stronger social licence – are becoming more evident over time in BC. However, there continue to be significant challenges around costs, timeline and scope shifts, process certainty, capacity (affecting all parties), managing and meeting expectations, and making sure that proposed projects in BC meet the acid test of global competitiveness. These challenges place significant stress on all parties and must be acknowledged and dealt with if the “optimistic” view of the future found in our survey is to be realized in practice.

Understanding the First Nation Perspective on Economic Reconciliation

Thus far, this paper has focussed on the perspectives of practitioners from the BC business community. This raises the question of how the opinions of business representatives may align with or differ from those of First Nation practitioners.

While we do not have access to a similar study from First Nations practitioners, we do have a relatively comprehensive report from the First Nations Leadership Council (FNLC) that was commissioned in 2013, entitled “Advancing an Indigenous Framework for Consultation and Accommodation in BC.”⁹

The FNLC’s report is primarily concerned with government-to-government dialogues on consultation and accommodation; however, the findings do provide some insights on First Nation views of the evolving relationships with industry in British Columbia. The report provides a timely review of the consultation and accommodation landscape, looking at a number of significant challenges and solutions to deal with First Nations’ frustrations regarding what they see as inadequate Crown consultation processes and accommodation efforts.

More specific to industry, the report includes a section on private law entitled “*Accommodation by Negotiation of Impact Benefit Agreements*,” which covers aboriginal views on the consultation frameworks for private sector agreements. It is striking that, with minor exceptions and some divergence on the magnitude of benefits, this section could have been written to reflect the perspectives of industry. In some ways, this points to the progress that has been made in forging a shared understanding of impact benefit agreements (IBAs) in BC over the past decade or so.

⁸ The summary of qualitative responses in Appendix 2 includes many examples and well detailed analytic summaries. The summary does not capture the full depth of the industry response set, but it is designed to provide readers with a synthesis that pinpoints key trends and observations.

⁹ http://www.fns.bc.ca/pdf/319_UBCIC_IndigActionBook-Text_loresSpreads.pdf.

In Part 5 of the FNLC report, which looks at “*Financial Risk Assessment - Rights Influence of the Economics*,” the discussion begins with this revealing paragraph (p. 80):

“Aboriginal Title and Rights implementation can have a positive or negative influence on whether a project is ‘economical’. A cooperative, respectful and affirmative legal relationship with the affected First Nation can garner political and legal support for the advancement of a project. An adversarial, disrespectful and publicly opposed project can mean extensive regulatory delays and litigation. Most matured industries have come to the informed conclusion that we are all better as allies and good neighbours.”

This section of the report is noteworthy in that First Nation leaders have articulated a view and definition of “consent” that has yet to be fully reconciled in government-to-government consultation and accommodation frameworks. For industry, this creates some obvious challenges, inasmuch as companies are often forced to navigate through differing notions and understandings of First Nation consent – particularly in the context of government-mandated permitting and approval processes that are supposed to deliver a high degree of investment and project certainty.

Within the broad arena of economic reconciliation, industry and First Nations share a concern that government's internal capacity to properly engage and embrace the duty to consult and accommodate is insufficient. That more government resources and greater process certainty are required is a view espoused by both industry and First Nations practitioners, albeit for somewhat different reasons and reflecting a mix of objectives.

Unfortunately, the Leadership Council report (unfairly in our judgment) paints an exceedingly bleak picture of government's consultation and accommodation policies and does not give credit to the province's new approaches and increasingly diverse toolkit for economic reconciliation. More optimistic, and in keeping with recent changes in economic reconciliation in BC, is this quote from an advisor to one of the FNLC report's authors, about the desire among many First Nations for economic reconciliation and industry engagement: “...economic development is our new hunting.”¹⁰

Below, we list some of the issues that must be tackled in order to improve the “hunt” for economic development in a manner that benefits all parties, based on the findings of the Business Council's survey.

Opportunities for Building Stronger Industry – First Nation Relations

The survey of industry practitioners, while motivated by a different experiential lens than the report from the First Nation Leadership Council, points to several specific areas that require action to accelerate economic reconciliation. Below we offer some summary observations, based on the survey, on what has to be done to forge stronger industry-First Nation relations; and by extension, to spur future land-based economic development in BC. In the final part of this series we will share some specific recommendations.

¹⁰ Ibid., p.85.



Capacity and resourcing

Economic development involves types of engagement and interaction with First Nations that tend to be quite labour and information intensive. Many of our survey respondents evinced a conviction that emerging partnerships with First Nations are leading to a better future, but this was juxtaposed with an awareness of real stresses around capacity, resourcing and rising expectations that pose threats to successful engagement models. While improved processes and thoughtful policies can assist, more resources and training for all parties will be essential, according to the Business Council members who completed the survey.

Transparency and information sharing

Practitioners on all sides of aboriginal economic development suffer from an inadequate set of information and data on which to build productive relationships and make sound decisions. Although BC now has an informed group of negotiators and leaders from both First Nations and industry who understand how to develop/implement agreements, accessing information that could expedite knowledge transfer is difficult and is often hindered by confidentiality clauses between the negotiating First Nation(s) and business. While there are legitimate proprietary and internal partnership reasons for maintaining some level of confidentiality around agreements and data, the lack of detailed information makes it hard to establish a solid understanding among all interested parties of the evolution and content of these agreements. Processes of engagement and decision-making could also be improved through better provision of data from government and a more coordinated approach to sharing data from First Nations and proponents.

Leverage vs principle based negotiations

– tensions between collaboration and adversarial approaches to project consent

As practitioners in industry-First Nation relations are aware, a significant and sometimes delicate issue for both First Nations and industry is how to move from broad project development discussions to the business component of achieving concrete agreements that meet a commercial investment test while also garnering First Nations' approval. While much of this process can and does fit within a collaborative consultative model, there are times when each party will need to bring forward topics that are more contentious. Examples include the complexity of overlapping First Nation territories, understanding the spectrum of right and title interests (strength of claim), the financial viability of a project, and uncertainty around Crown-First Nation approval processes. Dealing with such matters typically leads to a unique mix of both principle- and leverage-based negotiations in many contexts.

Dividing the resource rent and meeting accommodation requirements

While legal precedents confirm that the Crown can only delegate to industry procedural aspects of consultation, it often remains difficult for all parties to reconcile exactly what role, in a monetary sense, each plays in accommodating infringements of rights and title. Within Canada, BC has been a leader in resource revenue sharing with First Nations and in the development of First Nation–Industry Benefit Agreements. However, while there is a good understanding of the concept of accommodation, the dividing line between government-to-government and commercial arrangements has not been well established. The challenge is one of meeting rising First Nation expectations (constitutionally protected rights and title interests), while at the same time respecting the need for BC projects to be competitive and establishing frameworks that allow for a fair division of resource revenues, consistent with legal precedents.



Delegating consultation – achieving engagement certainty

Industry and First Nations have mostly embraced the concept of delegated consultation, and the model of economic engagement that has evolved in the province has brought benefits to all parties. However, in the absence of a more universally understood agreement on the relationship between consultation and project approval processes, the risk of conflict exists as an ongoing threat to certainty for all parties. Constructing a more comprehensive framework for consultation and project approvals should be an objective shared by all. While not the fault of any one party, survey respondents noted that much of the front-end work in industry–First Nations consultation could be improved with a clear(er) understanding of industry expectations (from the Crown and First Nations) and better information (noted above).

The spectrum of rights and title – building a more certain model for consent

While this survey was conducted prior to the Tsliqoht'in decision, respondents noted that industry can often find itself caught in the middle of Crown-First Nations tensions over consent requirements. Developing a better understanding of how rights and title interests have effect (legal and asserted) will help to build more effective models of what consent means in practical terms. In part III of our series we will outline some initial recommendations that arise from the recent Tsliqoht'in decision of the Supreme Court of Canada. However, it is worth noting that in practice many industry-First Nation interactions are based on commercial agreements that generally steer clear of specific title and right debates.

Conclusions

The inaugural survey of the Business Council's Aboriginal Affairs Committee leaves room for both optimism and concern. While there is strong support and a fair measure of long term optimism that the path of collaboration, partnership development and economic reconciliation will yield benefits for all parties, there is also considerable stress in the system. In light of this and of recent court decisions, the collaborative model that has evolved in BC needs new life – resources, people and time – breathed into it.

As we will see in Part II of our series, the green shoots of economic development in First Nation communities throughout BC require further nurturing. While we have seen some positive results and welcome improvements, governments run the risk of jeopardizing opportunities by not moving quickly to meet the needs of First Nations and industry. Of course, this risk is not only government's responsibility to address – industry and First Nations have to be willing and constructive partners. In this regard, if there is one overarching positive result of the survey, it is that the model of collaboration and engagement is now firmly rooted in BC.

In Part III of our series we will return to this topic, looking more closely at the path forward and putting forward a set of recommendations to advance economic reconciliation in BC in a way that will benefit all parties and our citizens collectively.

[Jock Finlayson](#)
Executive Vice President – Policy

[Tom Syer](#)
Vice President, Policy and Communications

APPENDIX I
Complete List of Survey Questions

1	Based on your experience and factoring in key considerations (historical context, legal landscape, agreement precedents, etc.) would you say that, overall, First Nation-industry relations are improving or worsening in BC? Improving / Worsening / Staying about the same
2	Do you believe this trend will improve or worsen in the coming years? Improve / Worsen / Stay about the same
3	In bullet form, please detail the reasons for your answer to question 2 above.
4	Overall (all-in)cost of concluding industry-First Nation agreements: Costs increasing / Costs levelling off / Costs declining
5	Agreement development timeframes: Longer timeframes to conclude agreements / About the same / Less time to conclude agreements
6	Consultation protocols and the ease of developing initial First Nation-industry engagement: Improving / Worsening / About the same
7	Legal framework: Increasingly complex and challenging / About the same / Increasingly certain
8	Environmental impact assessments: Greater certainty in processes / About the same / Less process certainty
9	Monetary and financial mitigation components (revenue sharing, equity, direct payments, etc.): Costs increasing / Costs levelling off / Costs decreasing
10	Business (contracting) opportunity development: First Nation opportunities, capacity and BTB engagement improving / About the same / Business opportunities a major challenge
11	Employment opportunities: First Nations workforce opportunities and capacity improving / About the same / Workforce employment challenges in agreements remain significant
12	Looking at the BC government’s accommodation policies, including those available through various forms of Crown resource revenue sharing but also including other measures such as economic development agreements and interim agreements, are these policies leading to greater certainty for business development? Yes /No / Don’t know If no, what are the key problems? What are potential solutions?
13	What, if any, additional forms of Crown accommodation should be considered by government?
14	Looking at the BC government’s consultation guidelines for industry proponents, are these guidelines providing greater or less clarity for proponents? Greater / Less / N/A If less, what are the key problems? What are potential solutions?



15	If you are active in multiple locations across BC, would you say that the BC government consultation guidelines are implemented consistently across the province? Yes / No / N/A
16	Is consistency improving or worsening? Improving / Worsening / N/A
17	Does government currently provide adequate information to industry with respect to which First Nations to consult? Yes / No
18	Does government currently provide adequate information to industry with respect to overlap/shared territory considerations? Yes / No If no, please explain inadequacies.
19	Have you ever had to address shifting First Nation territorial boundaries? Yes / No If yes, please explain the impact.
20	Is the increasing availability of consultation and capacity funding – from government, industry and self-sourced – resulting in better industry-First Nation relationships and greater certainty? Yes / No / Don't know Please explain answer.
21	Based on your experience, what are the biggest challenges to successfully completing First Nation – business development agreements? (Please list)
22	When you have successfully completed agreements, what were the key factors that led to success? (Please list)
23	Overall, what statement best describes your view of how well the mix between public and private roles in aboriginal consultation and accommodation is working in BC? Well, given the challenges that exist / Satisfactorily, but could be improved / Poorly, most of the framework needs significant improvement
24	Overall, are you optimistic or pessimistic that industry-First Nations business relations will improve in BC in the coming years? Optimistic / Pessimistic
25	What sector(s) of the economy are you active in? (Choose all that apply) Forestry / Oil and gas / Mining / Clean energy / Infrastructure (linear and fixed) / Aquaculture/agri-food / Other
26	How many agreements (defined as an official, signed document that details any matter of relationship between a First Nation and a commercial enterprise) between First Nation and industry, directly and indirectly, have you been involved with? 0-5 / 5-10 / 10+

APPENDIX II
Qualitative Responses

CHALLENGES AND RISKS	POSITIVES/OPPORTUNITIES
Overall	
<ul style="list-style-type: none"> • Improved certainty in consultation and engagement pathways contrast with significant cost escalation being driven by growing expectations at community level. • There are no easy answers to current challenges - engagement is time intensive • Capacity, staff turnover and timeline disconnects are a significant impediment to progress • Managing expectations and sorting out roles of industry and Crown in consultation and accommodation are critical • Rising expectations are contrasted with highly competitive marketplace, costs matter • Greater certainty on rights and title would assist, but potential (short and medium term) for First Nation – Crown conflict that impacts industry 	<ul style="list-style-type: none"> • Long term trend is favourable to improve investment certainty and produce better project/community level relations • Investment opportunities can drive positive relationship development as long as tangibles are there for all parties • In theory, BC is (or could be) a global leader in working with Indigenous populations – important for export driven economy • Cooperation and relationship development are increasingly entrenched in a positive direction, for the vast majority of industry and First Nations in BC • Pure business case is strong for partnerships and improving business-to-business relations (location, workforce supply, logistics) • Need to ensure revenue sharing delivery drives certainty; more explicit basis for accommodation frameworks • Right and title debates are being replaced by interest based negotiations – facilitating agreement • Capacity is improving, although in some areas opportunities are being missed

CHALLENGES AND RISKS	POSITIVES/OPPORTUNITIES
Government	
<ul style="list-style-type: none"> • Risk adversity in government exacerbates industry challenges and does not support some components of First Nation engagement • Proliferation of government engagement agreements can create outcomes that produce more uncertainty and gap risk • Too much variance continues in government staff approaches, varies by region, branch and individuals • Revenue sharing can be a double edged sword of raising expectations and leveraging challenges for the private sector at the same time • Consultation guidelines are not implemented consistently across the province • Staff turnover and experience are significant factors driving success/challenges • Information sharing is inadequate and databases are not accessible • Crown is inconsistent in providing guidance on overlap/shared territories; CAD is different than some local databases 	<ul style="list-style-type: none"> • Government has a diverse tool box for enabling positive relations • Revenue sharing and other Crown accommodation tools are highly advanced in BC compared to elsewhere (one key reason why Idle No More didn't take root in BC) • Consultation guidelines are, on balance, improvement over the past • New information tools, like FNEDD, are in right direction but more geo-spatial data access would be of considerable assistance
Cost Escalation	
<ul style="list-style-type: none"> • Many proponents facing major 'new' cost drivers • Large projects and 'unreasonable' precedents within some sectors create challenges for other businesses to execute effective commercial agreements • Costlier agreements not correlated to improved outcomes, impact competitiveness • Consultation costs are downloaded on to industry; industry pragmatically picks up slack 	<ul style="list-style-type: none"> • Revenue sharing has helped for some sectors • Crown corporation utilization of strength of claim analysis to backstop accommodation/ consultation framework assists with limiting escalation when well executed. • Consultation funding helps, but need more attention to best use and best practices



CHALLENGES AND RISKS	POSITIVES/OPPORTUNITIES
Timelines	
<ul style="list-style-type: none"> • Relationships and good agreements take time • Complexity is increasing • High variability in approaches to engagement across BC First Nations • Consultation industry has proliferated; commercial orientation is improving, but not enough 	<ul style="list-style-type: none"> • Where capacity and funding exist, improved timelines follow • Where successful relationships have been built, timeline improvement follow – but this can be eroded
Consultation	
<ul style="list-style-type: none"> • Ongoing confusion between Crown’s responsibilities and industry engagement adds uncertainty and costs • While capacity and knowledge are improving, new entrants face steep learning curve with First Nation engagement • High degree of variability in approaches from First Nations • Crown inconsistency (between levels of government) in consultation and staff turnover are huge impediments 	<ul style="list-style-type: none"> • Where clear delineation of consultation responsibilities exists, outcomes are improving • Staff with high levels of expertise and trust can build successful consultation
Legal Framework	
<ul style="list-style-type: none"> • Industry can be ‘caught’ in middle, resulting in difficult choices • Costs and time escalate with some jurisprudence, or lack thereof 	<ul style="list-style-type: none"> • Some legal precedents and government agency activity have assisted with certainty • Consultation framework has ‘settled in’, familiarity yields some benefits (along with the challenges)
Environment	
<ul style="list-style-type: none"> • Cumulative impact assessment is growing more challenging • Too much variance in staff approach to statutory obligations • Risk adversity = scope expansion = cost and time 	<ul style="list-style-type: none"> • Effective engagement programs can result in strong alliances to deal with environmental challenges - both on the ground and in the community

CHALLENGES AND RISKS	POSITIVES/OPPORTUNITIES
Monetary (broad)	
<ul style="list-style-type: none"> • For some, cost escalation increasing with limited tangible improvements in approval trends despite government revenue sharing policies • Leverage based negotiation and expectation growth is the norm – no/limited certainty • Limited linkage of monetary initiatives to real and perceived impacts and strength of claim remains ambiguous 	<ul style="list-style-type: none"> • Some positive developments as revenue sharing settles into market
Contracting	
<ul style="list-style-type: none"> • Some ongoing challenges with respect to capacity and expectation management; greater clarity needed in agreements 	<ul style="list-style-type: none"> • Capacity is improving in some areas, yielding direct project/operational benefits • Remote location work creates logistic and safety benefits from contracting and joint ventures • Significant increase in the number of First Nation contractors – more opportunities and health(ier) competition versus direct awards • Joint venture opportunities create win-wins when done right • Leveraging opportunities across projects and community infrastructure needs are growing
Employment	
<ul style="list-style-type: none"> • Maintaining stable, reliable workforce continues to be challenge • Productivity varies, pace of improvement is slow in some situations 	<ul style="list-style-type: none"> • Remote workforce benefits are possible – young workforce • Capacity is improving, but varies • Significant opportunities for training to yield productivity benefits • Some decent programs exist and funding is in place to support training, so not entire burden is on industry

CHALLENGES AND RISKS	POSITIVES/OPPORTUNITIES
Revenue Sharing	
<ul style="list-style-type: none"> • Application of revenue sharing formula across First Nations can be challenging • Mixed results in terms of creating more certainty for business • In some instances, has set a ‘floor’ expectation that can be leveraged in IBA negotiations • Lag times in accessing revenue sharing can be problematic – too far down the road 	<ul style="list-style-type: none"> • Certainty derived from revenue sharing varies, but overall has a positive impact on generating shared benefit concept for resource • Critical to dealing with broader ‘attacks’ on industry from some First Nation leaders with respect to lack of accommodation and recognition of rights and title interests
Information on Overlap/Shared Territory	
<ul style="list-style-type: none"> • Government processes and data to address this issue are inadequate • Access to better Crown information on strength of claim analysis does not occur • Ongoing challenge of ‘accepting’ statement of claim maps as basis for consultation • Need for more First Nations to have agreements amongst themselves on overlap protocols • Shifting/revised territorial boundaries is a growing problem and creates serious challenges to industry engagement – expands consultation, generates tension between ‘core’ and ‘periphery’ First Nations relative to projects, strains funding/staff time and adds cost 	<ul style="list-style-type: none"> • Where First Nations have concluded agreements and protocols amongst themselves, significant improvements can occur for engagement and BTB opportunities • The ‘informal’ relationship based experiences of dealing with shared territory improve over time with staff based relationship development and fuller understand of inter-band politics and history.
