

After the Mine: Healing Our Lands and Nations
– a workshop on abandoned mines

sponsored by
The Assembly of First Nations and MiningWatch Canada

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Slag heaps open out onto tailings area, Falconbridge, Sudbury

On May 11-13, 2001 the Assembly of First Nations and MiningWatch Canada held a workshop entitled: After the Mine: Healing Our Lands and Nations.

Why we held the workshop.

Abandoned mines – closed mines for which the owner cannot be found, or for which the owner is unwilling or financially unable to carry out clean-up – are a key source of pollution in Canada. There are at least 10,000 of these “toxic orphans” leaching acidic mixtures of cyanide, lead, cadmium, mercury and radioactive wastes. Some sites also have physical dangers like open shafts, collapsing tunnels and empty buildings.

Abandoned mines are a serious and immediate danger to human health and the environment. They are already costing Canadians millions of dollars in clean-up, cancers, lost fishery and farm income, and they stand to cost billions more. At least nine of these sites have been identified by DIAND on First Nations land. An unknown number of others are on lands of aboriginal use or interest (such as Adams Mine). Frequently, communities find themselves downstream from toxic sites and are unable to assess the risk or potential damage which may be caused by the sites.

Each ton of ore mining companies produce yield thousands of tons of waste rock (tailings). Tailings are often treated with toxic chemicals and are sometimes radioactive. Sulphurous rocks, broken up and exposed to air and water, create “acid mine drainage.” Acid mine drainage poses a double threat to ecosystems because it acidifies the water and it transports heavy metals into rivers, aquifers and soil. Drainage, or leachate, continues to contaminate the environment long after mining activity has ceased. Some tailings are located on permafrost, raising fears that the effects of climate change will weaken tailings dams and enable the release of higher level of contaminants.

There is no national inventory of these abandoned mines, and where inventories exist, they have rarely had a physical and chemical site assessment to determine their hazards.

In the past, governments took little action to ensure that mining companies cleaned up their mess. Reclamation securities or bonds generate inadequate revenue to cover the costs of clean-up. At the Mt. Nansen Mine in the Yukon, the securities revenue was only \$225,000, but remediation costs are estimated at \$6 million, not including a perpetual annual maintenance cost of \$2 million. In other cases, like the Giant and Faro Mines in the NWT and Yukon respectively, bankruptcies have left the federal government responsible for hundreds of millions of dollars of remediation. The formidable costs of these clean-ups mean that nothing is done, and when it is begun, it is inadequate.

Abandoned mines present a number of challenges for First Nations communities:

How does a community find out if it is jeopardized by a closed mine site? What are the risks?

Who is responsible for cleaning it up? And how are they made to act?

How can the health of the community be protected? What treatments are available if it is already contaminated?

What are the risks/benefits in remediating it themselves? What roles do Indian Affairs, Health Canada and Environment Canada play?

What policies need to be in place to prevent the problem in the first place?

This workshop addressed the growing need to build the capacity of aboriginal communities to deal with the problems created by abandoned mines. It provided opportunities for participants to share their own knowledge and questions, and included a tour of the Falconbridge tailings area, a sharing of resources available to deal with the problem from the Centre on Indigenous Nutrition and Environment, the Indian

Law Resource Centre in Montana, the Contaminants Program of the Assembly of First Nations, from Northwatch and from MiningWatch Canada, as well as a presentation on law and jurisdictional issues lead by Armand MacKenzie. There was also an excellent exchange of ideas for future activities and strategic direction on the issues.

Who participated in the workshop.

There were seventeen participants from all over Canada. Jim Eshkawkogan, Nswakamok Native Friendship Centre, provided the opening and closing. Bernard Pehtatagoose of Whitefish Lake First Nation provided an opening prayer and welcomed the participants telling us about the area's history with Inco. The other participants were Geraldine Pope of Kluane First Nation, Charlie Catholique of the Lutsel K'e Dene First Nation, Laura Calm Wind of Windigo Tribal Council, Serge Ashini Goupil and Armand MacKenzie from the Innu Nation in Schefferville, Sam Gull of Waswanipi Cree First Nation, Deputy Chief Raymond Ferris of Nishnawbe Aski Nation, Maurice Boucher of Deninu K'ue First Nation, Chief Paul Johnup of North Caribou First Nation, Andrew Huff of the Indian Law Resource Centre, Will David of the Assembly of First Nations, Joan Kuyek and Jamie Kneen of MiningWatch Canada, Brennain Lloyd and Catherine Daniel of Northwatch, and Marilyn Scott from the Centre for Indigenous Nutrition and Environment.

Stories from the communities

Sam Gull – Waswanipi Cree First Nation

“There are a lot of costs associated with mine cleanup, and if there were no requirements in place when the mines were authorised, then nothing will be done for cleanup. Government must be pressured to bring about mine remediation, because some of these sites have been shut down for 25 years and nothing has been done.”

In their territory, the people use the land, and there are five mining towns on the edge of the territory. They have 51 trap lines over the area, which is just south of the 50th parallel. There are many closed mines. Falconbridge owns at least 6 of the mines, but most were owned by Minova. Present ownership is not known in the community. At mine start up, the Waswanipi Cree were involved in a process for the certificate of operation, and negotiated employment opportunities and closure requirements. It took about two years for the closure of the site. Much of it is now remediated, but there are still questions about matters like the residual pond and where the outflow is. The outflow was monitored for a year after closure, but they don't know if it still is. For the other mines that have operated and closed down, know of no restoration plans, since the First Nation was not involved.

There are many clean-up issues for the closed mines, as well as security issues. The closest mine at 12km from Sam's home community. It operated from 1984 to 1994, and has since gone through restoration but it is the only one. Nothing has been done at the other sites. At the mine that was restored, they took the mine shaft down and removed the equipment. There is no monitoring of the tailings, and they are affecting camps in the area. Younger teens (12-14 years of age) have gotten into closed mines, and even shafts, since there are no watchmen on location.

All the gold and copper mines were closed for economic reasons over 10 years ago, and most are worrying. Tailings were left on the surface. There were no rules or regulations until 1985 in Québec. The Québec Ministry of the Environment says that they have no money to clean them up, as only \$2 million

was allocated for abandoned mines cleanup in Québec this year. Potential investors have been visiting one mine around 30 km away – this mine operated over 23 years. The investors are interested in restarting the mine, and asked the community what they had in terms of equipment etc. The mine has 12 levels and the water is up to level 5. It would take over a year just to pump it out. He is sure that contaminants must be getting into the groundwater.

Some people did work in the mines, then filtered off to nearby mining towns in the 1960s, but when they came back there was nothing for them. It has taken 15 to 20 years to get people together again in a new community. the population is now about 1200.

There is one new mine south of the community. The First Nation negotiated 25% of jobs, but the jobs are professional ones. There was to be a training program, but it never happened.

Maurice Boucher – Deninu Ku'e, Fort Resolution, NWT

People who worked at the lead-zinc mine experienced racism, and the lowest paying jobs. With the new diamond mines they negotiated a certain number of positions, but the people were set up to fail with racist comments and discrimination. Five people just quit, now only 2% are employed at the mine, and in the lowest paying jobs. They derive very few benefits from the mine.

The First Nation also deals with the Giant Mine and Colomac Mine...both previously owned by Royal Oak, both with terrible contaminants problems. There is nowhere near enough dollars for remediation from the Federal government.

The First Nation is developing a conceptual framework for environmental assessment for mining, hazardous waste dumps and incinerating garbage. They need to look at cumulative effects on forestry, and harvesting moose. In their community, there are not only the mines and garbage, but commercial fishing, pulp and paper mills, two dams, long range transportation of contaminants, POPs, global warming. They have diesel fuel generators and are the per capita highest hydro-carbon emitters in Canada. Longer summers mean a bigger window for diseases to reproduce, and people are getting sick more often and more severely. In the 1990s they started looking at cumulative effects. They are under the Mackenzie Valley Regional Authority Act. They have not yet got a land claims settlement in their area. The First Nation cannot request an EA. The territorial government and the Mackenzie Valley Regional Water Board gave permits to log in their territory without an EA.

"We are finding it impossible to cope with demands on their time; the Environmental Assessment from the Ekati mine is 13 volumes long. We are inundated with information that is only window dressing."

Laura Calm Wind, Windigo Tribal Council

The Golden Patricia Mine changed hands three times. It was a gold mine. Two elders have their traplines there. The mine closed in 1995. The Agreement the Tribal Council had with the mine expired in 1997. They had a trappers' compensation agreement, a general agreement and an appendix. The mine never did fill the terms of the agreements regarding employment and training. The Company tried to offer \$50,000 to get out of the agreement. Windigo did get provincial money to monitor the agreements.

“We went back and did an Environmental Impact Study to ask: what were the social and economic benefits and damages that the mine has created? We took statements from their elders. The company never involved the First Nation in the mine cleanup. When we asked to see what they have done, the mine refused to be recorded. So the First Nation threw them out of the meeting. The company then claimed this was ‘consultation.’”

Now the company is negotiating a private closure agreement with the province, trying to get an exit ticket. Ministry of the environment approved the tailings area, although the First Nations know there are problems. The province allows a certain amount of pollution; the mine will never be returned to its natural level. They have asked for a health study, but it has not yet happened.

Brennain Lloyd, Northwatch added that Ontario has only had rule for closure plans and financial assurances since the early 90s. They were in force for a few years and then the Harris government in the Omnibus Bill changed it to “financial self-assurances” for companies that qualify. Now companies prefer to say the operation is “suspended” rather than closed. There have only been three Environmental Assessments for mines in Ontario.

“The closure plans are not public information. We tried to do an Access to Information request for one mine and were denied.”

Serge Ashini Goupil, Innu Nation, Schefferville

The Iron Ore Company of Canada (IOC) operated the mines in their territory for many years before closing twenty years ago. They left behind many pits and tailings ponds as well as houses, a community centre, warehouses and fuel tanks. They refuse to clean up their mess, despite pressure from the 750 Innu and 700 Naskapi people whose territory it is. The company recently demolished the houses and the community centre, but left the industrial buildings and fuel tanks. The First Nations are concerned about the game and fish in the area., and want the sites repaired. They also need monitoring of the pit lakes and tailings areas and the water downstream. They do not think that the site is acid generating.

The community has tried all sorts of pressure to get IOC to clean up. The province negotiates directly with IOC and refuses to include or acknowledge the First Nation. Neither the province nor the company will accept responsibility. Recently the IOC was sold to Rio Tinto, and this may further complicate matters.

“The government has offered to take all my documentation and prepare a plan for us, but I told them that wasn’t on – you haven’t lived here and can’t put this together. I was told that the company was ready to come up and do clean-up, but our community told them that if they did that we’d block the road, because they would not do it properly without community participation.”

Resources to negotiate are a problem and Serge is often alone on his team. There is the band council and a community committee, but often when he goes into negotiation with the government he’s alone against five from the other side. Québec has asked the company to negotiate with the Innu but the company refuses. Innu wrote to three ministers to let them know their position and are still waiting to hear back. They don’t have much bargaining power, but they are hoping that they will get support from outside. This will give them bargaining power, let the company know that they won’t go away. He has made presentations to Association minière and Association des prospecteurs, but doesn’t have the resources to

stay on top of them. Band council doesn't have a budget to pay consultants for education and action without taking it out of other funds.

Charlie Catholique, Lutsel K'e Dene First Nation

"People up north have no chance when someone wants to put up a mine. Even though they have been there before the Europeans, and even though the people don't want them to put a mine because they have been trapping and hunting in that area, there is a mine happening."

The company goes ahead no matter what the community says, so they are forced to negotiate with the company over benefits. They have a hard time negotiating to get some benefits out of it. They got one quarter of a million dollars out of it, between four communities, when the mine is taking \$600 million in profits out of it. Their real concern is with the wildlife. The diamonds are not going to do anything for the people; the diamonds mean nothing to them. Right now, everything that matters is coming from the elders, but they are losing a lot the elders to cancer; only a few are still alive right now. Diamonds seem to be so important; there are more mines coming up, and there will be more damage to the land. It is very sad to see what has been done to the land in this area, and he is really hoping that this will not happen in his community.

Charlie's community is involved in negotiating land claims; they do lots of mapping, and GIS is in place now; they do lots of interviews with elders. Money for this work is pretty hard to find. They trying to get compensation for hydro plant on the north side of the lake; have started doing monitoring with the mine companies. The new Diavik mine means negotiating an impact benefit agreement and there is lots of other mining coming up.

The Tour of the Falconbridge Tailings Area

"The elders predicted at the time of the arrival of Europeans that there would come a time when the people would not be able to drink the water. When we were at the Falconbridge mine site yesterday, I did not run out to look at what was there, because I know that is what is coming to our land and it makes me sad to think of it."

Participants went on a tour of the Falconbridge tailings area with independent remediation specialists Catherine Daniel and Keith Winterhalder. Mark Butler, the Falconbridge Environmental Director, conducted the tour. Participants were struck by the sheer size of the damaged area, and by the impossibility of containing it all. We also learned that Falconbridge intends to stop providing drinking water to the town in the near future; that there is a clear nickel plume flowing from the area; that soil contaminated with hydrocarbons is being received from Shell and spread on the dry tailings (exposure to air decontaminates hydro-carbons); that arsenic levels in the town of Falconbridge are over 155 parts per million, and that the smelter there is the fifth highest point source of dioxin emissions in the province and the company has no idea why...although they suspect that the custom feed they are bringing in probably contains plastics.

"It was clear to all of us, that the work to reclaim the devastated area was having some success, and that - with careful maintenance and monitoring - water from the site could be made clean again. However, it was brought home very forcefully that it would be generations before the site would be free of contaminants, and that looking after it was a costly and exacting task. The room for accidents is enormous".

Marilyn Scott, Centre for Indigenous Peoples for Nutrition and the Environment

(Marilyn is an associate director for the Department of Health at McGill University, and works with CINE).

CINE is the Centre for Indigenous Peoples for Nutrition and the Environment. It underwent a four year period in development and was formalized in 1993. Its primary mission is to work together with indigenous people to do research and education, particularly related to food and environment. They come from an environment and nutrition perspective, focussed on the traditional food system. This is important when looking at contaminants in the natural food system. It works by providing a response to communities' concerns, interests and questions.

CINE is housed in a building with labs and conference facilities. Its governance is based at McGill University, but is linked with groups who form the governing body, including AFN, ITC, Council of Yukon First Nations, Dene Nation, ICC, Metis Nation, Mohawk Council of Akwesasne.

CINE has a research dimension and educational dimension. Education includes short courses in communities, and supporting education and training of aboriginal people getting degrees at McGill. There are three broad levels to their work:

- social science – shifting of diet patterns, how communities are responding to different pressures and opportunities with respect to diet
- laboratory – analysing food for nutritional and contamination qualities of food; linking to human and wildlife populations; interest in health extends beyond human health to include environment
- integration of information about diet to examine what different trends in diet achieve with respect to the overall health of a community

A key element of CINE is focus on partnership with the community. They have a strong philosophy of working with communities and appreciating the knowledge base of the community and ensuring that the community knowledge base remains strong. They incorporate that community knowledge into any action plan, use methodologies that make sense at the community level; return of knowledge back to the community – there is a very strong requirement that anything that they learn gets returned back to the community so the benefit goes to the community directly.

Some examples of CINE Research projects include cadmium in traditional food in Fort Resolution; benefits and risks of food consumption in Kahnasatake, contamination in fish in Big Trout Lake. An example of a question asked by a community might be the effect of mining on wildlife in an area, or how to compare benefits and risks of a project proposed near a community

CINE has a response strategy - a very important part of their approach – which includes three steps:

- clearing house, finding out knowledge that is available through the literature, currently; typically would take around a month
- short study – might be recommended, depending on outcome of the first step, would depend a lot on the nature of the concern, and the resources available within CINE, might include things like collecting food samples, small investigation, analysis of what is present;
- if they felt the resources that CINE had available were inadequate, they might recommend that the community, with CINE, develop a larger proposal for more investigation

Also often there are requests for short courses or training sessions in the community; examples are in nutrition, or links between diet and cancer and diabetes.

Much more information is available on the CINE website at <http://cine.mcgill.ca>.
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During the discussion period, a number of interesting problems were raised.

A problem with the deformed fish where there is an abandoned uranium mine. The uranium mine was abandoned in 1954; deformities seem to be increasing over time. Marilyn doesn't know if there are specific links to uranium, but there may be links, but there are also concerns about endocrine disruptors, which are causing a lot of changes.

Concerns about cumulative effects. Marilyn said that one of the most difficult things in dealing with contaminants is the presence of so many contaminants, so it is difficult to establish specific cause and effect. It is necessary to look at synergistic effects. For example, with the increase in temperature with global warming, the parasites in the wild have a longer period to reproduce. Many of the toxins found in animal have immuno-depressant effects, so the animals have a reduced ability to deal with parasites.

Where does a First Nation get samples analysed. They killed a moose last year near a mine that had jaundice, and the liver had holes in it; they sent it off to MNR, but would like to know where else to send it. Marilyn speculated that it might be liver flux, which is a parasite that is often transmitted by the snail. CINE's role would be more to look at chemical composition to see if there were contaminants. In terms of wanting to know how to respond, get in touch with CINE to ask what to do in the case of finding something like that, and ask how to prepare the tissue sample, etc.

"We saw a lot of ducks swimming around in the tailings pond at the Musselwhite Mine, and one of the contractors described some geese here last week. Those ducks probably go to our area, and end up being eaten. There have also been bear and moose sighted in the ponds. There are also higher rates of cancer in our community".

What sources of funding are there to do studies and monitoring. Marilyn identified sources as including DIAND, Environment Canada, Health Canada, grant councils, First Nation communities, and corporations. Will David added that CINE receives a certain amount of money from McGill, and the money from DIAND which funds for research under the Northern Contaminants Program.

Who reviews CINE's work before results are released to the community or the general public. Sometimes the data changes between the study and its release. Marilyn responded that there is a careful coordination between CINE and the community in terms of release and dissemination of the information, to be sure first that the community was comfortable with the release of the information before they did so. The question of release of study conclusions as something that researchers have been trying to come to terms with, as far back as a PCB study in the '80s, when they found that there were higher levels of PCBs in mothers' breast milk in the Baffin Islands. This study was released publicly before it was discussed with the community, and there were a number of negative outcomes, including media calling community members before they had the information, and negative dynamics among communities in the area based on reactions to the study. Now efforts are made to be certain that the community has control, and that the community is involved in setting up the study and continuously involved in the research and involved in the release of any information or conclusions from the study.

How can a community do their own sampling / monitoring program for mines. Ross River First Nation has done a sampling program, and were shocked to find out how different their levels were (higher) than DIAND's sampling results. This has made people in Ross River want to do more in response. When you find out this kind of information, it leaves you with questions about what you can do about it. We need to

develop a sense of what to do with the information once you have it. Marilyn described the challenge in how you talk about risk; you don't want to overstate OR understate the problem, and different groups respond to risk and information about levels of contaminants very differently, raises very important questions. A Community Monitoring Manual is soon to be released in the Yukon.

“For NAN, we want to see community involvement in all of the decisions about resources. We don't mind sharing the land, but we want to be involved in all of the decisions. In two weeks time, NAN will be hosting a conference on natural resources. We have designed a consultation process for dealing with resource companies which they will ask the conference to accept. Right now we have some communities going ahead and negotiating, but they are basically negotiating an employment and training agreement, which is not enough.” – Raymond Ferris

What Can We Do?

Will David: What the Assembly of First Nations can do.

Resolutions. The first thing to ask: “is there anything instructing action on the record?” There are currently only three resolutions on the books, one related to a specific conference, one to resource development agreements generally, including forestry and mining, and one on uranium mining in northern Saskatchewan.

Advocacy. AFN is an advocacy organization, so their main role is to advocate with federal departments. they need to know what to lobby about, i.e. where are the problems and what are the responses, for example, role of province versus the feds, and the appropriateness (or not) of the provinces regulating matters which affect First Nations. What AFN needs is guidance of their advocacy support; the people in this room are the experts in mining.

Help with resources, networking, and getting communities together. One possibility is to create a position in the AFN, but that would take resources, and so might take resources away from on-the-ground work. Another possibility is working in partnership with other organizations who are more specialized, such as MiningWatch Canada. At present, there are no specific program to look at mining; there are programs related to natural resources, and on environmental contaminants.

Helping communities learn from one another. AFN's charter is quite explicit that they are a lobbying and advocacy organization, not a government. Will sees a lot of good work on the ground, at the community level, around environmental issues; the difficulty arises in terms of how to make sure that everyone knows what work others are doing and how it can be helpful. For example, NAN might have developed a very good framework for consultation, while in another part of the country there is good work on economic development. Will is looking to hear what tools are already out there, and what else is needed; if there is a sentiment out there that people would like AFN to manage a program, they can look at that.

Committees on environment. There are two committees which have recently been revitalized, including a technical committee, which is established. The other is a Chiefs' committee. The call for nominations has gone out for this committee, but the committee is not yet established. There are no resources or funding for those committees at present, although there is secretariat support for the committees.

What Can MiningWatch Canada Do?

Joan Kuyek affirmed that abandoned mines were one of the three priorities of MiningWatch Canada.

The abandoned mines campaign: researching funding and reclamation options; trying to pressure the government around bad cases of abandoned mines, and trying to raise the profile of certain mine sites. Also important to get the stories out; there is a lot of support, particularly around cleaning up water.

Federal strategy development. MiningWatch Canada wrote a paper for the federal government last year on “orphaned sites,” and the last time the Mines Ministers met, they had abandoned mines on their agenda. IGWG is the group that carries out the work between the Mines’ Ministers meetings, and they have been directed to hold a workshop in late June on abandoned mines; the AFN has been asked to send representatives. If we can get people there who actually know about abandoned mines, and can get the media interested, then there could be some real attention brought to these issues through the workshop.

Clean Canada Fund – Green Budget Coalition. MiningWatch Canada has been trying to understand what the federal government is doing about abandoned mines. Until 1995 there was a National Contaminated Sites Program, which got cut in budget reductions. There is a Contaminated Sites Management Working Group in Ottawa, which reports to Treasury Board, and Treasury Board is currently undertaking a list of all of the contaminated sites on federal government land. The Auditor-General has told the government that they now have to show liability for contaminated sites on their financial statements, just as they show property they own as an asset. However, the standard of remediation they are using to estimate the cost of clean-up of these sites is based on the cost to return land to an industrial standard. It would probably cost the federal government \$2-3 billion to return to this standard. MiningWatch Canada has been arguing that the program should include all properties in which the federal government has a fiduciary interest.

Study of Full costs of Mining. There are many subsidies for the mineral sector in various jurisdictions; incredibly difficult to find out all of the financial arrangements between government and industry. MWC has been taking the position that industry should be paying for the cleanup of abandoned mines through some form of a tax on current mines, with some centralized accounting system, showing the costs and the ledger should show what mining is costing versus what it is paying.

What are different First Nations Doing?

Raymond Ferris reminded people that it is First Nation communities that have aboriginal and treaty rights. The political organizations, such as AFN, do not have the rights, so they should be providing support and tools to communities who have the rights. In this way, the communities can be involved effectively in consultations, and in legislation.

He knows it is difficult to ask the federal government for money to develop tools for the communities, because then the communities will become organized and able to express their voices fully, and the government does not want that. For example, there is a mine about 70 km from their community, where the First Nation wants to do a judicial review of the environmental assessment. At NAN, they have already done the initial work to develop a resource management agency. This would give the First Nations in NAN a strong voice. For example a Parks Class EA recently served as an example of NAN and communities. They were not included in development of the terms of reference for the EA.

Maurice Boucher described the approach in their community. They have a committee structure, looking at state of the environment and developing an integrated resource management plan, i.e. not putting a tourism lodge on a river polluted by a pulp and paper plant; running into trans-boundary issues,

competing jurisdictions/departments/mandates. First Nation governments are based on consensus, while other governments are based on democracy i.e. majority rules. By looking at different government structures you start appreciating different constraints you are under, different approaches being taken, different factors at play such as the stock market; want to stress that consultation is not consent. Federal government has embraced mining industry because the royalties all go to Ottawa. It is up to First Nations to say that they have to consent, whether government or acknowledges that or not.

In his community they look at diseases, abnormalities, parasites etc, in wildlife. A “field guide” has developed for hunters, schools. The strategy to gather information about what diseases harvesters see in fish or animals. They did necropsies on bison, caribou, and are also looking at water, sediments. The results are not in GIS yet. They are looking at an Information Management System to show where activities are, planning, monitor Land Use Plans etc.

Armand McKenzie - Jurisdictional and Legal Issues

Armand is from the Innu Nation; his home is in Schefferville. He is a lawyer in Québec, graduated from the University of Ottawa, and has been practicing law for seven years. He practices a different kind of law; a lot of representation for his people at the United Nations, practicing international law. He also worked as one of the negotiators for his organization in land rights discussions related to Québec in Canada. His regular practice is as a criminal lawyer for young offenders and adults on a regular basis, also does youth protection.

When he accepted the invitation to come to speak, he looked at the program “After the Mine: Healing our Lands and Nations,” he thought of the black bear. The black bear is the grandfather. He sees his people and how much respect they show to the black bear, how they value it. When you meet the bear, you must talk to it. There are lots of songs and drumming songs related to the bear. The bear is about healing. The theme of the meeting, healing, is what we need very much. But now the black bear goes to the dumps looking for food, and these dumps are close to the mines. Perhaps the image he can use to describe the situation of the indigenous people in North America – they have to go and look for what is left over.

He is pleased that Serge brought the photo's, and we can see what is left from the mining company – from the Iron Ore Company – in what was once a community that generated a lot of wealth for the mining company and for the mining employees. Now the situation has changed. They shut the mine down about 20 years ago, and we can see that the Innu children and the families are left with nothing. Fifty years ago the Innu people were self-reliant, like most indigenous people, and able to survive on the land with the resources from the land; but with the mining activities, it has been totally disrupted – the relationship to the land, between the parents and the children, the learning system. Innu children used to rely on their parents to learn about what was a good way of life; now the whole scheme has changed over the years, and there are schools, institutions like churches and government who have become involved in the Innu way of life. Mining has fully disrupted the community.

Most of the social and environmental costs are not taken into account by the mining companies, what is taken into account is the right to get the benefits at the lowest costs; this is what they will do, and they will do what it takes to achieve that. Armand and Serge have attended a number of conferences, including the Prospectors and Developers Association Conference in Toronto last March. The budget for that organization is huge. A company like INCO will spend about \$300,000 for a night in the Royal York during the conference, as a public relations exercise.

So it is a difficult task to try to overcome the difficulties we face, including confronting these people; they have the resources. In contrast, the Innu had about \$80,000 for the entire assessment of the Voisey's Bay mine development. Community of Schefferville managed to have \$10,000 to overcome the arguments of INCO with respect to VBNP. INCO, in contrast, has huge resources available, including very well paid lawyers. He mentions this because resources are a very important element when you go to court, when you are trying to make the polluter pay. A group came and asked him to defend their hunting rights, and asked how much that would cost, and he had to ask them "how much justice do you want?"

Aboriginal title, in Canadian law, is the right to the land itself. That statement comes from the Delgamuukw decision - one of the most important decisions that Canadian courts have come out with in the last several years. Jeffery Simpson, a columnist with the Globe and Mail said it was one of the most important decisions rendered because it can have an impact on the Canadian economy – the non aboriginal economy – because it confers a right to the land.

Aboriginal title is the exclusive use of the land by aboriginal people. It means that you can exclude the use of other non-aboriginal people, or other nations, to the use of the land. It is a right of the nation to exclude other users of the land.

What they say as well, is that aboriginal title is not limited to the traditional use, it can have modern uses of the land; for example, if you want to use the land for commercial purposes, such as outfitting, you do not have to have a permit, aboriginal title allows you to have that use. This right allows you to use the land as long as you do not disrupt your use of the land; but if you use it to build a Wal-mart, you can end up by losing aboriginal title to the land.

The other aspect is that it is constitutionally protected. That means that the right of aboriginal people to their land is in the highest law of Canada; it is protected constitutionally, which is not the right of non-aboriginal people, who, for example, have fee simple rights over their land, but no constitutional rights. In the case of aboriginal people, they have very important rights which are in the constitution. However, it is very hard to exercise these rights or have these rights reinforced in the courts. Because our rights are protected in the constitution, it means that our right supercedes other uses which are incompatible with the exercise of our right to the land.

Aboriginal title is not sovereignty over the land, as exists in international law. In many meetings we will hear about sovereignty or nation-to-nation law, but aboriginal right does not mean sovereignty over natural resources. Sovereignty over natural resources is held by the Canadian government; but what Delgamuukw said is that we must reconcile aboriginal use or right to the land with government of Canada sovereignty over natural resources.

One of the legal consequences of the lack of sovereignty, is that the Crown can infringe upon the aboriginal right / use of the land. But it means that they can't infringe in any manner they like; their fiduciary obligations must be taken into account. For example, in the case of education, if the government wants to infringe on the aboriginal right, they must meet certain standards that have been developed over time. These are fiduciary obligations. This means there is a trust-like relationship between the Crown and aboriginal people.

The Crown must ensure that that the resources are enhanced over time and well managed; there must be high standards of conduct, and good decisions must be made on the behalf of the aboriginal people.

Fiduciary relationships is a concept based on history; when the Crown asserted rights, they said they would act in the best interests of the aboriginal people, such as making sure that the aboriginal people

would continue to be able to use the land and relate to the land in the way which they were used to; that they would be able to continue to live off the land in the manner they were used to, and the crown must protect the interests of First Nations in light of the competing interests of others, such as mining interests, forestry interests, and others. When the crown makes decisions, they must take into account the interests of First Nations, because they have a high standard to meet.

There are some questions they must take into account. For example, if the Ministry of the Environment is going to give a permit to a mining company, they must take into account “did they consider the interests of First Nations people?”. This means they must go beyond simple consultation, in some situations, aboriginal consent may be required. The other question the courts have developed over the years is whether the economic component of aboriginal title; it means that the FN have the right benefit from the development of their land, so, is there any form of compensation for First Nations is one of the questions arising from Delgamuukw. Armand noted that there is a web site www.delgamuukw.org that has a lot of information on its, and gives details on all of the questions in his presentation.

One of the strong decisions coming out of the UN Human Rights Commission is that Canada, as a signatory of the Human Rights Convention, must comply to those treaties, and report back to the UN about their compliance. The UN Commission decided in April 99 and December 98 that they must respect the right to self-determination of aboriginal people in Canada. What this means in international law is the right of people to benefit, or to decide without any external pressure, about the use of the land; it is the right to choose. This is one of the strongest observations to come out the UN Commission. The UN Committee said that Canada must report on progress. The Commission recognized the aboriginal peoples right to the use of the land for sustenance, as well.

Let’s say that we want to make the polluter – the mining company – pay for the damage to the lands. This is a very difficult task. First of all, we have no financial resources, which is the situation of all indigenous people throughout the world. It is also very hard, in terms of human resources, to confront the company.

So, when you go to the courts for justice, you will have to consider how much justice you want, i.e. how much money do you have to spend?

The aboriginal right is in the constitution, which is the highest law, but it is very very hard to enforce this right; the task of proving this falls upon our shoulders, and it is a very difficult task. You must document that you use the land, and that as nation, the First Nation solely uses the land (no other first Nation), that there has been consistency of occupation, that the rights have not been extinguished, that the land has been used according to traditions You must go back, in Québec, as far as three or four hundred years, that the Innu used that land – not the Cree or the Algonquins, but the Innu. In B.C. it is about 150 years, since the Crown asserted interest over the land. You must use historians, archaeologists, experts. Mining companies have the resources, like helicopters. Daniel Ashini spoke of the time when the Innu wanted to do a protest, and needed to bring reporters in by helicopter, but the mining company stopped this by telling the helicopter company they wouldn’t get work if they worked for the Innu. You must document all the use, occupancy etc. to establish the right.

Another element relates to statutory limitation dates. In order to claim damages, you cannot do it indefinitely. In Québec, you must petition the court within three years of the damages happening. So, in the case of Schefferville, the damages happened 20 years ago, so the courts will not accept the claim.

But in the case of the mining companies, you must also show the damage. You must document the kind of damage. For example, if you wanted to say that there is a damage to your hunting practice, the company can say that there are still caribou there, you can still hunt. For fishing, you must demonstrate, in detail,

that a prejudice has been created, and so must prove that there were previously fish there. The mining companies can then challenge what you bring, and can hire experts – historians, biologists – to refute their claim.

A question is who do you go after – the mining company, or the company who approved the mine, or if the company changed hands, which company, and companies are owned by others companies; one company might have the lease, another the permit, another operate it. Perhaps the easiest way to go is against the government, who issued the license, given that they have the fiduciary obligations, and they failed to protect the interests of the First Nation. Also remember that government lawyers are a different kind of lawyers, i.e. not as well paid. For a variety of reasons, it may be best to go against the government.

You must also must establish what the damages are. For example, what is the area over which aboriginal title can be exercised. It is very hard to imagine a court recognizing aboriginal title over thousands of square kilometres. It may be better to argue for a smaller area, such as 10 or 100 square kilometres. If you are to win in court claiming prejudice, you must be very very specific.

An important element of aboriginal title is not only the right to the land, but the right to the mine, i.e. to the ore. The duty of the government to consult can be used in any negotiations with the mine company itself; For the Voisey's Bay project, we used these arguments in the court, and then the Panel themselves concluded that there was a fiduciary obligation, which meant there had to be a land claim agreement and impact benefit agreements. The government has refused to implement these panel recommendations, but INCO still feels obliged to sit down and talk to the Innu. The Innu position is that Innu consent is required before the project can proceed. INCO has not necessarily agreed with this position, but at least they are sitting down and talking.

Self determination – do we want to sustain our traditional way of life, or benefit from development and adopt a new way of life? These are questions we must consider carefully. Because we are without means, it is difficult to fight these companies. For example, the AFN is funded on a monthly basis, and there are strings attached to the funding. We must rely on ourselves more and more, and have our own resources. Communities will be divided in the future over use of the land: some preferring more traditional use of the land, and others preferring to get benefits. We need to have resources and be able to hire lawyers and firms to defend rights and interests in future projects. This is happening today within communities, and our nation is divided on how to respond to development. Some are advocating projects and some are opposing, even within a family.

Discussion

Maurice Boucher said that in the Territories it is all federal land, with the municipalities having some jurisdiction. Where they have not settled a land claim, they have no title to the land. The treaty says no taxes, but they still pay taxes. Ross River is saying that they should have reserve status, i.e. and not pay taxes., but when Ross River won this in the courts, the federal government appealed. When we look at the social costs of mining – given that it is a non-renewable sector – when you take into account the loss of fish and moose and so on, the replacement costs will be around \$60 million just in the territories alone. When the mine is gone, who will pay the costs? Will it be the Canadian taxpayer, through social assistance and so on?

Raymond Ferris said we should be empowering First Nations and empowering leaders and educating them to the point where they understand what they should be fighting for. As a Chief he saw that when you are signing agreements there is not enough money in them to serve the people. Why do we even take it, for example, signing housing agreements when there is only one quarter of the money you need.

Constance Lake organized a blockade against a logging company, and fifty people came out at first but that grew to 300 people, and now people know what they are fighting for and are ready to organize themselves when they need to.

Andrew Huff, Indian Law Resource Centre in the United States

Andy works for the Indian Law Research Centre, which is a group of Indian people who work for Indian nations for free. They are funded through communities and foundations, and take no money from government.

He came here because he works for the Fort Belknap people, whose reservation is at the foot of the Rocky Mountains. The Assiniboine and Gros Ventre Tribes of north-central Montana have long been engaged in a multi-faceted campaign to shut down and reclaim two massive, cyanide heap-leach gold mines located adjacent to their reservation.

After we got them closed, the companies declared bankruptcy and left a mess behind. They were insulated from lawsuits because the company no longer exists.

On behalf of the tribes, the ILRC has filed a number of law suits and pursued a number of strategies. The main point to take away is that, while the mining companies are powerful and the government bureaucracies are massive, the Assiniboine people decided they were going to get resolution, and have proceeded in that direction.

In any fight against a mine, the people must be united. Mining companies use resources to try to break unity within a community.

The Zortman and Landusky Mines are shut down now and are in the process of reclamation. It has taken eight years, but the process is now underway. The tribes have won a \$37 million lawsuit against the company, who went bankrupt shortly afterwards; they have now pursued the federal and state governments, who have now committed \$70 million, more than doubling their original commitment to mine closure. Obviously, they cannot reconstruct the mountain, but are now going to at least ensure that the water flowing into the reserve will not be polluted by acid mine drainage.

The main advantage of law suits like these is that you get the ear of whomever you are suing. It may take years, and take a lot of money, and you may not eventually win, but once you have filed the suit, you have the attention of the party you are suing.

They filed the law suit in federal court, on the basis that the federal government had breached fiduciary obligations by having allowed the mines to go ahead, which affected the resources of the tribes, even though the mine was not on the reserve lands. They also have a law suit in state court on state law issues which are quite specific to Montana. With these law suits operating in the background, we have been at the table with these agencies, and it has been the tribes who have been dominating the discussion about the reclamation.

You have said that First Nations in Canada often feel isolated and powerless or limited in their ability to stop the mines. That may be true but the strategies that have been successful in the U.S. are those that have simply seized control of the situation, regardless of what the agency of the courts say they have in terms of actual legal rights. The key is to have a lot of people on your side, who are willing to help out; There are resources there, such as CINE. You have to find the people that you need, and team up with them, such as academics, environmental groups, or other First Nations.

In the Fort Belknap situation, the Law Centre contracted with the Centre for Science in Public Participation – mostly engineers who work for free. They worked with us to develop an alternative reclamation plan, including how to fill the pits in, although they could not reconstruct mountains. It was necessary to get the expertise together to challenge the agency and company proposals. An example of the plan is included in “Mining Information Network: Resource Handbook for Tribes and Grassroots Groups,” from the Indian Law Resource Center (<http://www.indianlaw.org/>).

We are now involved in an initiative to clean up the river along the whole watershed, from Yukon to Montana, along a watershed that is 2500 miles long. There is a lot of unity and determination. Organizing along watershed basis appears to be a good strategy, in terms of building public opinion and working alliances.

Discussion

Laura Calm Wind said that in England, in 1982, there was a challenge to the Crown, brought by Indian First Nations. The decision found that no treaty could be changed without the consent of First Nations. When the constitution was repatriated to Canada, Canada became the successor signatory to the treaties. Canada was very clever in language in the constitutional talks, i.e. “existing rights” will be protected. There was a ten year study on treaties completed and filed with the U.N. last year.

When her First Nation was dealing with a treaty right to health, she had to find a lawyer who could look at it from the spirit and intent of the treaties. She found Sharon Venn, a woman lawyer who wrote the book “Our elders know our rights.” Six chiefs had to band together to deal with the mine in their area, but then the Chief was able to say that they would not be able to continue without meeting certain conditions. You have to exercise sovereignty in order to be able to have sovereignty. She questions the court’s right to define their rights. Donald Marshall is going to be coming to their area, because if the young people don’t believe in the treaties they may slip away. Aboriginal rights are a birthright. This is better language than inherent right. Lawyers can only practice law as far as the Crown to which they swore allegiance.

Maurice Boucher and *Raymond Ferris* reinforced the point that you must exercise your rights, rather than just talking about them.

Armand Mackenzie said that the community must support any action that would have the purpose of asserting indigenous sovereignty against any activity that would interfere with the exercise of aboriginal rights. In Daniel Ashini’s remarks from the previous conference proceedings, he describes how they had intensive community meetings in advance. A convoy of community members travelled by snowmobile in the coldest period of winter, and delivered an eviction notice to the mine manager. They also inquired of the company if they had any permit from the Innu Nation. The company responded that they had a permit from the province. The Innu Nation has developed a guideline for mining companies, which is available on the web site www.innu.ca.

These actions send a message to mining companies that they must be cautious. The community must be there from the beginning, sending a clear message to the industry that they are ready to exercise their rights. Most of the time, as communities we are confronted by so many social problems, we don’t allocate much energy or resources to the control of the land.

Paul Johnup has encountered some exploration companies who have been doing exploration work without consulting with them. Although they both said they have consulted and sent a letter, Paul has never seen it. They tracked down one company, Cana Brava from B.C., after some difficulty, and had a

meeting with them, but they said they were going to be out the next day. They said they were going to clean up, but they left drums and everything behind.

Brennain Lloyd, Northwatch. Permitting requirements in Ontario have been rolled back and we need strategies to respond. There are many strategies to deal with these intrusions from exploration companies and contamination from existing sites, including private prosecution. It is important to create an air of uncertainty, pushing for consultation with communities.

Making action plans:

- The newsletter is very helpful in terms of letting people know about the lack of social responsibility towards the Innu; the band council is not even included in the discussions between the government and company on the cleanup of Schefferville, at least the newsletter might create some pressure on the company.
- The Green Budget Coalition Clean Canada fund, but doesn't talk to provincial sites. Inventories vary across the country, few mechanisms for cleanup at the provincial level;
- Involving First Nations in the mapping of abandoned mines
- Developing GIS maps. Deninu K'e are developing a visual information management system as a way to look at where the activities / contaminants are happening.
- Create awareness, not only throughout Canada but also our kids, because they will inherit the messes that have been created. Need to create awareness and solutions, based on co-existence and partnerships.
- Share problems and analysis; network people having similar experiences, not only First Nations but US, international
- Pressure DIAND to provide money to fight for cleanup
- Resolution at AFN
- Establish a legal defence fund idea– Government of Canada only pays attention when other countries are on their case.
- Question of how much we want abandoned mines cleaned up – how much of a sacrifice will people make, how far will they go? Stop all development/activity until cleaned up?
- Meetings themselves are very useful, we learn a lot while we're here – overwhelmed by opportunity – so many things waiting to be done, need to sort out what needs to be done first, what's feasible. We would like to continue this process,
- Match resources, build toolkits, go to Schefferville.
- Do our homework, information is not hard to come by. Look at what companies claim in their web sites and press releases. Publish more information so we can use it. Make available in French, especially the toolkit and aboriginal conference proceedings.
- Educate our own people, how to address these issues, have to educate leaders. Simple tasks can help, simple materials from MWC etc.
- Ask ILRC to do work in Canada; take cases to international level, but exhaust domestic remedies first. ILRC is not licensed to practice in Canada, but can do all the training, organising etc.
- Look at economic instruments too, shareholder action, pressure on companies and Shareholder Action, Research and Education in BC.
- Team up with EAGLE-BC
- Undertake community monitoring research program. CINE works with Northern Contaminants Program in the North, in the South can use AFN Contaminants Program (directly through Will). Work with a number of communities in different areas with similar problems, develop program and framework for the project and implement it in communities to gather results. Identify laboratories that can test samples : often private not government because they're certified. They then will return results that are legally defensible. Down the road, a community will have enough documented to be able to

go to court. Time frames for both programs begin in April, so we'd have almost a full year to develop proposals, identify communities and partners

- In one community that suffered environmental trauma (oil spill) – they gave harvesters 3x5 cards and cameras. They asked them to document where they saw something unusual. They reported what was there but also what was different i.e. what was there before
- Contaminants sampling expensive, usually can only test for a few compounds. Deninu K'e looking at setting up small water lab, might not be able to do toxicology. Their proposal has been submitted to the Northern Ecosystem Initiative (DIAND)
- Package to take into the schools
- Make presentations in community. MiningWatch, Northwatch could do site visit, presentations.
- Setting up body to enforce First Nations laws. NAN setting up a Resource Protection Agency, with a library and connection to environmental groups etc. to serve lands and resources coordinators. Tell the companies that the cost of doing business includes respecting communities
- Monitoring animals important – moose but also ptarmigan, beaver
- Send out the manual on community monitoring once it's done
- Send out EBI web site reference on Citizens Prosecutions
- Look for more partners such as Trent University Environmental Studies, CINE, Safe Water Foundation in Saskatchewan
- Develop profiles on different types of mines, minerals impacts, histories of companies. (MiningWatch Canada is in the process of doing this)
- Information on what to look for during EA or monitoring.
- Press packet with photos on abandoned mines in different communities.
- Turn the abandoned mine into a museum to show why the mine should not have happened.
- Undertake a Social, Economic and Environmental Assessment of impacts at the mine's closure

Are there any benefits from mines? Jobs, royalties, roads... First Nations have to be able to decide equally yes or no, to know the impacts and benefits for one community or another. The community must have time and support to have full understanding of what they're deciding on. They must also have the freedom to decide yea or no, and not feel that the only possible answer is yes.