



# IAIA 21

VIRTUAL EVENT

**#iaia21**

# Implementing UNDRIP in Impact Assessments through Legislation

**Debbie Chan**

*Senior Counsel, Indigenous Legal Relations, Ministry of Attorney General\**

*British Columbia, Canada*

Debbie.Chan@gov.bc.ca



\* Note the opinions and views expressed are my own and not that of the Province of British Columbia





## British Columbia, Canada

- Over 200 Indigenous groups
- Only a few historic and modern treaties
- Most of B.C. subject to assertions of Aboriginal rights and title, with some groups who have court declaration of such rights



**Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration**



**Note by the Secretariat**

- Most comprehensive international instrument on the rights of Indigenous peoples
- Establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world
- Applies existing human rights standards and fundamental freedoms to the specific situation of Indigenous peoples

United Nations  
**DECLARATION**  
on the **RIGHTS**  
of **INDIGENOUS**  
**PEOPLES**





BRITISH  
COLUMBIA



## *Declaration on the Rights of Indigenous Peoples Act*

- Came into effect **November 28, 2019**
- Creates **framework** for implementing the UN Declaration in British Columbia
- Includes BC's commitment, in consultation and cooperation with Indigenous peoples in BC, to **align BC laws with the UN Declaration**



# Debate of the *Declaration Act*



## The UN Declaration

- “is a holistic document, and it was written generally, within the context of all the [nations] in the world”
- “the document must be contextualized for each circumstance, read in its entirety and not teased apart. We're committing to working with First Nations in British Columbia to reach agreement on how we will actually implement the Declaration...”

## The Act:

- ...is to be applied within the constitutional framework of the Constitution of Canada, which includes section 35 of the *Constitution Act*



# Path Forward



- *Declaration Act section 1(2)*: For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.

<https://declaration.gov.bc.ca/>



July 2017: Mandate letter to Minister of Environment and Climate Change Strategy:

“Revitalize the Environmental Assessment process...to ensure the legal rights of First Nations are respected, and the public’s expectation of a strong transparent process is met.”



Industrial Projects



Mine Projects



Energy Projects



Transportation Projects



Water Management Projects



Waste Disposal Projects



Food Processing Projects



Tourists Destination Resort Projects



# Environmental Assessment Revitalization

Environmental Assessment Process Announced  
March 7th, 2018

**Initial Engagement Phase**  
February - April, 2018



Environmental Assessment Advisory Committee



First Nations Workshops



Direct Engagement



**Discussion Paper**  
June, 2018

Discussion paper informed by the outcomes of workshops, engagements and recommendations of the Environmental Assessment Advisory Committee



**Comment Period on Discussion Paper**  
June 18 - July 30, 2018



**Direct engagements on Discussion Paper**

- Meetings with Indigenous nations – 20
- Meetings with industry associations – 7



**What We Heard Report & Intentions Paper**

Late Summer / Fall, 2018

Documents are created to outline what we heard and the intended direction of B.C.'s new environmental assessment process



**Legislation Introduced**  
Fall, 2018

New legislation introduced to support B.C.'s revitalized environmental assessment process

**ENVIRONMENTAL ASSESSMENT ACT**  
[SBC 2018] CHAPTER 51

Assented to November 27, 2018



**Regulation Development & Engagement**

Late Fall 2018 - Spring 2019

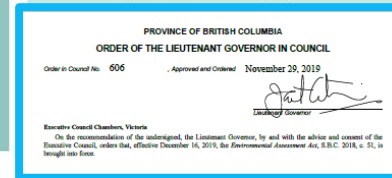
The new EA legislation will require supporting regulations, which will be developed, engaged on, and refined.



**Revitalized EA comes into force**

Late 2019

The revitalized EA process is ready to assess new projects

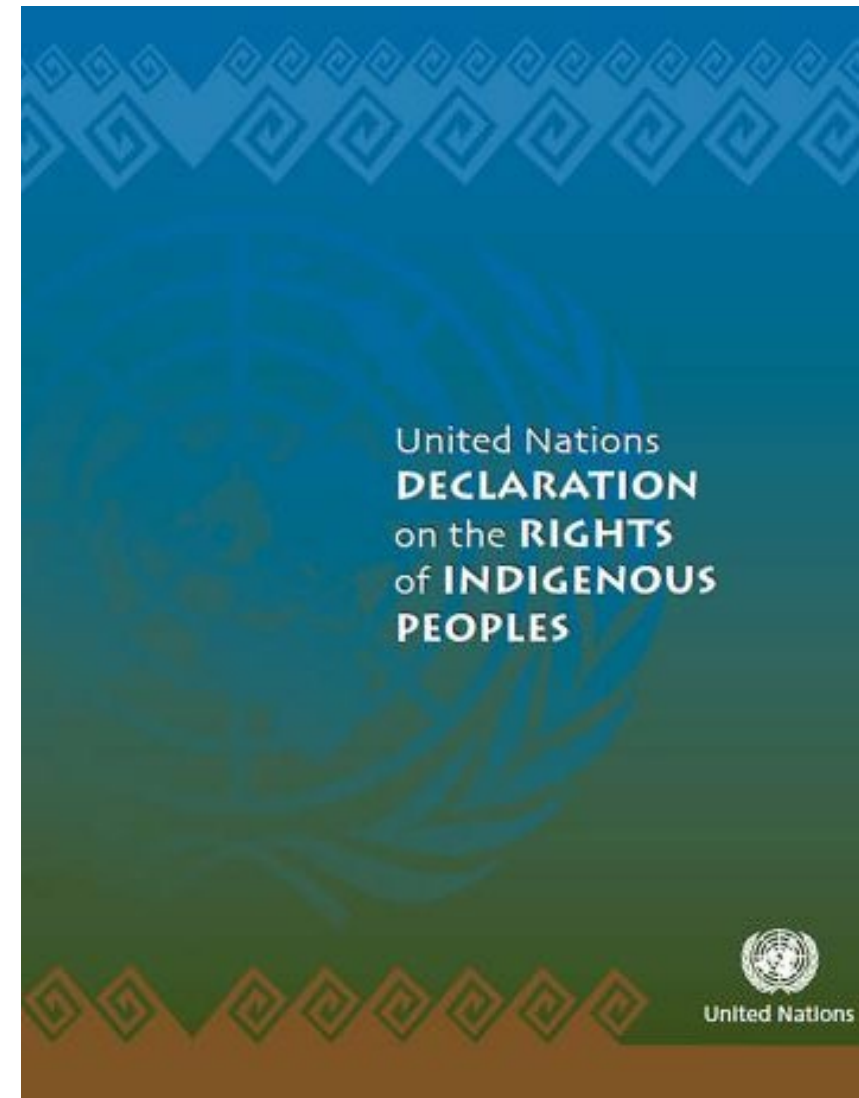


### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

### *Article 32*

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.



*Environmental Assessment Act*

# Purposes of the Environmental Assessment Office (EAO)

(2) The purposes of the office are

- (a) to carry out its responsibilities under this Act, and
- (ii) support reconciliation with Indigenous peoples in British Columbia by
  - (A) supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples,
  - (B) recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making in matters that would affect their rights, through representatives chosen by themselves,
  - (C) collaborating with Indigenous nations in relation to reviewable projects, consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and
  - (D) acknowledging Indigenous peoples' rights recognized and affirmed by section 35 of the *Constitution Act, 1982* in the course of assessments and decision making under this Act.



<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051>

# Process Planning



- EAO must **seek to achieve consensus** with participating Indigenous nations on the **process order**, which includes:
  - what information is required – and from whom
  - methods for obtaining that information
  - timelines
  - roles and responsibilities
  - what Indigenous interests will be assessed
  - whether an Indigenous nation will carry out the assessment of the project that affects the nation and its rights
  - set out consensus-seeking opportunities during the EA

# Effects Assessment



- EAO must **seek to achieve consensus** with participating Indigenous nations on:
  - sufficiency of the application from the proponent
  - draft Assessment Report, which includes
    - effects assessment of impacts on Indigenous nations and their rights
    - effects assessment on other matters that must be considered in every EA
  - draft EA Certificate with project conditions
  - sustainability recommendation

# Dispute Resolution

- participating Indigenous nations or EAO can refer substantial disagreements at key stages to a **dispute resolution facilitator**
- decision on issue cannot be made until after the facilitator has provided a **report**
- facilitators can be identified based on having relevant cultural, legal and technical **expertise**
- can **support** Indigenous laws and processes



# Decision



- Participating Indigenous nations can provide notification of their **consent** or **lack of consent** to project proceeding
- If the consent/lack of consent is contrary to recommendation of EAO, ministers must offer to meet with that Indigenous nation
- The meeting is **an attempt to achieve consensus**
- If the ministers decide to approve the project where a participating Indigenous nation has indicated lack of consent, the ministers must provide reasons for why the decision to proceed was made

## Examples of Consensus



### Mine Projects

## 2017: Kemess Underground Mine

- collaboration plan
- consensus on mitigation measures
- letter of support for project to proceed before provincial decision-maker issued certificate

## 2017: Ajax Mine

- collaboration agreement
- Indigenous-led community assessment on impacts to nation and its rights
- Indigenous nation decision package, indicating opposition, provided before provincial decision-makers decided not to issue certificate



## Examples of Consensus

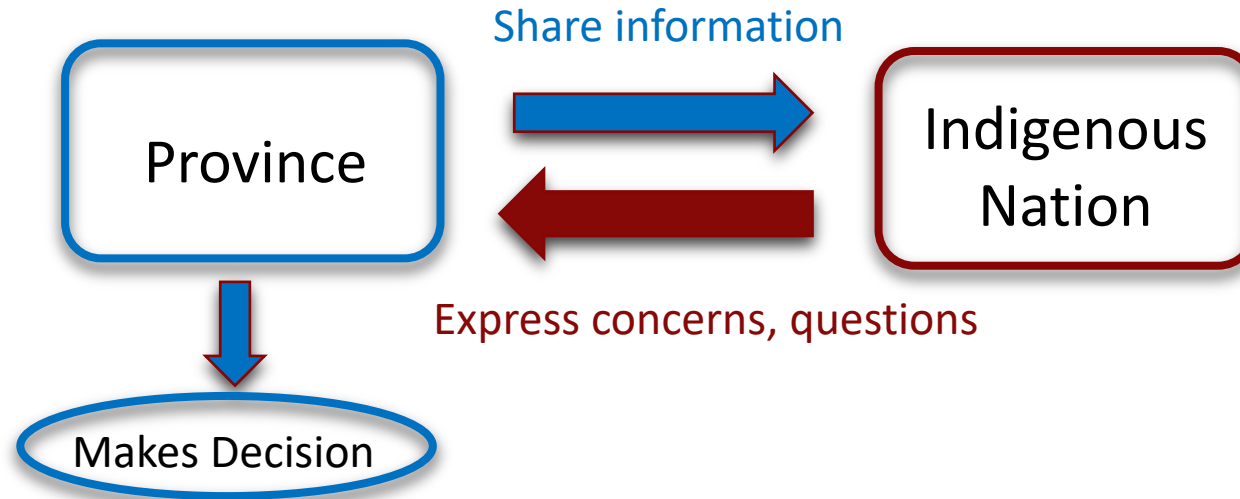


### Mine Projects

## 2019: Blackwater Gold Project

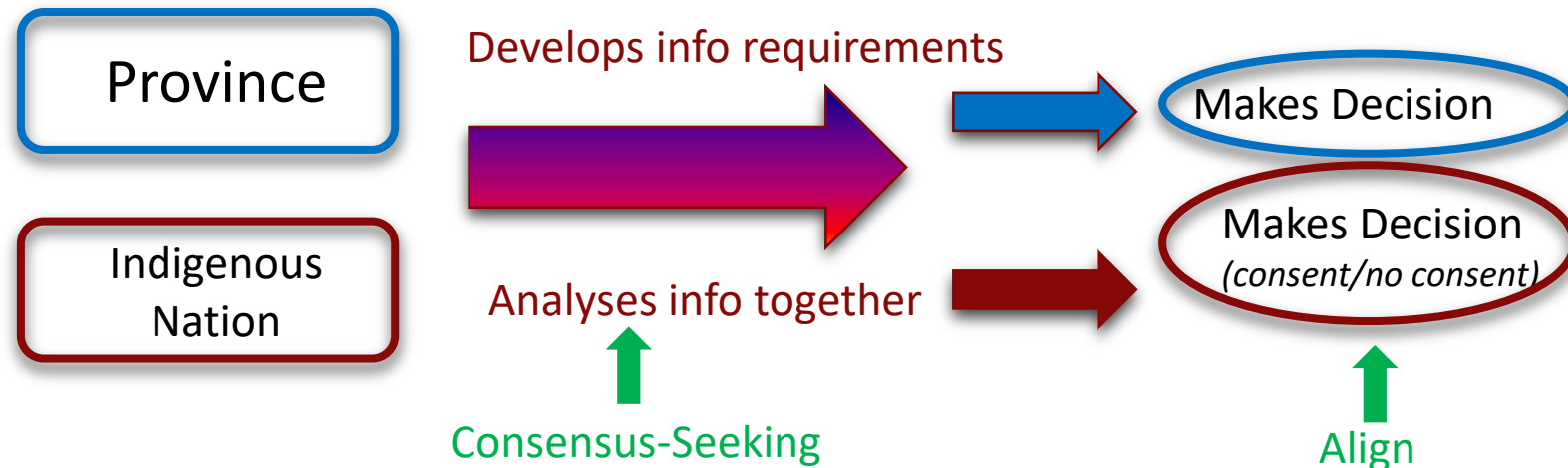
- Two collaboration processes with two Indigenous collectives: mine site vs. transmission line
- Each drafted own analysis of impacts to their nation and rights
- Reached consensus on certificate conditions
- One collective provided their consent to project proceeding
- The second collective withheld consent because of view of inadequate economic accommodation; resulting in government commitment to work together on economic development in broader territory

# Standard Consultation



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# Collaboration



# *Let's continue the conversation!*

Post questions and comments via chat in the IAIA21 platform.



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