



From Duty to Accommodate to Co-creation

**A REPORT ON THE EVENT PROCEEDINGS OF A CRITICAL
CONVERSATION ON THE RELATIONSHIP BETWEEN FIRST
NATIONS AND RESOURCE DEVELOPMENT**

Friday May 2nd, 2014 8:00 a.m. to 12:30 p.m. |

Senate Room, 6th Floor Robertson Hall, Carleton University



Carleton
UNIVERSITY

School of
Public Policy and
Administration

From Duty to Accommodate to Co-creation

*[U]nless we are really smart, we are on a collision course between...what is defined as national interests and what is defined as indigenous interests. I think we are smart enough...I hope we are smart enough...to think our way through this. I see that as a real challenge. We are either going to collide on these issues or sort these things out. **Bob Watts***

*He said "I've studied your project very carefully and, for the life of me, I can't understand why you would give it away for an arena and a couple of t-shirts. The reality is that ownership will not only drive your economy, it will drive the Canadian economy. You will become a full participant - Not the end result of a transfer payment economy." It makes perfect sense. It not only makes perfect sense, it's doable. **Lloyd Girman***

*We just heard that there is a lot of money floating around, but why are there still poor First Nations people in this resource rich country? There is a problem there. Jurisdictional evolution and First Nations' self-determination treaties justify First Nations' jurisdiction and a way forward. **Chief Isadore Day***

INTRODUCTION

Carleton University's Regulatory Governance Initiative (RGI) seeks to have a direct impact on enhancing the effectiveness of regulations, as well as other instruments used by governments and companies, to achieve regulatory goals. With a focus on regulatory policy, governance and management, the RGI adopts a holistic and problem-driven approach. The RGI's Critical Conversation event series aims to push the boundaries of current thinking on policy and regulation around current challenging issues. On May 2, 2014, the RGI hosted a Critical Conversation on the Relationship between First Nations and Resource Development, which brought together representatives of First Nation communities, business, government and academia to actively explore this complex and challenging topic.

To further emphasize the importance and timeliness of this issue, within days of this RGI session, the Assembly of First Nations Chief, Shawn Atleo, resigned following controversy around proposed federal legislation on First Nations control of education and the United Nations Special Rapporteur on

RGI

The Regulatory Governance Initiative (RGI) at Carleton University builds on the proven track record of Carleton's School of Public Policy and Administration to develop regulatory capacity and competence through research, education, and dialogue. Its scope is regulatory policy, governance, and management. Its approach is holistic and problem-driven. The RGI assembles expertise from the humanities, social and natural sciences as needed.



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the rights of indigenous peoples, James Anaya, released a report that expressed numerous concerns about the situation of indigenous peoples in Canada (May 7, 2014). This would suggest that there is still much work to do and many hurdles to overcome. With this in mind, this session brought together the expertise of more than 50 participants to collectively explore and discuss the challenges and opportunities that exist.

This summary of the event proceedings from the Critical Conversation on the Relationship between First Nations and Resource Development seeks to capture the key themes that emerged during this discussion and to draw out core ideas that can prompt further dialogue and serve to further clarify the path forward.

AGENDA¹

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| 8:30 a.m. | Opening Prayer with Elder Annie St. George |
| 8:35 a.m. | Opening Remarks by Dr. Susan Phillips , Director, School of Public Policy and Administration at Carleton University |
| 8:45 a.m. | Participants Roundtable and Speaker Introductions |
| 9:00 a.m. | Bob Watts - Nuclear Waste Management Organization |
| 9:15 a.m. | Lloyd Girman - Enterprise Canada |
| 9:30 a.m. | Chief Isadore Day - Serpent River First Nation |
| 9:45 a.m. | Speaker Plenary Discussion |
| 10:05 a.m. | Break and Refreshments |
| 10:30 a.m. | Introductions to Roundtable Conversations by Bob Slater
In the context of duty to consult and accommodate, over the next 5 years: <ul style="list-style-type: none">• What will be the 3 main drivers of change?• What will it take, over and above present best practices, to reach a new level of performance? |
| 11:15 a.m. | Plenary Discussion and Voting Exercise by Bob Slater |
| 12:00 p.m. | Closing Remarks by Rick Van Loon |
| 12:30 p.m. | Closing Prayer with Elder Annie St. George |

In order to set the tone for the event, as well as ensure that all participants began the discussions with a common understanding of the issues being explored, Bob Watts prepared a discussion paper entitled ***Lost in the Woods: Navigating Aboriginal Interests in Natural Resource Development*** that was circulated in advance of the session. After an opening prayer and opening remarks, the Critical Conversation began with presentations by three speakers with extensive experience and involvement with First Nations interests and activities in natural resource development.

¹ For speakers' bios please click on the speaker's name or see **Annex 1**

PRESENTATIONS

I. BOB WATTS – ABORIGINAL ENGAGEMENT

Bob Watts focused his presentation ([Presentation Slides](#)) on the work being done by the Nuclear Waste Management Organization (NWMO) to create a new type of relationship with First Nations and Métis peoples and to focus on long-term solutions for nuclear waste management. He proposed that the path forward is to think in terms of the principles and values of reconciliation. He argued that this framing translates into an effective approach for Aboriginal engagement that focuses on:

- Engaging early and often;
- Active and meaningful participation by Aboriginal peoples;
- A focus on building relationships and trust; and
- Establishing decision-making processes that are collaborative and respectful of traditional practices.

Mr. Watts was then able to provide concrete examples of how the NWMO is putting these principles into action. In particular, the NWMO has placed attention on recognizing the important social and scientific role played by traditional knowledge and has worked closely with Aboriginal peoples to establish ways to apply traditional knowledge in meaningful ways. Through a Council of Elders that has been established to inform NWMO activities, it is recognized that the Earth has agency and Aboriginal traditional knowledge holders are recognized as the translators of that agency. This introduces unique ways of thinking and acting to mitigate environmental impacts. The NWMO has further advanced its partnerships with First Nation and Métis peoples with the creation of the Resource Program, which supports community planning, learning events, as well as translation and communication activities.

Ultimately, Mr. Watts emphasized that case law related to indigenous rights is transforming how natural resource development is managed. He concluded that the work of the NWMO is focused on inclusiveness and reconciliation, which translates into an emphasis on co-creation. He ended his presentation by asking the participants to consider several questions, including:

- What does corporate reconciliation look like?
- Who does the paradigm of reconciliation impact?
- How can we ensure that indigenous interests are considered when advancing a national interest?

II. LLOYD GIRMAN – ENTERPRISE CANADA

Lloyd Girman's presentation began by proposing that we live in a unique time when there is a backlog of capital and an international shortage of good resource development projects worth investing in. This results in high levels of competition between banks to secure the best projects. He argued that in this context, the Canadian North is an attractive emerging market because Canada is a stable environment that does not pose the risks of many other resource-rich countries. Furthermore, as a resource-based economy, Canada depends on these investments to continue to grow and prosper.

Mr. Girman argued that this confluence of events is an amazing opportunity for First Nation communities in Canada because many of the potential projects and natural resources that are attractive to international investors are in their territories and these investors have no problem having real conversations with these communities about the management, control and ownership of these projects. In fact, investors have the

ability to set the requirement that a project will not receive funding without some level of Aboriginal ownership (e.g. 60% Aboriginal owned), which has the potential to transform how these projects are developed and managed.

Mr. Girman went on to propose that this shift from a paradigm of Aboriginal dependence on a transfer economy to a paradigm of active participation by Aboriginal peoples in the development of the Canadian economy is not only doable, it is already happening. He suggested that this availability of capital makes this paradigm shift possible and now it is for Aboriginal communities to take advantage of this opportunity. Mr. Girman argued that this demonstrates that, in a complex regulatory environment like Canada, change is achieved when action drives policy instead of focusing on how policy change can drive action. Furthermore, he emphasized that it is not money or lawyers that are at the center of this paradigm shift; it is about dramatically changing relationships. By putting Aboriginal communities in the driver's seat of these projects, the relationship with businesses, governments, and other stakeholders is fundamentally changed. He concluded by acknowledging that these issues are complex, but collectively we need to find creative ways to move forward to recognize the potential of the Aboriginal communities and the Canadian economy.

III. CHIEF ISADORE DAY – EXPLORING REGULATORY CHANGE “THE DUTY TO ACCOMMODATE”

Chief Isadore Day shared the Legend of the Serpent and the Legend of the Thunderbird from the Serpent River First Nation to convey the special relationship his community shares with their land and illustrate that First Nations cannot be understood without an appreciation of the value system that underpins their perspective ([Presentation Slides](#)). Chief Day also highlighted the contrast between the holistic worldview of his community with the exploitive policies and approaches that governments in Canada have adopted for well over a century in managing the country's natural resources.

Chief Day also spoke about how the original intent of the treaties signed in 1850 for the Anishinabe people was an extension of their worldview. He discussed how it was twisted to be the foundation for a system of apartheid both in Canada and South Africa and the source of tension and conflict between First Nations and the Crown that still continues today.

Chief Day then went on to unpack the complex regulatory environment in Canada with a focus on how First Nation jurisdiction has evolved and is continuing to evolve. He argued that our understanding of First Nations jurisdiction should be informed by the spirit and intent of the original treaties, which are about “shared obligations” and co-existence. Through the Canadian Constitution and case law, our contemporary understanding of First Nations' jurisdiction over their lands and resources has evolved from a paradigm of consultation and engagement to the duty to accommodate. He argued that the path forward will be found through a recognition of the duty to accommodate and a focus on a new type of relationship. He emphasized that he remains committed to tackling issues in his community related to sustainable development in the interests of future generations.

ROUNDTABLE DISCUSSIONS

Following the presentations, seminar participants were invited to engage in small group discussions. To take full advantage of the diverse perspectives and expertise in the room, a mix of participants were assigned to each table and asked to consider the questions below.

In the context of duty to consult and accommodate, over the next 5 year:

- What will be the 3 main drivers of change?
- What will it take, over and above present practices, to reach a new level of performance?

Each group was asked to record and display their responses for the review of all participants. Subsequently, each participant was given 3 green dots and asked to vote for those ideas that they most strongly agreed with or supported. Participants were also given one red dot to signal concern or disagreement with a particular idea. The themes and issues raised as part of this exercise are presented in **Annex 2**.

To close the session, Dr. Rick Van Loon summarized and commented on the common themes he observed in the roundtable discussions and the presentations. The following section integrates Dr. Van Loon's remarks with the material collected from the table discussions.

KEY THEMES AND IDEAS

The presentations and roundtable discussions touched on a broad range of issues and ideas regarding the drivers of change, as well as ideas about how to ensure a positive and effective path forward. Nevertheless, certain key themes did emerge that offer a guide for future work and discussion in this area.



THE DRIVERS

In a time of rapid and complex change, it is difficult to isolate specific drivers that can be credited with definitively shaping the relationship between First Nations and resource development; however, in the course of this session, 4 important and interrelated factors received particular attention.

The Law

At a foundational level, there is a recognition that the relationship between First Nations and the natural resources on their lands and traditional territories are gradually being altered as the Canadian legal framework continues to shift. Evolving jurisprudence, primarily as a result of litigation and case law, is driving changes in how the duties of governments to consult and accommodate are defined. This jurisprudence is also transforming how Aboriginal rights are defined and, by extension, the roles First Nations are positioned to play in developing and managing these resources. There is also a recognition that international laws and norms regarding Aboriginal rights are also placing pressure on governments to adopt new approaches to ensure First Nations are engaged and involved in developing a country's natural resources.

The Economic Opportunities

Canada is a country with an amazing wealth of natural resources, which have always been a central aspect of its economy. Furthermore, the importance of these resources has the potential to grow as global supplies become scarcer, while international demand continues to increase. At the same time, there is currently a global excess of capital available to invest in good projects and Canada is an attractive place to invest both because of the large number of development opportunities and the stability and transparency of its institutions. In this context, First Nations are well positioned to be central players and beneficiaries of these resource development projects because many of the potential opportunities are subject to Aboriginal title and interests. This means that the private sector has a particular interest in developing relationships with these communities and, through the partnerships that are emerging, the precedent is being set for First Nations to play a leadership role in resource development. A new model is emerging that shows a strong potential to influence Canadian public policy regarding how Aboriginal rights are defined and the role that they can and will play in the country's resource development future.

The Crisis

Many people argue that one of the strongest drivers of change is crisis and in recent years there is a growing sense of urgency regarding the accelerating global effects of environmental degradation. First Nations' active interest and involvement in how the country's natural resources are developed is directly linked to a growing concern about the relationship between past and present resource development practices and these observed environmental changes. There is a sense that First Nations' worldview, connection to the land and traditional knowledge provides them with the interest and capacity to adopt and support sustainable development practices with a focus on protecting the Earth for future generations. Many First Nations believe that resource development can be undertaken successfully if the resource management paradigm shifts from an exploitation approach to a focus on sustainability.

Community Transformation

In the face of all of these external drivers of change, there is a recognition that First Nation communities themselves are changing. While overall population growth in Canada is relatively small, the population of Canada's Aboriginal peoples has increased dramatically. In general, this means that communities are larger and younger, which makes the future health and sustainability of these communities a high priority.

In recent years, the leadership of these communities is also changing. As governments remain primarily reactive, First Nations are demonstrating an increased ability to actively exercise their jurisdiction by participating in or leading the development of their lands and resources. Community leaders are also adopting more active approaches to asserting their constitutionally protected rights.

THE PATH FORWARD

Irrespective of the current internal and external drivers for change that were identified and discussed during the session, there is a recognition that the successful path forward cannot be achieved without active and conscious effort by all stakeholders to alter the course set by the exploitive policies of the past and present. Consistent with the message delivered by the UN Special Rapporteur in his May 7, 2014 report, participants emphasized the importance of transforming relationships and the nature of the discourse.

Transforming Relationships

A dominant theme in all of the discussions was relationships - both the need to establish and maintain the linkages between First Nations, all levels of government, business and other stakeholders. However, perhaps more importantly, there was a recognition that more focus needs to be placed on transforming the nature of these relationships. Participants pointed to the need for increased and earlier engagement, improved communication and mutual understanding, as well as the significance of face-to-face dialogue. There was a recognition that reconciliation and relationship building must be values-based and that effort must be invested in establishing trust and respect at all levels.

Transforming the Discourse

The recognized need to transform relationships was complemented by a common theme related to the need to change the nature of the discourse. One aspect of this idea was the importance of moving from a discourse of economy versus the environment to seeing environmental and social sustainability at the core of the economy. However, the strongest message emanating from the discussion was the importance of moving from a discourse centered around duty to accommodate to a model of co-creation. Ultimately, business and government must recognize that their long-term interests are best met through a sustainable development approach and alignment with the interests of First Nation communities.

Annex I: Speaker's Bios



Speaker

Bob Watts' current projects include working on the Siting Process with the Nuclear Waste Management Organization and as an Adjunct Professor and Fellow in the School of Policy Studies, Queens University.

He is a former CEO of the Assembly of First Nations and before that the Interim Executive Director of the Canada's Truth and Reconciliation Commission, which will examine and make recommendations regarding the Indian Residential School era and its legacy.

A former Assistant Deputy Minister for the Government of Canada, Bob is a graduate of the John F. Kennedy School of Government, Harvard University and Fellow at the Harvard Law School.. Bob has taught, debated and lectured at a number of universities in Canada and the United States and at the Canada School of Public Service. Bob is from Mohawk and Ojibway ancestry and is a member of the Six Nations Reserve.



Speaker

Lloyd Girman, has over thirty eight years of experience in senior public and private sector positions. His strength lies in his uniquely creative ability to develop "win-win" solutions in any situation. Mr. Girman served the public sector in the Province of Manitoba as Deputy Minister of Northern Affairs, Secretary to the Aboriginal Affairs Committee of Cabinet, Senior Negotiator on Aboriginal Constitutional Issues, and as Senior Policy Analyst in the Department of Community Services.

His focus has been on the negotiation and development of public-private partnerships, joint ventures, large infrastructure projects and project financing.



Speaker

Chief Isadore Day worked in the construction, commercial fishing and in the social services setting prior to life in politics. Chief Day also has eight years of post-secondary education in Social Work, Business, Public Administration and Governance, education and academic theory and practice. He has been Chief since being elected in 2005 with a combined total of ten years in leadership. Serpent River First Nation underwent transformational change with Isadore as part of the leadership over the last decade.

Isadore diligently asserts Treaty Rights at the forefront of all negotiations with municipal, provincial and federal governments. Isadore has had a dialogue with a former US President, various Mayors, Premiers, the Prime Minister and the Governor General, all focused on the recognition of Inherent and Treaty Rights for Serpent River Anishinabek and First Nations across the country.



Speaker

Rick Van Loon was appointed President and Vice-Chancellor of Carleton University on August 1, 1996. He was reappointed for a four-year term on August 1, 2001 and retired in July 2005. He chaired the Council of Ontario Universities from 2003 to 2005.

He has held a number of senior positions with the federal government. Prior to his appointment at Carleton, Dr. Van Loon was Associate Deputy Minister, Health Canada for two years. Before Health Canada, he was Associate Deputy Minister of Indian Affairs and Northern Development. He has taught political studies at Queen's University and public administration and political science at Carleton University and the University of Ottawa. Richard Van Loon received his Ph.D. in political studies (1968) from Queen's University. He graduated with a Master of Arts degree in political science (1965) and a Bachelor of Science degree in chemistry (1961) from Carleton University.



Speaker

Susan Phillips joined the School in 1988 and has been Director since 2005. Her research focuses on the evolving relationship between government and civil society - in policy development, service delivery and promotion of citizenship. In particular, her work concentrates on comparative analysis of the policy, regulatory and financing frameworks that enable (or constrain) the work of civil society organizations and philanthropy, and the implications for public management.

With colleagues at the Centre for Charitable Giving and Philanthropy (CGAP), Cass Business School, City University London, she is currently co-editing the *Routledge Companion to Philanthropy*, the first international handbook on philanthropy (to be published in 2013). With CGAP colleagues, she is also in the early stages of a multi-year study of place-based philanthropy, examining the community leadership roles played by community foundations.



Facilitator

Dr. Robert Slater is Adjunct Professor and Senior Distinguished Fellow in Environmental Policy at Carleton University and is the Executive Director of the Regulatory Governance Initiative. He is also President of Coleman, Bright and Associates, a consulting firm that operates internationally specializing in Sustainable Development issues and a Senior Fellow with the International Institute for Sustainable Development.

Dr. Slater occupied several senior positions during a 32 year career at Environment Canada and was the Senior Assistant Deputy Minister for eight years. He was instrumental in establishing the National Roundtable on the Environment and the Economy, the International Institute for Sustainable Development and the UNU Institute for Water, Environment and Health.

He was appointed a Member of the Order of Canada in 2009.

Annex 2: Themes and Issues from Roundtable Discussions and Voting Exercise



