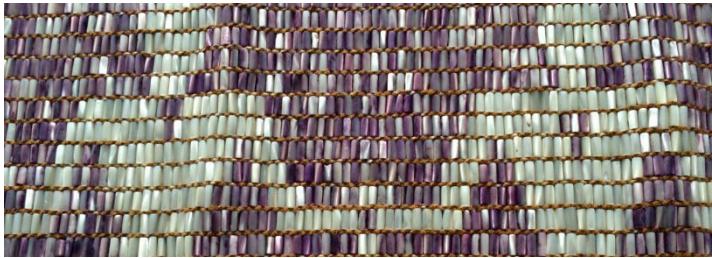


# Exploring Regulatory Change

## ***“The Duty to Accommodate”***

*A Critical Conversation on the  
Relationship between  
First Nations and Resource Development*

Friday, May 2nd, 2014  
Carlton University - RGI  
8:30 a.m. to 12:30 p.m.  
Chief Isadore Day, *Wiindawtegowinini*



## Setting the Context

Legends and teachings of the Serpent River Anishinabe hold strong parallels and ominous foretelling of the physical and modern world, and its environmental impacts . Sacred places and traditional practices helped carry the Anishinabe to a time where their views would become valued again.

The uranium industry and natural resource policy, in general as of the 21<sup>st</sup> century, are at a point of no return. Going forward must be done in a way that thinks about the lives our children.

## Presentation Overview

1) Worldview – Relationship

2) Treaties – Exploitation

3) Regulatory Evolution

4) First Nation Jurisdiction

5) Accommodation: a Way Forward

# The Legend of the Serpent



# The Legend of the Thunderbird



# *“Debwewin”* - Seeking the Truth





# ANISHINABE – AAKI CHI NAAKNI GEWIN

Anishinabe have long had a direct connection to the natural world based on “Natural Law” – Aaki Chi Naakni Gewin. At the time of contact and during the time leading up to the signing of treaties, this was acknowledged by the Crown.



## TREATIES WITH THE CROWN

The RHT 1850, was set in the context of resource extraction (Mica Bay). It would be clearly one of the most fundamental treaties in terms of annuities, protection of existing rights, – and apartheid in south Africa. Overall, the RHT is a legitimate marker that remains fundamental to the recognition of First Nation Jurisdiction.



# EXPLOITATION POLICY

Over 1 century 1850-1950; not only First Nations have expressed concerns with how governments over time have implemented resource development. Exploitation policy since the turn of the 19<sup>th</sup> century, has been viewed in Canada as having great devastation on the land; as well as the construct and under-fabric of its current policies.



# The Indian Act – Apartheid

Historical issues and complexities of the Indian Act 1876 imposed on a people, are also imposed on a country as a societal burden that is now becoming clear. 21<sup>st</sup> century challenges and conflicts between First Nations and Crown governments are continually being resolved by FN's taking an active stand in establishing FN Jurisdiction.

# Case Law, Canadian Constitution and RCAP

- “Self Determination” – the SCC, Canada’s Constitution 1982 and the Royal Commission on Aboriginal People, UNDRIP – have all validated the right to self-determination.
- Not to be taken as option, rather the high-water mark of recognizing Self-Determination, must start at the point of Treaties (pre/post, 1763) and form the foundation First Nations having a legitimate place in all aspects of Resource Development in modern Canada.

# Duty to Accommodate

- “At the high end is “accommodation,” a term still under construction. Accommodation may require a change of plans or it can be economic in form, but it does not always mean “compensation.” Profit sharing and win-win solutions have a place in this area of law. Most cases fall in the middle, requiring steps such as sharing information, providing opportunities to be heard and responding to concerns.” – *Alberta Environmental Law Center 2010*

# The REGULATORY Landscape: ‘Accommodating’ FN Jurisdiction

1. To control or direct according to rule, principle, or law.
2. To adjust to a particular specification or requirement:
3. To adjust (a mechanism) for accurate and proper functioning.
4. To put or maintain in order.

\*Vital Factors: History, Treaty, Land Title, FN Jurisdiction.

# First Nation Jurisdiction: “Lands and Resources”

- History and the Relationship - Pre Contact; Sustainability
- Colonialism and the Impacts of Exploitation - Contact
- Contemporary Conflict in Resource Development - IMPACT
- Jurisdictional Evolution – First Nations Self Determination
- Treaties justify FN Jurisdiction – a way forward
- Setting the table for Accommodation – The next 5 years



## FN Jurisdiction: *What does it mean?*

Returning to the original context of “shared obligations” – the Spirit and Intent of treaties. FN Jurisdiction essentially means that Natural Laws already exist; it is defining the contemporary context of formal responsibilities of FNs and what parts will be shared among other jurisdictions. The question is how do we get there?

# SRFN Lands Jurisdiction

## Changing the Course/Impact of Colonialism

- Occupying the Field - Occupancy & Use – Casting the Net: EL
- Joint Policy Efforts mean Joint Relations; JRC, NRED, etc.
- Collective Issues – Collective Rights – Collective Responsibility
- Challenging Ontario/Municipalities – Archeology
- Setting out & Demonstrating the Plan: SRFN CCP
- Environmental Review Panel – Enhanced/Harmonized EA
- Bi-Lateral Discussions with other Jurisdictions
- Multi-Jurisdictional Dialogue and Negotiations – EL/Ont./Can

# Addressing matters Face to Face





## For Our Children....

There is no need for convoluted and confused discourse of rhetorical and ill-fated policy when it comes to the work we must collectively convene is ensuring that Our Children have safe and clean drinking water to offer their Children.