

Indigenous Peoples, Mining, and Impact and Benefit Agreements: Who is Keeping Score?

Nola Buhr
Professor of Accounting
Edwards School of Business
University of Saskatchewan



EDWARDS
SCHOOL OF BUSINESS

UNIVERSITY OF SASKATCHEWAN

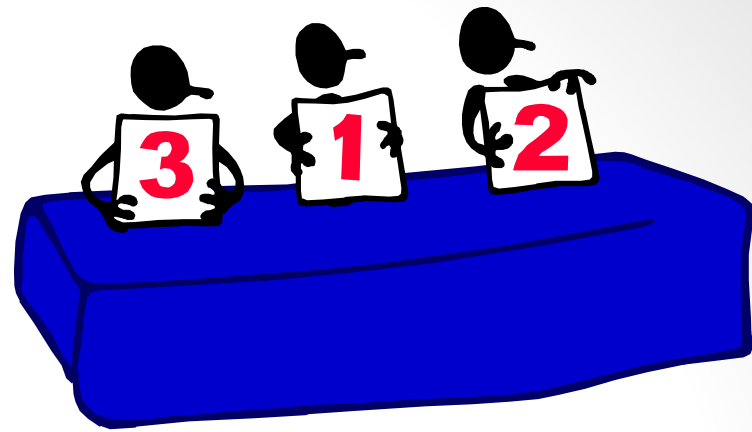
11th Australasian Centre on Social and Environmental Accounting Research
(A-CSEAR) Conference – 2-4 December 2012

Agenda

- Score-keeping
- Indigenous Peoples
- Mining and Indigenous Peoples
- Impact and Benefit Agreements (emphasis on Canada)
- IBA Saskatchewan example (but watch for the Martu)

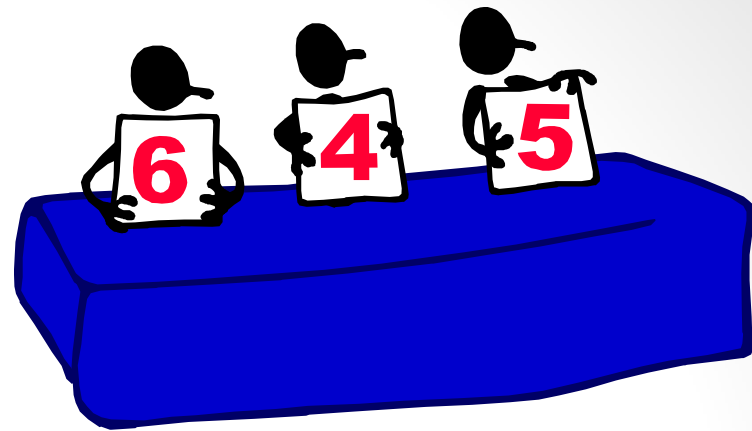


Score-keeping



- GRI, IIRC and Corporate “Sustainability” Reporting in general tend to do a poor job of providing information on what is happening at the community level.
- We need more focus on “sustainability” accounting at the community level.
- Especially because of their relationship with mining companies, Indigenous communities are a good place to start!
 - “indigenous peoples bear disproportionate costs from resource-intensive and resource-extractive industries” (UN DESA, 2009)

Score-keeping



Tsang, Welford & Brown, 2008 GRI Study, Reporting on Community Impacts

- Out of 58 G3 reports (globally sourced) 37 claimed that performance related to the SO1 indicator is reported; of these only 4 reports reported according to all the SO1 protocols
- ...“companies find it very difficult to articulate their community engagement objectives”
- “the assessment of impact of a given corporation’s CSR initiatives on community members is rarely seen”
- Under SO1 companies mainly report on donations and employee volunteer hours

Score-keeping

- SO1 is “Percentage of operations with implemented local community engagement, impact assessments, and development programs.” (GRI 3.1)
- There is also HR9 (non-CORE i.e. additional indicator) “Total number of incidents of violations involving rights of indigenous peoples and actions taken.” (GRI 3.1)



Score-keeping

Context-based Sustainability Management (Centre for Sustainable Organizations) (McElroy & Baue)

- McElroy & Baue are pushing for the GRI to enhance treatment of the Sustainability Context Principle in G4
- <http://www.sustainableorganizations.org/context-based-sustainability.html>

Score-keeping

Who is keeping score? The corporation.

Let's look at it from the perspective of Indigenous peoples.



Toronto, Ontario
Corporate Canada

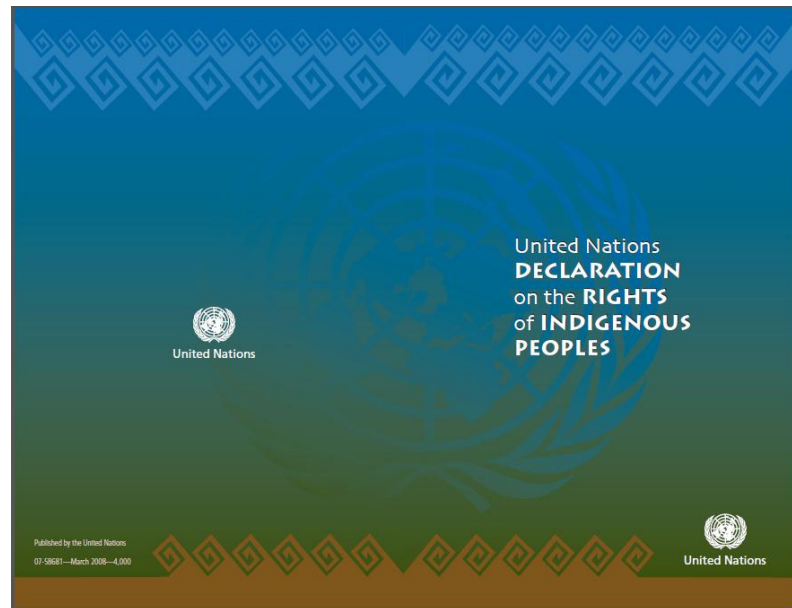


Attawapiskat First Nation
Also in Ontario

Indigenous Peoples

The *United Nations Declaration on the Rights of Indigenous Peoples* has recognized that there is a need to promote Indigenous rights...

“which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources” (2008, p. 2).



Indigenous Peoples

A snapshot (UN, Department of Economic and Social Affairs, 2009)

- More than 370 million people living in 90 countries
- Of 7,000 languages spoken today more than 4,000 are spoken by Indigenous peoples and it is predicted that 90 % of the world's languages are likely to become extinct or be threatened with extinction by the end of this century
- Indigenous peoples have been subject to colonization, conquest and occupation yet have been recognized as sovereign people through treaties (especially in Canada and New Zealand)

Indigenous Peoples

Living conditions of Indigenous peoples in Australia, Canada, New Zealand and the United States (UN DESA, 2009)

- Australia...an Aboriginal child born in Australia today can expect to die 20 years earlier than his non-Indigenous counterpart.
- Canada...about 70% of First Nations students on-reserve will never complete high school.
- New Zealand...Maori people make up 15% of the New Zealand population but 50 % of the prison population.
- United States...the average income of Native Americans is less than half the average of the rest of the population.



Indigenous Peoples

- Indigenous peoples have a special relationship with the land
- Traditional Ecological Knowledge (TEK) inform science, ecosystem management, environmental assessment and resource management (Birk 2009; Lertzman & Vredenburg 2005)
 - Spatial aspect (geographically located)
 - Historically situated (long time frames)
 - Socially mediated (social systems at the community level)
 - Culturally located (functions within a larger philosophical context)
 - With protocols for assessment, verification, transmission (orally)

Indigenous Peoples

- “Respect for nature requires a healthy state of stewardship with a healthy attitude. It is wise to respect nature. Respect the spiritual...It is not human to waste food. It is inhuman to over-exploit...Never harm or kill for sport. It is degrading to your honour...It challenges your integrity and accountability. Nature...once broken, will hit back...”

Nuu-Chah-Nulth elder quoted in Letzman & Vredeborg 2005



Indigenous Peoples

- But see..... The Ecological Indian (Krech III, 1999)

“The idea of the Native American living in perfect harmony with nature is one of the most cherished contemporary myths. But how truthful is this larger-than-life image? According to anthropologist Shepard Krech III, the first humans in North America demonstrated all of the intelligence, self-interest, flexibility, and ability to make mistakes of human beings anywhere.”

(Washington Post review on back cover)

Indigenous Peoples

Legal, historical and constitutional bases differs from country to country. This will enable (or not) Indigenous peoples to take control over their economic and social well-being.

- i.e. This affects their ability to “negotiate” with mining companies.



Indigenous Peoples

- In Australia, the Native Title legislation has given some increased negotiating powers to Indigenous peoples and has obliged mining companies to consult with communities and recognize some wider social responsibilities (UN DESA, 2009)
- However..... “while miners in the Pilbara such as BHP and Rio Tinto work closely with indigenous contract mining and services businesses in other countries such as South Africa and Canada, it is not acting similarly in Australia” (Australian Mining, 2010)

Mining

- The top 10 mining companies and their market capitalization (US\$) (mineweb.com, August 2012)
 - BHP Billiton - \$163 billion
 - Vale - \$95 billion
 - Rio Tinto - \$93 billion
 - Anglo American - \$44 billion
 - Xstrata - \$42 billion
 - PotashCorp - \$37 billion
 - Barrick - \$34 billion
 - Freeport-McMoRan - \$33 billion
 - Norilsk - \$31 billion
 - Goldcorp - \$30 billion



Mining

BHP Billiton on sustainability

We are committed to putting health and safety first, being environmentally responsible and supporting our communities.



Mining and Indigenous Peoples

Relevant areas in the literature:

- Impact and Benefit Agreements (and their follow-ups)
 - Ciaran O’Faircheallaigh (Griffith Business School, Australia)
- Environmental Impact Assessments (and their follow-ups)
- Corporate-community relationships

- Disciplines involved in the area:
 - Geography, law, political science and public policy

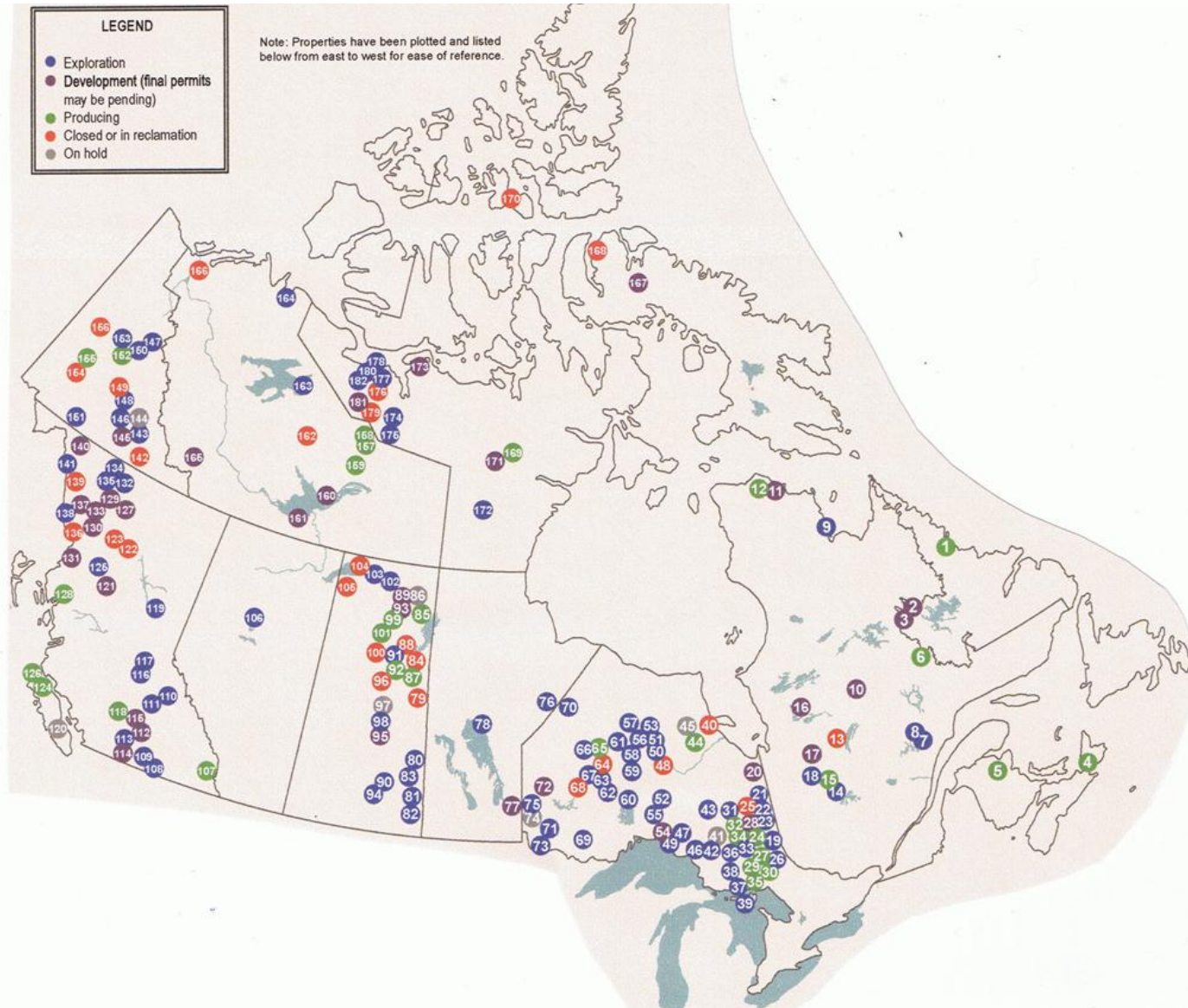
Mining and Indigenous Peoples

- Case study examples from the literature:
 - Rio Tinto, Richards Bay Minerals and the Mbonambi (South Africa) (Kapelus 2002)
 - Diamond mining in Botswana (De Beers/Government of Botswana) and Canada (Diavik/Rio Tinto) (Deleon & Ventriss 2010)
 - Uranium mining (Areva) in Baker Lake (Nunavut, Canada) (Bernauer 2010)

In Australia TOs (Traditional Owners) are negotiating agreements with mining companies.

- But very little of this is described in the academic literature.

Agreements between Mining Companies and Aboriginal Communities or Governments in Canada



Indigenous Peoples in Canada

- 3 groups of Indigenous peoples in Canada: Indian, Métis and Inuit
- Group membership depends on ancestry and lineage
- Indian is a legal definition but “First Nations” is the preferred term
- History has resulted in a unique relationship between Indians and the rest of Canada
- First Nations people identified with established communities; nearly all have a land base



Mining and Indigenous Peoples

- Mining In Canada is usually done on Crown lands which includes the traditional territory of Aboriginal peoples
- There is a multi-stage process to open a mine but key is to stake a claim with the government and obtain a mining lease.
 - This territory may be under an Aboriginal land claim process; or
 - Have the potential of being covered by a land claim; or
 - Be part of or impact a First Nation reserve (where the land is held in trust by the Crown).

Mining and Indigenous Peoples

- In Canada there are 3 ways to ensure Aboriginal peoples are consulted:
 1. Crown's (federal and provincial) legal obligation (3 supreme court cases) of a duty to consult
 2. Statutory compliance through Environmental Assessment legislation
 3. Voluntary business initiatives like IBAs



Mining and Indigenous Peoples

- Legal basis for Environmental Assessments (EAs) in Canada is the *Canadian Environmental Assessment Act* (passed 1992; effective 1995)
 - Emphasis on citizen engagement
 - Determine environmental effects
 - Outline mitigation measures
 - Environmental impact follow-up
 - Incorporate Indigenous knowledge as relevant
- In Canada, Impact and Benefit Agreements (IBAs) operate in isolation from the EA (Environmental Assessment) process

Mining and Indigenous Peoples

- In Canada, greater Aboriginal participation in resource development as a result of:
 - Modern land claims
 - Court rulings that recognize Aboriginal rights and title
 - Move towards self-determination and self-government
 - We have the Indian Act in Canada...

Impact and Benefit Agreements

What are they???



- Voluntary!
- Aboriginal community-company negotiations (other levels of government are typically not involved)
- IBAs enforced by private commercial law (contract-based)
- Confidential
- Go beyond conventional (regulated) Environmental Assessments

Impact and Benefit Agreements

Mining companies have all the power
so why do IBAs???

- Corporate Social Responsibility
- Reputation
- Licence to operate/social contract
- Lessen the chance of having Aboriginal peoples interfere with mineral development (road blocks, etc.)
- Duty to consult (in Canada) applies to governments NOT companies but companies have been “engaging” on this basis
- Recognition (by companies) of Aboriginal peoples’ relationship with the land and related rights



Impact and Benefit Agreements

- “historic resource extraction practices are no longer acceptable and that meaningful consultation and accommodation with aboriginal peoples is becoming a normal course of business” (Fidler & Hitch 2007)
- Goals:
 1. Benefits and opportunities (of the mining project) flow to the Aboriginal communities.
 2. Risk factors (within the community) such a adverse socio-economic and biophysical effects are addressed.

Impact and Benefit Agreements

Common Provisions of IBAs (per Fidler & Hitch, 2007)

- Employment – increased opportunities
 - Preferential hiring for Aboriginal people
 - Flexible schedules to accommodate traditional activities
- Education and training – increased opportunities
 - Apprenticeship and scholarship programs
 - Partnerships with local schools and community colleges
- Economic development – preferential contracting
 - Direct tendering to Aboriginal communities
 - Unbundling contracts into more manageable components



Impact and Benefit Agreements

More Common Provisions of IBAs (Fidler & Hitch, 2007)

- Socio-cultural support and communication structures – to reaffirm Aboriginal rights and culture
 - Monitor social impacts with developed indicators
 - Fund community projects and physical infrastructure
- Environmental monitoring and protection – complying with existing environmental laws & additional provisions
 - Obligations regarding reclamation
 - Minimize activity in sacred sites
- Finance – monetary settlements
 - Joint venture and development funds
 - Structured payouts



Impact and Benefit Agreements

Concerns (per Prno, Bradshaw & Lapierre, 2012)

- Only benefits blue-collar workers involved in mining
 - Need more community projects/infrastructure
 - Need profit sharing with the community
- Agreements are confidential due to their sensitive financial information (profit sharing, equity sharing, compensation, land-use payouts and royalties (Fidler & Hitch, 2007)
- Community-based IBA monitoring programs are needed to ensure that mining companies fulfil their commitments
- Mining has exacerbated and created social issues such as substance abuse
- Mining has created a number of negative environmental impacts



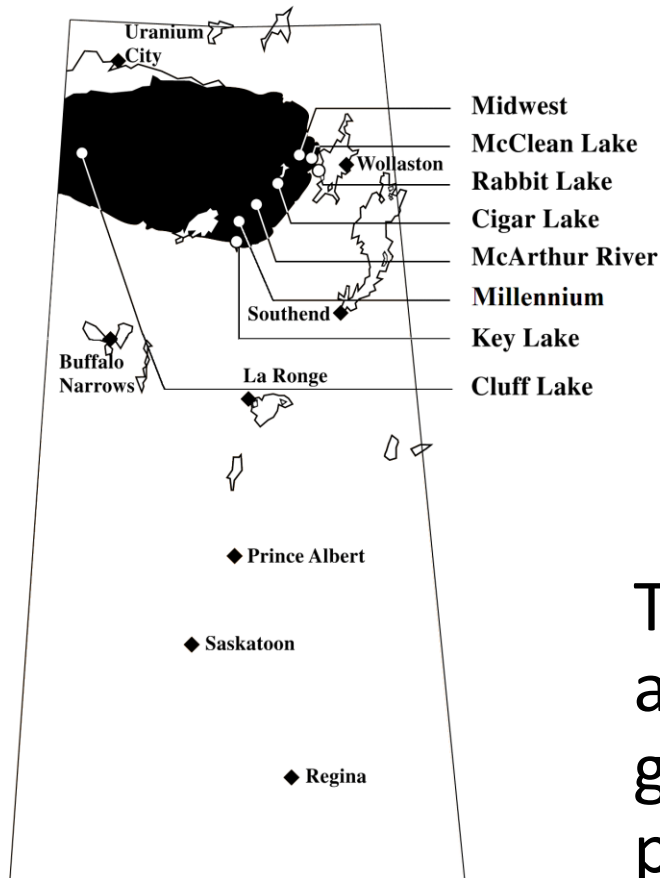
Impact and Benefit Agreements

More concerns

- Confidentiality prevents Aboriginal groups from sharing and learning about IBAs – keeps corporate bargaining power stronger
- Do all Aboriginal peoples have the capacity/ability (financial resources, legal expertise) to negotiate and develop IBAs?



An IBA example from Saskatchewan, Canada



The Athabasca Basin
accounts for 30% of
global uranium
production

An IBA example from Saskatchewan, Canada

- In 1993 the Athabasca Working Group (AWG) was created
 - Included two uranium mining companies and seven municipal and First Nation communities in Northern Saskatchewan
- In 1999 an Impact Management Agreement (this was first generation IBA) was signed between the two companies and six of the AWG communities with a focus on:
 - Employment, training and business development
 - Benefit sharing
 - Environmental Protection
- In 2000 a community-based environmental monitoring program was established

An IBA example from Saskatchewan, Canada

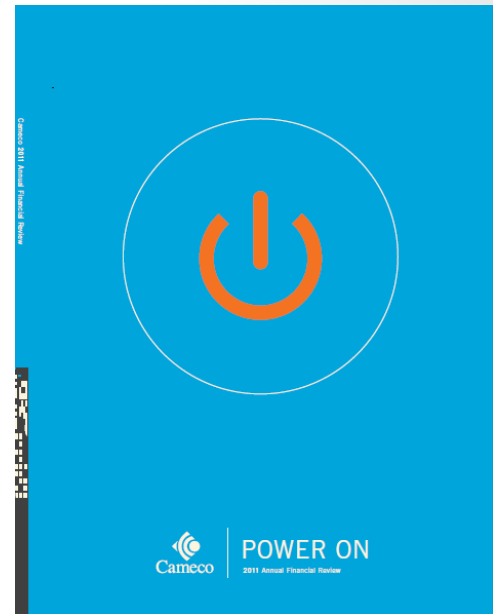
Cameco 2011 annual report
(182 pages) mentions:

“Athabasca Working Group” 1 x
“we work with communities....”

“Aboriginal” 1 x
donations to northern and Aboriginal initiatives

“First Nation” 1 x
dispute of land rights between FN and Cameco

“Indigenous” 5 x
2x ...general support of communities & Indigenous people
3x about their MOU with the Martu Aboriginal people in Australia who live in the area of Cameco’s Kintyre project in the Pilbara desert of Western Australia



An IBA example from Saskatchewan, Canada



George St. Pierre
(Wollaston Lake)

An IBA example from Saskatchewan, Canada

Community Based Reports - Community Vitality Monitoring Partnership Process, thirteenth Annual Report, 2011 (funded by Cameco and Areva)

- Northerners demonstrate traditional hands games as the visiting Martu from Australia look on. (*Photo Courtesy Aurora Communications*).



Impact and Benefit Agreements

- If you want more information.....
 - I have a list of references used in this presentation
<http://ro.uow.edu.au/acsear2012/2012/>
 - There is an Impact and Benefit Research Network
www.impactandbenefit.com
 - There is an IBA community toolkit, Gibson & O'Faircheallaigh 2010 available at www.ibacommunitytoolkit.ca

The End!



- Let's take another perspective on ``sustainability`` reporting.....
- Let's take a community perspective!