

Indigenous Peoples and Business in Canada

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Understanding the legal and historical context of Indigenous peoples in Canada is essential for businesses operating in the country. Indigenous rights, governance and economic participation play a significant role in industries such as natural resources, infrastructure and major development projects. Building respectful and mutually beneficial relationships with Indigenous communities not only aligns with reconciliation efforts, but also helps mitigate legal risks, project delays and disputes.

Indigenous Peoples and Governance

Canada recognizes three distinct Indigenous groups: First Nations, Inuit and Métis, each with unique culture, history, legal rights and governance structures.

Most Inuit are now represented by the territorial government of Nunavut and a variety of regional and corporate entities that implement a comprehensive agreement with the federal government dating back to the 1990s. Many Métis are increasingly organizing themselves into provincially-based organizations that are seeking self-government recognition from the federal government, but there are also dozens of smaller Métis communities - particularly in Alberta - with distinct self-government powers. Most First Nations are governed through a Chief and Council established under the Indian Act, but there are also many examples of traditional governance structures running in parallel and - especially in the north and British Columbia - there are an increasing number of First Nations moving out of the Indian Act through modern treaties and self-government agreements.

Indigenous and Treaty Rights

Indigenous rights in Canada are constitutionally protected under Section 35 of the Constitution Act, 1982. These rights include:

- **Aboriginal rights** recognized by the common law, which include rights to traditional customs, practices and traditions integral to Indigenous cultures prior to European contact, such as hunting, fishing and land stewardship as well as **Aboriginal title**, which is the right to exclusive use and occupation of traditional lands, requiring Indigenous consent for significant developments.

- **Treaty rights** defined either through historic treaties that the Crown negotiated between the 17th and early 20th centuries across much of eastern Canada, Ontario and the prairies or modern treaty making that resumed in the late 20th century. Historic treaties typically provided for protection of lands, hunting and fishing rights, as well as other benefits, while modern treaties typically also allow for self-governance and financial compensation to address historic losses.

Duty to Consult and Accommodate

The duty to consult and accommodate arises when governments make decisions that may adversely affect Indigenous or treaty rights. This duty applies to minor and major projects, including resource development, infrastructure and corporate transactions. While the legal duty rests with the Crown (government), businesses often play a critical role in consultation processes.

Consultation obligations vary based on the potential impact of a project on Indigenous rights. Deep consultation, including accommodation measures such as revenue sharing, environmental protections and Indigenous equity participation, may be required in cases of significant impact. Failure to meet consultation obligations can lead to legal challenges, regulatory delays or project cancellations.

Indigenous Participation in Business

Indigenous participation in the economy is growing, with many communities actively involved in joint ventures, equity partnerships and procurement agreements. Businesses engaging with Indigenous groups should consider:

- **Impact and Benefit Agreements (IBAs):** Legally binding agreements that outline economic, employment and environmental benefits for Indigenous communities affected by a project.
- **Indigenous equity ownership:** Increasingly common in energy, mining and infrastructure projects, providing Indigenous communities with long-term economic benefits.
- **Procurement and supply chain partnerships:** Many companies and governments prioritize Indigenous businesses in procurement policies, supporting economic reconciliation.
- **Real Estate Development:** Increasingly, we are seeing dramatic growth in the pace and scale of on-reserve real estate development, supported by a variety of government initiatives and increased interest and comfort by private sector developers, lenders, and tenants to building, working, and living on reserve lands.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Canada has endorsed UNDRIP as a framework for reconciliation. UNDRIP endorses Indigenous peoples' rights to self-determination and directs governments to seek free, prior and informed consent (FPIC) from Indigenous groups in many contexts. British

Columbia and the federal government have enacted legislation to align Canadian laws with UNDRIP and adopt action plans, influencing regulatory and business practices.

While the approach to FPIC is still under development and debate, at its core, it signals a commitment by some governments in Canada to meaningful consultation with the goal of securing support for major decisions.

Key Considerations for Businesses

Businesses operating in Canada should integrate Indigenous engagement strategies into their corporate planning and risk management frameworks. Best practices include:

- **Early engagement:** Proactively engaging Indigenous communities at the outset of a project to build trust and avoid disputes.
- **Legal due diligence:** Assessing Indigenous rights, land claims and consultation requirements during M&A transactions.
- **Sustainable partnerships:** Developing long-term, mutually beneficial relationships with Indigenous communities through employment, training and joint ventures.

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