

# Bill 173: Balancing Mining With First Nations' Rights

“You don't need a [meteorologist] to know which  
way the wind is blowing”



June 8, 2009  
Neal Smitheman

# First Nations Statistics

- Total Population of Canada 31,241,030
- Aboriginal Population 1,172,790
- Increase in Population from 1996 to 2006
  - Aboriginal 47%
  - Non-Aboriginal 8%
- In 2006, 48% of Aboriginal People were less than 25 years old
  - 31% for Non-Aboriginals
  - Median age of Aboriginal Population was 27 compared with 40 for Non-Aboriginals
- From 2001 to 2006, the Aboriginal Population 15-64 years (i.e., of working age) increased by 25%, compared with 6% for other Canadians

## First Nations Statistics Cont'd

- By the end of 2017, Aboriginal People of working age (15 and older) will number close to 1 million, about 3.4% of the working age population over all
- From 2001 – 2011, the size of the Aboriginal working age population will grow 3-5 times faster than the Non-Aboriginal counterpart

## First Nations Statistics cont'd

- **Aboriginals and the Mining Industry**
  - 12,000 Aboriginal Communities are located within 200 km of mineral and metal activities
  - More than 36% of First Nations Communities are located less than 50 km from one of the primary mines developed in Canada

## Remember Haida?

- Is there a Duty?
- Extent and Scope of any Duty
- Accommodation?
- Reciprocal Duties and Meaningful Consultation
- Veto Power
- Limited Delegation

# Post-Haida

- Ontario
  - Ipperwash
  - Frontenac
  - The Crown as Facilitator
- Bill 173

# The Exploration Plan and Exploration Permits

- First Nations Concerns
  - Treaty Rights
  - Environmental
  - Ecological
  - Archeological
  - Economical
  - Socio/Spiritual

# How do you spell Exploration Plan: MOU?

- The Platinex Template
  - First Nations Concerns Addressed
  - Monitoring
  - Governance
  - Equity/Warrants

# Dispute Resolution

- Facilitation/Non-Binding Mediation
- Funding
  - The Aboriginal Industry
  - Lawyers
  - Consultants
  - Experts
  - Peer Reviews
- Proponent Funding; the ultimate download

# Report to the Minister

- Co-opting Consultation
  - Downloading “Procedure”
  - Up-loading Proponent Consultation  
[Squamish v. British Columbia; Kelly Lake Cree Nation v. Ministry of Energy and Mines]

# Remedies

- Mandamus
- Injunctions (Frontenac?)

# Bill 191 - The Far North

- Purpose
  - 1....[The] to provide for community based land use planning...that directly involves First Nations
- Land Use Planning
  - Significant role for First Nations in planning in the Far North that includes at least 225,000 square kilometers
- Far North Land Use Strategy
  - The Minister shall ensure that a strategy is prepared and must provide opportunities for the involvement of First Nations

## Bill 191 - The Far North cont'd

- Community Based Land Use Plan
  - The Minister shall work with any interested First Nations in preparing a community based land use plan which must take into account the Far North land use strategy. A community based land use plan has no effect until the council of each of the First Nations involved has passed a resolution approving the plan and the minister decides that the plan takes into account the objectives of the Far North land use strategy

## Bill 191 - The Far North cont'd

- Moratorium
  - If no community based land use plan or no specific authorization for development has been obtained, no new mines can be opened but some prospecting etc. is permitted
- Funding is available



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