2015

Blueprints for First Nations Resource Autonomy

Reforming Mining Law in British Columbia
Fair Mining Practices Code

• **What it does:**
  – The Code synthesizes *international* best practice *mining legal provisions* into a *practical tool* for Aboriginal peoples in BC.

• **Focus of the Code:**
  – Specific *legal provisions* that regulate mining:
    • in accordance with Aboriginal people’s customs & laws;
    • in a manner that protects local ecosystems; and,
    • To translate short-lived booms into long-term benefits.
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Why did we create the Fair Mining Practices Code?

✧ To provide an overview of innovative mining legislation from around the world, organized into solutions for many of the issues faced by BC communities.

✧ To assist communities grappling with how to develop resources in a way that will provide real long-term benefits that sustain culture and nature.

✧ To help shift the balance between laws that promote mining above all other interests.

✧ As a tool for First Nations natural resource autonomy
Use & Application of the Code

• **LOCAL USE:**
  – BC First Nations in Treaty, IBA & land use negotiations and other alternative dispute resolution processes
  – Mining companies seeking to follow best practices

• **REGIONAL USE:**
  – Provincial regulators seeking to promote more respectful & sustainable mining on First Nation traditional territories
  – Advocates for provincial mining law reform

• **INTERNATIONAL USE:**
  – Communities, Regulators, advocates, lawyers, and others working on international law reform
The 10 Chapters of The Code

1 – Negotiation of Agreements – Community Preparation Background Paper
Agreements between First Nations, proponents and governments, Impact Benefit Agreements, preparation for negotiations

2 – First Nations’ Resource Policies – Community Preparation Background Paper
Land Use Plans, protection of cultural activities and heritage, socio-economic benefits, intergenerational equity, sustainability

3 – Indigenous Rights, Consultation and Consent
Aboriginal Rights in Canadian & international Law, duty to consult, duty to accommodate, free prior and informed consent

4 – Mineral Tenure and Land Use Planning: The Surface vs Subsurface Divide
Land use planning v. mineral tenure, First Nations involvement in land use planning, no-go zones

5 – Mineral Prospecting and Exploration
Regulating prospecting and exploration activities, Notice of Work, exploration permits, access, drilling, reclamation
6 – Environmental Assessment for Mining Activities
EA thresholds and scope, consultation, adaptive management, sustainability assessment model

7 – Permits for Mine Development and Operations
Mine permit applications, transfers, renewals and amendments.

8 – Compliance and Enforcement in the Mining Sector
Laws, government capacity, voluntary compliance, penalties and liability

9 – Closure and Post-Closure
Closure plans, Post Closure land use, Reclamation, Monitoring, Orphaned Mines

10- Mines, Money and the Public Purse
Security, royalties, mineral capital, taxes, victim compensation
RESOURCES & TOOLS

THE MINE MEDICINE MANUAL: A COMMUNITY RESOURCE

The Mine Medicine Manual is a user friendly, interactive, graphic field guide covering everything you want to know about mining in BC in under 150 pages. Based on Fairmining Collaborative’s Fair Mining Practices: A New Mining Code for British Columbia, The Mine Medicine Manual is a helpful and practical tool for all communities curious about, or affected by mining development. The Manual is tailored (but not confined) to use by First Nation resource managers, councilors, teachers, students, and the public at large – anyone who wants to get involved and learn more.

The Manual encourages a “hands on” approach, and covers the whole mining life cycle. Readers learn how to perform jobs of a resource manager: checking mining claims, researching mining companies, informing the community, media outreach, inspecting drill sites and mine sites, performing water and soil sampling, accessing key government and industry agencies, and more.

FAIR MINING PRACTICES: A NEW MINING CODE FOR BRITISH COLUMBIA

Focusing on positive solutions to complex mining issues, the “Code” is a compilation of innovative mining laws from around the world applied to the issues faced by First Nations and other communities in British Columbia.

A multi-purpose document, it is a valuable resource for communities whether they are developing mining and resource policies based on traditional laws and customs, negotiating with mining companies, grappling with the new tide of internet claim-staking, or searching for solutions to the legacy of mines.
Fair Mining Practices website
http://www.fairmining.ca/fair-mining-code
NEGOTIATING AGREEMENTS

SUMMARY

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<th>BC Mining Issue:</th>
<th>BC law does not require finalized agreements to be made between Indigenous communities and mining companies before exploration activities begin.</th>
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<tr>
<td>Fair Mining Best Practice:</td>
<td>BC law does not require finalized agreements to be made between Indigenous communities and mining companies before exploration activities begin.</td>
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All stages of mining activity within traditional territories have the potential of infringing upon Aboriginal rights and title. As neither the government nor mining companies are legally obliged to enter into agreements with First Nations, it is the government’s duty to address concerns and reconcile conflicting interests.

Unlike other parts of Canada, very few First Nations in BC have signed treaties with the provincial government. Only those First Nations in BC who have signed treaties have ownership of all minerals and precious metals on their settlement lands.

All remaining First Nations’ traditional territory does not fall under these same ‘ownership’ rights and remains unceded and thus subject to First Nations land claims.

A First Nation’s power therefore lies in the negotiation of three important agreements with mining companies and government:

- Access / Exploration Agreements
- Impact Benefit Agreements (IBAs or Resource Policies);
- and Accommodation Agreements.

These agreements are important as they allow the affected First Nation to call for ethical and beneficial resource policies before consenting to a project.

GLENN GRANDE
"With this mining policy we can no longer be ignored or imposed upon, and the province and industry can no longer claim they do not know how to work with us - this document spells that out in clear, specific terms."

- Chief Bev Sellars

Guiding Principles

✧ Shared Decision Making & Accountability
✧ Environmental Stewardship
✧ Socio-cultural Considerations
✧ Economic Benefits & Intergenerational Equity
The Four Elements

- Fair Mining Practices: A New Mining Code for British Columbia
- The Mine Medicine Manual: Natural Resource Manager’s toolkit
- Community Empowerment Education Program
- Xat’sull First Nation Mining Policy

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