LIVING IN A MATERIAL WORLD

Turning Corporate Indigenous Relations Communications from Token to Tangible

Union of British Columbia Indian Chiefs

West Coast Environmental Law

The *lhílhló:ya* (dragonfly) is presented as a way to show themes of adaptability, manoeuvring between worlds and togetherness. The root word of *lhílhló:ya* is *lhílt*, which is to weave, as the body of the dragonfly looks similar to a needle for weaving.

The lhílhló:ya navigates between the air and water, as well as between the spirit and physical worlds, with speed and precision – a gift that can translate to metaphorical values.

lhílhló:ya reflections in our work can be related to weaving together input from multiple views and directions.

This piece pairs Coast Salish design elements and contemporary colours, portraying the lhílhló:ya with human hands in the place of wings, reminding us of the possibilities when we weave together our own views, from many angles.

ABOUT THE ARTIST

Xémóntalot Carrielynn Victor (Stahlo Coast Salish, mixed European) is based in XwChí:yóm (Cheam), S'ólh Téméxw ("our land"). She is a descendant of Coast Salish ancestors that have been sustained by S'ólh Téméxw since time immemorial and Western European ancestors that settled around northern Turtle Island beginning in the 1600s. Carrielynn was born and raised in S'ólh Téméxw and nurtured by many parents, grandparents, aunts and uncles. Along with owning an art practice, Carrielynn maintains communal roles as a linguist and plant practitioner.

AUTHORS

Eugene Kung and Joanna El-Mikati (WCEL), with research assistance from Rosemary Hu and Emily Sabourin (law students). Special thanks to: Wenonah North Peigan and Andrea Glickman (UBCIC); Joseph Bastien & Molly Damiani (SHARE/RRII), plus Shin Imai, Geordie Hungerford, Elizabeth Jordan, and others for their reviews and contributions.

PHOTO CREDITS

Cover photo, and images on pages 6 & 27 licensed from Melody Charlie / melodycharlie.com. All other Images from Unsplash.com contributors

LAYOUT & DESIGN

JC Ospino, Alliter CCG / jc@alliter.com

Contents

About

Union of British Columbia Indian Chiefs

The goal of the UBCIC is to support the work of our people, whether at the community, national, or international level, in our common fight for the recognition of our inherent and constitutionally protected title and rights, and treaty rights, and respect for our cultures and societies. Our goal, the goal of the people, has been to give the First Nations people of B.C. a voice strong enough to be heard in every corner of the world. We have done so, and we continue to carry out this mission in a number of different ways.

For more information on the UBCIC, visit **www.ubcic.bc.ca.**

West Coast Environmental Law

West Coast Environmental Law (WCEL) is a non-profit group of environmental lawyers, strategists and communicators dedicated to safeguarding the environment through law. Since 1974, we have successfully worked with communities, non-governmental organizations, the private sector and all levels of government, including First Nations governments, to develop proactive legal solutions to protect and sustain the environment.

For more information on WCEL visit **www.wcel.org**

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

WEST COAST Environmental Law

Introduction

When Reconciliation Action Plans (RAPs) first began appearing across corporate Canada,[1] they seemed to mark a turning point – a voluntary commitment by companies to turn words of reconciliation into measurable action.

Yet, as the enthusiasm settled, a troubling reality emerged. Without clear guidance, standards or oversight, many RAPs and other Indigenous Reporting Products (IRPs)[2] became more symbolic, or even performative, than substantive – failing to reflect the lived realities, rights transgressions and opposition of the communities they impacted and claimed to support. More troubling still, these shortcomings were not offset by stronger, more reliable mandatory Indigenous relations disclosures to fill the gaps left by misleading or incomplete voluntary reporting in RAPs and other IRPs. Accordingly, this paper examines two distinct but connected problems in how companies communicate about their Indigenous relations – one in mandatory **disclosure**[3] and the other in voluntary **reporting**.[4]

First, although Indigenous relations are often – and increasingly – material to a company's risk profile, financial performance, operational viability and share price, they are rarely, if ever, accurately and consistently disclosed in mandatory securities filings, except in extreme cases.

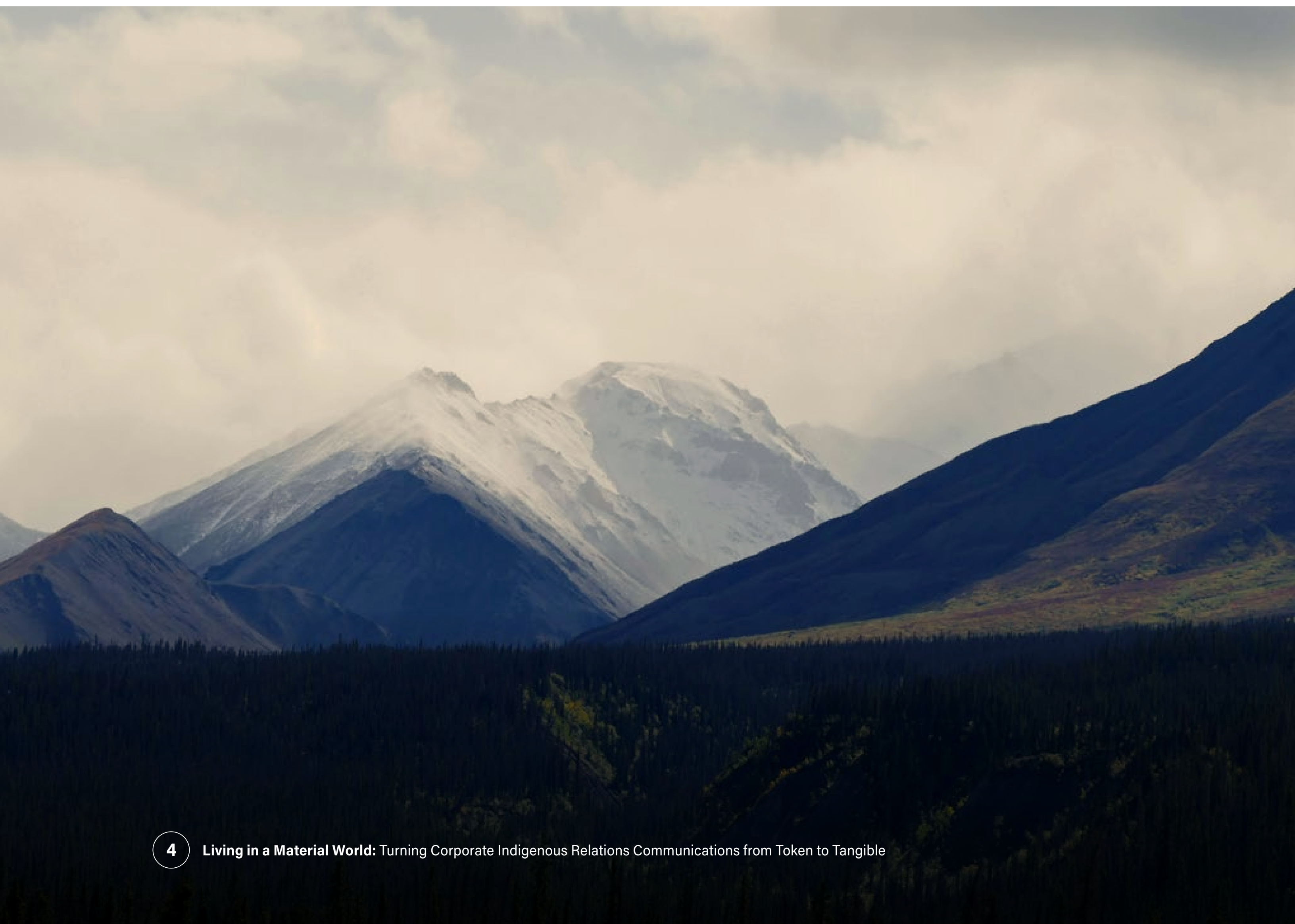
This issue is compounded by a second problem: Indigenous relations are largely confined to voluntary reporting – through RAPs or other IRPs, such as sustainability reports – where no standards, guidelines or regulatory oversight ensures that companies credibly, accurately and comprehensively report their real impacts on Indigenous rights and resulting risks to their business performance, financial outlook and overall operational viability, which are a critical component of credible reporting and effective reconciliation planning. Instead, these reports often focus only on peripheral public relations matters that fall short of the meaningful corporate accountability that true reconciliation demands.

As a result, this collective suite of Indigenous relations communications[5] – both mandatory and voluntary – often fails to provide a complete and accurate picture, omitting material information and emphasizing peripheral issues that create a superficially positive impression of Indigenous relations, ultimately misleading the public and investors who rely on these communications in their decision-making.

Left unaddressed, these gaps will continue to undermine Indigenous trust, erode investor confidence, distort corporate financial viability and risk profiles, and compromise both the broader promise of corporate–Indigenous reconciliation and the business advantages it can deliver.

Still, we argue that the story is far from over. With clear guidelines and standards co-developed with Indigenous rightsholders to support and encourage stronger disclosures, credible reporting and greater accountability from corporate actors, this collective effort could enable mandatory securities filings, along with RAPs and other IRPs, to fulfill their original purpose – paving the way for stronger, more robust and more meaningful corporate–Indigenous relations across Canadian markets.

Ultimately, we offer five recommendations for securities regulators as they take concrete steps toward reconciliation with Indigenous Peoples.



Summary of recommendations

1. Provide guidance to issuers clarifying that Indigenous relations, rights and risks can be material and must be disclosed accurately, consistently and comprehensively under current standards. Given the inherent incentive to downplay poor Indigenous relations due to potential impacts on access to reputation, access to capital and share price, the determination of materiality can no longer be left solely to the judgment or discretion of the issuer.

   - This includes clarifying to issuers **what kind of information must be included** – such as Indigenous rights transgressions, community opposition, presence of consent, alignment with Indigenous laws and protocols, and the associated risks and opportunities they raise.
   - It also includes clarifying **where material information must be disclosed** in existing SEDAR+ filings and continuous disclosure obligations – for example, in risk assessments within annual reports and annual information forms, or wherever "forward-looking information" statements are made regarding financial projections, the ability to raise capital or the capacity to sustain and grow operations.
   - Standards and guidance should be co-developed with Indigenous Peoples where appropriate.

2. Provide direction to ensure that material information flows consistently and comparably through all corporate communications, including voluntary Indigenous relations reporting in RAPs and IRPs, given the importance of such information to the credibility of these voluntary products and to ensure that investors and the public are not misled by inconsistencies across disclosures and reports.

3. Develop RAPs that outline actions securities regulators can take to advance reconciliation and ensure capital markets are aligned with Indigenous rights – as the Ontario Securities Commission has demonstrated openness to with its *Action Plan for Truth and Reconciliation*.[6]

4. Strengthen oversight and enforcement to compel disclosure when companies fail to provide material information, and adapt existing complaints processes to improve access, engagement and effectiveness for Indigenous Peoples – including continuous engagement beyond merely submitting an initial grievance.

   - Economic reconciliation and recognition of barriers to access may also warrant the development of a dedicated, streamlined and culturally competent grievance mechanism to enable Indigenous Nations to engage more effectively with securities commissions and their issuers.

5. Work with provincial governments on the process of aligning securities legislation and regulations with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration),[7] particularly in BC, where the *Declaration on the Rights of Indigenous Peoples Act* provides a framework to bring all legislation and regulations in line with the UN Declaration.

   - Bring policies, rules, staff guidance, standards, procedures, instruments and all administrative measures into alignment with the UN Declaration (including Article 19) and applicable laws.
   - This includes requiring issuers to disclose information regarding free, prior and informed consent (FPIC) where the UN Declaration calls for it. For example, Article 32 calls for FPIC prior to the approval of any project affecting Indigenous lands, territories or resources; securities commissions could therefore require issuers to disclose whether FPIC has been obtained.

Foundational challenges and opportunities

In the world of mandatory corporate disclosures, Indigenous relations have historically been under-reported and under-appreciated in mandatory filings. As a result, they are often not reflected in risk assessments, financial and operational projections, and share price valuation.

Today, Indigenous relations are increasingly proving to be material to a company's financial performance, operational viability and share price. However, comprehensive and accurate disclosures – including information on rights transgressions, community opposition, impacts on material risk factors and even the positive effects of strong Indigenous relations on risk mitigation – remain rare, appearing more as exceptions than the rule. For example, a study shows that only a small fraction of deaths and injuries related to resource conflicts are formally reported.[8]

As various case studies will demonstrate, Indigenous rights have become increasingly material to share prices and other risk factors that may impact investors' decisions to buy, sell or hold securities – falling squarely within existing materiality standards of securities regulators – and can no longer be reasonably ignored or treated as optional. Yet many issuers continue to omit them.

Another consequence of these gaps in mandatory disclosures, combined with the lack of standards in the world of voluntary reporting products, is that material information is also ignored or downplayed in RAPs and other IRPs. For example, RAPs often end up emphasizing peripheral, less centrally material topics, such as scholarships, employment programs and other social initiatives, instead of being guided by material information to correct course and focus on resolving the issues that are at the heart of reconciliation. These key issues are often also critical to financial performance, such as addressing Indigenous rights transgressions and community opposition to mitigate risks, ensure operational certainty and leverage financial opportunities.

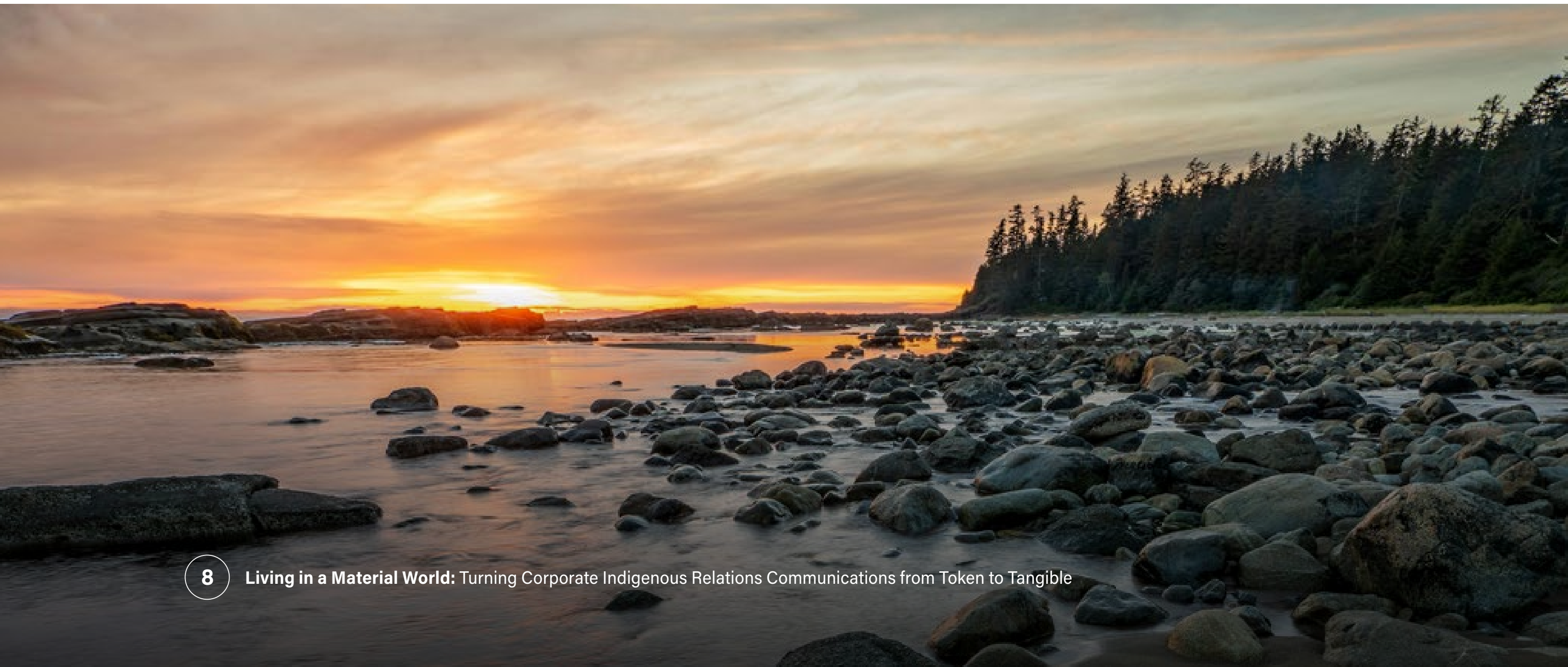
While peripheral initiatives may contribute to improving Indigenous relations, they do not address the core issue: aligning business operations with Indigenous rights – the most surefire way to ensure that share price, operational viability, financial performance and investor buy-in aren't compromised by poor Indigenous relations. As a result, the starting point for genuine reconciliation is often misdirected, highlighting positive actions that look good publicly while leaving critical and material issues unaddressed. At the same time, companies waste a critical opportunity to use RAPs and IRPs to communicate to the public and investors credible plans to reconcile their operations with Indigenous rights by addressing core issues in Indigenous relations that simultaneously mitigate risk and create a competitive advantage.

As the series of case studies canvassed throughout this paper will demonstrate, Indigenous relations can no longer be treated as sentimental, purely charitable or merely aspirational – they are pragmatic and often material for companies whose operations intersect with Indigenous rights. Accordingly, credible communications are critical not only for investors, the public and Indigenous Peoples in making informed decisions, but also for companies themselves, which depend on accurate information to meaningfully assess, manage and report on their risk profiles, financial opportunities and long-term viability.

This is the second in a series of papers exploring RAPs and IRPs.[9] The first paper, *Reconciliation Action Plans in Canada: Origins, Issues and Opportunities*, reviewed the history and context of the emergence of RAPs in Canada in recent years[10] and posed a number of discussion questions for Indigenous rightsholders. Those questions were used to engage Union of British Columbia Indian Chiefs[11] members in the fall of 2025, with a third paper, *Baseline Expectations and Good Practices for the Development and Assessment of the Reconciliation Action Plans (RAPs) of Companies in British Columbia*,[12] synthesizing those engagements to provide an Indigenous-led framework outlining the core principles, key elements, baseline expectations and good practices of a credible RAP or IRP.

Reconciliation Action Plans in Canada identifies four categories for improvement of RAPs: oversight, standards, development process and accountability. This paper continues the discussion and proposes that securities regulators could play an important role in corporate–Indigenous accountability and reconciliation by applying existing legal definitions and disclosure requirements and by providing clarity, guidance and standards for credible Indigenous relations disclosures in corporate filings, considering the potential implications for financial risk and investor decision-making.

We also invite securities regulators to consider the guiding role they can play in ensuring that credible, material information flows consistently and comparably through corporate communications, including Indigenous relations reporting in RAPs and IRPs, given the importance of such information to the credibility of these voluntary products and to ensure that investors and the public are not misled by inconsistencies across filings and reports.

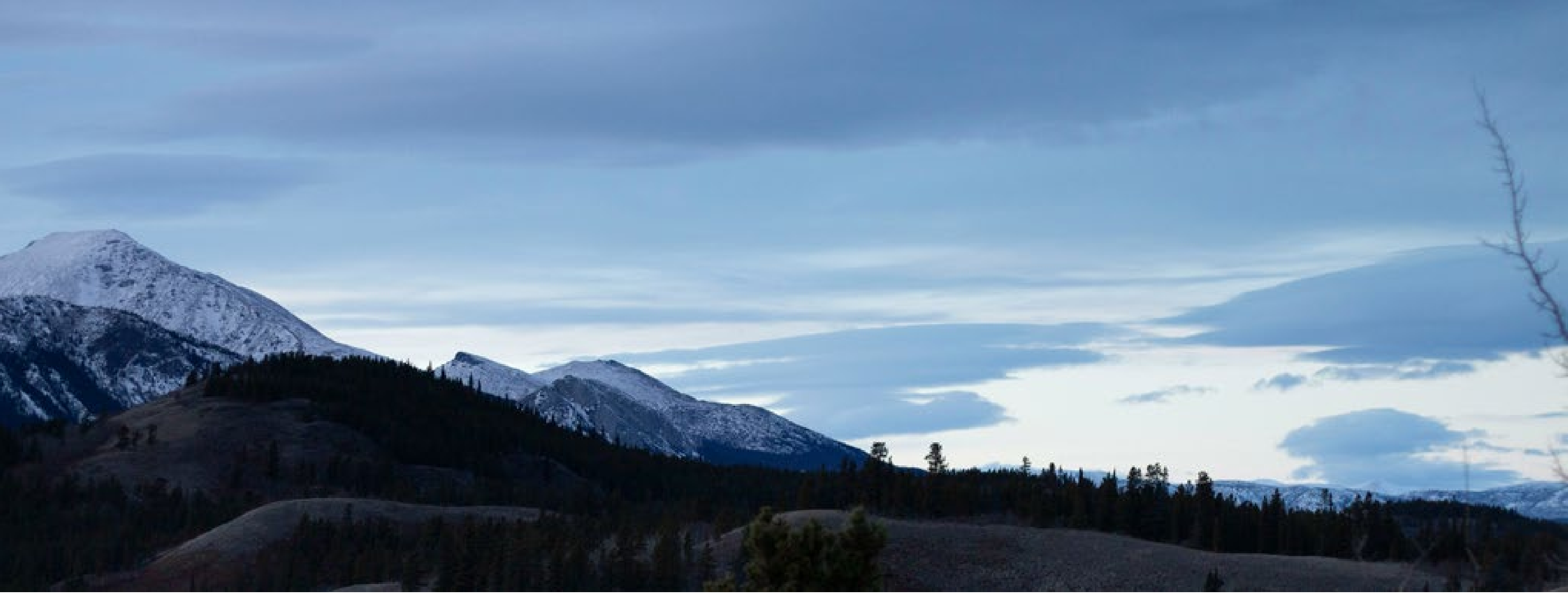


In theory, RAPs, as one of the most common forms of dedicated IRP, are corporate communications and reporting products that can define and demonstrate specific, tangible goals and track companies' progress for building relations with Indigenous Peoples and upholding Indigenous rights. In other words, **RAPs are accountability tools that are intended to provide insight about how a company is working toward the social, economic, political, operational and legal imperative of reconciliation with Indigenous Peoples**. Accordingly, to be credible and useful to investors and the public, their content must accurately reflect the status of a company's impact on Indigenous rights, and they must clearly set out the company's plan to improve Indigenous relations by managing and resolving any negative impacts and associated risks – including financial risks – as they advance along the path to reconciliation.

In this way, a credible RAP offers a flexible space for companies to develop and communicate their solutions to material issues identified in more limited mandatory disclosures. This can help address the real obstacles to reconciliation with Indigenous Nations while mitigating risks, advancing opportunities, and building public and investor trust. However, in practice, the absence of any standards means that the content of RAPs and IRPs is inconsistent across corporate sectors and left entirely to each company's discretion to present as it sees fit. For instance, companies may release RAPs with plans in social categories, like Indigenous employment or scholarship opportunities, cultural event sponsorship and education for staff, while downplaying or staying silent on the impact of the company's activities on Indigenous rights and the extent of Indigenous opposition, both of which can compromise the financial viability of a company's operations and the value of its share price.

For example, a study reviewing Indigenous reporting across the S&P/TSX Composite Index identified a clear pattern: "While symbolic activities are widespread, substantive commitments that shift authority, redistribute economic benefit, or embed Indigenous rights into governance are concentrated in only a few pillars and sectors."[13] Overall, the study concluded that disclosures are "often characterized by emotive or aspirational language that lacks specificity or measurable commitments, thereby obscuring meaningful accountability and the true intent behind company commitments."[14]

This freestyle approach often means that RAPs can paint an incomplete or misleading picture of a company's relations with and impact on Indigenous Peoples, with little recourse for investors or impacted Indigenous communities. From this perspective, RAPs and IRPs are at risk of becoming primarily performative. This may meet certain corporate goals – such as improving public relations – but not the goals of true reconciliation or corporate accountability.



As a result, there is a growing call from investors, Indigenous Peoples, advocacy groups and issue experts[15] – frustrated by inaccurate, incomplete or misleading Indigenous relations communications in both disclosures and reporting – for clear guidance, standardized practices and regulatory oversight, to ensure their accuracy, transparency and accountability.

In this paper, we examine how information about the status of Indigenous relations and a company's impact on Indigenous rights is increasingly "material" under existing securities law standards. Therefore, credible communications are critical to investor decision-making – particularly given that poor Indigenous relations can significantly impact a company's legal, financial, operational, reputational and political risk profiles, potentially affecting share prices, financial performance and overall operational viability. In contrast, strong relations and alignment with Indigenous rights can mitigate risks while providing greater financial certainty and competitive advantage.

Accordingly, securities commissions have an important role to play in ensuring that companies are disclosing material information on Indigenous relations by providing clear guidance and expectations to issuers.

Recommendation 1

Securities regulators should provide guidance to issuers clarifying that Indigenous relations, rights and risks can be material and must be disclosed accurately, consistently and comprehensively under current standards.

This includes clarifying to issuers what kind of information must be included – such as Indigenous rights transgressions, community opposition, presence of consent, alignment with Indigenous laws and protocols, and the associated risks and opportunities they raise.

It also includes where material information must be disclosed in existing SEDAR+ filings and continuous disclosure obligations – for example, in risk assessments within annual reports and annual information forms, or wherever "forward-looking information" is disclosed.

Furthermore, regulators like securities commissions could co-develop standards and guidance with rightsholders to ensure that voluntary reporting is comprehensive, accurate, credible, consistent and comparable with disclosures on Indigenous relations, rights and related risks. Ultimately, voluntary reporting should acknowledge and build upon what is identified in disclosure, not exclude it altogether.

Presently, RAPs and IRPs are a double-edged sword. On one hand, they risk becoming performative and unreliable reporting products that serve corporate branding goals rather than genuine reconciliation. On the other hand, they hold real potential to become tools for meaningful corporate reporting, accountability and due diligence.

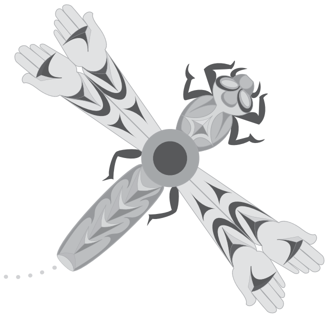
With Indigenous-co-developed standardization and guidance, RAPs and IRPs can become a threefold opportunity: companies can use them to demonstrate and advance real commitments to reconciliation while mitigating their risk profiles; investors can rely on them to better assess a company's Indigenous and human rights practices as part of their due diligence; and Indigenous Peoples can make use of additional transparency and accountability, building cooperation and trust with companies or seeking further remedies for rights violations.

Ultimately, Indigenous relations are a critical component of prudent corporate planning and responsible communications – a principle that holds true regardless of the IRP or corporate disclosure filing, whether addressing shareholders, investors, the public or securities regulators.

Recommendation 2

Securities regulators should provide direction to ensure that credible, material information flows consistently and comparably through all corporate communications, including voluntary Indigenous relations reporting in RAPs and IRPs, given the importance of such information to the credibility of these voluntary products and to ensure that investors and the public are not misled by inconsistencies across disclosures and reports.

In the sections that follow, we first discuss investors' interest in credible Indigenous relations communications. Next, we examine whether information about Indigenous relations (including the content expected of credible disclosures, RAPs and IRPs) meets securities regulators' standards of "materiality" and argue that they increasingly do. We then explore how regulators could provide greater guidance and clarity – drawing on examples from climate finance – to strengthen corporate communications and fulfill their responsibility to advance Indigenous economic reconciliation. Throughout the paper, case studies are used to illustrate key points.



Investors need credible communications about Indigenous relations

"The uncertainty that we all experience today – Indigenous peoples, Industry, governments and the Crown — whether what we witness in relation to pipelines or any of a number of projects, has its roots directly in [a] history of denial and division."[16]

- Jody Wilson-Raybould

The assertion of Indigenous rights, including free, prior and informed consent,[17] can be understood as a pathway to greater certainty, rather than more uncertainty. As showcased in a series of case studies throughout this paper, risks and uncertainty associated with Indigenous communities arise not from the exercise of Indigenous rights but from infringement on those rights. Accordingly, companies that proactively disclose and report a credible plan to address these risks head-on demonstrate not only a commitment to reconciliation but also sound business judgment and strategic advantage – signalling their preparedness to comply with legal obligations that have too often been ignored.

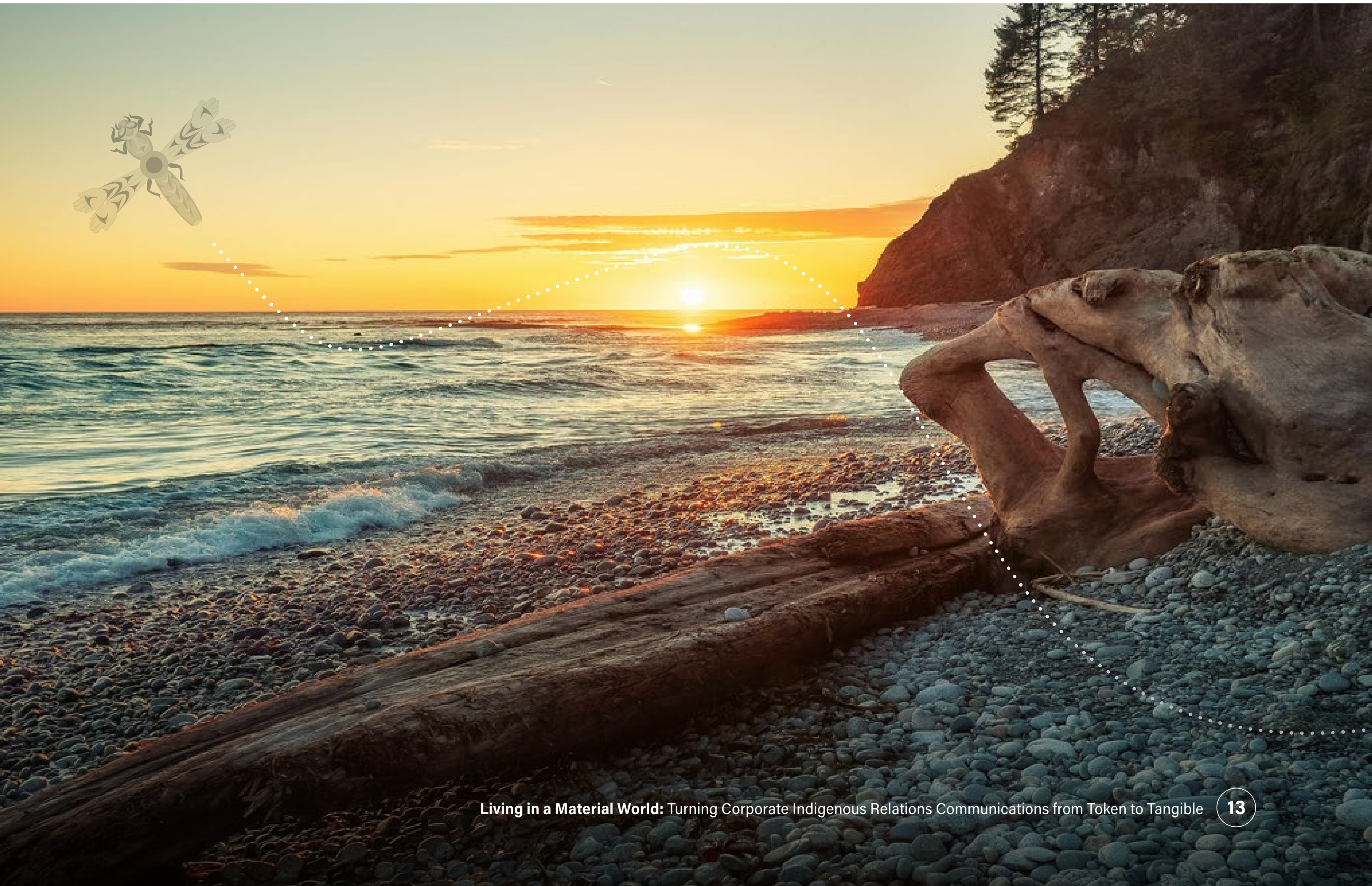
This shift is increasingly reflected in investor expectations and in what investors look for when reviewing corporate communications. Canada's Responsible Investment Association (RIA) emphasizes that corporate disclosures regarding Indigenous rights and reconciliation are material to investors.[18] Acknowledging that Canada's economic successes have often excluded Indigenous Peoples, who continue to "bear the brunt of its environmental and social fallout,"[19] investors across the country are increasingly focused on ensuring that investment risks and opportunities related to Indigenous rights and reconciliation are not overlooked.

Specifically, the RIA has identified RAPs as a key mechanism for improving corporate reporting on Indigenous rights and reconciliation.[20] The RIA advises that it is key for investors to consider company RAPs as a critical Indigenous relations reporting tool, intended to publicly outline an organization's goals and road map for engaging and collaborating with Indigenous communities – often within the frameworks of the UN Declaration, the Truth and Reconciliation Commission of Canada's Calls to Action and *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, which includes specific calls to action for Canada's extractive industries.[21]

RAPs are emphasized as a way for investors to assess the quality and effectiveness of a company's Indigenous relations programs when making investment decisions – underscoring the importance of seeking out accurate and complete information. The RIA advises that investors should look for "quantifiable goals, clearly disclosed methodologies, and mechanisms that provide regular updates so stakeholders can gauge progress."[22] It also suggests that investors may "ask follow-up questions even if no RAP is available, including how and where these and other frameworks are addressed," such as:

- What has been submitted to regulatory bodies, government or other third parties with respect to Indigenous permitting and disclosures [related to the impact of proposed activities on the traditional territories of rightsholders]? Where can investors and the public access this information?[23]
- What issues have been flagged when carrying out due diligence with respect to Indigenous rights, title and lands? How is the company addressing them?[24]
- How are subsidiaries and contractors/subcontractors accounted for and involved in this work? What are the processes, and where is the reporting to ensure they also comply with the above?[25]

Critically, **the RIA advises investors to seek out information that should be included in *any* credible Indigenous relations disclosure or reporting mechanism, from other voluntary IRPs to more standard corporate filings, whether or not a company has decided to create a RAP. This suggests that regardless of the format the communication takes, the content is often material to investors – and is expected to remain consistent and comparable across them.** If not publicly available or provided voluntarily, investors are encouraged by the RIA to actively seek out this information to guide their investment decision-making.



Although investors are recommended to proactively seek this information to make sound decisions, regulators must play a pivotal role in protecting them from material information gaps and ensuring investors are equipped to distinguish performative from substantive disclosure.[26] Additionally, given the variety of mechanisms available for companies to report on Indigenous relations, it is important to prevent companies from exploiting this range of options by selectively disclosing or cherry-picking information across communications in a misleading way, creating discrepancies and information gaps between disclosures and reports that leave investors more vulnerable.

> "Inconsistent or incomplete disclosure creates blind spots for investors, obscuring potential exposure to legal, operational and reputational risks. Without reliable information on Indigenous Peoples' consent, partnerships, and participation in governance, due diligence remains constrained, limiting investors' ability to distinguish between issuers demonstrating leadership and those undertaking performative activities"[27]
>
> **— Raylene Whitford**

Credible disclosure and reporting of risk

Generally, investors do not look to Indigenous relations communications in RAPs, IRPs and other corporate disclosure filings as altruistic expressions of a company's idealistic reconciliation goals.

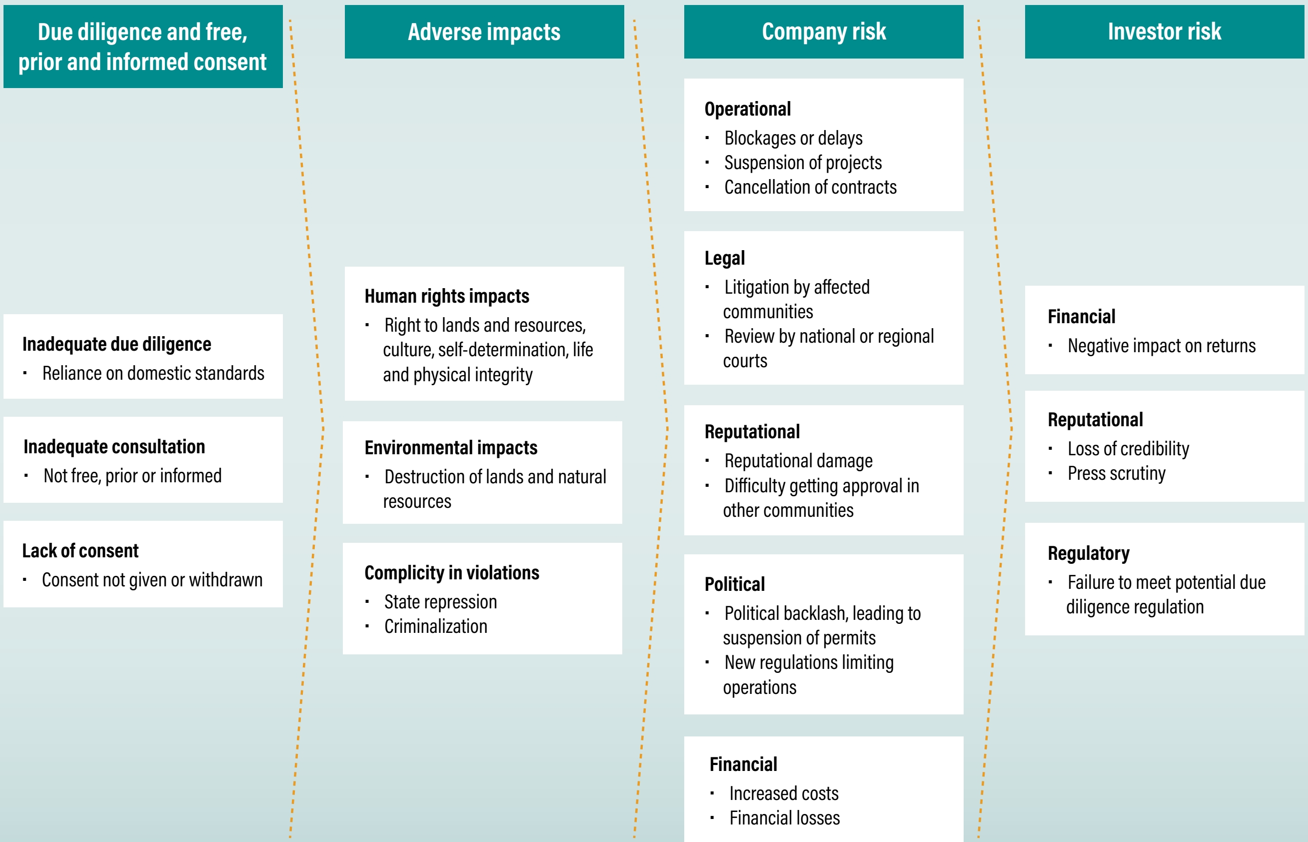
Rather, together, these documents are expected to provide reliable corporate responses to internal assessments of how a company's past actions and future operations intersect with Indigenous rights, its plans to address existing violations and related risks, and its role in advancing broader reconciliation efforts.[28] **To be credible, this process should include an accurate and transparent evaluation of a company's Indigenous relations performance and forthcoming strategy across five key risk categories commonly used in corporate risk assessments: legal, operational, financial, reputational and political.**

Inherent in its name, a RAP should be a plan developed following a dedicated gap analysis that identifies where corporate activities impact or violate Indigenous title, rights and interests. The resulting plan should be tailored to advance reconciliation by mitigating these specific impacts and associated risks and advancing opportunities to create stronger relations. Accordingly, information deemed material must be disclosed in mandatory filings and should be referenced and planned around in voluntary reporting. **In all cases, RAPs and IRPs should live up to their function as corporate reporting tools designed to assure investors that the company has a clear and credible strategy for aligning operations with Indigenous rights, while demonstrating sound business judgment, effectively managing risks and opportunities, and meaningfully advancing corporate-Indigenous reconciliation.**

The very fact that RAPs have gained such popularity – and that companies are dedicating significant resources to their development and presentation – underscores that information on Indigenous relations, particularly how companies plan to address Indigenous rights-related impacts and risks, is important to investors and may be material to corporate operations and performance. However, there is currently no requirement for companies to acknowledge and incorporate such material information from their corporate disclosures into their planning within RAPs and IRPs. In the absence of standardized guidelines and institutional oversight to verify the credibility of RAPs and IRPs, investors lack safeguards to protect their investment decision-making from being influenced by partial, misleading, inaccurate or inconsistent information across corporate communications.

In 2023, Amazon Watch and the SIRGE Coalition published *Respecting Indigenous Rights: An Actionable Due Diligence Toolkit for Institutional Investors*,[29] an important resource for investors that summarizes the risk categories as follows:

Figure 1. Illustration of how failure to respect Indigenous rights may lead to investor risk.



As with other forms of corporate reporting, credible Indigenous relations reporting and a well-rounded Indigenous relations strategy outlined in a RAP or IRP cannot be accurate and comprehensive unless it includes a company's actionable strategies to mitigate risks and leverage potential opportunities across five key categories in relation to Indigenous rights:

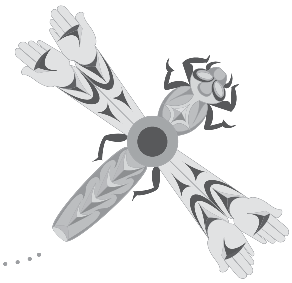
1 *Legal risks* arise when a company's projects or operations impact constitutionally protected Aboriginal rights, title and interests in the course of its business, potentially leading to lawsuits, delays or project cancellations.[30] To mitigate the risk of litigation or regulatory project shutdowns, a company may include legal compliance and due diligence strategies in its RAP, setting out a mechanism for identifying the proper title holders and decision-makers of impacted territories; conducting meaningful consultation; and ideally obtaining free, prior and informed consent, in line with the UN Declaration and the legal traditions of the impacted Indigenous Peoples. Given the "legal winning streak"[31] of over 300 successful cases for First Nations in resource conflicts, a RAP that glosses over legal risks is concerning for investors in companies facing potential lawsuits. As set out by the Supreme Court of Canada in *Tsilhqot'in Nation v. British Columbia*: **"Governments and individuals... can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."**[32]

2 *Operational risks* arise from disruptions to project construction or operations due to Indigenous opposition, protests or resistance to activities that impact Indigenous territories, rights or interests. To mitigate this risk, companies can engage Indigenous communities early in project development, planning and co-management, which can help ensure operational continuity and reduce the likelihood of delays or work stoppages. Furthermore, by upholding operational best practices based on free, prior and informed consent, companies can foster long-term relationships with Indigenous communities, ensuring greater operational stability.

3 *Financial risks* may involve economic losses to a company or project due to stakeholder divestment from companies violating Indigenous rights, higher costs of capital or insurance premiums reflecting increased risks, loss of business from consumer boycotts, costly legal battles, project delays or regulatory shutdowns. Companies can mitigate financial risks by accurately reporting Indigenous relations information to investors in RAPs and outlining mechanisms for respecting Indigenous rights and upholding UN Declaration standards and the Indigenous laws of the impacted community. Doing so can secure Indigenous community buy-in; attract cooperation, partnerships and investments; and maintain the confidence of existing shareholders.

4 *Reputational risks* may involve public backlash or a decline in a company's reputation due to perceived disregard for or disrespect toward Indigenous rights and self-determination. This can harm the company's public image and erode customer and investor confidence. For example, in an era where legal minimum standards require meaningful consultation and accommodation with impacted Indigenous Nations, a company that fails to engage with rightsholders – especially amid Indigenous opposition to a project – could face public boycotts, reduced appeal to potential investors and increased pressure on existing shareholders to divest. Additionally, when companies present RAPs that idealize or mislead readers regarding their Indigenous relations and fail to address or acknowledge actual impacts, the subsequent materialization of risks – whether operational, financial or legal – can severely damage the company's long-term credibility and reputation. For example, the RIA reports that "individual account holders, Indigenous tribes, and cities like Seattle divested from Wells Fargo and other banks due to concerns over their lack of responsiveness to Indigenous claims."[33]

5 *Political risks* may involve regulatory or policy shifts around Indigenous rights protections, often driven by public or governmental pressure. For companies, such political changes can lead to new legislative or regulatory requirements that may restrict operations. Companies that remain adaptable to these shifts – by having plans to stay current with changes – reduce the risk of misalignment and potential punitive consequences. As international standards like the UN Declaration are implemented at national and provincial levels (e.g., BC's *Declaration on the Rights of Indigenous Peoples Act*[34] or Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*),[35] and as mandatory human rights due diligence[36] gains traction globally, RAPs can serve as a primary resource for investors to gauge how prepared and adaptable a company is in mitigating risks and leveraging emerging opportunities related to Indigenous rights.



CASE STUDY

ENBRIDGE NORTHERN GATEWAY PROJECT (2006–2016, BC)

Enbridge's Northern Gateway Project is a prime example of the intersection of the five risk categories.

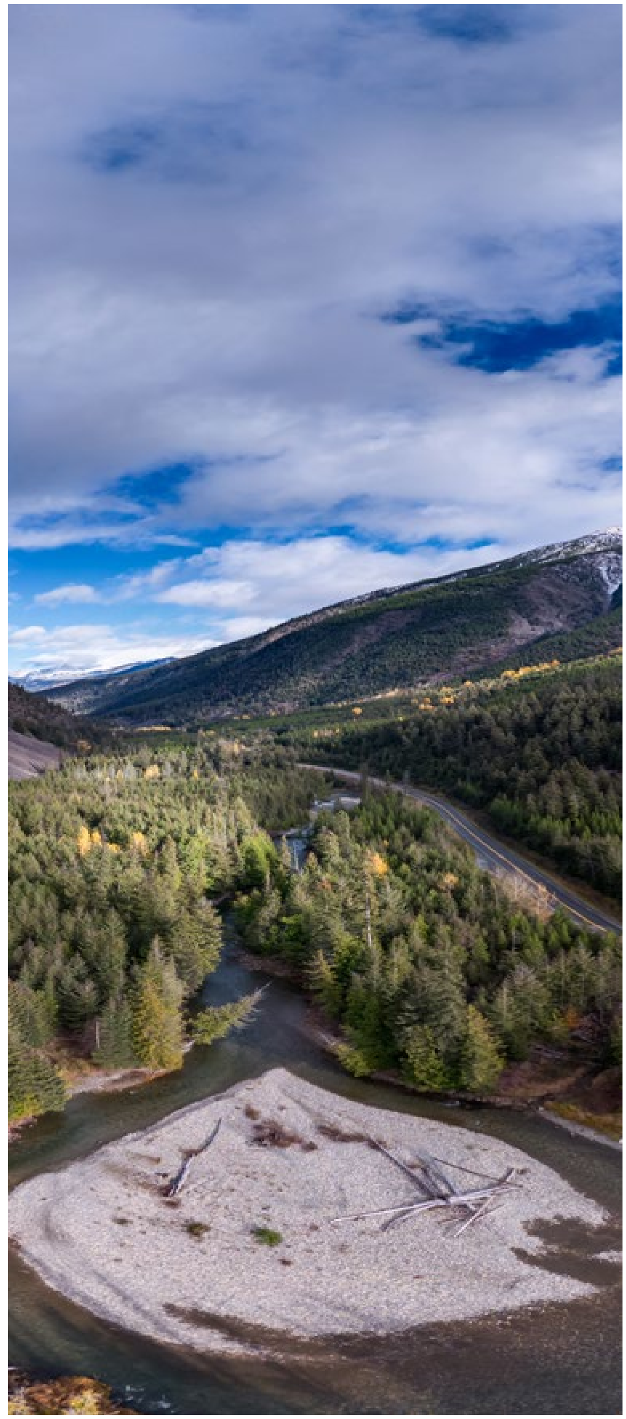
Incident: Enbridge's proposed Northern Gateway Project in British Columbia faced strong opposition from Indigenous communities, including the Gitxaała Nation, the Wet'suwet'en First Nation and the Yinka Dene Alliance. The communities argued that the pipeline would threaten their lands, waters and cultural heritage and that they were not sufficiently consulted in the approval process.

Consequences

- ***Legal risk:*** Legal risks arose throughout the controversial regulatory process[37] and crystallized when the initial approvals were challenged by impacted First Nations at the Federal Court of Appeal. The resulting decision, *Gitxaała Nation v. Canada*, 2016 FCA 187,[38] quashed the approvals because "Canada's execution of the Phase IV consultation process was unacceptably flawed and fell well short of the mark."[39]
- ***Operational risk:*** This was not as prominent, as the project was approved for only a short time before being quashed by the Federal Court of Appeal, but Enbridge faced a steady stream of protests during and after the regulatory joint review process,[40] including a cross-Canada rail journey that brought thousands of protestors and a bright spotlight on Enbridge's 2012 annual meeting.[41]
- ***Financial risk:*** Financial implications arose in a number of areas. Enbridge was unable to meet one of the National Energy Board's conditions to secure contracts with its customers for 60% of the capacity of the pipeline.[42] After the project was cancelled in 2016, Enbridge claimed nearly $400 million in losses (it recovered $14.7 million from the National Energy Board).[43]
- ***Reputational risk:*** The controversy impacted Enbridge's reputation greatly, with numerous protests and rallies outside its events and admonishment for presenting a map that erased parts of the landscape[44] not long after Enbridge's Line 6B ruptured and spilled hundreds of thousands of gallons of oil into the Kalamazoo River in Michigan, further staining the company's reputation.[45]
- ***Political risk:*** Political decisions finally killed the project, when then prime minister Justin Trudeau announced in November 2016 that the federal government would not continue consultation on the project. In 2019, the federal government passed the *Oil Tanker Moratorium Act*,[46] which banned or limited oil tankers from parts of BC's north coast, furthering the political risk.

When a company's disclosures transparently address Indigenous rights transgressions, opposition and resulting risks and its RAP includes opportunities to mitigate those impacts and risks, investors can place greater trust in the company's communications. **Accurate and comprehensive Indigenous relations information allows investors to make informed decisions about whether to buy, sell or hold securities, with the assurance that the company has considered and planned for critical issues that directly affect financial performance and securities valuation.**

In contrast, when a RAP focuses solely on social initiatives – such as increasing Indigenous employment or scholarships or providing internal cultural competency training[47] – while remaining silent on the company's involvement in Indigenous rights violations or community opposition to its operations, it misleads investors, undermines informed decision-making and exposes investors to significant financial risk if these issues later materialize. **In other words, it skips the part that is actually financially material, whether or not it is included in other disclosures** (it usually isn't). The outcome is a heightened risk profile with no strategy to address it, leaving investors, companies and impacted Indigenous Nations vulnerable to harm and without adequate safeguards or mitigation efforts.



CASE STUDY

TC ENERGY COASTAL GASLINK PIPELINE (2018–2025, BC)

Incident: The Coastal GasLink Pipeline, a project led by TC Energy, faced significant opposition from the Wet'suwet'en in British Columbia. While some First Nations had signed agreements with the company, the Wet'suwet'en hereditary chiefs opposed the project, citing concerns about its impact on their unceded lands and cultural heritage. The company's communications suggested that the First Nations agreements represented unanimous support, but they failed to take into account the rights of the hereditary chiefs, which the Supreme Court of Canada confirmed were the proper rightsholders in the 1997 case *Delgamuukw v. British Columbia*.[48] The conflict drew international attention when video of militarized police forcibly removing unarmed Indigenous land defenders from their land hit the news and social media.

Consequences

- ***Operational, legal and compounding financial risk:*** The opposition led to nationwide protests and blockades in 2020, disrupting rail and road networks across Canada. The protests caused significant delays and increased costs for the project, which was already facing regulatory and environmental challenges. Numerous stop work orders and fines were levied against the company. The delays resulted in a final cost of approximately $14.5 billion, more than double the initial estimate.[49] As a result, TC Energy wrote down $2.6 billion in lost equity in 2022.[50]
- ***Reputational and financial risk:*** In the month following the militarized removal of Wet'suwet'en land defenders, TC Energy's share price plummeted on both the TSX ($75 to $48) and the NYSE ($48 to $30).[51] TC Energy faced global criticism for its handling of Indigenous rights issues, leading to increased scrutiny from investors and stakeholders. Campaigns targeting Coastal GasLink's lenders, including the Royal Bank of Canada, drew the support and attention of Hollywood A-listers.[52]
- ***Missed risk mitigation opportunity:*** The delays, increased costs, losses and reputational harm could have been avoided had TC Energy pursued an alternative route suggested by the Wet'suwet'en hereditary chiefs. The company rejected that proposal on the basis that it would cost an additional $800 million, less than one-third of the eventual $2.6 billion write-down in 2022.[53]
- ***Issues with disclosure and reporting:*** In its 2019 annual information form, TC Energy assured investors by emphasizing a range of social policies promoting respectful engagement with Indigenous groups.[54] Yet, its July 2020 interim Managers Discussion and Analysis (MD&A) disclosed only largely resolved Wet'suwet'en issues – a court injunction prohibiting protesters from impeding the project, "removal of blockades by law enforcement" (downplaying the militarized forceful removal that contributed to the public outrage and reputational harm) and ongoing negotiations regarding a memorandum of understanding "on issues regarding… Aboriginal Rights and Title."[55] Although the the risk management section of TC Energy's 2020 annual report acknowledged that its "reputation with… Indigenous communities [could] have a significant impact on [its] operations and projects, infrastructure development" and "future access to investment capital," it did not mention or quantify financial risks associated with poor Indigenous relations.[56] TC Energy released RAPs in 2021[57] and 2022,[58] with no mention of the significant opposition to the project, the Wet'suwet'en hereditary chiefs at the heart of the opposition, the nationwide protests it sparked or any plans to properly mitigate the particular issues and impacts to Indigenous rights that spurred the range of significant risks discussed above.

Shareholders are filing resolutions about Indigenous rights

Investors are increasingly pushing companies to improve Indigenous relations communications, employing strategies such as shareholder resolutions, independent analyses and divestment. This trend is evident in both US and Canadian companies and financial institutions.[59]

For instance, US banks such as JPMorgan Chase & Co., Wells Fargo and Citigroup have faced increased pressure from their investors to submit more accurate and detailed Indigenous relations disclosures via shareholder resolutions.[60]

Citigroup faced shareholder pressure over its Indigenous rights policies and practices, leading to the release of a report detailing its due diligence process.[61] The report disclosed that Citigroup turned down seven transactions, flagged 37 transactions and 16 client relationships, and approved three transactions, subject to ongoing risk monitoring or client engagement due to the "potential risks to Indigenous Peoples."[62] However, the report was criticized as inadequate, with investors emphasizing that in order to adequately assess the material risks and impact on investment, investors require more transaction-specific and detailed information on how Citigroup analyzed the Indigenous rights risks before accepting, rejecting or adding further stipulations for transaction approvals. They pressed their belief that Citigroup's policies are misaligned with core principles for Indigenous rights and consequently flagged investors' remaining doubts on the bank's ability to "manage human rights risks."[63] This example emphasizes how important comprehensive Indigenous relations information is becoming to investors.

This momentum has impacted Canadian banks as well, with similar proposals calling for better Indigenous relations communications and policies filed at the Bank of Montreal, Toronto-Dominion Bank and the Royal Bank of Canada (RBC) by the British Columbia General Employees' Union and the Union of British Columbia Indian Chiefs. The pressure from shareholders succeeded in obtaining a commitment from RBC to amend its human rights statement to align with international Indigenous rights standards, introduce a new component to its environmental and social risk process to assess impacts on Indigenous lands and communities (I-ESR), and review its new I-ESR policies in its 2025 racial equity audit.[64]

In 2021, shareholders of TMX Group Ltd., which owns and operates the Toronto Stock Exchange, the TSX Venture Exchange, the Montreal Exchange and Canada's derivatives exchange, voted "overwhelmingly" in favour of a resolution on Indigenous inclusion and reconciliation,[65] underscoring how widespread the calls for better Indigenous relations, disclosures and reporting have become.

Securities regulators and disclosures

Consistent and accurate disclosure of material information about Indigenous rights, opposition and related risks and opportunities falls squarely within the purview of securities regulators, yet it is not commonly disclosed by issuers.

In Canada, publicly traded companies are required to regularly disclose certain information relevant to investor decision-making. To ensure this corporate reporting is accurate, provincial securities commissions across the nation play a vital role. In British Columbia, the BC Securities Commission aims to "foster fair and efficient capital markets"[66] by setting regulatory standards; monitoring the province's investment marketplace;[67] and ensuring that corporate disclosures contain full, true and plain disclosure of all material information.

Historically, securities regulators have not focused on disclosures related to Indigenous relations – presumably because of the relatively recent recognition of Indigenous rights following a long history of denial and division (referenced by Jody Wilson-Raybould above) that informed Canadian government policy and related legislation, including securities legislation.

Nonetheless, information about a company's Indigenous relations, including rights impacts and related risks and opportunities can be – and increasingly is – material, and securities filings that fail to disclose such information do not currently comply with securities requirements.

However, without clear guidance, standards or enforcement by securities regulators to clarify to issuers that Indigenous relations information can be material and must accordingly be fully, transparently, accurately and consistently disclosed, investors remain exposed to significant gaps in disclosures and corporate risk assessments – with little recourse from securities regulators to ensure any hidden material information is brought to light.

As explored throughout this paper, there is an increasingly urgent call to action from investors, Indigenous Peoples and advocacy groups for securities regulators to uphold the principle that credible Indigenous relations disclosures are a critical component of credible corporate financial communications.

The Ontario Securities Commission (OSC) has begun to consider the role and responsibility of securities regulators in advancing Indigenous economic reconciliation through regulation and policy work.[68] In 2025, the OSC released its *Action Plan for Truth and Reconciliation* (APTR), recognizing that Indigenous Peoples have historically been excluded from full and equal participation in the economy and that reconciliation requires ongoing, meaningful engagement with Indigenous Peoples to better understand their perspectives and needs to enhance participation within capital markets.[69] In this way, RAPs can also serve as a tool securities commissions themselves can use – similar to what the OSC has done – to identify actions they can take as regulators to advance Indigenous economic and corporate reconciliation.

As part of initiating this engagement, the OSC hosted a virtual roundtable, *OSC Roundtable: Pathways to Truth and Reconciliation*, on October 21, 2025, to seek feedback on the draft APTR, including strengths, gaps and opportunities to strengthen its commitments.[70] One key discussion point was the fifth pillar of the APTR – regulatory and policy work – which outlines the OSC's commitment to continuing dialogue with Indigenous Peoples and communities to determine how they wish to engage with the OSC on policy initiatives and to co-develop engagement processes for proposed policies, rules and guidance that facilitate greater Indigenous input.[71]

This represents an important opportunity to advance the objective of this paper: ensuring that securities commissions meaningfully engage Indigenous Peoples in developing standards, guidance, rules and policies that support credible Indigenous relations disclosures; improving consistency and comparability of material information across reporting; and building greater trust among Indigenous Peoples, corporations, investors, regulators and the public through effective corporate communications.

Recommendation 3

Develop RAPs that outline actions securities regulators can take to advance reconciliation and ensure capital markets are aligned with Indigenous rights – as the Ontario Securities Commission has demonstrated openness to with its *Action Plan for Truth and Reconciliation*.

Securities regulation and disclosure requirements: The material standard

The BC *Securities Act* requires all "issuers" to comply with the Act's disclosure requirements.[72]

A prospectus, the primary marketing document for any new issue of securities, "must provide full, true and plain disclosure of all 'material facts' relating to the securities issued or proposed to be distributed."[73] The BC *Securities Act* defines a "material fact" as "a fact that would reasonably be expected to have a significant effect on the market price or value of the security" when used in relation to "a security issued or proposed to be issued."[74]

Additionally, management discussion and analysis serves as a "narrative explanation, through the eyes of management, of how [a] company performed during the period covered by the financial statements, and of [the] company's financial condition and future prospects."[75] Management discussion and analysis should "discuss material information that may not be fully reflected in the financial statements, such as contingent liabilities."[76] Here, "material information" is information that, if omitted or misstated, would likely influence or change "a reasonable investor's decision whether or not to buy, sell or hold securities in [a] company"[77] – going beyond considering only financial information that may impact share price.

Importantly, risk is a key factor in proper and comprehensive material disclosure. For instance, an annual report is where issuers can describe their operations, prospects, governance and risks.[78] Critically, "in preparing a report, [issuers must] focus the disclosure on information that is material,," and "in determining whether or not a particular matter is material, [they must] consider whether disclosing, omitting or misstating the relationship, transaction, agreement, plan or other information would likely influence or change a reasonable investor's decision as to whether or not to buy, sell or hold a security in the capital of the venture issuer."[79]

Additionally, an annual information form (AIF) must be filed annually by certain companies under Part 6 of National Instrument 51-102. An AIF is "a disclosure document intended to provide material information about [a] company and its business at a point in time in the context of its historical and possible future development" and "describes a company, its operations and prospects, *risks and other external factors that impact the company specifically*."[80] The BC Securities Commission similarly encourages issuers filing an AIF to "exercise their judgement when determining whether information is material" and ask themselves: "Would a reasonable investor's decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material."[81]

Going beyond initial disclosures, the BC *Securities Act* also sets out its continuous disclosure requirements in Section 85, including: "(a) periodic updates about an issuer's business and affairs, (b) disclosure of *material changes*, and (c) any other prescribed disclosures."[82] A "material change" is defined as "a change in the business, operations, or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer."[83]

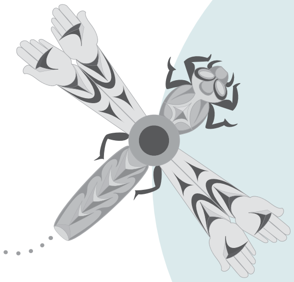
Additionally, National Policy 51-201, Part II – Timely Disclosure, requires companies to *immediately* disclose any "material change" in their business.[84] For changes initiated by the company, the change is considered to occur once the decision to implement it has been made, which may be even before formal approval by the company's directors if such approval is deemed probable.[85] Companies must fulfill this obligation by issuing and filing a press release describing the change and by submitting a material change report *as soon as practicable* and no later than 10 days after the change occurs.[86] Importantly, this policy statement is said to not alter existing timely disclosure obligations, underscoring the legal requirement for companies to communicate material information promptly to investors.[87]

The importance of timely and proper disclosure was highlighted in a recent Supreme Court of Canada ruling in Lundin Mining Corp. v. Markowich,

> This court has recognized that "proper disclosure is the heart and soul of the securities regulations across Canada" and is pivotal for "an effective securities regime." ... Disclosure helps maintain a "level playing field" of information between investors and issuers, which has been described as "the most fundamental principle of securities regulation."[88]
>
> [. . .]
>
> As a result, preventing and deterring informational asymmetry between investors and issuers is essential "to maintain the integrity of the securities system and protect the public interest." ... This is the "core policy goal that underlies securities law."[89]
>
> [. . .]
>
> Disclosure also promotes the efficiency of capital markets by helping investors to identify and direct capital to the most deserving public companies. Armed with appropriate information, investors are more confident and participate more actively in securities markets, thereby enhancing the efficiency and competitiveness of capital markets more generally.[90]

In practice, issues such as Indigenous rights violations, community opposition to operations, and a company's strategies for addressing these concerns and associated risks have not historically been acknowledged as material in corporate disclosures. As case studies such as the Coastal GasLink Pipeline illustrate, some issuers may include limited information on Indigenous relations – such as social policies – while omitting or downplaying the real financial risks associated with Indigenous rights violations and resulting opposition.[91] This has allowed such issues to escape the scrutiny of securities regulators, including the BC Securities Commission, despite their clear implications across the five key risk categories.

As illustrated by the case studies in this paper, evidence is growing that these risks can, and increasingly do, significantly affect a company's financial performance, share value, course of operations and project viability. While incomplete, misleading or inaccurate Indigenous relations disclosures have not yet resulted in systematic guidance – despite the material consequences they often carry – conditions are ripe for securities regulators to remind and clarify to issuers their existing obligation to disclose material information on Indigenous relations, rights and associated risks.



The reasonable investor standard requires credible Indigenous relations disclosures

This paper challenges the prevailing assumption that Indigenous relations disclosures are not material to investor decision-making.

Despite limited oversight by securities regulators, prudent investors are increasingly recognizing that environmental, social and governance (ESG) issues and risks, including those of Indigenous relations, can significantly impact business operations, financial performance and long-term viability.

In *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*,the Supreme Court of Canada introduced the concept of the reasonable investor to the materiality test: **Information is considered "material" if there is a substantial likelihood that a reasonable investor would have considered it important when deciding to invest**.[92]

The reasonable investor test is inherently fluid; as societal norms and expectations evolve – particularly in the era of truth and reconciliation – so too do responsible investors' expectations that disclosures include the information they consider necessary for sound investment decision-making. Given the media attention in the past few decades on conflicts over resource development involving Indigenous rights violations and land defence, it is reasonable for today's investor to expect that Indigenous relations and associated risks that impact a company's operations are disclosed as material information.

Moreover, while Indigenous Peoples add spacehave historically faced significant barriers to participation in the Canadian economy, there is growing momentum toward economic reconciliation – aimed at expanding Indigenous participation, reducing barriers to capital access and recognizing the role of securities regulators (such as the Ontario Securities Commission[93]) and the financial sector[94] in facilitating this shift.

Indigenous entrepreneurs are playing an increasingly significant role in Canada's economy, with Indigenous-owned businesses contributing over $31 billion annually to GDP, according to the National Indigenous Economic Development Board.[95] Research by the Indigenomics Institute, in partnership with Mastercard, used large-scale data analysis to better assess the current and future trajectory of the Indigenous economy, identifying at least $100 billion in economic activity and expanding Indigenous participation across diverse sectors, including clean energy and procurement.[96]

It is important to consider that as Indigenous-led investments increase, disclosures will need to evolve to also reflect the information that reasonable Indigenous investors consider important or material in their investment decisions.

Improving enforcement of Indigenous relations disclosures

As explored below, complaints filed with securities commissions have already been brought against companies that failed to properly include such disclosures in mandated corporate reporting documents available through platforms such as SEDAR+.

However, relying exclusively on a complaint-based system – where the complainant has little or no involvement beyond the initial complaint – to enforce the disclosure of material Indigenous relations means that the scale of underreported material facts related to Indigenous relations is likely much higher than the number of known complaints.

Accordingly, we urge securities commissions to enhance oversight and enforcement of Indigenous relations communications so that companies are compelled to disclose this information when they fail to do so. Commissions should also consider modifying existing complaint processes to improve accessibility, participation and effectiveness for Indigenous Peoples, including ongoing engagement beyond the initial claim submission.

In addition, advancing economic reconciliation and acknowledging existing barriers to access may justify the creation of a dedicated, streamlined and culturally responsive grievance mechanism. Such a mechanism would support Indigenous Nations in engaging more effectively with securities commissions.

Recommendation 4

Strengthen oversight and enforcement to compel disclosure when companies fail to provide material information, and adapt existing claims processes to improve access, engagement and effectiveness for Indigenous Peoples – including continuous engagement beyond merely submitting an initial grievance. Economic reconciliation and recognition of barriers to access may also warrant the development of a dedicated, streamlined and culturally competent grievance mechanism to enable Indigenous Nations to engage more effectively with securities commissions and their issuers.

Materiality: The impact of Indigenous relations on share price

It is well documented that Indigenous relations can impact a company's financial performance or share price – an outcome that falls squarely within the BC Securities Commission's definition of "material" information that investors are entitled to receive.

A study from the University of Oxford examined the impact of 354 assassinations of Indigenous and civil society activists linked to mining projects and estimated a median loss in market capitalization of US$100 million for the mining company within the 10 days following the assassination.[97]

Research by the Justice and Corporate Accountability Project (JCAP) highlights the significant financial and ethical risks associated with companies underreporting Indigenous opposition and social conflict related to mining and resource extraction.[98] JCAP analyzed Indigenous relations corporate disclosures in Canadian SEDAR+ filings, management discussion and analysis documents, annual financial report and media releases, focusing on a small sample of complaints that reflect a broader trend: the proven impact of social conflicts on share prices.[99]

Notably, JCAP found that whenever a public complaint was filed with the securities commission based on a company's failure to accurately disclose Indigenous rights violations or conflict, stock prices tended to decline with substantial market capitalization losses.[100] Specifically, JCAP found that investor trust is seriously undermined when companies omit or misrepresent serious incidents – such as community conflict or the assassination of activists – in investor communications.[101]

Further, JCAP's research identified that less than 25% of death and only 12.3% of injuries related to resource conflicts were disclosed to investors via traditional corporate reporting mechanisms in its sample.[102] This pattern of corporate underreporting of Indigenous rights violations and community opposition to resource development projects aligns with findings from the Shift Project, which assessed disclosures from 18 leading Canadian mining companies[103] and concluded that most failed to provide a full picture of human rights concerns, instead opting for selective reporting and cherry-picking convenient, incomplete and often inaccurate narratives.[104]

As the JCAP study and others have concluded, **"investors care about human rights impacts and consultation with Indigenous communities and consider them important to the value of their investments."**[105] In this sense, communications on Indigenous rights impacts can "likely influence or change a reasonable investor's decision as to whether or not to buy, sell or hold a security" – thereby meeting the materiality test that requires such information to be included in an annual report filed with the BC Securities Commission.[106]

CASE STUDY

TAHOE RESOURCES ESCOBAL MINE SUSPENSION (2017, BC AND GUATEMALA)

Incident: British Columbia-based Tahoe Resources' Escobal silver mine in Guatemala was suspended following protests and legal challenges from Indigenous Xinka communities, who claimed they were not properly consulted about the project. The mine accounted for nearly 50% of Tahoe's revenue. Tahoe's CEO stated on BNN Bloomberg prior to the court challenges that "communities love us"[107] in spite of allegations of security guards shooting protestors.

Consequences

- ***Operational risk:*** The mine was suspended in 2017 after a Guatemalan court ruled that the company had failed to consult Indigenous communities adequately.
- ***Financial risk:*** Tahoe's share price plummeted from $27 in 2014 to $2.32 in 2018 before being sold to Pan American Silver for about $5 per share, largely due to unresolved Indigenous rights issues.
- ***Legal risk:*** Civil society organizations working with impacted Indigenous communities filed four complaints with the BC Securities Commission between 2016 and 2019, for failure to disclose material information.[108]
- ***Broader legal precedent risk:*** The conflicts stemming from the Escobal mine resulted in a precedent-setting case filed in BC that allowed Guatemalan nationals to sue the BC-based company in BC courts. The legal battle took six years.[109]

CASE STUDY

PLATINEX (2008, ONTARIO)

Incident: Platinex faced Indigenous opposition that prevented access to 221 mining claims and 81 mining leases at Big Trout Lake in 2006. Platinex and the Kitchenuhmaykoosib Inninuwug First Nation (KIFN) had been in ongoing discussions about the intended exploration and development of the area since 1999, with KIFN advising Platinex in 2001 that it wanted a moratorium on all development until proper consultation had taken place.[110] In August 2005, KIFN advised Platinex that all previous agreements were "null and void." Nevertheless, in October 2005, Platinex made public its mining application on the TSX Venture Exchange and represented that KIFN had "verbally consented" to low-impact exploration.[111] By December 2005, Platinex had raised $1 million in private placements.[112] In May 2006, Platinex filed a material change report about an injunction brought by KIFN,[113] and in December 2006, it disclosed in a technical report that access had been blocked in February 2006.[114]

Consequences

- ***Legal risk:*** Platinex and KIFN were involved in a series of injunctions and counterclaims that delayed the project by five months. Platinex sued the Ontario government and KIFN for $10 billion in losses but ultimately recovered only $5 million, 0.05% of its original claim.[115]
    - Justice G.P. Smith strongly cautioned against the trend of companies turning to legal action against Indigenous Nations over inadequate disclosure: "Large wealthy corporations issuing lawsuits for many millions of dollars could disentitle First Nations from qualifying from the right to claim injunctive relief. This result cannot be deemed to be in accordance with the principles of equity."[116]
- ***Legal and political risk:*** Following the injunction and damages hearings, Platinex relinquished its property rights related to the mine to the Government of Ontario, which was in land negotiations with KIFN.[117]

Canadian Securities Administrators and National Instrument 43-101

In April 2022, the Canadian Securities Administrators (CSA) released *Consultation Paper 43-101 – Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects*,[118] which included specific questions about disclosure of Indigenous rights impacts, including the extent of Indigenous rights-based opposition.

The First Nations Financial Management Board (FNFMB) submitted a comment letter,[119] which stated:

> Indigenous peoples and the UN Declaration are, by definition, material to the majority of mineral projects. *National Instrument 43-101 Standards of Disclosure for Mineral Projects* ("NI 43-101") must include issuer disclosure of clear and accurate information on the scope and nature of Indigenous rights and title regarding mineral projects. Disclosure must include whether an agreement has been entered into between the issuer and the First Nations including disclosure of key items such as whether free, prior, and informed consent has been obtained, or a pathway has been developed and agreed to for obtaining consent.[120]
>
> [. . .]
>
> An open and transparent disclosure regime under a revitalized securities disclosure regime regarding Indigenous rights bolsters the interests of all parties, ultimately to the benefit of public market investors.[121]

The FNFMB submission proposed the following specific mandatory disclosures:

1. The traditional and colonial (settler) names of the Indigenous Peoples on whose lands the project is located.
2. A map depicting the territories.
3. A description of how the project impacts Indigenous rights.
4. Whether any agreements are in negotiation or have been reached.
5. Whether free, prior and informed consent has been provided for the project, and if not, providing reasons why and the issuer's plan to obtain consent.
6. Any notice provided to the impacted First Nation(s).

7. The status of any consultation, including accommodation where necessary.

8. Whether the issuer has received notification from the Indigenous rightsholders withholding consent for the project.[122]

In February 2025, the CSA released proposed changes to NI 43-101.[123] While they did not go as far as the recommendations put forward by the FNFMB to include these mandatory disclosures as part of ongoing continuous disclosure, the CSA stated:

> The Modernized Disclosure Requirements will instead require disclosure in a technical report specifically about permits, agreements and negotiations with Indigenous Peoples, rightsholders or communities concerning the mineral project, as that disclosure is relevant in a technical report in order for investors to fully understand and appreciate the risks and uncertainties relating to a mineral project.
>
> We remind issuers that existing disclosure obligations under Canadian securities laws require issuers to disclose material information to investors. These disclosure obligations apply irrespective of specific disclosure requirements under the Instrument or Form. Issuers need to assess whether information related to the issuer's relationships, engagement, and agreements with Indigenous Peoples, rightsholders or communities is material information that is required to be disclosed under Canadian securities laws.

The CSA's NI 43-101 modernization demonstrates that disclosure about Indigenous rights issues is on the minds of securities regulators. In the mining context, there is no debate about whether Indigenous rights violations are material – the question is how that information should be disclosed.

While NI 43-101 is a good first step toward incorporating Indigenous reporting into securities disclosures, it is not sufficient on its own for comprehensive, accurate and credible communications. For example, although NI 43-101 requires "reporting on permits, agreements, and negotiations with Indigenous Peoples, rightsholders, or communities concerning the mineral project," a credible RAP supplements it but can go further by providing additional information, context and detail – which may not meet the threshold for required material disclosure, but that can still be used to effectively guide the company's reconciliation efforts and strategies. For example, it can acknowledge material Indigenous opposition and rights transgressions (e.g., under Article 35 of the the UN Declaration) disclosed in its securities filings, while going further to demonstrate how the company plans to mitigate these specific risks and create opportunities through proactive remediation, meaningful engagement and reconciliation initiatives – offering investors and stakeholders a clearer view of both accountability and forward-looking strategy. RAPs and IRPs also address broader areas, including social, employment, governance and economic factors, and even the company's role in addressing rights impacts and risks and contributing to industry-level reconciliation efforts – as highlighted in *Baseline Expectations and Good Practices for the Development and Assessment of the Reconciliation Action Plans (RAPs) of Companies in British Columbia*.[124]

Accordingly, NI 43-101 serves as one tool available to securities regulators to require dedicated, sector-specific disclosures on Indigenous relations, illustrating that there is space within existing frameworks for material information on these issues. At the same time, the submission by the FNFMB is intended to apply more broadly across Indigenous disclosures as a starting point and can continue to inform other general or sector-specific standards, guidelines and instruments that securities regulators may develop.

Establishing such clear baselines for mandatory disclosure would allow companies to report consistently on material Indigenous relations risks, while enabling voluntary reporting – such as RAPs and IRPs – to build on that foundation. Voluntary frameworks can then provide the additional flexibility for companies to outline reconciliation strategies and actionable remediation plans in greater depth, while recognizing the material impacts that their operations may have on Indigenous rights and accounting for the practical realities of their industry context.

Mirroring material information in Indigenous relations disclosures and reporting

The suite of mandatory disclosures and voluntary reporting mechanisms available to companies should present a cohesive and comprehensive picture of their Indigenous relations.

As demonstrated by how a RAP can build on NI 43-101 disclosures, RAPs can complement securities filings by providing truthful, reliable and effective insights into a company's plans to address material issues in its Indigenous relations and provide more information on the company's risk mitigation strategies. Accordingly, a company must first disclose how such issues are projected to impact its share price, financial performance, project viability and risk profile, and then report on how it plans to address its Indigenous rights transgressions and improve its relations to ensure long-term operational and economic stability and meaningfully work toward corporate–Indigenous reconciliation – the intended role of RAPs.

Therefore. securities regulators are being called upon to affirm the financially material nature of Indigenous rights–related information in corporate disclosure and to remind issuers of their obligation to report such information under existing laws (see Recommendation 1).

Furthermore, voluntary disclosure frameworks – such as RAPs, IRPs and other voluntary filings (e.g., sustainability reports) – should be guided by Indigenous-co-developed uniform standards and guidelines and should receive appropriate regulatory oversight to ensure adherence, accuracy and credibility. This would include the requirement to report material information that would initially be disclosed in other corporate securities filings. Any such standards, guidelines and regulatory oversight for Indigenous relations reporting, including for RAPs and IRPs, must be developed in concert with Indigenous Peoples, following the "Nothing about us without us" principle. This is especially important for RAP guidance so that corporate reporting appropriately upholds respect for Indigenous Peoples' rights and fulfills the potential to drive forward meaningful reconciliation and constitute credible, comprehensive and accurate Indigenous relations content. The next paper in this

series outlines the key elements of a credible RAP or IRP, incorporating input from Indigenous rightsholders and issue experts to recommend standards that should guide RAP development and content.

Currently, Indigenous relations reporting is often inaccurate, inconsistent and misleading, and there is a general presumption that material Indigenous relations information – including rights transgressions and related risks – is not required to underpin a RAP. Because RAPs remain the most common form of IRP in the corporate sector, many companies have relegated most, if not all, peripheral Indigenous relations information to this voluntary reporting forum, omitting inconvenient material facts and issues from both voluntary reporting and mandatory disclosures. Therefore, these communications should be subject to some form of oversight and scrutiny by regulators to ensure full transparency.

Accordingly, we also encourage securities regulators to consider the guiding role they can play in ensuring that credible, material information flows consistently across various corporate communications, including Indigenous relations reporting in RAPs and IRPs. Considering the importance of material information to the credibility of these voluntary products, securities regulators can play a key role in ensuring that investors and the public are not misled by inconsistencies across securities disclosures and voluntary reports (see Recommendation 2).

Although reconciliation (including through securities disclosures, RAPs and IRPs) may look different across industries – depending on their unique histories and their past, present and future impacts and remediation needs in relation to Indigenous Peoples – the bottom line is that wherever Indigenous rights intersect with business operations, companies are expected to assess, publicly communicate and incorporate into their business strategies information that is material to investors.

While overall awareness of reconciliation[125] and Indigenous relations–related disclosure appears to be increasing across sectors (e.g., finance, energy, industrials, materials, information technology, utilities, real estate, health care),[126] industries remain at different stages of recognizing the materiality of Indigenous relations, rights and associated risks. Notably, in a baseline analysis examining the S&P/TSX Composite Index, the natural resource (i.e., materials) industry is leading the way, with "59% of the sector identifying Indigenous Peoples as a material sustainability topic" and "all five issuers in the index that made FPIC commitments being mining companies setting a precedent for rights-based governance within regulated resource industries."[127] In contrast, "in industries without direct land-based operations, reporting remains largely symbolic, signalling support without demonstrating structural or governance-level commitments."[128]

Securities regulators are well positioned to provide uniform guidance, standards and policies to issuers across sectors regarding their obligation to disclose and comparably report material information on Indigenous relations, rights and risks, while taking into account varying provincial contexts. This is a clear gap in Indigenous relations communications that regulators are both capable of and well positioned to fill, particularly as they increasingly examine their regulatory role in advancing economic reconciliation.

FORWARD-LOOKING INFORMATION

Indigenous relations are critical to future financial performance, operational viability and business certainty

A company's forward-looking disclosures, such as acquisition strategies, financial projections and plans to sustain or grow production, are incomplete and misleading to investors if they fail to address the impact Indigenous rights violations, community opposition and public backlash can have on seriously hindering these goals.

The case study snapshots presented in this paper offer just a few examples of how materialized financial, operational, legal, reputational and political risks stemming from poor Indigenous relations are often improperly undisclosed as material or "forward-looking information" (FLI) in securities filings. Companies often misrepresent, misleadingly portray or entirely omit critical information about the true extent of Indigenous rights violations and community opposition, even though such risks can severely undermine a company's economic performance and project viability.

"Section 4A.3 of NI 51-102 [*Continuous Disclosure Obligations*] requires reporting issuers that disclose material FLI to include disclosure that identifies material risk factors that could cause actual results to differ materially from the FLI" as well as material factors or assumptions used to develop material FLI.[129]

Accordingly, when a company fails to account for such material risks in its FLI statements – including disclosures with respect to financial projections, "the Company's goal to sustain or grow production" or its "expectations regarding the ability to raise capital" in the future – those disclosures omit critical information that may hinder the achievement of those objectives and may therefore be inaccurate or misleading.

When investors are uninformed about risks related to Indigenous relations, it erodes their trust in the company's credibility and disclosure practices if there are subsequent issues with raising capital, share price collapses, divestments, costly delays or project shutdowns.

CASE STUDY

ENERGY TRANSFER PARTNERS DAKOTA ACCESS PIPELINE (2016–2017, USA)

Incident: The Dakota Access Pipeline (DAPL) faced fierce opposition from the Standing Rock Sioux Tribe, which argued that the pipeline threatened its water supply and sacred sites. Protests garnered international attention, with thousands of activists joining the Standing Rock camp.

Consequences

- ***Operational and financial risk:*** The project faced significant delays due to legal battles and protests and cost DAPL's owner an estimated US$7.5 billion.[131]
- ***Reputational risk:*** DAPL's owner, Energy Transfer Partners, faced widespread criticism from environmental and Indigenous rights groups, as well as divestment campaigns. Additionally, banks and other financial institutions involved in financing the pipeline faced reputational risks and pressure from shareholders. For example, Wells Fargo and Citigroup saw their share prices decline during the height of the protests, while account closures and divestment were estimated to cost US$4.4 billion.[132]
- ***Legal risk:*** The US Army Corps of Engineers conducted an environmental review, and the Biden administration temporarily halted the pipeline's operations in 2021. In a report commissioned by DAPL's funders, the law firm Foley Hoag[133] concluded that international industry good practices require adherence to international standards when they are more stringent than domestic standards, including seeking and securing free, prior and informed consent rather than meeting minimum legal standards of consultation.

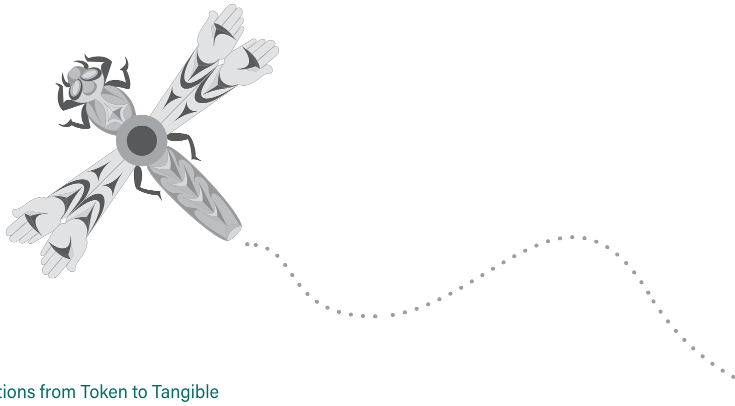
CASE STUDY

NORONT RESOURCES (2021, ONTARIO)

Incident: Noront Resources is a mining company operating primarily in Ontario's Ring of Fire region. The company's public communications referred to only three First Nations with which the company had partnerships, while staying silent on the significant opposition expressed by other impacted First Nations, other than "general risks of First Nation lands and rights claims."

Consequences

- ***Legal risk:*** Students from Osgoode Hall Law School in Toronto filed a complaint with the Ontario Securities Commission (OSC) against Noront, asking for an investigation into Noront's disclosures, as neither the company's Annual Information Forms nor its MD&A documents filed with the OSC included a risk assessment or disclosure regarding the impacts of fierce Indigenous resistance to its projects.[135]
- ***Financial risk:*** As news of the OSC complaint became public, Noront's share price experienced significant volatility. Although the share price eventually recovered, neutralization is not guaranteed and may depend on various factors, such as sustained reputational damage, prolonged litigation or lengthy operational delays. **The key regulatory take-away is that issuers are required to disclose material information when it is reasonably expected to have a significant effect on market price or security value – not once the impact is confirmed or sustained.** The Noront example reinforces this principle: the disclosure obligation exists regardless of whether the ultimate effect on the share price is uncertain or temporary.



Indigenous relations communications can be a tool to identify and plan for opportunities

Strong Indigenous relations can offer companies material advantages and risk mitigation that are often neglected or underutilized.

In addition to securities laws recognizing investors' right to be informed about factors that may impact share price, future operations or other material information relevant to investment decision-making, companies that under-disclose information on Indigenous rights and relations miss a key advantage. **Indigenous relations communications provide an opportunity to not only transparently identify related risk but also strengthen investor confidence by prudently disclosing efforts to mitigate those risks in a manner that demonstrates that companies' forward-looking financial and operational projections are achievable and reliable.** They can then leverage voluntary reporting mechanisms, such as RAPs, to proactively plan for risk-reducing operational adaptations and pursue business growth opportunities aligned with Indigenous rights – simultaneously advancing reconciliation and enhancing their own competitive advantage.

A company's ability to remain current and compliant with evolving international, national and regional regulations concerning Indigenous rights is crucial to mitigating political and legal risks that can set its operations and economic growth behind – particularly in sectors frequently impacted by such regulations, like resource extraction industries operating on Indigenous territories.

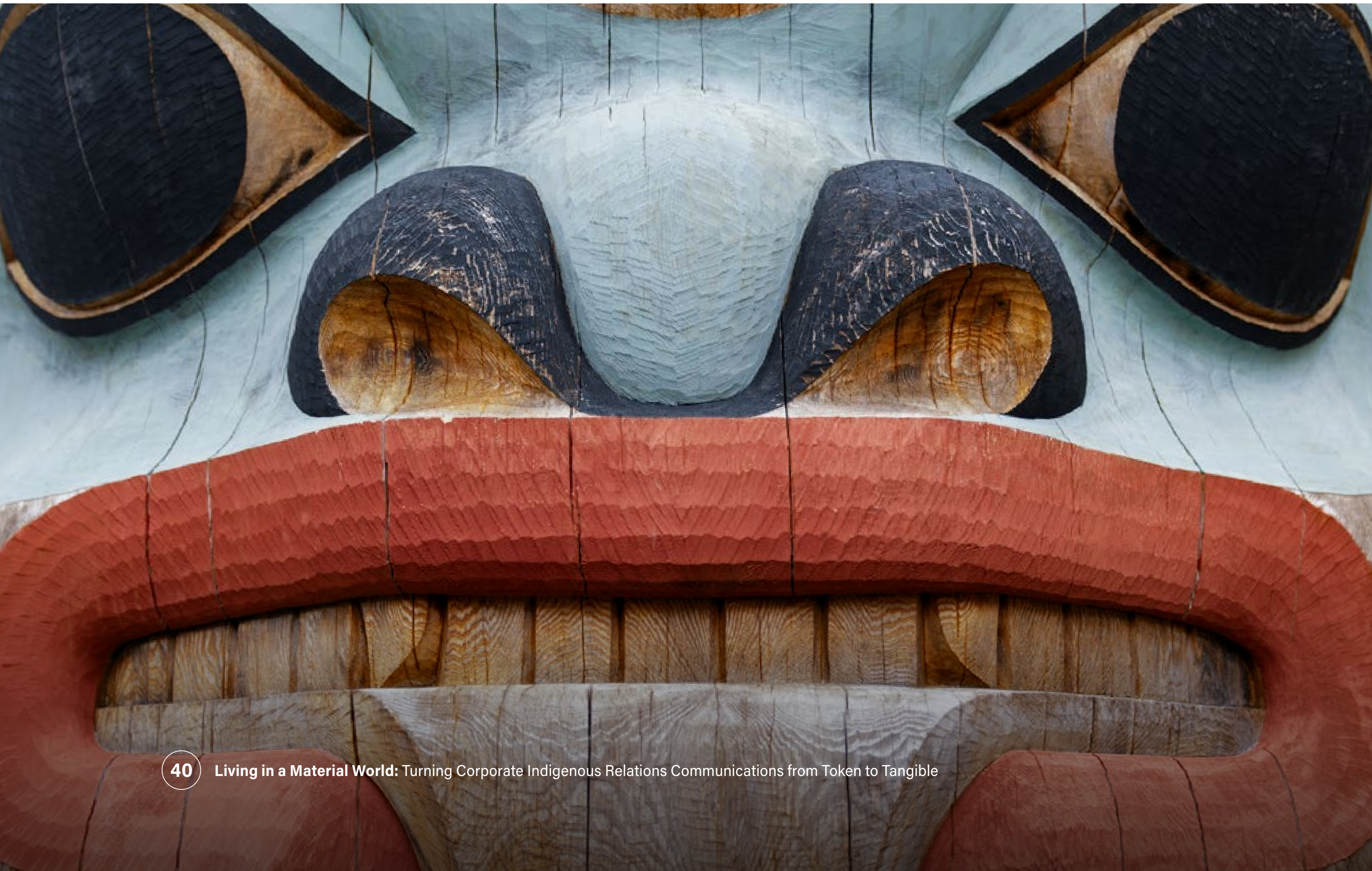
These issues present not only risks companies must disclose to investors but also opportunities for ongoing performance and to lead and thrive amid changing social and climate responsibility standards. As the UN Declaration – the minimum international standard – gains traction at national and regional levels, particularly through its incorporation into common law,[136] including British Columbia's *Declaration on the Rights of Indigenous Peoples Act*, prudent investors will want to evaluate how prepared and willing a company is to adapt to these regulations.

Beyond mandatory risk disclosure, RAPs can serve as a valuable opportunity for a company to showcase its approach to achieving lower risk for shareholders by articulating its commitments and plans for implementing the UN Declaration within its industry-specific operations. This demonstrates to investors its readiness to address and benefit from evolving regulatory, legislative and jurisprudential changes while simultaneously lowering its financial, operational, legal, reputational and political risk profile.

Positive Indigenous relations can improve the bottom line. The Canadian Council for Indigenous Business has noted that companies participating in its Partnership Accreditation in Indigenous Relations (PAIR) program are better positioned to perform financially by achieving superior results in Indigenous relations and corporate social responsibility through improved risk management, increased operational stability, an enhanced reputation and a competitive edge that drives increased business opportunities.[137]

Speaking to the need to vet often misleading or inaccurate Indigenous relations communications, PAIR certification provides an oversight solution, as it is designed to assure investors that a company's performance in Indigenous relations has undergone a rigorous reporting process, evaluated by independent external verifiers and a jury of Indigenous business professionals, thereby validating performance and ensuring credibility. However, while certifications of this nature are a valuable option for companies and investors willing to participate in such programs, they are entirely voluntary and typically adopted by companies seeking a competitive advantage. Accordingly, the underlying problem remains that there is no regulator providing uniform or mandatory standards, guidelines or regulations to ensure credible Indigenous relations disclosure and reporting of material information across all corporate sectors.

Securities regulators may wish to study the PAIR program for the types of information required and for validation in developing guidance for credible disclosures and voluntary reporting such as RAPs and IRPs.



CASE STUDY

FIRST TELLURIUM CORP. (2023–PRESENT, BC)

Context: A “pro-FPIC” responsible mining company[138] in British Columbia, First Tellurium integrates Indigenous engagement and stewardship into its business strategy.[139] The company’s Small Mine and Phased Approach Strategy focuses on securing Indigenous support, including investment and employment[140] opportunities. Chairperson Tony Fogarassy champions obtaining free, prior and informed consent (FPIC) from First Nations before beginning mining activities, in line with the UN Declaration.[141] Understanding the impact of mining on Indigenous territories, First Tellurium also respects the governance rights and title of First Nations.[142]

First Tellurium’s partnership with Cheona Metals, the company’s first Indigenous partner, is described as “expand[ing] opportunities, open[ing] up mineral ground that most companies don’t have access to, and provid[ing] a vehicle for new beneficial partnerships.”[143] Its message to shareholders reinforces this strategic advantage: “Not only are you investing to find metal, you’re investing in Indigenous support, responsible mineral exploration, and environmental rehabilitation.”[144]

Consequences

- ***Operational, reputational, legal and financial risk mitigation:*** First Tellurium’s approach reflects a broader industry shift toward adopting the UN Declaration and FPIC as global standards in responsible mining practices.[145] This strategy lowers the company’s risk profile, reducing the likelihood of litigation over Indigenous rights violations, delays or project shutdowns, negative impacts on share price or investor sentiment, and divestment from lenders or insurers.
- ***Political and legal risk mitigation:*** Notably, BC’s mineral tenure regime was recently challenged in the *Gitxaała*[146] case, which found the gold rush–era mineral tenure regime was not meeting the constitutional duty to consult. The Supreme Court of British Columbia gave the Province 18 months to resolve the conflict.[147] First Tellurium’s business model demonstrates to investors its preparedness for a future UN Declaration–compliant framework[148] by following the advice of the Supreme Court of Canada in *Tsilhqot’in* and securing consent to avoid protracted legal battles. In contrast, other mining companies will now have to navigate the legal, operational and political risk of retroactively adjusting their operations to align with these shifting standards, while First Tellurium can take advantage of this as an opportunity to thrive in a changing regulatory landscape.

CASE STUDY

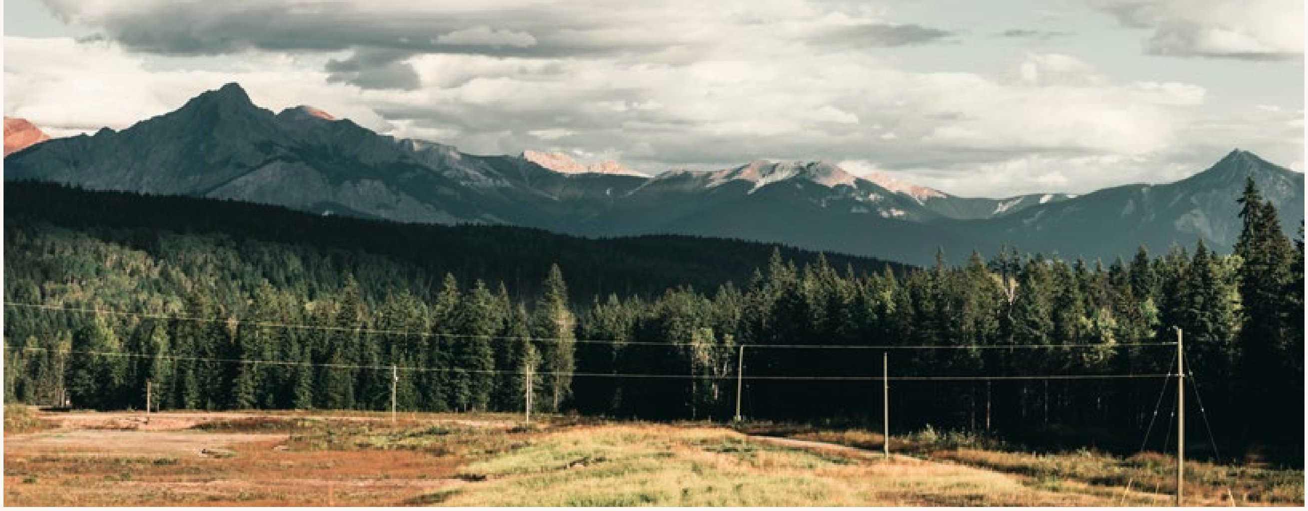
GITANYOW LAX'YIP LAND USE PLAN AND FORESTRY PARTNERSHIP (2012, BC)

Incident: In 2012, the Gitanyow Hereditary Chiefs and the Province of British Columbia agreed to the Gitanyow Lax'yip Land Use Plan (GLLUP), which was legalized through both Gitanyow Ayookxw (Indigenous law) and provincial law.

Consequences

- ***Legal risk mitigation:*** The agreement on the GLLUP created enhanced certainty for forestry operations in Gitanyow territory, which had previously been the subject of many years of legal proceedings. The case shows how respecting Indigenous Peoples' own laws can create favourable conditions for businesses to operate.
- ***Operational risk mitigation and certainty:*** Greg DeMille, manager of Skeena Sawmills Ltd. and Skeena Bioenergy, stated on the 10-year anniversary of the plan:

  Skeena Sawmills conducts forest management activities, including forest planning, road construction, timber harvesting and silviculture, within the Gitanyow Territory. In 2012, we endorsed the Gitanyow Lax'yip Land Use Plan ("GLLUP"), built in collaboration with the Gitanyow Huwilp. Implementing the GLLUP has been instrumental in fostering a trusting relationship with the Gitanyow and has provided certainty to the fibre supply requirements of Skeena Sawmills and Skeena Bioenergy's manufacturing facilities located in Terrace, BC.[149]



CASE STUDY

DECLARATION ACT CONSENT DECISION-MAKING AGREEMENT FOR ESKAY CREEK PROJECT (2022–PRESENT, BC)

Incident: In June 2022, the Tahltan Nation and the Government of British Columbia[150] reached a landmark agreement establishing a process for consent-based decision-making concerning a mine in northwestern British Columbia. Generally, Section 7 of the Declaration on the Rights of Indigenous Peoples Act permits decision-making agreements where an Indigenous governing body and the provincial government (or another decision-maker) can either exercise statutory decision-making power jointly or require the consent of the Indigenous governing body before exercising that statutory power[151] – such as before authorizing development projects that could affect Indigenous rights and territories.[152] The Declaration Act Consent Decision-Making Agreement for Eskay Creek Project was the first of its kind, setting out a process for the Tahltan to both participate in the provincial environmental assessment process and conduct its own risk assessment to determine whether it would consent to the project.[153] The Eskay Creek mine was approved by the BC government in January 2026 and was the first project to go through the regulatory process under a Section 7 agreement.[154]

Consequences

Projects receiving such consent can expect a significantly reduced risk profile:

- ***Legal risk mitigation:*** Seeking and receiving consent reduces litigation risk that often arises from proceeding without consent.
- ***Reputational risk mitigation:*** Projects face reduced reputational risk from boycotts or public backlash by demonstrating responsible, rights-respecting decision-making.
- ***Financial risk mitigation:*** This approach protects share value by avoiding Indigenous rights transgressions and mitigates financial impacts from community opposition, legal costs or project disruptions.
- ***Political risk mitigation:*** Decision-making aligns with the highest standard of Indigenous engagement – consent – and positions the project to comply with evolving policies, regulations and laws aligned with the UN Declaration and/or free, prior and informed consent.

UN Declaration–aligned securities laws

Beyond the examples highlighted throughout this paper of Indigenous and investor pressure prompting banks, insurers and companies to align with free, prior and informed consent and UN Declaration standards, it is equally important to recognize the broader socio-political, legal and international shifts reinforcing the expectation that companies uphold Indigenous rights and transparently disclose and report on their progress of aligning their operations and practices.

The onus is not only on companies but also on legislators and regulators to facilitate this. For instance, the Truth and Reconciliation Commission of Canada's Call to Action #92 urges companies to "adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources."[155]

Further, the *Declaration on the Rights of Indigenous Peoples Act*[156] creates a framework to bring all BC laws and regulations in line with the UN Declaration.[157] Presumably, this will eventually include the BC *Securities Act*.

Additionally, Article 19 of the UN Declaration calls on states to consult and cooperate in good faith with Indigenous Peoples through their own representative institutions to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. This speaks to the responsibility of securities commissions to ensure that any standards, guidelines and regulations developed around Indigenous relations reporting are co-developed with Indigenous Peoples.

Recommendation 5

Securities regulators should work with provincial governments on the process of aligning securities legislation and regulations with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration),[158] particularly in BC, where the *Declaration on the Rights of Indigenous Peoples Act* provides a framework to bring all legislation and regulations in line with the UN Declaration.

- Bring policies, standards, procedures, instruments and all administrative measures into alignment with UN Declaration (including Article 19) and applicable laws.
- This includes requiring issuers to disclose information regarding free, prior and informed consent (FPIC) where the UN Declaration calls for it. For example, Article 32 calls for FPIC prior to the approval of any project affecting Indigenous lands, territories or resources; securities commissions could therefore require issuers to disclose whether FPIC has been obtained.

Securities commissions across Canada can begin by implementing UN Declaration–compatible standards, policies and guidance to ensure credible disclosures on material Indigenous relations, rights and risks, supported by regulatory oversight that holds companies accountable to these standards. We also invite securities regulators to consider their role in consequently ensuring that such material information flows through to RAPs, IRPs and other standard or voluntary reporting, so investors and the public can trust corporate communications and not be vulnerable to material information gaps. Nationally, given existing securities requirements for issuers to provide “material” information to investors, the conditions are particularly favourable for securities regulators to ensure that this obligation is upheld across all corporate communications, as such information is equally critical to understanding a range of significant risks and opportunities relevant to investor decision-making. In this way, securities regulators can play a vital role in driving UN Declaration alignment across all corporate communications.

Parallels in climate disclosure trends

Corporate performance on Indigenous relations and rights[159] – including the environmental and climate impacts of operations on Indigenous territories[160] – is increasingly influencing investment value and business performance. As this trend continues to gain momentum, investors must be able to rely on the credibility of corporate communications, including RAPs and IRPs, to make informed investment decisions.

> "As global sustainability reporting frameworks continue to evolve, the intersection of Indigenous rights, environmental stewardship, and climate strategy will become a defining test of credibility. Issuers that do not address Indigenous Peoples' rights in their public reporting provide an incomplete view of operational resilience and legitimacy. Conversely, corporations that embed Indigenous rights within governance and decision-making processes demonstrate stronger long-term accountability, resilience, and respect for Indigenous rights. . . . Overall, [there is an] urgent need for more coherent, consistent, and rights-based disclosure frameworks."
>
> **— Raylene Whitford[161]**

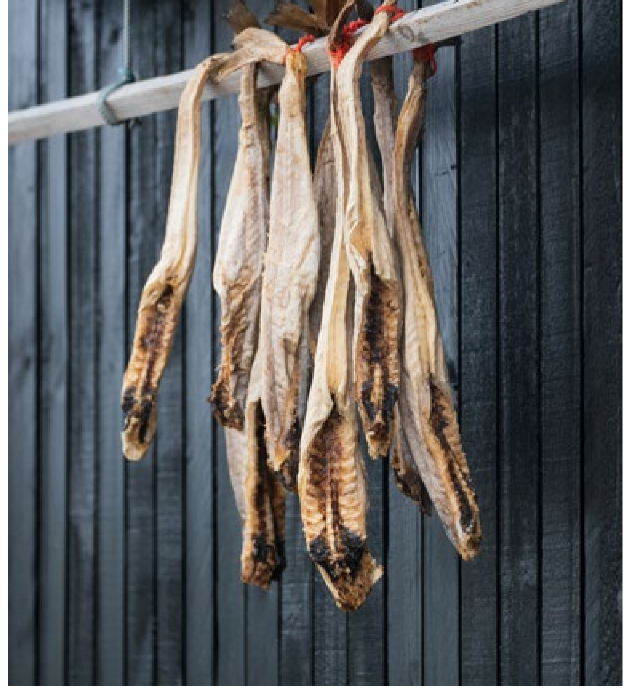
The need for strong and clear disclosure and reporting standards on Indigenous relations echoes shifts happening in the climate reporting arena, where there is a similar push to recognize climate disclosures as financially material.[162]

Although currently on pause, Canada has recently considered mandating climate disclosures. For example, in October 2024, the Department of Finance Canada announced its intention to implement mandatory climate-related financial disclosures for large, private companies by amending the *Canada Business Corporations Act*, following similar initiatives in California, the EU, the UK and New Zealand – all of which have introduced or are planning mandatory climate disclosure requirements.[163]

Climate-related financial disclosures provide information on a company's exposure to climate risks, how it is managing those risks, and its strategies for reducing its carbon footprint and adapting to potential climate-related disruptions.[164] Furthermore, the Canadian Securities Administrators (CSA) previously initiated efforts to finalize a mandatory climate change disclosure rule for Canadian issuers[165] that would consider standards issued by the Canadian Sustainability Standards Board (CSSB).[166] Although the CSA announced a pause in developing a new mandatory climate-related disclosure rule for Canadian issuers shortly after the US Securities and Exchange Commission withdrew support for its own climate disclosure rules, the CSA stated that it will continue to monitor domestic and international regulatory developments regarding climate-related disclosures and expects to revisit the project in the future to finalize requirements for issuers.[167]

Interestingly, the CSSB has adopted the International Financial Reporting Standards (IFRS), issued by the International Sustainability Standards Board, as the foundation for its own Canadian Sustainability Disclosure Standards (CSDS).[168] IFRS S1 (reflected in CSDS 1) sets global requirements for companies to voluntarily disclose material, investor-focused information about all sustainability-related risks and opportunities that could reasonably be expected to affect their prospects, cash flows, access to finance or cost of capital.[169] These disclosures must cover governance strategy, processes and performance metrics used to manage sustainability-related risks and opportunities.[170] It remains to be seen whether the CSA, which has stated that it will consider the CSSB's issued standards,[171] will integrate Indigenous relations reporting – as a material factor in sustainability-related risks and opportunities – into its mandatory climate change disclosure rule for Canadian issuers when the project is revisited.

In the EU, the 2023 Corporate Sustainability Reporting Directive (CSRD)[172] establishes corporate sustainability reporting requirements for companies with securities listed on EU-regulated markets, mandating them to "publish regular reports on the social and environmental risks they face" – including how climate change impacts their operations and how their business activities impact human rights, "people and the environment."[173] Beyond mere reporting, the Corporate Sustainability Due Diligence Directive – officially approved by EU member states on February 24, 2026 – is said to mark "a historic shift for corporate accountability" by requiring large multinational companies to "identify, prevent, and address human rights and environmental abuses throughout their global supply chains."[174] Although the EU's controversial Omnibus I recently removed the legal requirement for companies to adopt climate transition plans, experts stress that these plans remain important for risk management, are still required under the CSRD and remain mandatory in certain sectors – such as for financial institutions under other regulations.[175]



As climate reporting continues to evolve and becomes mandated in some areas, it is noteworthy that the climate risk assessment framework also offers a useful lens for understanding risks related to Indigenous rights. Climate risk reporting – as defined by the Task Force on Climate-related Financial Disclosures[176] and reiterated in IFRS S2[177] – often falls into two categories: **physical risks**, such as weather-related disruptions to assets and operations, and **transition risks**, which arise from the global policy shift toward a low-carbon economy – encompassing legal, regulatory, technological, market and reputational changes.[178]

Physical risks parallel the tangible impacts of Indigenous resistance to projects – such as protests, blockades or direct action – that can disrupt operations, supply chains and access to resources, much like severe weather events in the climate context. **Transition risks** are mirrored in the aforementioned evolving legal and policy landscape around Indigenous rights, especially with the adoption of instruments like the UN Declaration into federal and provincial legislation (e.g., Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*, BC's Declaration on the Rights of Indigenous Peoples Act). As jurisdictions increasingly require compliance with Indigenous rights frameworks, companies, governments and Crown corporations face growing financial, legal, reputational and operational risks when shifting from outdated practices (e.g., development without consent) to those aligned with new legal standards.

Similarly, in both climate and Indigenous relations contexts, companies that proactively disclose and address these risks – and transparently report to investors how they are managing them – can benefit from substantial opportunities available to those who proactively adapt and lead – securing investor trust; supporting long-term business viability; strengthening their resilience in rapidly changing markets; and unlocking opportunities in responsible, ESG-focused business.

The US Sustainable Investment Forum's recent investor guide *Sustainable Indigenous Finance: Navigating the Energy Transition* emphasizes that 72% of investors believe energy transition investments are accelerating, with 54% of related projects located on or near Indigenous territories.[179] The guide underscores the growing need for investors to be proactive and well equipped to manage the legal, social, environmental and reputational risks linked to both climate and Indigenous relations.[180] Moreover, it emphasizes the strategic importance of Indigenous inclusion as a critical part of financial materiality, performance, long-term value creation and systemic resilience.[181]

As pressure grows from responsible investors, Indigenous Peoples and the public for stronger corporate accountability – and as the material financial, operational, reputational, political and legal risks associated with violating Indigenous rights become better understood – increased regulatory scrutiny to ensure credible Indigenous relations communications, both within and beyond climate disclosure frameworks, should be on the horizon.

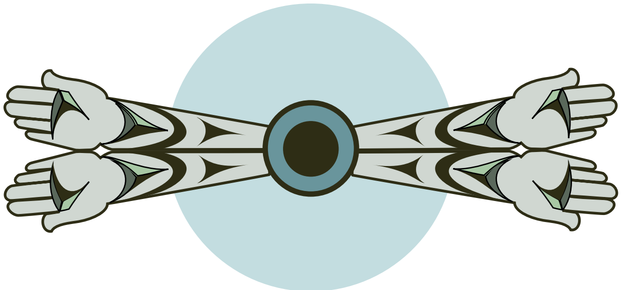
Just as climate-related disclosures can benefit from guidance and standards so that they are more consistent, comparable and reliable for investors, securities disclosures require clarification that Indigenous relations are often material and currently subject to disclosure. Additionally, RAPs and IRPs would benefit from similar baseline guidance and uniform standards to ensure material information credibly informs companies' plans to remedy Indigenous rights infringements in their operations and activities – a core pillar of reconciliation. Any standards or guidance developed by regulators should be done in concert with Indigenous Peoples who are also familiar with securities disclosures.

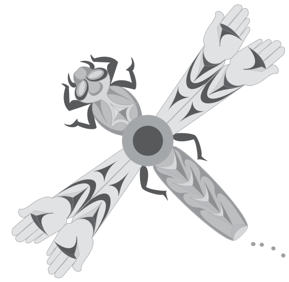
This does not require reinventing the wheel. The five risk categories set out previously are well established in corporate and climate reporting but have not been applied in a consistent manner to Indigenous rights. The First Nations Financial Management Board's comment letter on NI 43-101,[182] which sets out eight areas of mandatory reporting, provides a starting point.

Securities regulators have responded to gaps in material information and lack of consistency by prescribing new standards and disclosure reviews and by stressing existing disclosure requirements. Notably, in response to a gap in gender-diversity disclosures, NI 58-101 was introduced "to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions."[183] Several jurisdictions across Canada have since implemented NI 58-101 and require issuers to report annually on their board's gender diversity, their policies for nominating women, consideration of gender in appointments and any established targets or progress.[184] Following a "comply or explain" disclosure regime under Form 58-101F1,[185] companies must either have such policies or targets for women's representation or explain why they don't.[186]

Alternatively, in the realm of cybersecurity reporting, in 2017, *CSA Multilateral Staff Notice 51-347 – Disclosure of Cyber Security Risks and Incidents* was jointly published by Canadian Securities Administrators (CSA) members including the Ontario Securities Commission and the BC Securities Commission to explain how existing continuous disclosure requirements of material facts and changes apply to cybersecurity and emphasize that CSA members expect issuers, to the extent that they have determined that cybersecurity risk is a material risk, to provide risk disclosure that is as detailed and entity specific as possible.[187]

Similarly, when addressing gaps in Indigenous relations disclosures, securities commissions are well positioned, responsible and called upon to act. With a wide array of tools at their disposal, they are recommended to work with Indigenous Peoples to establish uniform expectations, standards and guidance for material disclosure – and potentially for material reporting – by issuers.





Conclusion

Indigenous relations are increasingly material to a company's financial performance, operational viability, investor decision-making and share valuation – either heightening risk exposure or creating strategic advantage.

Yet Indigenous relations have historically been under-disclosed and are generally not acknowledged as "material" until after conflicts become public and hindsight demonstrates their significant financial, operational and reputational weight.

Investors are increasingly interested in credible mandatory disclosures and voluntary reporting on a company's Indigenous relations. These tools help investors ensure alignment with Indigenous rights, accurately understand risks affecting their investments and be assured that a company has credible plans (e.g., in its RAP) to adjust its operations and activities to address those impacts, mitigate risks and leverage related opportunities.

Securities commissions can improve material gaps across corporate communications by issuing guidance on when and how this material information should be disclosed, in response to shifts in the reasonable investor. This is needed to clarify the materiality of Indigenous relations information – including any Indigenous rights transgressions, opposition and related risks – as well as the requirement to include such information in existing mandatory disclosures (or new dedicated or sector-specific tools like NI 43-101).

New guidelines, standards and regulatory oversight are also necessary for voluntary corporate reporting – co-developed with Indigenous Peoples – to ensure that material information flows consistently and comparably across all corporate communications.

Otherwise, these gaps in the suite of corporate communications will continue to allow companies to paint incomplete and misleading pictures, motivated by public relations.

As the case studies canvassed throughout this paper demonstrate, misleading Indigenous relations communications undermine public trust, hinder broader corporate–Indigenous economic reconciliation and leave companies vulnerable to the very risks they aim to avoid – without safeguards in place to prevent such reporting failures. In contrast, credible Indigenous relations disclosures and reporting can together showcase transparent impact and risk acknowledgement as well as prudent and intentional risk mitigation planning that can transform these pitfalls into opportunities for companies that align their operations and disclosures with UN Declaration standards and emerging ESG disclosure trends, while meaningfully advancing reconciliation.

While poor Indigenous relations often lead to costly delays, project shutdowns, lengthy legal battles and damaged share prices with grave financial, reputational and operational viability consequences, strong relations and communications can provide a clear competitive advantage and greater certainty. **Companies can no longer afford to ignore the material impact Indigenous relations have on business performance.**

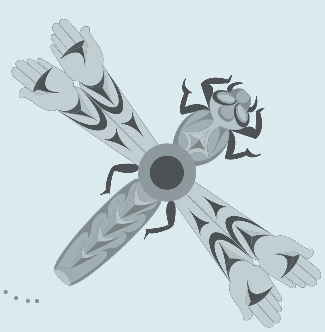
Standardizing Indigenous relations communications – which currently often fail to accurately disclose and report on Indigenous rights transgressions, opposition and associated risk factors – is a crucial first step toward building genuine corporate–Indigenous trust. The underlying principle – that credible Indigenous relations information, whether provided through mandatory disclosure mechanisms or voluntary RAPs, is a critical component of accurate corporate–financial communications – should guide securities regulators as they continue reforming corporate practices to build investor trust, foster meaningful reconciliation with Indigenous Peoples and uphold true accountability in Canadian capital markets.

While the growing number of IRPs, including RAPs, may appear to advance reconciliation by holding corporations accountable for their impact on the Indigenous Nations whose territories they operate on, they cannot achieve these goals without transparently acknowledging – and including plans to address – Indigenous rights transgressions and opposition to their operations. Without enforceable and uniform standards and guidelines co-developed with Indigenous Peoples, Indigenous relations communications, including RAPs, will remain symbolic gestures and performative tokens – gutting them of their pragmatic value. But with proper guidance, standards and oversight, they can become a blueprint for meaningful truth-telling, productive reconciliation and sound economic strategy.

As investors increasingly recognize the strategic value of robust Indigenous relations communications, it's time for regulators to enforce credible disclosures and consistent reporting of material information by providing clear guidance, policies and standards supported by robust oversight.

As more companies explore opportunities for UN Declaration–aligned operations to advance their business goals and securities regulators like the Ontario Securities Commission are turning their minds to the regulatory role they play in economic reconciliation, the trajectory is clear: credible and enforceable corporate-Indigenous communications are key to guiding capital markets forward.

The Union of BC Indian Chiefs and the Reconciliation and Responsible Investment Institute have engaged with Indigenous rightsholders, leaders, and issue experts to propose an Indigenous-led framework – including foundational elements, baseline expectations and good practices – for credible RAPs and IRPs. The third paper, *Baseline Expectations and Good Practices for the Development and Assessment of the Reconciliation Action Plans (RAPs) of Companies in British Columbia*, will be available at www.rrii.org and www.ubcic.bc.ca.



Endnotes

1 Molly Damiani & Joseph Bastien, *Reconciliation Action Plans in Canada: Origins, Issues and Opportunities*, Reconciliation and Responsible Investment Institute (29 September 2025), online: https://rrii.org/news-events/reconciliation-action-plans-in-canada-origins-issues-and-opportunities/ [RAPs in Canada].

2 An Indigenous Reporting Product is a document designed to share information and insight on a company's commitments, plans and operations and their real or potential impact on or intersection with Indigenous rights, title and interests. Examples include Indigenous relations policies, company statements and policies, Indigenous corporate disclosures, sustainability reporting and Reconciliation Action Plans.

3 Standard or mandatory securities filings in Canada filed on SEDAR+ may include management discussion and analysis, annual and quarterly financial statements, prospectuses, information circulars, material change reports, business acquisition reports, annual information forms and technical reports. In this paper, "disclosure" refers to mandatory filings of material information.

4 Voluntary corporate social responsibility or environmental, social and governance disclosures such as sustainability reports, Reconciliation Action Plans and other Indigenous Reporting Products. In this paper, we use "reporting" to refer to voluntary filings.

5 "Communications" in this paper includes both mandatory disclosures and voluntary reporting.

6 Ontario Securities Commission, *Action Plan for Truth and Reconciliation* (2025), online: https://www.osc.ca/en/news-events/reports-and-publications/action-plan-truth-and-reconciliation [OSC *APTR*].

7 United Nations, *Declaration on the Rights of Indigenous Peoples* (2007), art 19, online: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf [UN Declaration].

8 Shin Imai & Sarah-Grace Ross, *Social Disclosure and Share Value: Empirical Data on (Non-)Disclosure of Information Related to Violence and Lack of Indigenous* Consent: Submission to the Canadian Securities Administrators Consultation Regarding NI 43-401, Justice and Corporate Accountability Project (13 September 2022), online: https://justice-project.org/wp-content/uploads/2023/04/CSA-NI-43-401-consult-fin.pdf [Imai & Ross].

9 Reconciliation Action Plans (RAPs) are part of a broader suite of Indigenous Reporting Products (IRPs). The critiques and recommendations throughout this paper apply to all forms of Indigenous relations reporting – whether as distinct IRPs integrated within existing corporate disclosure mechanisms or as future frameworks that may offer better forums for adequately and comprehensively identifying, disclosing and addressing Indigenous relations risks and opportunities before shareholders.

10 RAPs in Canada, supra note 1.

11 In September 2024, the Union of British Columbia Indian Chiefs (UBCIC) unanimously adopted Resolution 2024-46 to examine Reconciliation Action Plans (RAPs) and other Indigenous Reporting Products in the interest of assessing their alignment with the *United Nations Declaration on the Rights of Indigenous Peoples*. The UBCIC Chiefs-in-Assembly acknowledged the current limitations of RAPs in Canada; the opportunity to ensure alignment with and adherence to free, prior and informed consent standards; and the need for improved institutional support and standards.

12 Molly Damiani, Joseph Bastien, Wenonah North Peigan, Eugene Kung & Joanna El-Mikati, *Guidelines and Baseline Expectations for the Development and Assessment of Corporate RAPs*, Reconciliation and Responsible Investment Institute & Union of British Columbia Indian Chiefs (May 2026). [*Baseline Expectations and Good Practices*].

13 Raylene Whitford, *Progress or Performance? Indigenous Rights in Corporate Disclosures: A Baseline of Issuers in the S&P/TSX Composite Index* (2026) [doctoral research report] at 14, online: https://static1.squarespace.com/static/6276ddc5519bd16f205d4fc5/t/69b5d58488bb4f694c3b076d/1773781043244/RWhitford_Progress+or+Performance.pdf [Whitford].

14 *Ibid* at 3.

15 Responsible Investment Association, "Indigenous Rights and Reconciliation Are Material: How Can Investors Support Due Diligence?" (17 November 2022), online: https://www.riacanada.ca/magazine/indigenous-rights-and-reconciliation-are-material-how-can-investors-support-due-diligence/ [RIA]; see also Whitford, *supra* note 13.

16 Jody Wilson-Raybould, "Speech to the Business Council of British Columbia, April 13, 2018" (20 September 2019), online: (UBC Library Open Collections) https://open.library.ubc.ca/cIRcle/collections/ubcpress/641/items/1.0380798.

17 **Free, prior and informed consent (FPIC):** The right of Indigenous Peoples to give, withhold and withdraw their consent to projects that may affect their lands, territories, resources, cultures or rights. "Free" means consent is given voluntarily, without coercion, intimidation or manipulation. "Prior" means consent is sought well in advance of any authorization or commencement of activities, with adequate time for Indigenous decision-making processes. "Informed" means all relevant information – on the nature, scope, purpose and potential impacts of a proposal – is shared in a culturally appropriate, accessible and transparent way. FPIC is not merely a process of consultation – it is a substantive right grounded in Indigenous Peoples' inherent rights to self-determination, participation in decision-making and control over their traditional lands and ways of life. It is affirmed throughout the UN Declaration, *supra* note 7, arts 10, 11, 19, 28, 29 and 32.

18 RIA, *supra* note 15.

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

26 Whitford, *supra* note 13 at 16.

27 *Ibid* at 17.

28 RIA, *supra* note 15.

29 Emil Sirén Gualinga, *Respecting Indigenous Rights: An Actionable Due Diligence Toolkit for Institutional Investors* (Amazon Watch & SIRGE Coalition, April 2023) at 9, online: https://respectingindigenousrights.org/.

30 The duty to consult First Nations lies with the federal and provincial governments. Private companies do not have an independent duty to consult, but the government can and does delegate certain procedural aspects of consultation to third parties, including regulatory bodies. As a result, a prudent company will both engage in consultation and evaluate the status of government consultation and regulatory processes. See *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41; and *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40.

31 Bill Gallagher, "300 Legal Wins", (30 July 2020), online (blog): https://billgallagher.ca/300-legal-wins/.

32 *Tsilhqot'in Nation British Columbia*, 2014 SCC 44, [2014] 2 SCR 256 at para 97.

33 RIA, *supra* note 15.

34 *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, online: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044 [DRIPA].

35 *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, online: https://laws-lois.justice.gc.ca/eng/acts/u-2.2/ [UNDA].

36 Office of the United Nations High Commissioner for Human Rights, "Mandatory Human Rights Due Diligence (mHRDD)", online: https://www.ohchr.org/en/special-procedures/wg-business/mandatory-human-rights-due-diligence-mhrdd.

37 Mychaylo Prystupa, "How Harper triggered a First Nations legal war over Northern Gateway", *National Observer* (1 October 2015), online: https://www.nationalobserver.com/2015/10/01/news/how-harper-triggered-first-nations-legal-war-over-northern-gateway.

38 *Gitxaała Nation v Canada*, 2016 FCA 187, online: https://www.canlii.org/en/ca/fca/doc/2016/2016fca187/2016fca187.html.

39 *Ibid* at para 230.

40 Mark Hume, "Pipeline will spur massive demonstrations, opponents warn", *The Globe and Mail* (19 December 2013), online: https://www.theglobeandmail.com/news/british-columbia/pipeline-will-spur-massive-demonstrations-opponents-warn/article16064945/.

41 West Coast Environmental Law, "Freedom Train 2012: Taking Enbridge Opposition Canada-Wide" (16 May 2012), online (blog): https://www.wcel.org/blog/freedom-train-2012-taking-enbridge-opposition-canada-wide.

42 National Energy Board, Considerations: *Report of the Joint Review Panel for the Enbridge Northern Gateway Project*, vol 2 (2013) at 369, online: https://publications.gc.ca/collections/collection_2014/one-neb/NE23-176-2013-1-eng.pdf.

43 *Canadian Press, "Enbridge gets $14.7M federal refund over Northern Gateway pipeline project", CBC News (27 December 2018),* online: https://www.cbc.ca/news/canada/calgary/enbridge-federal-refund-northern-gateway-oil-pipeline-project-1.4959946.

44 *Judith Lavoie, "Enbridge depiction of clear tanker route sparks outrage", CTV News Vancouver* (15 August 2012), online: https://www.ctvnews.ca/vancouver/article/enbridge-depiction-of-clear-tanker-route-sparks-outrage/.

45 US Environmental Protection Agency, "EPA response to Enbridge spill in Michigan" (last updated 9 March 2026), online: https://www.epa.gov/enbridge-spill-michigan.

46 *Oil Tanker Moratorium Act*, SC 2019, c 26, online: https://laws-lois.justice.gc.ca/eng/annualstatutes/2019_26/FullText.html.

47 *RAPs in Canada*, *supra* note 10.

48 *Delgamuukwv British Columbia*, [1997] 3 SCR 1010, at paras 12 and 70, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1569/index.do. First Nations band councils are a creation of the *Indian Act*, while traditional forms of Indigenous governance continue to exist in many Indigenous communities. Under the *Indian Act*, the band council's jurisdiction is limited to the reserve lands, while traditional governance, such as the Wet'suwet'en hereditary system, governs the traditional territory, with each house and clan responsible for certain areas. See paras 12 and 70 of *Delgamuukw*.

49 Coastal GasLink, "CGL Announces Commercial In-Service" (19 November 2024) [news release], online: https://www.coastalgaslink.com/whats-new/news-stories/2024/2024-11-19-cgl-announces-commercial-in-service/.

50 TC Energy, "TC Energy Provides Coastal GasLink Project Update" (1 February 2023) [news release], online: https://www.tcenergy.com/announcements/2023-02-01-tc-energy-provides-coastal-gaslink-project-update/.

51 TC Energy, "Shareholder Information", online: https://www.tcenergy.com/investors/stock-information/.

52 No More Dirty Banks, "Celebrity Signatories", online: https://www.nomoredirtybanks.com/signatories.

53 Andrew Kurjata, "Why Coastal GasLink says it rejected a pipeline route endorsed by Wet'suwet'en hereditary chiefs", *CBC News* (16 February 2020), online: https://www.cbc.ca/news/canada/british-columbia/wetsuweten-coastal-gaslink-pipeline-alternative-path-1.5464945.

54 TC Energy Corporation, *2019 Annual Information Form* (12 February 2020), online: https://www.sedarplus.ca/csa-party/recordsdocument.html?id=5023aadab4c588296f131d4a3845ae53db39ed85c9ecde9158d927bee8655c86.

55 TC Energy, "Management's Discussion and Analysis" *in Quarterly Report to Shareholders: Second Quarter 2020*, (29 July 2020), online: https://www.sedarplus.ca/csa-party/records/document.html?id=c60c12d0e4ead2fd4aacc459be5bccbc3e2d7c946072308781a831d4271aae3b.

56 TC Energy, *Annual Report* 2020, online: https://www.sedarplus.ca/csa-party/records/document.html?id=0bc42eaa6b6e1caf5e85557b7b5c34c308afc3e264fb8f63dd900149bb0ade94.

57 TC Energy, *Reconciliation Action Plan* (March 2021), online: https://www.tcenergy.com/siteassets/pdfs/sustainability/indigenous/journey-towards-reconciliation/tc-energy-reconciliation-action-plan-march-2021.pdf.

58 TC Energy, *Reconciliation Action Plan Update* (November 2022), online: https://www.tcenergy.com/siteassets/pdfs/sustainability/indigenous/journey-towards-reconciliation/tce-energy-reconciliation-action-plan-november-2022.pdf.

59 First Peoples Worldwide, *Indigenous Peoples' Rights and Participation in 2023 AGM Proposals* (26 October 2023), online: https://static1.squarespace.com/static/67228f0f7192a401a75ff94a/t/67837bec5328db2ff741b0db/1736670189535/Indigenous+Peoples+and+the+2023+AGM+Season.pdf; First Peoples Worldwide, *Indigenous Peoples' Rights and Participation in 2024 AGM Proposals* (25 November 2024), online: https://static1.squarespace.com/static/67228f0f7192a401a75ff94a/t/67837c6efb1eef6d35a2d8f3/1736670319083/Indigenous+Peoples+and+the+2024+AGM+Season.pdf.

60 *Ibid*.

61 Citigroup Inc., *Respecting the Rights of Indigenous Peoples* (April 2024) at 7, online: https://www.citigroup.com/rcs/citigpa/storage/public/2023-Respecting-Rights-Indigenous-Peoples-Report.pdf.

62 *Ibid* at 7.

63 Dominic Webb & Gina Gambetta, "Citi Publishes Indigenous Rights Report in Bid to Stave Off Shareholder Resolution", Responsible Investor (11 April 2024), online: https://www.responsible-investor.com/citi-publishes-indigenous-rights-report-in-bid-to-stave-off-shareholder-resolution/.

64 Union of British Columbia Indian Chiefs, "Investor Engagement Yields Major Changes to Indigenous Rights at Canada's Largest Bank" (7 March 2024) [news release], online: https://www.ubcic.bc.ca/investor_engagement_yields_major_changes_to_indigenous_rights_at_canadas_largest_bank.

65 SHARE, "Press Release: TMX Group Limited Shareholders Vote in Favour of Company-Supported Shareholder Proposal on Indigenous Inclusion" (12 May 2021) [news release], online: https://share.ca/blog/press-release-tmx-vote-reconcilation/.

66 BC Securities Commission, "About", online: https://www.bcsc.bc.ca/about.

67 *Ibid.*

68 OSC *APTR*, *supra* note 6.

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Securities Act*, RSBC 1996, c 418, online: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96418_01 [BCSA].

73 *Ibid*, s 63(2).

74 *Ibid*, s 1.

75 BC Securities Commission, Form 51-102F1, Management's *Discussion & Analysis* (30 June 2015), online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Poliies/Policy5/51102F1-F-June-30-2015pdf.

76 *Ibid.*

77 *Ibid.*

78 BC Securities Commission, Form 51-103F1, *Annual and Mid-Year Reports* (29 July 2011), online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy5/51103F1_FProposed.pdf [NI 51-103F1].

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 BCSA, *supra* note 72, s 85.

83 *Ibid*, s 1.

84 BC Securities Commission, National Policy 51-201, *Disclosure Standards* (31 May 2013), online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy5/51201_NP.pdf.

85 *Ibid.*

86 *Ibid.*

87 *Ibid.*

88 *Lundin Mining Corp. v Markowich*, 2025 SCC 39 at para 35, online: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/21294/index.do.

89 *Ibid*, at para 36.

90 *Ibid*, at para 37.

91 See the TC Energy Coastal GasLink Pipeline case study on page 20.

92 *Sharbern Holding Inc. v Vancouver Airport Centre Ltd.*, 2011 SCC 23, [2011] 2 SCR 175 at para 43, online: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/7937/index.do.

93 OSC *APTR*, *supra* note 6.

94 Indigenous Services Canada, "Economic Reconciliation Roundtable I: What We Heard" (last modified 22 July 2024), online: https://www.sac-isc.gc.ca/eng/1712932096213/1712932133185.

95 Globe content studio, "*The $100-billion economic engine: How Indigenous entrepreneurs are powering Canada's economy*", The Globe and Mail (12 May 2025), online: https://www.theglobeandmail.com/business/adv/article-the-100-billion-economic-engine-how-indigenous-entrepreneurs-are/.

96 *Ibid.*

97 David Kreitmeir, Nathan Lane & Paul Raschky, *The Value of Names: Civil Society, Information, and Governing Multinationals* (Rochester, NY: SSRN Wharton Research Data Services Research Paper Series, 24 December 2020), online: https://ssrn.com/abstract=3751162.

98 Imai & Ross, *supra* note 8.

99 *Ibid.*

100 *Ibid.*

101 *Ibid.*

102 *Ibid.*

103 Erika Piquero, "Most Canadian Mining Companies Are Lagging When It Comes to Human Rights Reporting. Here's Why", Shift Project (January 2019), online: https://shiftproject.org/most-canadian-mining-companies-are-lagging-when-it-comes-to-human-rights-reporting-heres-why/.

104 Shin Imai & Sarah Colgrove, "Investors are increasingly shunning mining companies that violate human rights", *The Conversation* (22 February 2021), online: https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702.

105 *Ibid.*

106 Form 51-103F1, *supra* note 78.

107 Imai & Ross, *supra* note 8 at 10, citing *BNN Bloomberg*, "Tahoe CEO: Sure I love silver but I'm making $1B bet on gold", (9 February 2015), online: https://perma.cc/4L9F-7HU4.

108 MiningWatch Canada, "Securities Commissions Asked to Investigate Ahead of January 8 Tahoe/Pan American Silver Merger" (3 January 2019), online (blog): https://miningwatch.ca/news/2019/1/3/securities-commissions-asked-investigate-ahead-january-8-tahoe-pan-american-silver.

109 CFM Lawyers LLP, "Guatemalan Protesters Reach Landmark Conclusion to Lawsuit against Canadian Mining Company" (30 July 2019) [news release], online: https://www.newswire.ca/news-releases/guatemalan-protestors-reach-landmark-conclusion-to-lawsuit-against-canadian-mining-company-855276548.html.

110 Scott Kerwin, "Analysis of *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation* Case", MiningWatch Canada (15 September 2006), online (blog): https://miningwatch.ca/blog/2006/9/15/analysis-platinex-inc-v-kitchenuhmaykoosib-inninuwug-first-nation-case.

111 *Ibid.*

112 *Platinex Inc. v Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CanLII 26171 (ON SC) https://www.canlii.org/en/on/onsc/doc/2006/2006canlii26171/2006canlii26171.html [*Platinex v KIFN*].

113 Platinex Inc., Form 51-102F3, *Material Change Report*, (31 May 2006), online: https://www.sedarplus.ca/csa-party/records/document.html?id=1e1811d8c157d7779ecb84fa048137db506b4fcef7f12ee6e1312a33ae0b1b2a.

114 R.J. Burnside & Associates Limited, *2006 Qualifying Report: Big Trout Lake Exploration Property*, Platinex Inc. (24 November 2006) online: https://www.sedarplus.ca/csa-party/records/document.html?id=f2e139148fd647df918ef7ff5d0b2e087904008ea92bbb73e15c14d6aea1e818.

115 Ontario Ministry of Energy, Northern Development and Mines, "Correction: Ontario Resolves Litigation Dispute Over Big Trout Lake Property", (14 December 2009) [news release], online: https://news.ontario.ca/en/release/10327/correction-ontario-resolves-litigation-dispute-over-big-trout-lake-property.

116 *Platinex v KIFN*, *supra* note 112 at para 122.

117 Platinex Inc., "Platinex Announces Update on Big Trout Lake Platinum-Palladium Royalty" (23 January 2020) [news release], online: https://www.sedarplus.ca/csa-party/records/document.html?id=41933f8d04c48ef2894af861b6704b3917d46091be1726f3de76cf7f26cb42ff.

118 Canadian Securities Administrators, *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects [CSA Consultation Paper]* (14 April 2022), online: https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/4-distribution-requirements/current/43-401/43401-csa-consultation-paper-april-14-2022.

119 First Nations Financial Management Board, Re: CSA Consultation Paper 43-101, *Consultation on National Instrument 43-101, Standards of Disclosure for Mineral Projects* (12 September 2022) [letter], online: https://fnfmb.com/sites/default/files/2022-09/2022-09-11_-_fmb_submission_on_csa_consultation_paper_43-101_final.pdf [FNFMB letter].

120 *Ibid* at 3.

121 *Ibid* at 8.

122 *Ibid* at 12.

123 Canadian Securities Administrators, "Annex A: Text of Proposed CSA Notice" in *CSA Notice and Request for Comment, Proposed Repeal and Replacement of National Instrument 43-101 Standards of Disclosure for Mineral Projects* (13 February 2025), online: https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/BCN/Text-of-proposed-CSA-Notice--Annex-A-February-13-2025.pdf.

124 *Baseline Expectations and Good Practices*, *supra* note 12.

125 Whitford, *supra* note 13 at 10.

126 *Ibid* at 6.

127 *Ibid* at 10.

128 *Ibid* at 6.

129 Canadian Securities Administrators, *Guidance Regarding the Application of Forward-Looking Information Requirements Under National Instrument 51-102 Continuous Disclosure Obligations [CSA Staff Notice]* (20 November 2009), online: https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/5-ongoing-requirements-for-issuers-insiders/current/51-330/51330-guidance-regarding-the-application-of-forwardlooking-information-requirements-under-national-instrument-51102-continuous-disclosure-obligations-csa-staff-notice.

130 *Ibid.*

131 Carla F. Fredericks, Mark Meaney, Nicholas Pelosi & Kate R. Finn, *Social Cost and Material Loss: The Dakota Access Pipeline*, First Peoples Worldwide, (November 2018), online: https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf.

132 *Ibid.*

133 Foley Hoag LLP, Good Practices"Public Summary of Foley Hoag LLP Report, Good Practice for Managing the Social Impacts of Oil Pipelines in the United States" (May 2017), online: https://foleyhoag.com/news-and-insights/publications/ebooks-and-white-papers/2017/may/good_practices_social_impacts_oil_pipelines_united_states/.

134 Dayna Nadine Scott & David Peerla, "Are Mining Companies Hiding Indigenous Opposition?", Corporate Knights (27 September 2021) online: https://www.corporateknights.com/responsible-investing/are-mining-companies-hiding-indigenous-opposition/.

135 *Ibid.*

136 *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319, online: https://www.canlii.org/en/ca/fct/doc/2025/2025fc319/2025fc319.html.

137 Canadian Council for Indigenous Business, "Partnership Accreditation in Indigenous Relations (PAIR)", online: https://www.ccib.ca/pair/ [CCIB].

138 Lisa C. Fong, "Podcast! Gitxaała Nation's Challenge from the Perspective of a Pro-FPIC Miner", Ng Ariss Fong, Lawyers (22 March 2023), online: https://www.ngariss.com/our-in-dispute-posts/podcast-gitxaala-nations-challenge-from-the-perspective-of-a-pro-fpic-miner/ [Fong].

139 First Tellurium Corp., "Responsible Mining through Indigenous Engagement and Stewardship in British Columbia" (1 October 2023), online: https://firsttellurium.com/article/responsible-mining-through-indigenous-engagement-and-stewardship-in-british-columbia/.

140 First Tellurium Corp., "About Us", online: https://firsttellurium.com/corporate/#about.

141 Fong, *supra* note 138.

142 *Ibid.*

143 First Tellurium Corp., "Community", online: https://web.archive.org/web/20240520003735/https://firsttellurium.com/community/.

144 *Ibid.*

145 Fong, *supra* note 138.

146 *Gitxaała v British Columbia (Chief Gold Commissioner),* 2023 BCSC 1680, online: https://www.canlii.org/en/bc/bcsc/doc/2023/2023bcsc1680/2023bcsc1680.html.

147 *Ibid.*

148 Joanna El-Mikati, "Gitxaała and Ehattesaht Back in Court: Exploring the Legal Enforceability of DRIPA", West Coast Environmental Law (3 February 2025), online: https://www.wcel.org/blog/gitxaala-ehattesaht-legal-enforceability-dripa.

149 Gitanyow Hereditary Chiefs, *Celebrating 10 Years: Sustainable Development, Gwelx ye'enst & Leading-Edge Land Use Planning* (22 September 2022), online: https://www.gitanyowchiefs.ca/wp-content/uploads/2023/08/2022_09_Tenth_Anniversary_digital.pdf.

150 Kate Gunn, "Consent, Indigenous Rights and the Tahltan Agreement", First Peoples Law (6 July 2022), online (blog): https://www.firstpeopleslaw.com/public-education/blog/tahltan-agreement [Gunn].

151 DRIPA, *supra* note 34, s 7.

152 Gunn, *supra* note 150.

153 *Ibid.*

154 BC Ministry of Mining and Critical Minerals & Tahltan Central Government, "Province Approves Eskay Creek Mine, First *Declaration Act* Section 7 Agreement", BC Gov News (27 January 2026) [news release], online: https://news.gov.bc.ca/releases/2026MCM0008-000078.

155 National Centre for Truth and Reconciliation, "Truth and Reconciliation Commission of Canada: Calls to Action", online: https://nctr.ca/about/history-of-the-trc/truth-and-reconciliation-commission-of-canada-calls-to-action/.

156 DRIPA, *supra* note 34.

157 UN Declaration, *supra* note 7.

158 *Ibid.*

159 Partnership Accreditation in Indigenous Relations includes a certification program that confirms corporate performance in Indigenous relations at the Bronze, Silver or Gold level. See CCIB, *supra* note 137.

160 There is a growing push from Indigenous Peoples to mandate Indigenous relations reporting within the climate disclosure framework. In a comment letter on the Canadian Securities Administrators' proposed National Instrument 51-107, the First Nations Financial Management Board argued that: (1) greenhouse gas (GHG) emissions and prospective GHG emissions reporting will affect Indigenous Peoples and their rights disproportionately compared with the mainstream economy and (2) in developing the National Instrument, the Canadian Securities Administrators are required to cooperate and consult with Indigenous Peoples in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*. First Nations Financial Management Board, *"FMB Comment Letter to Canadian Securities Administrators (CSA) Proposed National Instrument 51-107"* (17 March 2022), online: https://fnfmb.com/en/leadership/submissions/fmb-comment-letter-csa-proposed-national-instrument-51-107. See also Sustainability Directory, "Why Are Indigenous Rights Relevant to ESG?", online: https://esg.sustainability-directory.com/question/why-are-indigenous-rights-relevant-to-esg/.

161 Whitford, *supra* note 13.

162 Amanda Carter, "Corporate Climate Disclosure Has Passed a Tipping Point. Companies Need to Catch Up", World Resources Institute (6 May 2024), online: https://www.wri.org/insights/tipping-point-for-corporate-climate-disclosure.

163 Axxima, "Climate Disclosures: How They Will Affect Your Business" (11 March 2025), online (blog): https://www.axxima.ca/blog/climate-disclosures-in-canada-how-to-get-prepared/.

164 *Ibid.*

165 David Forrester et al., "CSA's Climate Disclosure Rule on Hold: An Update on Climate Disclosure in Canada and the U.S.", Torys LLP (30 April 2025), online: https://www.torys.com/our-latest-thinking/publications/2025/04/csa-climate-disclosure-rule-on-hold.

166 CPA Ontario, "Canadian Sustainability Disclosure Standards", online: https://www.cpaontario.ca/sustainability/sustainability-reporting-standards/csds-sustainability-reporting-standards [CPA Ontario].

167 Canadian Securities Administrators, "CSA Updates Market on Approach to Climate-Related and Diversity-Related Disclosure Projects" (23 April 2025) [news release], online: https://www.securities-administrators.ca/news/csa-updates-market-on-approach-to-climate-related-and-diversity-related-disclosure-projects/.

168 Financial Reporting and Assurance Standards Canada, "Adoption of CSDS 1 and CSDS 2 based on IFRS S1 and IFRS S2", online: https://www.frascanada.ca/en/sustainability/projects/adoption-csds1-csds2.

169 International Financial Reporting Standards Foundation, *IFRS S1 General Requirements for Disclosure of Sustainability-Related Financial Information*, online: https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s1-general-requirements/.

170 *Ibid.*

171 CPA Ontario, *supra* note 166.

172 European Commission, "Corporate Sustainability Reporting" (9 December 2025),, online: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.

173 *Ibid.*

174 Nele Meyer, "Press Release: EU Green Lights Watered Down Corporate Sustainability Due Diligence Law", European Coalition for Corporate Justice (24 February 2026) [news release], online: https://corporatejustice.org/news/press-release-eu-green-lights-watered-down-corporate-sustainability-due-diligence-law/; European Commission, "Corporate Sustainability Due Diligence", online: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en.

175 Moriah Costa, "What Happens to Climate Transition Plans in the Wake of the EU Omnibus?", Green Central Banking (25 February 2026), online: https://greencentralbanking.com/2026/02/25/climate-transition-plans-eu-omnibus/.

176 Financial Stability Board, "Task Force on Climate-related Financial Disclosures", online: https://www.fsb-tcfd.org/.

177 International Financial Reporting Standards Foundation, "Introduction to the ISSB and IFRS Sustainability Disclosure Standards", online: https://www.ifrs.org/sustainability/knowledge-hub/introduction-to-issb-and-ifrs-sustainability-disclosure-standards/.

178 Canada Climate Law Initiative, "Micro-Certificate Program: Climate Risk and ESG for Corporate Governance and Decision-Making", online: https://ccli.ubc.ca/what-we-do/online-micro-certificate-course-climate-governance/.

179 US Sustainable Investment Forum, First Peoples Worldwide & ImpactARC, *Sustainable Indigenous Finance: Navigating the Energy Transition* (13 October 2025), online: https://www.ussif.org/research/research-and-publications/sustainable-indigenous-finance-investor-guide.

180 *Ibid*.

181 *Ibid*.

182 FNFMB letter, *supra* note 119.

183 Canadian Securities Administrators, CSA Multilateral Staff Notice 58-307, *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* (28 September` 2015), online: https://www.osc.ca/en/securities-law/instruments-rules-policies/5/58-307/csa-multilateral-staff-notice-58-307-staff-review-women-boards-and-executive-officer-positions; BC Securities Commission, National Instrument 58-101, *Disclosure of Corporate Governance Practices* (31 December 2016), online: https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-5/58101-NI-September-19-2025.pdf [NI 58-101].

184 Canadian Securities Administrators, CSA Multilateral Staff Notice 58-317, *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions: Year 10 Report* (30 October 2024), online: https://www.osc.ca/sites/default/files/2024-10/csa_20241030_58-317_women-on-boards-year-10_0.pdf.

185 NI 58-101, *supra* note 183.

186 CSA Multilateral Staff Notice 58-317, *supra* note 184.

187 CSA Multilateral Staff Notice 51-347, *Disclosure of Cyber Security Risks and Incidents* (19 Jan 2017), online: OSC https://www.osc.ca/sites/default/files/pdfs/irps/20170119_51-347_disclosure-cyber-security.pdf.

Union of
British Columbia
Indian Chiefs

www.ubcic.bc.ca

West Coast
Environmental Law

www.wcel.org