

**Negotiating Agreements: Indigenous And Company
Experiences: Presentation Of The Voisey's Bay Case
Study From Canada**

**INTERNATIONAL SEMINAR ON NATURAL RESOURCE
COMPANIES, INDIGENOUS PEOPLES AND HUMAN
RIGHTS: SETTING A FRAMEWORK FOR
CONSULTATION, BENEFIT-SHARING AND DISPUTE
RESOLUTION**



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2. Background

Country Context:

In Canada, aboriginal people have rights which are entrenched in the Canadian Constitution. These rights include a special fiduciary relationship with the federal government and the protection of treaties or land claims agreements. Treaties or land claims agreements are negotiated between an aboriginal group, the federal government and in some cases, provincial governments. Land Claims agreements include a number of issues to be dealt with, including ownership rights to land, rights to wildlife, fish and plants, financial compensation, land use planning and economic development. Recent agreements have included self-government.

In addition to the constitutional protection, there have been a number of court cases which have further defined aboriginal rights especially in relation to land and resource development in the traditional territory of aboriginal people. In essence a number of these cases require that there is consultation with aboriginal people before any development can take place.

In Newfoundland and Labrador, the province where Vale Inco's Voisey's Bay mine is located, two aboriginal groups were in the process of negotiating unresolved aboriginal land

claims when the nickel discovery was announced. The announcement of the discovery created much excitement for the mining industry and for exploration companies. There was a rush on mineral staking in northern Labrador and a resulting disagreement between aboriginal people, governments and mineral exploration and development companies. The Innu and Inuit, in whose traditional territory the nickel deposit was, wanted to be involved in decision making around whether or not the project should proceed and what the project should or should not include. They wanted to be involved in discussions and decisions around the environmental impacts of the project and they wanted benefits from any development that might proceed.

Disagreement about how or even if the project could proceed was primarily driven by the fact that neither the Innu nor Inuit had a land claim agreement in place. A land claim agreement would have set out the rules for exploration, development and benefits sharing.

Eventually a path forward would be found that would reconcile the interests and rights of governments, aboriginal peoples and the Company even though final land claims agreements were not in place.

3. Elements of the process that led to the agreement: The Voisey's Bay Project

Several factors contributed to the success of the Voisey's Bay project getting through a complex set of negotiations with a number of stakeholders.

3.1 The involvement of the local community in an independent environmental assessment of the potential impacts of a development.

Vale Inco Newfoundland and Labrador (VINL) had to submit its mining development proposal to government for environmental review. In the Voisey's Bay development, both federal and provincial governments acknowledged that the environmental review of the project had to involve Inuit and Innu. As a result, the federal and provincial governments, the Nunatsiavut Government and Innu Nation signed a Memorandum of Understanding which set out the general framework for the environmental impact assessment of the project. While the technical review followed the general process set out by the Canadian and Newfoundland Environmental Assessment Acts, the Innu and Inuit were involved in establishing the Terms of Reference of the review and in the appointment of the panel members who oversaw the environmental assessment.

Public hearings were held in all Innu and Inuit communities and the Innu and Inuit were able to participate. Aboriginal people brought their traditional knowledge about the environment and individuals had a chance to speak about the environmental impacts that they believed would result from the project. As a result the project design and overall pace of the development was adjusted to address Innu and Inuit concerns. One of the most interesting outcomes was the involvement of independent Innu and Inuit environmental monitors who work at the mine site and who report directly to the aboriginal groups about environmental issues.

3.2 Responsiveness to unique needs and requests of affected aboriginal groups or communities.

The Impacts and Benefits Agreements (IBAs) negotiations had to include things that were meaningful to aboriginal people. Aboriginal people wanted training, employment and business opportunities as well as a clear

understanding of and involvement in environmental matters. For Inuit in particular winter shipping was a particular concern. During the winter months the Inuit use the land fast sea ice as a transportation route and for harvesting. There is also a deep cultural connection to using the ice.

For its part the Company was clear that in order to be viable the project must have the ability to ship year round. Many Inuit said that they would not support the project if it meant breaking ice. The issue threatened to be a deal breaker. VINL and the Nunatsiavut government agreed that a small shipping working group of local representatives of the parties would meet to discuss issues linked to open water shipping. Over a number of years this group established trust and common understanding between the parties on the issue of both open water and winter shipping. While details of how shipping would be conducted were eventually included in a separate agreement between the Company and the Inuit the issue of collective Inuit consent was contained within the ratification vote for Inuit IBA. The message was clear: a yes vote meant acceptance of winter shipping as well as all the benefits the project could provide.

In addition to the broad concerns about using the ice, there were particular concerns about the safety of people using the ice and for the vessels themselves. VINL made a commitment early on that if shipping in winter could not be done safely it would not be done at all. Through the shipping working group and the later negotiation of a Shipping Agreement the Inuit and the Company worked together to find solutions to allow shipping to happen safely. Today, VINL contracts the services of a local Inuit business to provide services around safe crossing of the track. VINL and the Inuit continue to look at new ways of improving shipping safety.

3.3 Providing for individual members the opportunity to have their say about the IBA.

Since the IBAs were negotiated in advance of finalised land claims and self-government agreements, the Innu and Inuit leadership wanted to be sure they had the support of the majority of their members. Once agreements with the Company were reached, information sessions took place in all aboriginal communities as well as other centers where large numbers aboriginal people were resident. As well, all households were sent an information summary setting out what was contained in the IBAs. Finally, all members who were over the age of 16 were asked to vote on whether or not to approve the Agreement. On voting day, 82% of Inuit voted in favour of the Agreement, amongst the Innu 76% were in favour.

3.4 Financial Compensation to aboriginal groups.

The Innu and Inuit Impacts and Benefits Agreements each contain a section on financial compensation. For both Innu and Inuit the key was to ensure the income generated from the Voisey's Bay project would be wisely managed and utilized. To date it is apparent that the funds are having a positive impact.

Both the Innu and Inuit decided that the money would be managed by semi- independent trusts. Clear rules are in place to guide the trustees on what the funds can be spent, these include spending for purposes of language and cultural preservation and enhancement, youth programming, implementation of the obligations set out in the IBA, training and a heritage fund to acknowledge that the resource belongs to generations beyond the present one. The result is that that the moneys are free from

political interference and are being managed in a way that benefits Innu and Inuit.

3.5 Recognition that all stakeholders want certainty.

Land claims negotiations to set out new relationships between Labrador's aboriginal peoples and the federal and provincial governments were ongoing on at the time of the nickel discovery and subsequent IBA negotiations. These negotiations had been underway in some form since the 1970's but with little impetus to reach mutually satisfactory conclusions. The Voisey's Bay project was a factor that made all stakeholders understand the value of having agreements in place that would provide the clarity of conditions that potential developers require. The now finalised Inuit land claim agreement sets out details about land ownership, land use planning, wildlife and fishery related issues as well as self government. All of these issues mean that there is now certainty about the rules that apply to development on Inuit owned lands.

In the case of the Voisey's Bay Project the absence of finalised agreements created significant challenges. Concurrent with IBA negotiations governments and aboriginal groups negotiated separate and specific chapters for each of the Innu and Inuit final land claims agreements. These 'Voisey's Bay chapters' provided certainty to all parties, including the Company, on the conditions that would apply to the development.

3.6 Building the capacity of Aboriginal people to take up employment opportunities.

The Federal government responded to the need for training by making training funds available to Aboriginal people. Administered by a custom built aboriginal/federal government/VINL body these funds were used to deliver

practical and technical training in mining related fields, both in traditional training institutions and in relatively remote aboriginal home communities.

4. Elements of the Agreement

Vale Inco has two separate Impacts and Benefits Agreements: One with Innu Nation and the other with the Nunatsiavut Government. The negotiation of these agreements and the agreements themselves are tools which built relationships between the Company and aboriginal communities. They are the mechanisms which ensure the Company will provide benefits from the project to the aboriginal groups and communities; the agreements themselves provide the details about the benefits and how the parties will work together to achieve them.

The agreements also embody the aboriginal collectives' consent to the project by way of referenda held in 2002. This ensured that all members of both groups had an opportunity to learn about the agreements and to ask questions before deciding whether or not the project should proceed. These votes gave the aboriginal collectives (Innu Nation and the Nunatsiavut Government) the support of their members before approving the project. The IBA's also formally recognize the relationships between the parties and each party's commitments to ensure that the relationships are maintained.

Both IBA's contain an objectives section. The objectives include:

- To establish and maintain an effective relationship based on mutual respect, co-operation, trust and good faith
- To establish measures to protect the environment
- To protect and support the social and cultural values

- To provide significant benefits and fair compensation to Innu and Inuit

The IBAs deal with a number of specific subjects. What follows is a summary of what is in each of the chapters as well as a description of some of the things that we are doing in relation to the chapters.

Education & TrainingThe objective is of the section of the IBA is to encourage and assist Innu & Inuit to receive the education and training necessary to maximize opportunities for employment; to perform their duties; advance according to abilities and aspirations; contribute to the well being of communities and to reduce barriers to participation in the workforce.

There are specific requirements in this chapter about participating in career counseling in schools, Stay in School programs, Scholarships, School Awards, a Construction training program and Student employment. Vale Inco participates in a visit to each of the Innu and Inuit schools each year. In addition to those visits a program to bring in students from each school to spend 3 days at the mine site allows them to see the mine, mill, port, accommodations complex and other areas of the site, this in turn allows the students to think critically about the career choices that are available to them. Students also have the opportunity to speak with employees at site to discuss education and training requirements for the positions at the site as well as the realities of working at a fly-in/fly-out operation.

Vale Inco has a full time training department with 10 employees. This complement includes mill, heavy equipment and maintenance trainers as well as a full time skills development trainer who delivers a broad range of programming from literacy training to professional certification courses. Having these positions on site allows VINL to ensure that all employees are trained to work at

Voisey's Bay with the Vale Inco focus on safety. In addition VINL is able to hire aboriginal people who may not have the full range of formal education or experience that would normally be required.

VINL also has on site computer based training, literacy and cultural diversity training, and progression training (including a provincially recognized Adult Basic Education program).

Employment The objective of the section is to maximize aboriginal employment. The IBA's contain hiring preferences for Innu and Inuit as well as non-enforceable objectives for percentages of Innu and Inuit employees. The minimum is 25% and the objective is 50%. Currently the VINL workforce is made up of 54% aboriginal employees, and 13% of the workforce is aboriginal women. In terms of comparisons with other operations of a similar type this is an extremely good result and while pleased VINL recognizes the need to further improve, particularly in career areas where there are few or no aboriginal employees.

At the Voisey's Bay site the Innu and Inuit Employment Coordinators work with the Human Resources department and are integrally involved in recruitment and hiring process. They have thorough local knowledge about the training that Innu and Inuit in the communities have, and are personally known to much of the aboriginal population. They are able to help Innu and Inuit who are interested in working at site write resumes, discuss the education and training requirements for various positions, sit in on interviews with aboriginal people and are able to counsel aboriginal employees who have problems while at site.

VINL believes strongly in promoting from within, this favours the development and promotion of aboriginal people. Since this policy in itself then drives recruitment to the entry level this additionally favours the recruitment of more aboriginal

employees who may have less than the required skills for the more senior positions.

Workplace Conditions There are a number of workplace conditions which are set out in the IBA's. These include provisions for Inuit and Innu employees' advisory committees which can make recommendations about site issues of particular relevance to aboriginal people and provide advice directly to senior management at the mine site. To ensure awareness of the cultural diversity at the Voisey's Bay site there is a requirement for all employees to participate in Cross Cultural Awareness as well as gender sensitivity training. Given that diet change can be a concern for aboriginal people who come to work at the site country foods are part of the menu and there is a country kitchen that employees may use for preparation of traditional food brought from home. To ensure there is no increased pressure on natural resources in the project area there are strict policies that prohibit hunting and fishing or harvesting of any kind by any employees. Additionally, the site is alcohol and drug free.

VINL has a cultural leave policy for aboriginal employees which allows them to take unpaid leave to participate in cultural activities or to hunt and fish when animals are in season.

One of the most popular annual events at the Voisey's Bay site are visits by Innu and Inuit elders. These visits allow respected community members an opportunity to see the mining and milling operation of Voisey's Bay which was an area that the elders had traditionally used for harvesting and for cultural purposes. During these visits the elders are able to see the Company's operations firsthand which they can in turn share with residents of their home communities the reality of how the site looks and is being run. The elders visits also afford them an opportunity to see relatives and

other community members working as part of a valuable and productive operations team.

Business Opportunities VINL employs a contracting methodology that ensures first opportunities are provided to aboriginal companies. To date all major – and most minor – operations service contracts have been awarded to aboriginal firms including for the following activities:

- Site Services
- Security
- Air Transportation
- Medical Services
- Catering and Housekeeping
- Shipping Support
- Fixed Equipment Maintenance

In addition much of the re-supply of materials required to support operations are purchased from aboriginal firms.

Environmental Protection Close integration and an open approach to environmental management at the Operations site ensures that aboriginal governments are aware of VINL's efforts to act in an environmentally responsible and regulatorily compliant manner. Mechanisms are in place to provide the Innu and Inuit with the opportunity to comment on and make recommendations about how activities affecting the environment should take place.

In particular there is a commitment to fund independent environmental monitors who are onsite at all times. These monitors are employees of the Innu Nation and Nunatsiavut and report directly to them. They have full access to the site and participate in all meetings related to environmental issues.

Shipping Shipping, particularly during the winter months, is the most contentious issue for Inuit at the corporate and community level. As was noted earlier many Inuit opposed

the project on the basis of the Company's insistence that shipping through ice was a requirement. A shipping agreement was negotiated with the Nunatsiavut Government which includes:

- A description of the capabilities that ships transiting the ice must have
- Closure periods when shipping cannot take place
- A provision for shipping observers to be on the ship to ensure that the ship's captain is aware of Inuit who may be harvesting in the area of the ship's route. In addition they monitor that the Shipping Agreement is implemented as intended.
- Provisions for communications between VINL and the Inuit community
- Standards to which vessels and shipping activity must conform
- An agreement to conduct further research into the ecosystem through which the ship's route traverses

The biggest impact that is felt by Inuit in the communities is winter shipping. Inuit continue to harvest and use the ice in the area that is broken by winter shipping, many Inuit have cabins and traditional hunting areas on the south side of the ice breaker track and the ice is a highway for Inuit and Innu who are traveling by snowmobile during the winter.

Vale Inco is recognized locally as having listened to the community and has continued to work with Inuit to minimize the impact of winter shipping. In certain conditions the re-freezing of the ship's track has taken an unacceptably long time. In an effort to reduce the impact of this effect the Inuit and Vale Inco have designed and had constructed a floating pontoon structure which can be deployed immediately after the ship has passed. Travel to the other side of the ship's track has now been reduced to a matter of hours rather than potentially a matter of days.

Implementation The IBAs each contains a chapter which sets out details around how the agreement will be implemented. One of the primary mechanisms is the establishment of joint oversight committees that cooperatively guide implementation. These two committees meet quarterly and deal with any concerns that may have arisen; they also discuss where the focus should be on a go-forward basis.

FinancialThe IBA's set out how the Innu and Inuit will benefit in terms of sharing in the revenues from the development. There are baseline fixed payments to Nunatsiavut Government and Innu Nation over the life of the mine. In addition, there are additional payments which are payable depending on the overall profitability of the operation.

In recognition of the physical effect that development of the operation would have on the mine site footprint area separate payments were made to both the Innu Nation and Nunatsiavut Government as compensation for loss of harvesting opportunities. Innu Nation and the Nunatsiavut government then administered the funds to their members.

Dispute Resolution The IBAs contain formal mechanisms to address disputes between the parties. The process has many steps the most essential of which is a discussion at one or other of the joint implementation committees. If the issue cannot be resolved at this level it will then be escalated to the President of Nunatsiavut and the Grand Chief of the Innu Nation and the President of VINL. Failing resolution at this level the matter can ultimately be resolved by the courts.

To date there have been no disputes that have gone further than a discussion by the Presidents.

5. Lessons Learned

VINL's Labrador Operations are today a successful but authentic reflection of the efforts of many people, aboriginal and non-aboriginal over many years. Throughout the seven year process of negotiating IBA's a number of truths have become self-evident.

- **There have to be benefits for all involved** - All parties must actively want the project to proceed because it will meet an interest that is of importance to them.
- **Empower the community** - Affected communities must know that their voice has been heard and that what they have said has been taken into account.
- **Build capacity and strong communities** –This is equally important for the Company who has need of strong capable employees and businesses.
- **Honesty** – There is no value in hiding bad news; relationships are best built based on openness and transparency.
- **Credibility** - Can't be bought, it takes time and usually pain to attain.
- **The operations group has to be the core delivery mechanism for practical delivery of benefits** – This is not primarily a distant corporate accountability.
- **Certainty and survivability whatever the political reality is critical** – Relationships with the people are critical rather than just the politicians, the people must value the project.
- **Our shareholders' interests are tied to these relationships** – relationship capital is an asset that

must be protected. Weakening of the relationship will almost certainly have a material effect on the business.

- **The price is not always financial** – Environmental and social costs have a different currency but are equally as relevant as monetary costs.
- **Issues that are not in the company's bailiwick are often critical to project success** – It's likely that the Company will need to directly or indirectly facilitate solutions
- **Communications are critical** – Be open even when the message is unpopular. Be realistic. There is nothing worse than an unfulfilled expectation.
- **Time to develop good relations is critical** – The Voisey's Bay development is a better project today because of the time it took to reach the needed agreements.
- **Make success in aboriginal hiring commitments critical to overall success** – Redefine 'best candidate' with a view to the larger picture of local relationships. Ensure employees can work safely but look for attitude rather than just skills.