Operationalizing Indigenous Consent through Life of Mine: Indigenous Self-Determination in the Mining Sector

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What principles or standards could contribute to meaningful Indigenous oversight of mining in BC to reflect Indigenous self-determination in the mining sector? Are there specific tools or mechanisms that could be applied to support self-determination and Indigenous oversight? How could these mechanisms operate to the benefit of all Indigenous nations that are based in BC?

INTRODUCTION

In recent years, British Columbia and Canada have experienced a profound transformation in the legal, practical and policy role of Indigenous peoples in every aspect of public policy and decision-making, not least in the mining sector, and that transformation is continuing at an unprecedented pace and scale.

Crown consultation with Indigenous Nations about major projects has evolved rapidly from an era when it rarely occurred, to a best practice, to a mandated constitutional reality.[2] The affirmation in *Delgamuukw*[3] and *Tsilhqot'in Nation*[4] that Aboriginal title *exists* in British Columbia, not only to specific sites but more broadly to expansive hunting, trapping and gathering territories, has reinforced the need to address unresolved Indigenous rights of ownership, management and control over their unceded lands. Industry leaders have increasingly recognized the importance of Indigenous consent as a legal, social and business reality, especially in the wake of high-profile major projects that have floundered in the face of Indigenous opposition. And with British Columbia enacting legislation to implement the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP),[5] and Canada poised to do the same, we can expect recognition and respect for Indigenous self-determination, governance and stewardship of their lands, peoples and distinctive cultures to continue transforming the foundations of British Columbia and Canada for the foreseeable future.

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[2] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73.

[3] *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

[4] *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

[5] Pursuant to the United Nations' *Declaration on the Rights of Indigenous Peoples,* the free, prior informed consent of Indigenous peoples is a minimum requirement that is established and required before mines are built in British Columbia in compliance with international human rights.

In the mining sector, we see this transformation starting to emerge in British Columbia through such innovations as Indigenous-led environmental assessment processes,[6] more equitable project agreements between proponents and Indigenous Nations and the new *Environmental Assessment Act*,[7] which recognizes a regulatory role for Indigenous governments and establishes tools for requiring Indigenous consent.

And increasingly, there is recognition that Indigenous consent is not a "one-off" greenlight for project development, but rather an essential operating principle *through life of mine*, from project proposal through operations, closure, reclamation and long-term monitoring and management. As an example, in recent years, some Indigenous Nations have successfully negotiated a lead role in designing and implementing monitoring programs through major project agreements.

These trends are encouraging but still far from comprehensive. Too often, best practices continue to depend on the negotiating strength of the Indigenous Nation, the progressiveness (or otherwise) of the mine proponent or operator and the extent to which government regulators are prepared to innovate or hold mine operators accountable. Too often, we continue to see "worst practices" without accountability.

There have been many positive innovations and partnerships in the BC mining sector in recent years, driven by dedicated Indigenous leadership and forward-looking mining proponents and operators. At the same time, it must be recognized that mining laws in British Columbia were established in a colonial era, in denial of Aboriginal title and Indigenous self-determination. In our view, a transformed legal and policy framework is required to reflect a new era of recognition and respect for Indigenous peoples. Although innovative developments and best practices are emerging from government-to-government agreements and partnerships between Indigenous groups and mine operators, these practices must become the business standard rather than the exception, driven and supported through a renewed legal and policy framework.

In this paper, we outline key principles for a renewed legal and policy framework in the mining sector with a particular focus on the British Columbia context. We then review some practical regulatory tools for operationalizing Indigenous consent through life of mine, not only as best practices, but as a framework for meaningful Indigenous oversight of mining activities founded on Indigenous self-determination and rights of free, prior informed consent.

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[6] See: Recent Experience with Indigenous-Led Assessments: A BC Perspective", prepared by the First Nations Energy and Mining Council for the Canadian Environmental Assessment Agency (November 2019).

[7] *Environmental Assessment Act*, SBC 2018, c 51.

PRINCIPLES FOR INDIGENOUS OVERSIGHT IN THE MINING SECTOR

We propose the following as emerging principles for Indigenous oversight in the mining sector as it transitions to a post-title, post-UNDRIP era of reconciliation:

- Consent-based: *Free, prior informed* consent of Indigenous peoples for decisions that affect their lands and territories is the overarching operating principle.

  Consent is not simply a "one-off" approval for mine development; rather, Indigenous consent should be *active* and *ongoing* at every stage of project development with the goal of operationalizing Indigenous consent through life of mine. Operationalizing consent as a driving principle calls for "creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together".[8]

- Recognition and reconciliation of Aboriginal title: In a post-*Tsilhqot'in Nation* world, mining regulation must adapt to recognize and reconcile the rights of ownership, management and economic benefit that Indigenous peoples hold in their unceded territories across much of British Columbia.[9] In practical terms, this means implementing structures and processes for securing Indigenous consent, sharing decision-making authority, equitably sharing economic benefits, and respecting the ancestral laws, culture and connection to the land at the core of Aboriginal title.

- Government-to-Government relationship: The relationship of Indigenous peoples to British Columbia and Canada is government-to-government, nation-to-nation.[10] Indigenous peoples are self-governing and self-determining, through their own institutions.[11] Mine operators have a critical role to play in establishing respectful relations with Indigenous governments. However, the primary relationship is between the Crown and affected Indigenous peoples, as *governments*, with a direct and shared governmental responsibility for the regulation and oversight of mining activities.

- Incorporating Indigenous laws, priorities and values: as recognized in UNDRIP, "[r]ecognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment".[12] Indigenous values, ethics of stewardship

[8] Government of British Columbia, *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, p 5.
[9] *Tŝilhqot'in Nation v British Columbia*, 2014 SCC 44, para 73.
[10] Government of British Columbia, *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, p 2.
[11] UNDRIP, Articles 3, 4, 32(2).
[12] UNDRIP, Preamble.

and deeply entrenched responsibility for future generations offer a much-needed corrective to outdated mining practices that historically generated short-term revenues but left behind a legacy of massive liabilities and environmental damage.

- Inclusive and empowering: Mining operations have differential impacts for Indigenous peoples, women, 2SLGBTQQIA individuals, disabled persons and other vulnerable groups. In recent years, Gender Based Analysis Plus (GBA+) has emerged as a best practice across disciplines and a tool for understanding and mitigating negative impacts of development for vulnerable populations and including diverse perspectives and experiences.[13] A trauma-informed, inclusive, empowering approach to understanding and regulating the impacts of mining operations for Indigenous populations is essential. In particular, the Final Report of the Murdered and Missing Indigenous Women and Girls Inquiry outlines numerous "calls to justice" that are essential considerations for a renewed mining framework.

TOOLS FOR OPERATIONALIZING CONSENT

Underpinned and guided by the principles outlined above, there are a number of tools that could be adopted and/or adapted to operationalize the Indigenous right to free, prior and informed consent in the mining context in British Columbia and which would provide greater oversight by Indigenous Nations for projects which have garnered their consent.

These tools are by no means exhaustive or definitive,[14] but they reflect the authors' collective experience of working with and for Indigenous Nations in British Columbia in whose territories there are large operating mines, some with the consent of the Indigenous Nation (through negotiated Impact Benefit Agreements and other constructive government-to-government arrangements), and other projects which operate without an Indigenous Nation's consent, as well as proposed mines which did not have the consent of the Indigenous Nation and were strongly opposed.

1. Respectful Government-to-Government Relationship – Foundation for Operationalizing Consent

[13] See, for example: "Gender-based analysis plus (GBA+) in impact assessment", Impact Assessment Agency of Canada.

[14] Essential to approaching this discussion is to note that an Indigenous Nation, as a result of its own rights to self-determination, is free to make decisions about its future, and no amount of prescribed "tools" or concepts can replace the need for free, prior and informed discussion *within* a community, according to its own governance and institutions. We are not proposing to examine *how* consent is secured or the internal processes through which an Indigenous community and rights-holders determine whether to freely grant or withhold their consent.

The foundation for operationalizing consent in the mining sector in British Columbia begins with recognition and respect for Indigenous governments as legitimate, sovereign Nations who make decisions and hold responsibilities to uphold the collective rights of their citizens. To realize this vision begins with strong government-to-government ("G2G") relationships which engage Indigenous governments not as stakeholders or parties to be consulted, but as *sovereign governments* representing rights- and title-holders, and as regulators with equal authority.

Fundamentally, this means understanding free, prior informed consent as a *relationship* or *set of relations* between different governments, jurisdictions and laws,[15] based on reconciliation of different sovereignties[16] and, we suggest, respect for their self-determination. From this flows the question of *how* these relationships are structured and the answers guide where to focus our attention. A robust and respectful G2G foundation is critical to the success of all of the tools discussed in this paper.

Tools which could enable strong G2G relationships include establishing structures which explicitly recognize multiple decision-makers, and which move beyond the status quo processes that are the legacy of the "consultation and accommodation" model. Structures need to be adaptable to reflect the unique context, aspirations and input of the Indigenous Nations at issue, and may need to be multi-lateral to reflect the fact that many projects fall in shared territories.

Redefining Indigenous governments as more than a body to be consulted implies that there must be role for Indigenous governments in a wide range of different decisions, including a regulatory role, if desired. This can and should include the setting of conditions and expectations for mine operations and extends to monitoring compliance and deciding when and how to respond to incidents of non-compliance. Despite suggestions that Indigenous governments already play a role in British Columbia's compliance regime, it is the authors' experience that in fact they are regularly shut out of investigations, provided almost no communications from provincial compliance and enforcement officials investigating incidents at mine sites, and afforded even less attention when it comes time to make decisions about how to respond to non-compliance.

G2G structures must also be realistic: there are both "good" proponents (e.g., respectful, compliant with regulations and permit conditions) and "bad" proponents (e.g. disrespectful of regulators, Indigenous peoples, non-compliant with regulations and permit conditions). The rules of the game, and the G2G structures, must anticipate both. This suggestion isn't about labelling any one company – it is about having clarity of expectations and consequences for when those expectations are not met. British

[15] Danesh, Roshan, and Robert McPhee. 2019. *Operationalizing Indigenous Consent through Land-Use Planning.* IRPP Insight 29. Montreal: Institute for Research on Public Policy, p. 9.
[16] White III Kwulasultun, Douglas. 2019. *Consent.* Vancouver: Union of British Columbia Indian Chiefs.

Columbia's Auditor General's report on mining identified "regulatory capture" as a live issue in the Province.[17] This criticism rings true for many Indigenous governments dealing with mining companies and government, who experience highly skewed power dynamics where even provincial staff are often afraid of the repercussions of simply doing their jobs.

Recent steps by the Province to respond to the Auditor General's report as well as the British Columbia Mining Jobs Task Force Final Report[18] through amendments to the *Mines Act* (including new auditing powers and division within the Provincial Ministry of Energy, Mines and Petroleum Resources between permitting and inspection duties), are steps in the right direction. However, tinkering around the edges will not deliver the transformation needed to implement an operational consent-based model. If British Columbia is serious about implementing UNDRIP, then work is urgently needed to establish respectful G2G processes that are wholistic, that bridge the silos created by the current regulatory system (e.g. gaps between the roles of different ministries) and are grounded by joint decision-making guided by Indigenous jurisdiction, values, laws and responsibilities.

G2G tables already exist in British Columbia, such as the Red Chris Mine Management Agreement and related Red Chris Mine Forum[19] between the Tahltan Nation and the Province of British Columbia. In many ways, the basic formula is already proven through this table and others. What we propose here is for Indigenous *decision-making* and for real *authorities* be integrated as standard practices and expectations for G2G tables.

What follows are potential tools or critical areas of work to enhance Indigenous oversight of mining activities.

2. Ensuring consent is informed

Many Indigenous communities have borne the brunt of the negative impacts from British Columbia's resource extraction economies over the past 150+ years without enjoying the benefits, equitably or at all. This history gives Indigenous peoples unique insight into what safeguards should be in place to ensure that the "informed" part of *free, prior and informed consent* is established and maintained at all stages of a proposed/constructed project. Based on our experiences, Indigenous peoples often struggle to be fully informed about potential or existing projects or in ways that are culturally sensitive, self-determined and adequately resourced.

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[17] Auditor General of British Columbia. 2016. *An Audit of Compliance and Enforcement of the Mining Sector.*
[18] British Columbia Mining Jobs Task Force. 2018. *Final Report.*
[19] Tahltan Nation and Province of British Columbia. 2017. Tahltan-Province Government-to-Government Red Chris Mine Management Agreement.

Ensuring Indigenous governments are fully informed requires shifting how planning and execution occur at all stages of the mine cycle – staking/tenuring, exploration, proposal, review, construction and reclamation/closure. Being informed requires full and transparent disclosure of risks, and acceptance that each Indigenous Nation has its own perception of risk and its own analysis of what constitutes acceptable risk. If operating under the premise of consent-based mining, with proponents and the Province respecting outcomes from Indigenous decision-making, we expect that there will be a renewed consideration of the types of impacts that are acceptable, the impacts that simply are not acceptable and, when possible, how to adapt plans to reflect Indigenous values and perspectives.

There are already instances where healthy and respectful relationships exist between proponents and Indigenous Nations. We take this one step further and propose that such structures should *always* exist, beginning with healthy and respectful relations between the Province and Indigenous Nations. If realized, the incorporation of Indigenous values and worldviews into resource decision-making could provide an alternate path that strikes a more inclusive, sustainable balance between economic development and long-term environmental stewardship.

3. Longer-term "Life of Mine" Planning

Respecting Indigenous laws and values requires an openness to changing how we approach long-term mine planning. This begins early in the process, including decisions around where it is appropriate to conduct exploration, as well as the pre-feasibility stage, when assessing what is possible and acceptable in the context of the affected Indigenous Nations and territories.

Determining levels of acceptable risk should be an honest dialogue collaboratively developed. It extends to all stages of the proposal and project, but is particularly acute at the impact assessment stage and when reclamation and closure plans are being developed.

Tools to engage Indigenous peoples as more active partners are emerging through reformed impact assessment processes (at both the provincial and federal levels), although at this time consent-based decision-making is not guaranteed or even the norm (it remains a potential tool in the new provincial legislation, as yet unused). Nor do these reformed processes fully address problems plaguing impact assessment, e.g. proponents hold disproportionate power to determine the scope of what will be reviewed and are responsible to collect the data and conduct the analysis to determine the impacts of a proposed project.[20]

[20] Westwood, Alana and Martin Olszynski and Caroline Fox and Adam Ford and Aerin Jacob and Jonathan Moore and Wendy Palen. 2019. *The Role of Science in Contemporary Canadian Environmental Decision Making: The Example of Environmental Assessment*. University of British Columbia Law Review, forthcoming. Available at SSRN: https://ssrn.com/abstract=3309943.

Until impact assessments meaningfully reflect Indigenous knowledge, values, ways of life, unique perception of risk and decision-making authority, environmental assessments will continue to be a flashpoint for conflict over Aboriginal rights, title and self-determination. By contrast, if Indigenous consent is required for a project to proceed, we can expect environmental assessment processes to be more inclusive and promote wholistic planning, transparent risk assessment, rigorous risk management strategies and mitigation, and overall better project design.

Two particularly important examples are: a) determining and assessing risk for reclamation, closure and post-closure and setting security bonds; and, b) more independent, Indigenous-led monitoring and decision-making when responding to unexpected problems.

a) Determining and Assessing Risk

Indigenous Nations have an obvious role to play in developing acceptable reclamation, closure and post-closure plans and, by extension, determining the amount of security bonding expected from proponents up front.

This is obvious to us because Indigenous communities have occupied their lands and waters for thousands of years – and are not leaving. Unlike the proponent, Indigenous Nations are not transient; they live, breathe, eat, fish, drink and pass down the lands that they own to their children, grandchildren, and so on. This intimate relationship with the land means that Indigenous Nations rightly expect that the enormous environmental liabilities resulting from major mines require both their consent and participation in the planning.

Many Indigenous communities are guided by teachings which require them to plan for future generations, and this is an important lesson that is often lost amongst the technical obfuscation that too often shrouds reclamation and closure plans. Input can take the form of alternatives assessments undertaken *by* the Indigenous community with respect to reclamation and closure, end-of-life-land-use, and whether common mining legacy issues like water treatment and discharge in perpetuity are acceptable risks. All British Columbians would benefit from an enhanced role for Indigenous peoples in determining how mining is planned over the long-term, and what guarantees are expected up front before granting consent.

b) More Independent and Indigenous-led Monitoring

The second example relates to independent and Indigenous-led monitoring, bolstered by subsequent decision-making authority when responding to unexpected problems. Monitoring can be understood in relation to long-term planning because monitoring is how we know whether predictions around impacts are accurate, and whether commitments and conditions related to granting consent/approval are being honoured over time.

It is already recognized that increasing Indigenous participation as stewards and monitors is an ideal and inevitable role for Indigenous Nations.[21] For too long Indigenous Nations have been told to "just trust us" while experiencing mounting negative project impacts over time. But it isn't enough to have occasional or token participation. Indigenous-led monitoring should include an element of independence (e.g. monitors should be employed by and primarily responsible to their Nation), and be part of a coherent and integrated monitoring program that asks questions and reports back meaningfully about issues that matter to the Indigenous Nation. If this were to be combined with decision-making authority when responding to problems

[21] British Columbia Mining Jobs Task Force. 2018. *Final Report*, p. 27.

(e.g. worsening water contamination), Indigenous Nations would likely have much more confidence in the regulatory system.

A leading example in the Province can be found in the Tahltan Nation and the Red Chris Mine, where Tahltan Guardians are directly involved in monitoring through joint inspection and several oversight mechanisms (both with the proponent and with the government), including a Wildlife Management Committee, an Environmental Oversight Committee and a Red Chris Monitoring Committee[22].

Finally, independent and Indigenous-led monitoring must extend not only to environmental impacts, but also to social impacts of mining. Given the differential impacts of mining across different populations within Indigenous Nations, and particular concerns for vulnerable groups such as women, children and 2SLGBTQQIA individuals, it is critical that Indigenous Nations lead the ongoing assessment of impacts (both positive and negative) and direct the timely, effective response to concerns as they arise.

4. Equitable Sharing, not to be confused with Adequate Resources

A major obstacle to consent-based mining is the woeful level of G2G revenue-sharing vis-à-vis British Columbia's Economic and Community Development Agreements ("ECDA") and the common but never guaranteed (or consistent) private contracts between proponents and Indigenous Nations (often called Participation Agreements, Impact Benefit Agreements, etc.).

The lack of consistent and meaningful sharing of revenues by the Province is a major stumbling block when arguably the *entirety* of the mineral rents and benefits should flow to the unceded title holders. The ECDA policy currently commits 37.5% of the mineral taxes collected by the Province to be shared with Indigenous communities, but because of the generous tax holidays available to proponents, mineral taxes are often not paid or minimal when compared to other taxes. Further, Indigenous Nations have to split the 37.5% between all impacted Indigenous Nations, and annual revenues in practice can be as low as $4000.[23] This level of sharing is orders of magnitude below what it should be given the significant impacts that result from mining, and the fact that the minerals are generating billions of dollars of revenue for proponents and the Province (and the federal government).

Moreover, there is an important distinction between *compensation* and *benefits*. Compensation reflects what should be paid to address environmental and/or social, spiritual, cultural and other impacts imposed by a project (including historic, ongoing and future impacts), without being premised on relaxing community standards or

[22] Tahltan Central Government. 2020. Industry Review 2020, p. 13.
[23] Williams Lake First Nation (formerly Williams Lake Indian Band). 2014. *Williams Lake Indian Band Press Release*. 25 July, 2014. Accessed October 18, 2020.

recourse. Benefits should be understood as something that begins only after compensation has been addressed. Taken in combination, it is our suggestion, one shared by others within industry as well,[24] that current levels of G2G sharing fall far short of equitably sharing the benefits of mining (or addressing the matter of compensation). To address this, sharing of provincial revenues other than the mineral tax, (e.g. sales taxes, income taxes, excise taxes, land taxes) should be on the table. Alternatively, new taxes could be developed to address the shortfall.

Secondly, and particularly important given that proponents have a significant number of ways to avoid taxes, is that for many Indigenous Nations, consent is not granted until there is an agreement in place with *both* the Crown and with the proponent. Agreements with proponents should entail a comprehensive framework for relationship-building and relationship-maintaining, combined with the meaningful sharing of benefits through both the sharing of revenues and preferential contracting opportunities.

Currently, the Province takes the position that the ECDA is also meant to fund Indigenous consultation for ongoing permitting and oversight at a mine. Given the often-insignificant levels of G2G revenue-sharing, this is unacceptable unless and until dedicated funding for mine oversight and engagement are secured. Engagement, and informed consent, require technical advice, dedicated staff and significant attention from leaders. Respectful relations simply cannot exist between governments if one of them cannot come to the table informed and able to make self-determined decisions. Adequate resourcing to engage and provide oversight should be guaranteed to Indigenous governments (whether from the proponent, the Crown, or both) and should not be premised on compromising the right to free, prior informed consent.

Over time, it might be expected (and encouraged) that Indigenous Nations will increasingly move beyond revenue-sharing and preferential contracting opportunities to occupy a more central role as *true partners* or *proponents* in mine development. When Indigenous peoples have a significant (or controlling) stake in the mining operations in their territory, and hold seats in the boardroom, we can expect to see entirely new levels of benefit-sharing and consent-based decision-making.

5. Updated Land Use Planning and Reform to "Free Entry" staking

Alongside the strident opposition to the very concept of free, prior informed consent is often the propping up of a very old and problematic foundation for mining in British Columbia: the "free entry" system. Free entry is premised on the concept that anyone with a "Free Miners Certificate" has the right to "stake" a mineral claim anywhere in the Province that isn't already staked or has a land status that prohibits staking (e.g. a two-zone system, with parks, ecological reserves, Indian Reserves, etc., not available for staking).

[24] British Columbia Mining Jobs Task Force. 2018. *Final Report*, pp. 22-23.

The granting of the mineral claim to the Free Miner confers significant rights, including what is often thought of as preferred rights over other land uses and users, including Indigenous Nations and private land-owners (who have the right to compensation but not to withhold consent). In fact, there is zero consultation required with Indigenous Nations before staking occurs, meaning that many mineral claims are granted without any knowledge or notice to the local Indigenous Nation. This antiquated system is often a source of conflict owing to its outright disregard for Indigenous rights, especially title.

The system need not be so problematic. Other jurisdictions, without significantly changing their "attractiveness" to investment, have moved away from the free entry system (e.g. Alberta). Alternatively, consent-based mechanisms could exist at the outset, prior to conferring mineral tenures to third parties, while still respecting a proponent as being "first in line" to secure particular mineral tenures.

The history of land use planning in British Columbia compounds the challenges of developing a consent-model in a "free entry" system. Many (if not most) land use planning processes failed to bring Indigenous governments to the planning table as decision-makers or even rights-holders. As a result, many Indigenous governments boycotted or participated minimally, and current land use plans are generally not accepted as a legitimate planning tool by Indigenous Nations. The result is a mineral tenure landscape with extremely high uncertainty because, from the outset, the interests and aspirations of Indigenous governments are not reflected on the landscape. This collision between a status quo premised on disregard for Indigenous rights and interests, and a new legal reality increasingly demanding recognition and respect for the same, continues to confound Indigenous governments seeking respect for their own land use plans,[25] as well as the mining industry seeking certainty.

Other scholars have identified land use planning as a critical opportunity to develop consent-based models and, if done respectfully, to generate outcomes that *increase* certainty for resource developers, the Province and investors.[26] Given the mining industry's negative experience with prior land use planning processes and ongoing concerns about any outcomes which reduce their access to land for exploration,[27] it is far from certain that the mining industry will readily accept consent-based, Indigenous-led land use planning. But if framed as a tool to achieve *certainty*, as a process that will help prevent conflict and stranded assets (e.g. exploration investment

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[25] Cox, Sarah. 2020. *'No mandate' from B.C. government for new protected areas: FOI docs.* The Narwhal. Online: https://thenarwhal.ca/bc-government-kaska-indigenous-protected-area-foi/, accessed October 18, 2020.
[26] Danesh, Roshan, and Robert McPhee. 2019. *Operationalizing Indigenous Consent through Land-Use Planning.* IRPP Insight 29. Montreal: Institute for Research on Public Policy.
[27] Association for Mineral Exploration British Columbia. 2016. *Framing the Future of Mineral Exploration in British Columbia: AME BC Mineral Land Access and Use Report*. Vancouver: Prepared for AME BC by Hemmera.

where there are strong objections to the use of lands for mining), then this may be the most important proactive tool available to operationalize consent-based decision-making.

6. From Best Practices to a Comprehensive Regulatory Framework

Many of the suggestions made here are already being done, in some instances as a result of a singular negotiated agreement in a particular Indigenous territory in British Columbia or elsewhere. What we propose, however, is to entrench these best practices as standard operating procedures for governments and industry, supported and required by British Columbia's laws and regulations.

Operationalizing consent for Indigenous peoples through renewed legislation, policies and relationships will benefit everyone in the long run. It is the *only* way that structures built on a foundation of denial for Indigenous rights and title can be transformed to respect and promote the basic human rights of Indigenous peoples.

Governments and industry are starting to recognize the practical value of securing Indigenous consent – as well as the perils of continuing down the current path of escalating conflict and uncertainty. What is required now more than ever is political determination from governments, and commitment from industry leaders, to take concrete steps to implement free, prior informed consent and to build relationships based on mutual respect and understanding.

If our starting point is the assumption that Indigenous peoples' free, prior informed consent is required for mining activity in British Columbia, then we believe that the very tone and nature of engagement between governments (e.g. the Province/Crown and Indigenous governments) and between an Indigenous government and a proponent will shift fundamentally. What might be currently a fragile peace owing to underlying issues of title and rights could shift to a focus on how to respect and uphold Indigenous laws, values and rights in a way that will ultimately benefit not only Indigenous Nations, but also the Province, the proponent, and the environment.