Perspectives on First Nations issues and Canadian energy projects

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Indigenous issues in Canada encompass historical, socio-economic, political and cultural factors, and understanding that complexity is crucial in developing successful relationships between Indigenous communities and the energy sector.

To help clients better understand these complexities, BLG partners Cherie Brant and Nadir André shared their expertise in Indigenous Law and the energy sector in a webinar entitled Perspectives on First Nations Issues and Canadian Energy Projects. The conversation offered a robust analysis of the following:

- Indigenous interests and key legal principles
- Indigenous governance structures
- Creating successful partnerships between Indigenous communities and the energy sector

Indigenous interests and key legal principles

Indigenous interests include inherent rights, sovereignty, autonomy in decision-making processes, and restoring governance and jurisdiction. Preserving Indigenous interests is key in understanding the issues surrounding some current energy projects, such as the Coastal GasLink pipeline in the Wet'suwet'en First Nation.

Project proponents should preface their outreach with an understanding of the relationship between Indigenous interests and key principles in Indigenous law, including:

- the inherent status of Aboriginal Rights
- how modern treaties empower First Nations and Métis communities
- the history and ongoing importance of land claims
- the implications of unceded territory

Proponents should see jurisprudence as the minimum standard. Additionally, focusing entirely on economic issues overlooks the fact that the land is inextricable from Indigenous identity and culture.

Understanding Indigenous governance

Indigenous governance structures are integral to Indigenous interests. While some First Nations operate through a band council system, others have modern legislation enabling them to opt out of portions of the *Indian Act* and limit the Crown's role. Other communities have a multiplicity of decision makers from an intact traditional form of governance.

Métis peoples are not under the jurisdiction of the *Indian Act;* they do not have reserve land, and are not entitled to modern treaty negotiations thus far. Historical relationships were forged through the provinces rather than the federal government, though this has changed in light of recent jurisprudence. In some provinces (*e.g.*, Ontario), the Crown recognizes the rights of Métis peoples through agreements.

The Crown does not recognize traditional governments, which differ from the Chief and Council who typically focus on administering reserve land and providing programs and services. The two governance structures have specific interests: the Chief and Council typically focus on wealth and revenue primarily generated through land claims or agreements, while traditional governments are more concerned with preserving cultural identity and its ties to the land.

In order to build successful relationships with Indigenous communities, proponents should have a deep knowledge of a given community's governance structure(s), and involve the various governance structures throughout the negotiation process.

Successful partnerships between Indigenous communities and the energy sector

Relationship building is more important than ever. Proponents must engage all community stakeholders in a timely, culturally aware and transparent manner. To receive the best possible advice for successful negotiations, find professional resources who can assess the specific social and political dynamics of a given First Nation.

Proponents should include rights-holders in negotiations, which can include Impact Benefit Agreements (IBA), consultations and referendums. It's also crucial to apply pressure on the Crown to conduct a proper consultation.

Finally, proponents can further establish successful, productive relationships by displaying patience in addressing a community's concerns—for example, most IBA negotiations are at least eight months in length.

For further information on the topics addressed in the webinar or any other issues relating to Indigenous law and the energy sector, please contact Cherie Brant or Nadir André.

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