

Business in the News: Ethics & Corporate Social Responsibility COMM 390 Business Writing

BC FIRST NATIONS & ALTERNATIVE ENERGY PROJECTS



The Wind Energy Project: Your company, Windy Power Inc., would like to build a large turbine wind energy development project somewhere in a remote location in BC. They figure this way there will be less opposition even though the transmission lines will be longer.

Windy is a Canadian energy company focused on bringing sustainable renewable energy projects to market. Windy is motivated to bring clean energy to communities and create profits for its shareholders.

Management has identified several geographic regions they are interested in, but they now need to consider the nations that have jurisdiction over those territories. They have asked you to research the nation with jurisdiction over one of the 12 locations:

1. *Hesquiaht First Nation*, one of the Nuu-chah-nulth Nations on the west coast of Vancouver Island
2. *Tsawout First Nation* in Saanich near Victoria (part of the Douglas Treaties)
3. *shíshálh Nation* near Sechelt
4. *Klahoose First Nation* north of Powell River
5. *Metlakatla First Nation* on the northern coast of BC;
6. *Taku River Tlingit First Nation* in north western BC
7. *Kitselas First Nation* near Terrace
8. *Stellat'en First Nation* west of Prince George in central BC
9. *Tshilqot'in First Nation* in central BC
10. *Fort Nelson First Nation* (part of Treaty 8)
11. *Yaqaṇ Nukiy* (Lower Kootenay) First Nation in south western BC
12. *Splatsin First Nation* part of the Shuswap Nation, near Enderby

The executive team has never dealt directly with any of the six First Nations in question before, so are looking to you to prepare them appropriately before they begin a consultation process. They also know that the recent Supreme Court Decision, commonly known as the “William Decision,” acknowledges that the nations have more control over their traditional territories than many people thought they had, so they want you to identify what they might mean for WINDY’s projects. Assume your title is, *Research & Business Development Coordinator*, working as a full time employee with the company.

The executive team know that each nation receives many requests for development projects so they need to start on the right foot if they have any hope of building a successful partnership. They have asked you to write a briefing paper that outlines what the team should know about the history of the nation, relevant current events, possible approaches to gaining their cooperation and approval, and important cultural sensitivities.

Assume that the engineers in your company did a Feasibility Study to determine the geographic suitability of each nation in question. Assume that a student intern did a *Community Assessment Report* to learn facts about the community. Now you, the *Research & Business Development Coordinator*, are identifying the steps needed to build a good relationship. You are providing guidance to your management so they can build a strong relationship with the nation and its leadership, and that will result in a successful business partnership.

IMPORTANT: The report should be fact based and as objective as possible. Refrain from value judgements or recommendations such as, “they should diversify the economy,” these are assessments that would be made by management.

Don’t presume to know the nations values and priorities. Let them tell the company as part of the process. In your report, you should have direct quotes from the chief or other members of the nation so that you are not speaking for them.

NOTE: You may not contact any nation directly, but must rely on information publicly available. Also, please do not use the nation’s logo as this is not a project sanctioned by that nation.

DELIVERABLE: Write a briefing paper to Windy's Director of Development, Samantha Bara, discussing the one nation you researched. In this paper you will not include the *Community Assessment Report*, however, you will do the following:

- Identify any important historical or current issues the team should know before attempting to build a relationship with the nation. This might include a significant historical event (e.g. a Supreme Court ruling, land claim or mega-project in which the nation is directly involved) or relevant current events. Also consider if they have a history of litigation or cooperation with government and business.
- Articulate a process Windy should expect to follow in order to be successful in proposing a collaboration with the nation in question. What research should they do before they contact anyone? Whom should they contact? (title, name, etc.) What are the steps necessary to take before a project can even begin? (E.g. phone calls, meetings, LOI) Include possible approaches to gaining their cooperation and approval, as well as any information on a typical approval process for this nation, if available.
- Consider key issues with respect to cultural sensitivity awareness and building trust. What kind of language do we want to use or avoid? Explain. How do we communicate that we would like to engage in a process that is unique and sincere, collaborative and iterative?
- Identify the type of projects the nation tends to favour. Does Windy's project complement existing projects?
- Include a paragraph or section briefly outlining compensation the nation might be seeking, both monetary and otherwise. (Note: Do not suggest building a school or other infrastructure. If the community needs a school, they will build it themselves.)
- Provide a brief summary of *Best Practices* for engaging with First Nations communities on land management projects (see *Best Practices for Consultation and Accommodation* prepared by MNP, not the document prepared by the Province which was done without consultation). Assume that title is not in question. This, as with the rest of your report, must be written *in your own words*. You may paraphrase but you must not plagiarise.
- Make a recommendation about the suitability of the nation you researched to pursue a partnership with Windy and provide an explanation for your decision. Among other things you will consider governance structure, economic priorities and economic need. (Note: *The Community Assessment assignment helps in answering this question, but you are not including the report itself.*)
- The report should be formatted as a proper business report (similar to the *Community Assessment Report*). Include an introduction and a conclusion to your Briefing Paper as well as title page and Table of Contents. Label all maps, photos and figures.
- Include a bibliography using APA style formatting. Use APA style **in text citations** for all direct quotes, facts and ideas from other sources.

FORMAT: Maximum 2000 words. Do *not* submit a pdf, even if the formatting is slightly disrupted when you view it in turnitin, it is restored when it is downloaded. I am able to provide better feedback on a Word document.

PEER EVALUATIONS: A complete draft for peer evaluation is worth 10% of your total for this assignment, part marks are not granted. If you are not going to complete a proper draft or provide robust evaluations then do not submit any draft; you will be penalized the 10%. (The final paper is marked out of 30, the peer evaluation is marked out of 3 for a total of 33 marks.) The whole assignment is worth 25% of your grade.

SUBMISSION:

Draft for Peer Evaluation: Sunday February 21, 11:59pm via Turnitin (for marks)
→ LATES WILL NOT BE ACCEPTED

Peer Evaluations Returned: Tuesday, February 23, 11:59pm via Turnitin
→ LATES WILL NOT BE ACCEPTED

FINAL DRAFT: Sunday, February 28, 11:59pm via Turnitin
Late penalty: 10% per day

Learning Objectives

1. **Ethics:** Social inclusion and cultural understanding
2. **Objectivity:** Learn to identify and compensate for expectations and biases.
3. **Research:** Use a variety of sources, with an emphasis on primary sources, to write a fact based report.
4. **Critical Thinking:** Assess the validity of a source. Determine what is relevant and useful information in order to understand key issues and dominant trends.
5. **Applied Learning:** Build a sound and logical argument, apply what you've learned at Sauder to a real world business.
6. **Improved Knowledge:** Gain a rudimentary understanding of the BC economy and some of the communities within it. Understand that communities, regardless of heritage, function differently than corporations and often share priorities amongst each other.

The William Decision – Summary

In June 2014, in the case of *Tsilhqot'in Nation, v. British Columbia*, the Supreme Court of Canada ruled unanimously to declare "Aboriginal title to approximately 1900 km² of the Claim Area, including Xeni (Nemiah Valley) and much of the surrounding area, stretching north into Tachelach'ed (Brittany Triangle) and along the Tsilhqox (Chilko River)." This is the first time in Canadian history that a court has declared Aboriginal title to lands outside of a reserve.

"The Court rejected the "postage stamp" view of Aboriginal title once and for all. Aboriginal title is not restricted to small, intensively used sites. Aboriginal title extends to all the territory that a First Nation *regularly* and *exclusively* used when the Crown asserted sovereignty." This means ownership is of areas that were used regularly and only by the Tsilhqot'in at the time the Canadian government staked its claim.

"The Court confirmed that Aboriginal title gives the Tsilhqot'in the right to control the land. These lands can be managed according to Tsilhqot'in laws and governance. Aboriginal title also means the Tsilhqot'in have the right to the economic benefits of the land and its resources...the only limit on the ways that Aboriginal title lands can be used is that they cannot be developed in a way that deprives future generations of the control and benefit of the land."

This decision has significant implications for First Nations across Canada as they can use this case to assert title to their own traditional territories. "We can expect First Nations to assert much greater control over their traditional territories. We can expect a greater expectation of First Nations' consent before major projects proceed."

It should be noted that while this is a major victory for the Tsilhqot'in and all First Nations in Canada, it is still problematic because it grants primacy to Canada's Courts at the expense of the indigenous systems that governed this land for many thousands of years.

Source: Tsilhqot'in National Government

http://www.tsilhqotin.ca/PDFs/2014_07_03_Summary_SCC_Decision.pdf

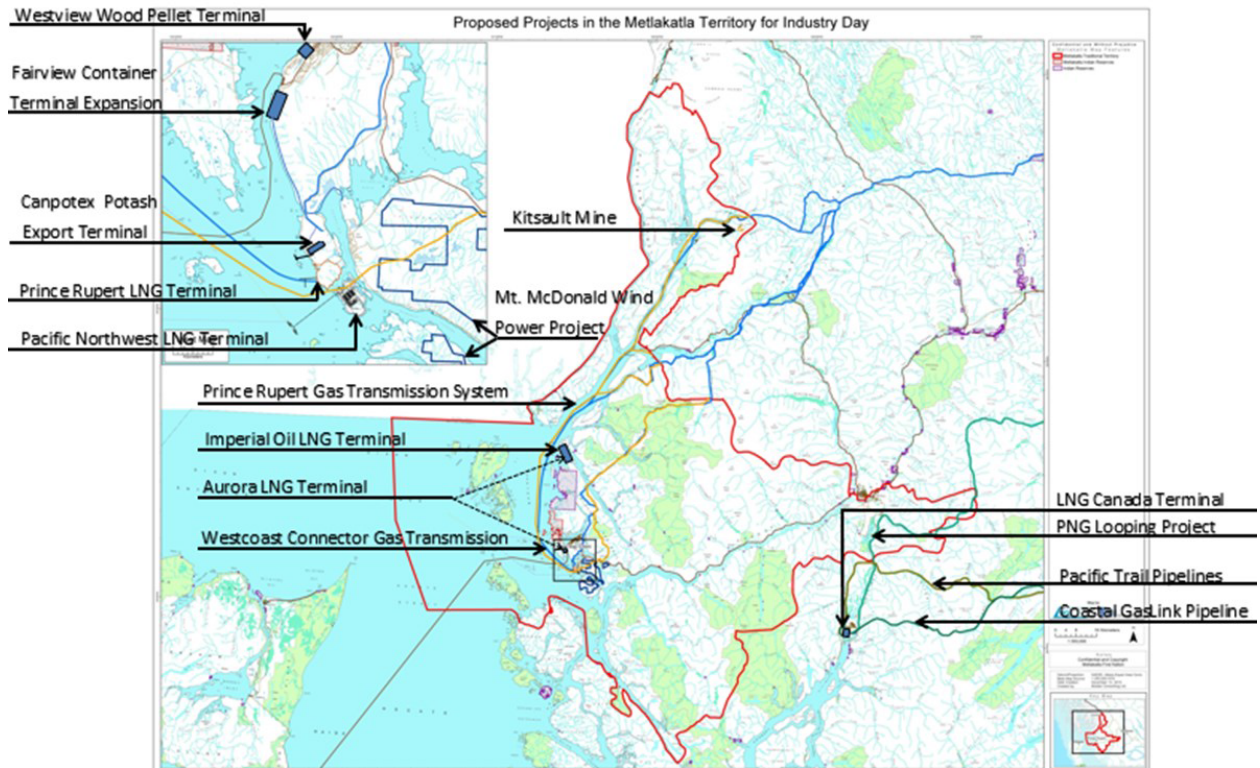
REQUIRED READINGS

1. Preamble to the William Decision (pages 5-11)
http://www.fns.bc.ca/pdf/William_en_%28SCC-2014%29.pdf
2. The Lax Kw'alaams First Nation overwhelmingly rejected a more than \$1-billion offer in money and Crown land in exchange for supporting a natural gas terminal.
<http://www.theglobeandmail.com/news/british-columbia/no-lng-project-without-environmental-guarantees-bc-grand-chief-vows/article24471901/>
3. Globe and Mail, May 2015: "B.C. pushing ahead with LNG proposal despite objections from First Nations "
<http://www.theglobeandmail.com/news/british-columbia/bc-pushing-ahead-with-lng-proposal-despite-objections-from-first-nations/article24533325/>
4. *Best Practices for Consultation and Accommodation*, prepared for the New Relationship Trust by MNP:
<http://www.newrelationshiptrust.ca/downloads/consultation-and-accomodation-report.pdf>
5. The Provincial Government's position on negotiating land claims:
<http://www.gov.bc.ca/arr/treaty/negotiating/why.html>
6. The Tye, Ian Gill, May 2015, "No Wealth, No Justice in \$1 Billion LNG Offer to First Nation Band"
<http://thetye.ca/Opinion/2015/05/09/No-Wealth-No-Justice-Billion-LNG-Offer/>
7. Monte Paulsen, "A Gentle Revolution" in the Walrus.
<http://thewalrus.ca/2006-01-politics/>
8. *Michel Pond* writes about the legacy of residential schools and the resilience of First Nations people: *document is available on the class blog*
9. Read the latest community newsletter. It will give you a sense of some of the things going on in the community.
10. Read the Economic Development Corporation page on the Nations' website.

Additional Materials (optional)

1. Union of BC Indian Chiefs: <http://www.ubcic.bc.ca/Resources/#axzz2eKPVr6tZ>
2. Xwixwa Library at UBC about native land claims, produced by a First Nations film organization:
<http://resolve.library.ubc.ca/cgi-bin/catsearch?bid=4123037>
3. Reading Recommended by the Dean: *The Inconvenient Indian*, Thomas King
4. A news article that discusses a study linking a Metlakatla woman with DNA that is at least 5500 years old: <http://o.canada.com/news/breakthrough-dna-study-links-b-c-woman-5500-year-old-grandmother/>
11. Helen Haig-Brown writes about the experience of her ancestors since contact with Europeans in 1862: <http://www.legacyinteractive.ca/legacy-articles/view/11/renewing-healing-honouring-and-transforming-the-legacy-by-helen-haig-brown>

APPENDIX ONE: Proposed Projects in Metlakatla Territory



Proponent

Canpotex Ltd.
Pinnacle Renewable Energy Group
Maher Terminals
Avanti Mining Inc.
Rupert Peace Power Holdings
BG Group
Spectra Energy Ltd.
Pacific Northwest LNG
Nexen
Imperial Oil Resources Ltd.
Shell Canada Ltd.
TransCanada
TransCanada
Pacific Northern Gas Ltd.
Apache Canada Ltd. & Chevron Canada Ltd.

Project

Canpotex Potash Export Terminal
Westview Wood Pellet Terminal
Fairview Container Terminal Expansion
Kitsault Mine
Mt. McDonald Wind Power Project
Prince Rupert LNG Terminal
Westcoast Connector Gas Transmission
Pacific Northwest LNG Terminal
Aurora LNG Terminal
Imperial Oil LNG Terminal
LNG Canada Terminal
Prince Rupert Gas Transmission System
Coastal GasLink Pipeline
Pacific Northern Gas Looping Project
Pacific Trail Pipelines

Source: *Metlakatla Newsletter, February 2014*

<http://metlakatla.ca/sites/metlakatla/files/Metlakatla-Newsletter-Feb2014.pdf>

APPENDIX TWO - VOCABULARY

Aboriginal – Includes First Nation, Metis and Inuit. Used by government and in business when referring to the population in general terms. E.g. “Amongst the Aboriginal population, 46% of individuals are under age 25.” (www.aandc-aadnc.gc.ca)

Aboriginal Rights - Aboriginal rights are collective rights which flow from Aboriginal peoples’ continued use and occupation of certain areas. They are inherent rights which Aboriginal peoples have practiced and enjoyed since before European contact. Because each First Nation has historically functioned as a distinct society, there is no one official overarching Indigenous definition of what these rights are.

Aboriginal Title - Refers to the inherent Aboriginal right to land or a territory.

Collaborate – work jointly on an activity or project (Oxford English Dictionary)

Crown Land – An area under the control of the federal or provincial government, 94% of the land in BC is still termed provincial crown land.

Band or Tribal Council – The political body identified by the Indian Act (an Act of Parliament, 1876) that governs a reserve or a number of reserves. A band may include more than one nation or there may be more than one band within a single First Nation. Sometimes used interchangeably with First Nation.

First Nation – Refers to a group of people with its own distinct culture, history and territory. It implies that aboriginal people should be engaged on a nation-to-nation basis rather than as a federal government to its subjects. Used when referring to the people responsible for a specific geographic jurisdiction.

Indian – A legal term used in the Indian Act and widely used in the past to refer to aboriginal people in North America, dating back to Christopher Columbus who hoped he had reached the shores of India; still sometimes used today, including by some aboriginal people, but inappropriate in any business or political context, especially if used by non-Aboriginal people.

Indian Act – is the primary document which governs how the Canadian state interacts with the 614 First Nation bands in Canada and their members. It dates back to 1876 and concerns registered Indians, their bands, and the system of Indian reserves. It is very wide-ranging in scope, covering governance, land use,

healthcare, education, and more on Indian reserves, and has been the source of a great deal of controversy resulting in many amendments over the years. (Wikipedia)

Indian Treaty – Legal agreements Canada signed with First Nations across most of the country, in which Canada or “the Crown” gained title (ownership) of the land, and in exchange guaranteed annual payments in perpetuity, as well as access to health care and education. Originally treaties did not include the right to vote, and for a time forbid the right to speak native languages or perform traditional ceremonies such as potlatches. In BC many First Nations never signed treaties although most are still in negotiations with the Provincial Government to do so.

Indigenous –The first people known to have lived in a specific region. In BC indigenous ancestry dates back 15,000 years to forever – depending on to whom you speak. E.g. the Haida people are indigenous to Haida Gwaii, the Musqueam people are indigenous to what is now called Vancouver – they share much of this territory with the Squamish and Tsleil-Waututh Nations.

Inuit - An Aboriginal people in Northern Canada, who live in Nunavut, Northwest Territories, Northern Quebec and Northern Labrador. The word means "people" in the Inuit language — Inuktitut. The singular of Inuit is Inuk.

Jurisdiction - The power, authority or control granted to a formally constituted legal agency or political entity, to deal with and make pronouncements on matters of infrastructure, environment, economy or justice.

Land Claim – A First Nations’ claim to their traditional territory. By the laws of Canada, a First Nation has significant rights of title (ownership) to its traditional territories. These rights are the same whether there is a treaty or no treaty, however a treaty is specific and binding and there need be no negotiation for title to the land once it is in place. This allows a First Nation to determine how the land is used and who is granted access, although there are some limits and there is some ability for the Federal Government to override Aboriginal rights to traditional territory.

Metis - a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation. The Supreme Court of Canada recognizes the Métis as having the same rights as other Aboriginal people. (Métis National Council, 2002)

Native – A term widely used in the 1980’s & ‘90’s to refer to Canadian and American aboriginal people. No longer appropriate to use in business in Canada.

Native American – A term widely used to refer to aboriginal people in the United States, sometimes also ‘**American Indian.**’

New Relationship Trust - An independent non-profit organization dedicated to strengthening First Nations in BC through capacity building in 5 key areas: governance capacity, education, language & culture, youth & Elders, and economic development. Was endowed with \$100M by the Provincial Government.

Reserve – Parcels of land the Canadian government assigned to Aboriginal peoples after the British (and later Canada) claimed ownership of all land now called “Canada.”

Royal Proclamation of 1763 - King George III affirms Indigenous Title and Rights to unceded territories in North America, acknowledging the right to the lands, territories and resources which Indigenous Peoples have traditionally owned or occupied, and cements the Crown’s duty to negotiate with Indigenous people for the surrender of land.

Strategic Engagement Agreements (SEA) – Agreement between the Province of BC and First Nations that is intended to encourage a positive and respectful government-to-government relationship; strengthen B.C.’s investment climate;

Transformative Change Accord (TCA) 2005 – An agreement between the Province of BC, the federal government and the BC Assembly of First Nations, First Nations Summit, and Union of BC Indian Chiefs. Intended to close the social and economic gap between First Nations and other British Columbians over the next 10 years, reconcile Aboriginal rights and title with those of the Crown, and establish a new relationship based upon mutual respect and recognition.

Treaty - A contract between two nations where rights and title are defined. The Nisga’a-Canada Treaty took 113 years on which to come to agreement. It included taxation, jurisdiction, dispute resolution, governance, justice, transition out of the Indian Act among many other things.

Tribal Council – A group of First Nations, usually in the same cultural group, who form a political organization and set their own priorities and mandate.

RESOURCES

1. *A Handbook for Educators of Aboriginal Students*, Thompson Rivers University, Kamloops, BC, 2010.
<http://www.aved.gov.bc.ca/aboriginal/docs/educator-resources/TRU-Handbook-for-Educators-of-Aboriginal-Students.pdf>
2. Indigenous Foundations, UBC, retrieved on September 12, 2013:
<http://indigenousfoundations.arts.ubc.ca/home/land-rights/aboriginal-title.html>
3. Ministry of Aboriginal Relations and Reconciliation, Province of BC, retrieved on September 12, 2013:
http://www.newrelationship.gov.bc.ca/agreements_and_leg/other.html
4. First Nations in BC, retrieved on September 12, 2013:
<http://fnbc.info/>
5. Union of BC Indian Chiefs
<http://www.ubcic.bc.ca/department/library.htm#axzz2sTjZh096>
6. Metis National Council, retrieved May 24, 2015
<http://www.metisnation.ca/index.php/who-are-the-metis/citizenship>