

# THE VALUE IN INDIGENOUS RELATIONS

The Mining Association of Canada (MAC) and Millani Inc. have been working together for the last several years to cultivate increased dialogue between mining companies and institutional investors, with the aim of aligning issuers' environmental, social and governance (ESG) disclosures with the evolving expectations of investors.

This discussion paper is the result of the most recent roundtable that took place in June 2021, which brought together representatives from Indigenous communities, institutional investors, and MAC members. Participants discussed ways for corporate issuers to successfully engage in long-term, meaningful relationships with Indigenous communities and how investors can appropriately assess and value these relationships.

The discussion began with the following panelists providing their views and perspectives:

- **Mark Podlasly**, Director of Economic Policy and Initiatives, First Nations Major Projects Coalition, Chair of the First Nations Limited Partnership
- **Matthew Pike**, Aboriginal Affairs Superintendent, Vale
- **Theresa Baikie**, Impact and Benefit Agreement Coordinator, Nunatsiavut Government
- **Ekaterina Hardin**, Analyst, Sector Lead, Extractives and Minerals Processing, Value Reporting Foundation
- **Tara Shea**, Senior Director, Regulatory and Indigenous Affairs, The Mining Association of Canada

## CANADA'S MINING SECTOR

The mining industry in Canada has prioritized building and maintaining respectful, strong, trusting partnerships with Indigenous communities – First Nations, Inuit and Métis Peoples– impacted by, or with an interest in, mineral exploration and mining activities. From exploration to mine closure, the mining sector engages with communities impacted by their projects in order to share information, collaborate on issues related to environmental effects, monitoring, and cultural protection.

The industry also focuses on developing mutually beneficial partnerships and initiatives that generate economic opportunities and wealth for surrounding communities. The mining industry has become the largest private-sector industrial employer, on a proportional basis, of Indigenous Peoples in Canada and a trusted partner of Indigenous businesses. Since 2000, over 500 relationship agreements have been signed between mining and exploration companies and Indigenous communities or governments.<sup>1</sup>

Partnerships between mining companies and Indigenous communities can be key to the success of Canada's mining sector and when relationships deteriorate, the cost can be significant. Research conducted by the Corporate Social Responsibility Initiative (CSRI) concluded that the consequences of failing to adequately address Indigenous rights can be financially material. The study concluded that the most frequent costs were those arising from lost productivity due to delays or shutdowns.<sup>2</sup> With the growth in responsible investing and the integration of ESG issues into investment analysis, there is an increasing need for investors to understand and assess these potential risks.

**“Not getting Indigenous consent for a project can represent a material financial risk and cause major delays or stop the operation altogether. This is why we seek to understand and evaluate the company’s level of community engagement at the onset.”**

- Asset Manager

Indigenous rights are protected under Section 35 of the *Constitution Act, 1982*, which recognizes and affirms existing Indigenous and treaty rights. The interpretation of Indigenous rights and their application to the natural resource development industry continues to evolve. Court decisions over the past few decades have clarified the Crown's obligations with respect to making decisions that may impact Indigenous rights. Notably, the Supreme

1 Natural Resources Canada, Indigenous Mining Agreements: <https://atlas.gc.ca/imaema/en/index.html>

2 Costs of Company-Community Conflict in the Extractive Sector, Rachel Davis and Daniel Franks, 2014: [https://www.csrmi.uq.edu.au/media/docs/603/Costs\\_of\\_Conflict\\_Davis-Franks.pdf](https://www.csrmi.uq.edu.au/media/docs/603/Costs_of_Conflict_Davis-Franks.pdf)

Court of Canada has clarified that the Crown has a duty to consult and, where appropriate, accommodate Indigenous Peoples if action might adversely impact potential or established Indigenous or treaty rights. This may be required when issuing permits, licenses, and regulatory project approvals.

In June 2021, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (Bill C-15) received Royal Assent and came into force in Canada. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes accountability and minimum standards for Indigenous Peoples through 46 articles, covering issues such as injustices, equal rights, self-determination, and rights to traditional lands, while promoting mutual respect and partnerships. This

new legislation requires the federal government, in consultation and cooperation with Indigenous Peoples, to take all measures necessary to ensure the laws of Canada are consistent with UNDRIP and to develop an action plan to achieve UNDRIP's objectives. These processes could lead to a variety of different outcomes, some of which will affect the mining sector's relationships with Indigenous communities.

As noted by Mark Podlasly, Director of Economic Policy and Initiatives at the First Nations Major Projects Coalition, "UNDRIP is broader as it is a global standard, but every country will have to define how it will be implemented. Hence the need to dig deeper for ways to execute it".

**“Through employment creation, local business development, community investments as well as through meaningful engagement and collaboration, the mining sector has an important role to play in advancing reconciliation.”**

- Tara Shea, Senior Director, Regulatory and Indigenous Affairs,  
The Mining Association of Canada

## THE VOICE OF INDIGENOUS PEOPLES

Although there is not a uniform set of values inherent to different Indigenous communities, there are common threads which include environmental consciousness, balance, respect, humility, and tolerance.<sup>3</sup> As noted by Matthew Pike, Aboriginal Affairs Superintendent at Vale, “Indigenous concerns relating to the environment are broad and include a wide spectrum of considerations which go beyond climate change, such as dust on the snow, the impact on wildlife and icebreaking activities to name a few”.


In fact, Indigenous skills and knowledge can help mitigate climate change and environmental risks. Environmental

concerns raised by Indigenous communities are valid risks that a company should take into consideration in their project evaluation. Understanding community needs and interests, in terms of healthcare, education, and infrastructure, is crucial to making progress in initiating and/or maintaining successful partnerships. Some Indigenous communities may welcome economic development that can help them meet such needs at the same time as protecting the environment, respecting local cultural values and including the perspectives of affected communities.

3 Woodbine Ecology Center: <https://woodbinecenter.org/>

Matthew Pike provided an example of how Vale has been successful in understanding the context of Indigenous communities' needs and integrating them into COVID-19-related policies. At the onset of the pandemic, the company decided to send its Indigenous employees home

with full pay, knowing that a COVID-19 outbreak could have deep and lasting impacts on their communities. It was noted that building successful partnerships is not just about monetary compensation, but about open dialogue, respect, accountability, logic, and transparency.



**“Anything short of trying to be the safest company in the world is not good enough.”**

- Matthew Pike,  
Aboriginal Affairs Superintendent at Vale

## **STRONG INDIGENOUS RELATIONS START WITH EFFECTIVE GOVERNANCE**

Investors often look to a company's senior executive team and its Board of Directors to create the appropriate culture and execute on long-term strategy. Company culture is considered a governance issue by many, and this can apply to a company's approach to Indigenous relations too. As noted by Mark Podlasly, the acronym “should be GSE rather than ESG, as everything starts with governance”.

Throughout the conversation, it became clear that the best way to ensure that the corporate culture of a company integrates the values, perspectives, knowledge and understanding of a given community is through the inclusion of those voices throughout a company's operations, including at senior positions. Proactively ensuring that leadership understands and has experience in Indigenous relations is essential and of significant importance to ensuring that Indigenous partnerships are key to the culture of the company.

The panelists discussed how meaningful partnerships need to be built and cultivated between mining companies and the surrounding communities. This can be accomplished in a number of ways, including through engaging and maintaining conversations around the use of Indigenous lands, providing training and employment for local communities, fostering business relationships with local suppliers, and educating management and employees on the history of Indigenous Peoples.

Meaningful community participation in each project, which goes beyond just financial considerations, can be a key success factor throughout the lifecycle of the project and can have lasting positive impacts on the development of the organisation and its purpose. Projects that include Indigenous voices and opinions, and have buy-in from the start, will have a better chance of succeeding.

**“Include, empower and listen to Indigenous Peoples. There will be disputes but if they are at the table, a company can strongly solidify its chance to avoid some massive disasters, both financially and reputationally.”**

- Matthew Pike, Aboriginal Affairs Superintendent at Vale

**“Inclusion must be a theme throughout, whether at the corporate office or on the ground. Be comfortable with being held accountable.”**

- Theresa Baikie, Impact and Benefit Agreement Coordinator at Nunatsiavut Government

## THE VALUE OF REPORTING STANDARDS AND DISCLOSURES

A key takeaway from the roundtable was that the four main ESG frameworks used by corporate issuers and investors to report and/or analyse material sustainability aspects – the [Global Reporting Initiative \(GRI\)](#), the [Value Reporting Foundation SASB Standards \(SASB\)](#), the Financial Stability Board’s [Task Force for Climate-related Financial Disclosures \(TFCD\)](#), or the [Climate Disclosure Standards Board \(CDSB\)](#) – include limited, if any, input from Indigenous Peoples.

Although the GRI framework recommends disclosing on the management approach for all identified material topics, the topic of Indigenous relations is only deemed

material upon legal action. As highlighted by Mark Podlasly, “If Indigenous rights are violated but not brought to court, then this issue won’t appear as material under GRI”. Such an approach can inadvertently incentivize the pursuit of legal action to ensure community interests are identified as material by investors, thus disproportionately highlighting negative Indigenous relations. SASB has had some, albeit limited, input from Indigenous Peoples in its development. However, as a market and evidence-driven framework, there are opportunities to include the perspectives of Indigenous Peoples into the standards more, if deemed material. It was noted that the timing of such input may be critical, as capital markets are already

moving towards building sustainable accounting standards through the International Financial Reporting Standards (IFRS) Foundation.

MAC's [Towards Sustainable Mining \(TSM\) Indigenous and Community Relationships Protocol](#) was highlighted as a leading tool for assessing Indigenous and community relationships.<sup>4</sup> The protocol was developed in collaboration with MAC's Community of Interest Advisory Panel and with the guidance of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Canada's Truth and Reconciliation Commission's (TRC) Calls to Action.<sup>5</sup> The protocol, which is designed to facilitate strong relationship building through collaborative engagement and decision-making processes, incorporates measurable criteria reflecting the TRC's call to the corporate sector.

## THE INVESTOR PERSPECTIVE - HOW TO ASSESS INDIGENOUS RELATIONSHIP MANAGEMENT

Investors increasingly seek to understand and assess the quality and sincerity of a corporate issuer's Indigenous relations. When asked how Indigenous relations are currently assessed, investor participants reported that they generally engage directly with corporations to understand the overall approach. It was noted that they have limited tools to assess this topic and try to get insights by understanding the mechanisms in place to manage such relationships. But it remains a challenge. As noted by one attendee, "Indigenous relations are complex, it is difficult to find reliable key performance indicators (KPIs) to accurately represent good risk management".

The question remains: How can investors monitor and define success? Which KPIs can they use to define if Indigenous relations are positive, and how can corporate issuers be compared to peers? As mentioned by one corporate representative, "Comparing different divisions in the assessment of Indigenous relations is challenging due to differing operating jurisdictions and a lack of common indicators reflecting the state of the relations".

Some useful metrics identified in the discussion included: the percentage of Indigenous representation in the organization's workforce in total, within senior management,

This includes specific criteria to ensure that management and designated employees are educated on the history of Indigenous Peoples in Canada and receive skills-based training in intercultural competency, conflict resolution, human rights, and antiracism. The protocol sets a standard for what is considered good practice in TSM that includes aiming to achieve free, prior and informed consent (FPIC) before proceeding with development where impacts to rights may occur, and establishes requirements for shared decision making with Indigenous communities as a means of implementing FPIC. As summarized by Matthew Pike, "FPIC comes down to the basics of having trusting relationships and addressing concerns while respecting Indigenous knowledge".

and on the Board of Directors; the number of Indigenous suppliers and contractors; financial commitments to communities surrounding projects (e.g., schools, healthcare, transport); retention rate of Indigenous Peoples in training program and as employees; and if or what connection there may be to executive compensation. Investors mentioned that because of the complexity of the topic, understanding the context behind the metrics becomes incredibly valuable in assessing the quality and sincerity of engagements with Indigenous communities.

To fully understand a company's approach to Indigenous relations, one participant suggested directly contacting Indigenous communities impacted by a company's operations. However, this may not be realistic considering the limited resources an investment manager or an impacted community might have for direct engagements. One tool to consider is TSM. With its ability to benchmark between peers, independent assurance and community of interest oversight – including strong Indigenous involvement – TSM offers a scoring system that investors can use to quantify the quality of a company's approach to building and maintaining strong relationships with its affected Indigenous communities.

4 Mining Association of Canada, TSM Indigenous and Community Relationships Protocol: <https://mining.ca/towards-sustainable-mining/protocols-frameworks/indigenous-and-community-relationships/>

5 Truth and Reconciliation Commission of Canada: Calls to Action: [http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf)

## OPPORTUNITIES

One of the key takeaways of this roundtable was that engaging with Indigenous communities is not only the right thing to do, but it may also create value for an organization, by providing access to local talent, local businesses and suppliers, maintaining a social license to operate in challenging jurisdictions, and building long-term partnerships.

Currently, there are more than 600 Indigenous communities in Canada, and it is estimated that between 2011 and 2036, the contribution of Indigenous Peoples

to future labor force growth in Canada may be “as high as 21%”.<sup>6</sup> The mining industry comprises 70 core mining occupations and there is currently demand for new workers for all of them. Around 180 producing mines and more than 2,500 exploration properties are located within 200 km of Indigenous communities in Canada.<sup>7</sup> Many mines and projects are located on traditional lands. Indigenous Peoples across the country are, therefore, ideally situated to access employment opportunities (and other benefits) in the mining industry.

## CONCLUSION

Governments and regulatory bodies are emphasizing the importance of respecting and including Indigenous perspectives in their decision-making processes, with the aim of promoting reconciliation and striving for a sustainable future. Corporations understand more and more the benefit of including Indigenous communities at the initial phases of their projects, as early and meaningful engagements help facilitate strong relationships, identify and address concerns, and ensure that projects are mutually beneficial. Increasingly, Indigenous communities are being included in the discussion. To ensure that those voices are heard and are well integrated in the decision-making process over time, an inclusive corporate culture is fundamental.

The *TSM Indigenous and Community Relationships Protocol* was highlighted as a strong, existing framework for corporate disclosures. Nevertheless, challenges remain for investors to evaluate the quality and depth of Indigenous relations. Corporate disclosures that provide context around varying metrics on this topic will provide increasing value as investors grapple with how to evaluate and value these relationships over time.

The markets are recognizing that strong Indigenous relationship management is no longer just about risk management. It is acknowledging that opportunities also exist, including by creating an inclusive culture and sense of purpose, attracting talent, and fostering relationships

with local suppliers. These efforts not only contribute materially to the success of a corporation, but also help build a stronger and more inclusive society.

Through dialogue and partnerships with Indigenous communities, the mining industry can continue to evolve and improve practices. The mining sector, along with all levels of government, churches, civil society organizations, other industries, the investment community, foundations and all Canadians, has a role to play in advancing Indigenous reconciliation and contributing to meaningful implementation of the Truth and Reconciliation Commission’s 94 Calls to Action.

**“Sharing the success of a project, creating real win-win partnerships, is purposeful.”**

- Corporate representative

6 OECD iLibrary, Chapter 2. Profile of Indigenous Canada: Trends and data needs: <https://www.oecd-ilibrary.org/sites/e6cc8722-en/index.html?itemId=content/component/e6cc8722-en>

7 Mining Association of Canada, Facts and Figures 2020: <https://mining.ca/wp-content/uploads/2021/02/FF-2020-EN-Web-1.pdf>



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## ABOUT THE MINING ASSOCIATION OF CANADA (MAC)

The Mining Association of Canada is the national organization for the Canadian mining industry. Its members account for most of Canada's production of base and precious metals, uranium, diamonds, metallurgical coal, and mined oil sands, and are actively engaged in mineral exploration, mining, smelting, refining and semi-fabrication.

For the last 86 years, the Mining Association of Canada (MAC) has been the national voice of the Canadian mining industry working with governments, playing an education role for different stakeholders and encouraging sustainable practices, while promoting the Canadian mining industry's value creation and leadership worldwide. Through MAC's reporting framework, *Towards Sustainable Mining* (TSM), MAC members are guided by principles that align social, economic, and environmental performance with the priorities of the communities in which they operate.

For more information, please visit [www.mining.ca](http://www.mining.ca).

## ABOUT MILLANI INC.

Millani Inc. provides advisory services on ESG integration to both investors and companies. For the past 13 years, Millani has become the partner of choice for institutional investors and corporate issuers. By providing advisory services on integrating material ESG issues into their investment strategies and decision-making processes, we help our clients reduce risks, increase returns, and create value. Millani is also leveraging this expertise and its experience in ESG consulting to help reporting issuers improve their ESG disclosure to financial stakeholders and optimize their market value.

For more information, contact us at: [info@millani.ca](mailto:info@millani.ca) or visit our website: [www.millani.ca](http://www.millani.ca).