



# WE WANT REAL PARTNERSHIP

UNDRIP Gives Us the Means

ALICIA DUBOIS, TABATHA BULL, MARK PODLASLY, J.P. GLADU AND KIM BAIRD

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## ABOUT THE AUTHORS



### **ALICIA DUBOIS**

Alicia is a proud Indigenous professional who earned a B.Sc., with Distinction from the University of Lethbridge and a Juris Doctor from the University of Toronto. Alicia joined the Alberta Indigenous Opportunities Corporation from CIBC's executive team where she developed and implemented CIBC's Indigenous Markets strategy and framework. In this role, she established and proudly led an expert national Indigenous Markets team. At AIOC, Alicia continues her dedication to Indigenous economic prosperity and wellness by bolstering Indigenous access to capital and the economy and supporting meaningful Indigenous ownership in mid to large scale resource and related infrastructure projects.

Alicia is the Co-Chair of the Board of Directors of the Canadian Council for Aboriginal Business and served as a member of the Board of Trustees of the Royal Ontario Museum. She actively contributes to awareness building and enhancing the positive national narrative around Indigenous finance and prosperity via speaking engagements with industry, governments and diverse audiences across the country. In 2019, Alicia was honoured with the National Aboriginal Trust Officers Association's inaugural Award of Distinction for her steadfast commitment to Indigenous prosperity and self-determination. Prior to her career in Indigenous financial services, Alicia practiced law at Alberta Justice, ENMAX Corporation and Native Child and Family Services of Toronto.



### **TABATHA BULL**

Tabatha is Anishinaabe and a proud member of Nipissing First Nation near North Bay, Ontario. She is currently the President & CEO of Canadian Council for Aboriginal Business (CCAB) working with Aboriginal and non-Aboriginal businesses to help strengthen a prosperous Indigenous economy and Canadian market. Also, a member of the Ontario Chamber of Commerce board, Tabatha is committed to working with members to improve business competitiveness across all industry sectors. Before joining CCAB, Tabatha led the First Nations and Métis Relations team at the IESO, Ontario's electricity system operator.



## **MARK PODLASLY**

Mark Podlasly (Nlaka'pamux Nation) is the Director of Economic Policy and Initiatives at the First Nations Major Projects Coalition, a national 65+ Indigenous nation collective seeking ownership of major projects such as pipelines and electric infrastructure. He is also the Director of Governance at the First Nations Financial Management Board leading the development of an Indigenous response to the United Nations Declaration on the Rights of Indigenous Peoples.

A Harvard University graduate, Mark has been at the forefront of governance and infrastructure issues around the world, with extensive global experience in the planning, permitting and construction of capital projects connected to energy, resource extraction and community infrastructure.

In addition, Mark informs Indigenous governments on the establishment of sovereign wealth funds to capture and invest revenue from resource extraction activities. He currently manages an eight-figure fund shared by eight communities in British Columbia.



## **JP GLADU**

Jean Paul (JP) Gladu is currently the President of A2A Rail and previously served as the President and CEO of the Canadian Council for Aboriginal Business (CCAB) from September 2012 until April 2020. Anishinaabe from Thunder Bay JP is a member of Sand Pont First Nation located on the eastern shores of Lake Nipigon, Ontario. JP completed a forestry technician diploma in 1993, obtained an undergraduate degree in forestry from Northern Arizona University in 2000, holds an Executive MBA from Queens University and the ICD.D from Rotman School of Management

University of Toronto. JP has over 25 years of experience in the natural resource sector. His career path includes work with Aboriginal communities and organizations, environmental non-government organizations, industry and governments from across Canada.

Currently, JP serves on the board of Suncor, Noront Resources, outgoing Chair of Mikisew Group of Companies, and previously served on the Board of Ontario Power Generation. He was appointed as the Chancellor of St. Paul's University College Waterloo in 2017. His previous appointments include Canadian Electricity Association Public Advisory Panel, Colleges and Institutes Canada (previously ACCC), the Northern Policy Institute, Canadian Foundation for Economic Education, advisory member to the Canadian Association of Petroleum Producers, a committee member to the Provincial Forest Policy Committee. In 2014, he was

identified as a Diversity 50 Board Ready Candidate from the Canadian Board Diversity Council and a recipient of the Community Service Award – Transformation Awards from Diversity Magazine.

JP is an accomplished public speaker with countless engagements not only across Canada but internationally as he shares the challenges and successes of Indigenous business and the growing Indigenous economy in Canada today.

As a father to his daughter Chloe, along with a passion for his community, his culture and traditions; JP brings the past, present and future to the table, moving non-Indigenous and Indigenous business toward sustainable partnerships and shared economic prosperity.

Specialties: Leader, excels at understanding people and values, in-depth and skilled negotiator, financial sourcing, proposal development, building confidence in others, strong work ethic, excellent communication skills (written and verbal) and strategist with a long-view.



#### **KIM BAIRD**

Kim is the owner of Kim Baird Strategic Consulting and offers First Nation related and strategic advice to industry, government and First Nations. While Chief of the Tsawwassen First Nation for over thirteen years, her most notable achievement was when she negotiated and implemented British Columbia's first urban treaty, replacing the Indian Act with self-governance for her community. She spent six years on the BC Hydro Board – providing her with in-depth knowledge on energy issues in BC.

She is on several boards including the Canada Infrastructure Bank, Vancouver Board of Trade, and Canada Public Policy Forum. Kim is a member of both the Order of British Columbia and the Order of Canada and holds an Institute of Corporate Director's designation.

# TABLE OF CONTENTS

About the Authors .....1

Introduction.....4

We Want Real Partnership .....4

    Equity and Partnership.....5

    Bill C-15 and UNDRIP .....6

    Access to Capital .....7

    Capacity-building .....8

# INTRODUCTION

In April 2020, the Energy Future Forum convened a plenary session on the critical importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and full Indigenous participation and ownership in Canada's energy development. The following is a blended transcript edited for clarity and conciseness of Indigenous economic leaders Alicia Dubois, Tabatha Bull, Mark Podlasly, J.P. Gladu and Kim Baird. These leaders spoke about their vision for economic reconciliation, the challenge of access to capital and the opportunity UNDRIP presents to catalyze economic development by making real partnership a prerequisite for any project to move forward in Canada.

## WE WANT REAL PARTNERSHIP

Our communities have been here for thousands of years, and we're going to be here for thousands more. We want to have the ability to influence and contribute to projects that occur in our backyards ensuring they incorporate the principles of Indigenous traditional knowledge, in combination with Western science. For projects to move forward in Canada, we need to start talking about what that looks like.

Empowerment is now the bottom line. No longer are Indigenous communities in the passenger seat. Instead, we are co-drivers and co-designers of these projects in ways that enable us to build them together. Indigenous entrepreneurs and businesses can play a significant role in being part of the solutions to building Canada.

There is much to be optimistic about. To advance reconciliation with First Nations, Inuit and the Metis, the last federal budget pledged more than \$18 billion over the next five years to narrow the socio-economic gap between Indigenous and non-Indigenous people. As well, the Canada Infrastructure Bank launched the Indigenous Community Infrastructure Initiative (ICII), which will spur new infrastructure projects in Indigenous communities and help generate investments in projects.

As of late, there has been an acceleration of partnership with Indigenous communities from coast to coast, such as the Cedar LNG<sup>\*1</sup> in Kitimat, British Columbia, which is taking place within the traditional territory of the Haisla Nation, and the Clearwater Seafoods deal between Premium Brands of British Columbia and a coalition of Mi'kmaw First Nations in Atlantic Canada. The pace of partnerships is accelerating as companies realize that it is in their best interest to make Indigenous partners integral to the decision-making process of projects.

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<sup>1</sup> In June 2020, Pembina partnered with the Haisla Nation to develop the proposed Cedar LNG Project, the largest First Nation-owned infrastructure project in Canada with one of the cleanest environmental profiles in the world.

Awareness is increasing about the significant socio-economic gap that exists between Indigenous and non-Indigenous people. Public discourse over the last year has illustrated a willingness to do something. It isn't only a matter of being partners on projects, but also about how we move forward together in shaping our understanding of economic reconciliation with Canada's Indigenous Peoples. Energy development, environmental protection and Indigenous relations are intertwined priorities for government and industry. As we move forward, we will have to ensure all three move in sync to generate shared economic prosperity for Indigenous Peoples and Canadians alike.

## EQUITY AND PARTNERSHIP

Providing equity to Indigenous communities does not equate to full consent; instead, it's part of the equation. The other part is the need for proponents to work collectively in a meaningful way as they design projects with Indigenous communities. This must happen from the very beginning of a project if it is to be successful. (Oftentimes, engagement with Indigenous communities occurs at the very end of project development when regulatory approval is required.) Early engagement will also lead to greater project certainty. We need to find innovative solutions to forming partnerships, as each Indigenous community will have different interests, objectives and risk appetites.

Partnering with Indigenous communities can help unlock the logjam to project development in four ways:

1. Projects with Indigenous engagement and involvement have a higher chance of being approved. When Indigenous people are involved in all aspects of the project, including governance, the result can be a win-win situation that benefits all proponents, including the Indigenous community in question.
2. Regarding risk mitigation, such projects are less likely to be protested or blocked. In particular, for Indigenous communities, these projects can help contribute to self-determination by providing financial autonomy. Not only is partnership beneficial for the Indigenous communities involved, but it will also benefit the local and broader Canadian economy.
3. When real partnerships form, the need for UNDRIP legislation becomes less relevant. It's important to understand that these deals cannot be transactional alone, but need to be built on a relationship that fosters shared outcomes, trust and understanding.
4. The best way of getting free prior and informed consent is to have true partnership and true ownership with Indigenous partners.

With increasing Indigenous partnerships, we will witness an increase in shared experiences that can foster and build trust within their respective relationships. Many of the programs led by the Canadian Council for Aboriginal Business play a key role in cultivating these partnerships that foster shared experiences and values.

What will constitute a “real partnership” with Indigenous communities?

- First, we want to see more Indigenous people in executive leadership positions in Canadian corporations and boards.
- Second, we want to see greater equity for Indigenous communities. Having a voice and financial stake will be fundamental to economic reconciliation with Indigenous Peoples.
- Third, it will be essential to foster and strengthen the capacity and competencies of Indigenous communities by integrating Indigenous knowledge and experiences into our education system and business practices.
- Fourth, we must incorporate Indigenous Peoples into the decision-making process.

## BILL C-15 AND UNDRIP

As the first province to legislate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), British Columbia illustrated that the implementation of UNDRIP would take time. Part of the development and implementation involved engaging with BC’s Indigenous communities. Alberta is taking a similar approach in developing legislation in cooperation and consultation with Indigenous communities. Federally, although Bill C-15 seeks to harmonize Canadian law with UNDRIP, it falls short of including Indigenous people in the Canadian economy. For both the federal and provincial governments, it will take some time to implement UNDRIP, including implementing free, prior and informed consent.

We need to really think about how this will unfold in Canada. We already have a hard time attracting capital in this country and will continue to have a hard time if we don’t get this right. As witnessed by Canada’s history, legislating takes time. For instance, defining the duty to consult and accommodate took more than 10 years. However, there is consensus and a desire for active partnership and ownership between Indigenous Canadians and industries. The best way of getting free prior and informed consent is to have true partnership and true ownership with Indigenous partners.

Engaging in consultation, making agreements and negotiating does not equate to veto power; instead, it’s about balancing interests. This was made evident in landmark decisions of the Supreme Court of Canada, such as its *Delgamuukw*, *Haida* and *Tsilhqot’in* rulings. In the 2004 *Haida Nation* ruling, the Court found the Crown has a “duty to consult with Aboriginal peoples and accommodate their interests” and secure “full consent.” In 2014, the Court ruled in *Tsilhqot’in* that the government must obtain the consent of title-holding Indigenous nations to use their land. However, the Court also maintained that the Crown could override the nation’s wishes under certain circumstances where a “compelling and substantial” objective exists. Regarding a veto, the Supreme Court explicitly states, “This process [of accommodation] does not give Aboriginal groups a veto... Rather, what is required is a process of balancing interests, of give and take.” The best way for projects to move forward with Indigenous communities is to enter true, meaningful partnerships.

Using language like “consent” and “veto” can be highly divisive for both sides. We must collectively work together on projects that benefit both Indigenous Peoples and Canadians. Moreover, the desire to have unanimous consent can sometimes be problematic – whether at a dining room table at home or around a boardroom table on Bay Street, there will always be disagreements and differences. Why, then, are all Indigenous Peoples expected to agree? Canada’s Indigenous Peoples are not a monolith and should not be treated as such. It’s not good business or politics to start to have this as the expectation. If this is the starting point for a partnership, it means we are not open to exchanging ideas and negotiating.

Despite the challenges for achieving consensus, some projects are already underway. It will be challenging; however, we are witnessing UNDRIP occurring in real time. The implementation of UNDRIP is an ongoing process, starting with fostering a relationship and shared outcomes.

## ACCESS TO CAPITAL

One of the most significant barriers to Indigenous communities’ participation in large-scale projects (such as energy and transportation) has been their lack of access to capital so they may become equity partners and investors.

In Alberta, Indigenous communities have had a largely different experience with resource development projects than Indigenous communities in other provinces. Over the last 15 years, extensive cooperation has taken place between Indigenous communities and the oil and gas industry, resulting in Indigenous ownership of smaller-scale oil and gas companies. However, Indigenous communities have lacked the financial resources to invest in major, large-scale projects. The lack of access to low-cost capital has been a barrier, which led the Government of Alberta to create the Alberta Indigenous Opportunities Corporation (AIOC). The AIOC has up to \$1 billion to provide a minimum loan guarantee of \$20 million, with a maximum of \$250 million per project to support Indigenous investment in medium- to large-scale natural resource development (including renewables) and related infrastructure projects.

Likewise, the Canada Infrastructure Bank Community Infrastructure Initiative aims to invest \$1 billion to encourage infrastructure investment in Indigenous communities. These are the types of programmes we need to see across Canada, shifting from engagement and consultation to equity and partnership.

A green Indigenous bond can provide opportunities for Canadians to invest in projects that reduce greenhouse gas emissions and projects that support Indigenous communities. Alternatively, Indigenous communities could consider building something along the lines of an Indigenous sovereign wealth fund that allows Indigenous Peoples to deploy capital in a way that builds their communities and supports their self-determination. Many countries worldwide with sovereign wealth funds are used to financing government services for the public good, with the long-term goal of generating multi-generational returns.

## CAPACITY-BUILDING

In addition to supporting access to capital and affordable borrowing for Indigenous communities, capacity-building is essential to allowing Indigenous communities to be better partners in evaluating whether a project is beneficial. The AIOC has developed such an approach to ensure Indigenous communities make independently informed decisions about potential investments. Capacity grants can support communities to develop competencies in navigating complex deals and project designs, with the consideration of whether these deals and projects are for the benefit of their communities.

In addition, AIOC provides capacity grants to support Indigenous representation on the board of directors via governance training. These grants help ensure that training is made available for Indigenous board members so they may have strategic influence and impact. Moreover, once Indigenous board members have the designation and experience, they are well-positioned to sit on the boards of other corporations and guide their strategic directions.

Within our educational institutions, we need to ensure there is a space that respects how Indigenous students learn, that incorporates Indigenous knowledge into the educational curriculum and that enhances remote and flexible learning. In particular, remote learning enables Indigenous students to learn and remain connected to their communities while they build the capacity to benefit their lives and communities.

There is a knowledge gap for well-meaning industry players looking to build partnerships with Indigenous communities. The entire ecosystem would benefit from integrating Indigenous values, worldviews and culture into mainstream society. Likewise, our educational institutions have a role to play in incorporating Indigenous knowledge and worldviews into its curriculum, including the hiring of Indigenous professors in every discipline, which would serve as a key benchmark. As we move forward, it's about bringing Indigenous knowledge systems to the forefront of our education system.

It's about having a positive brand; it's about goodwill; it's about partnerships that recognize the strategic advantage of having Indigenous people as partners – and not merely as passengers with little or no active engagement, which is a lot of what we have seen historically.

Indigenous communities must have the agency to make informed decisions and do their analysis and due diligence to ensure the projects align with their community objectives and values, and position them as active participants. At the core, it needs to be a solid transaction that offers stability for the community in question, and that positively contributes to more meaningful outcomes for Indigenous communities and Canada.

