Indigenous Partnerships Sustaining North America’s Energy Future

By Canada Institute Staff

Introduction

With the continuing evolution of the First Nations-Industry-Government relationship in the North American energy sector, the Wilson Center’s Canada Institute was pleased to host a forum entitled: Indigenous Involvement in North America’s Energy Future: Respecting Rights through New Relationships on Thursday October 25, 2018.¹ During this forum, panelists² from industry, government, and indigenous communities with expertise in energy, banking, and legal affairs examined the evolution of the relationship. In particular, they examined how legal obligations, a growing body of norms and standards, modern consultative processes, traditional knowledge and mutual respect are transforming the future of energy in North America, while generating important environmental and social outcomes.

¹ To view the event webcast, please visit the event page [here](#).
² A full list of participants is found at the end of this document.
Mitigating Risk through Indigenous Inclusion in Energy Projects

Corporate social responsibility is at the core of the indigenous-industry relationship in North America. It is not enough for companies to simply follow the letter of the law. A greater commitment is required in order to provide meaningful acknowledgement of indigenous rights and address the environmental concerns of indigenous communities.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an institutionalized framework of norms and standards to help close the gap between the federal/sub-federal laws and equitable treatment of indigenous persons. But, international norms are not sufficient. They must be operationalized through daily application and interaction between businesses, governments, and indigenous communities. Initially, there will be missteps but, as some of our panelists pointed out, missteps are an opportunity for learning and growth.

While our conversation focused on energy companies, it became clear that many other stakeholders are key to the process. Banks and financial institutions have identified strong corporate social responsibility practices not just as a ‘good thing to do’ but a key element in identifying mutually beneficial opportunities and sustainable investments. Legal advocates are necessary to ensure processes are fair and transparent, while governments provide resources, support, and the public interest perspective.

Gare Smith highlighted three best practices that the financial sector in the United States are taking into account when assessing an energy project opportunity:

- Exercise due diligence when evaluating a project’s social and environmental impacts;
- Create a meaningful engagement of indigenous communities in energy projects through capacity building and a greater allocation of resources; and
- Generate Impact Benefit Agreements (IBAs) between Indigenous communities and industry to ensure that the project’s potential negative impacts are outweighed by its benefits and support.

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3 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) consists of 46 articles that detail how governments should respect the indigenous people’s human rights. The declaration’s main themes are: (i) the right to self-determination; (ii) the right to be recognized as distinct peoples; (iii) the right to free, prior and informed consent; and (iv) the right to be free of discrimination.
accountability.\textsuperscript{4}

“Looking ahead, we can see that the banks are going to be at the center of the debate about projects they consider financing in the future and in my judgement the kinds of challenges raised by the Dakota Access Pipeline (DAPL) protests are more likely to become the norm than the aberration.” –Gare Smith

This approach to due diligence is actively embraced by many in the finance sector. The finance sector’s capacity to identify opportunities for improvement in terms of environmental and social (E&S) performance associated with financing energy projects in North America is dependent on the financier’s ability to actively engage and respond to indigenous communities concerns in the lending process. Olga Puntus of Wells Fargo & Company describes her company’s policy of active engagement with indigenous communities to build trust and knowledge on both sides.

For example, after acknowledging that the Standing Rock Sioux tribe believes it wasn’t consulted properly at the outset of the Dakota Access Pipeline project, Wells Fargo leaders consulted with tribal customers and leaders, indigenous stakeholders and their representatives to develop an Indigenous Peoples Statement (IPS) to help guide the bank’s decision-making for projects where proceeds of its financing may potentially impact Native American, Native Alaskan or other indigenous communities. Based on the IPS, for project-finance opportunities where Puntus’ team can identify that the use of proceeds may potentially affect Native American, Native Alaskan or other indigenous communities, the customer is required to demonstrate alignment with the objectives and requirements of International Finance Corporation Performance Standard 7 on Indigenous People, including with respect to circumstances requiring Free, Prior and Informed Consent. With the implementation of the Indigenous Peoples Statement in early 2017, the number of transactions requiring additional due diligence beyond the standard environmental and social due diligence increased significantly.

Puntus outlines three key questions her bank uses to evaluate a potential client’s commitment to identifying E&S opportunities:

- Is the client, in particular at the senior/executive level, clearly and publicly committed to achieving good E&S performance?
- Does the client have the ability, resources and tools to achieve its E&S performance objectives and requirements?

\textsuperscript{4} For a complete outline of best practices, refer to the “Public Summary of Foley Hoag LLP Report, “Good Practice for Managing the Social Impacts of Oil Pipelines in the United States.”
• Has the client consistently demonstrated good E&S performance in the past?

**The Duty to Consult**

The Supreme Court of Canada’s 2004 decision in Haida Nation v. British Columbia (Minister of Forests “compels the Crown to consult with indigenous communities whose treaty rights may be adversely impacted by the Crown’s conduct.”) While many outside of Canada consider the ‘duty to consult’ as an important acknowledgement of indigenous rights in resource development, the implementation of this obligation has been problematic. Legal specialist Brendan Hunter observes that the biggest risk to an energy project in Canada is reaching a consensus on how the consultation among indigenous communities, governments and industries should be carried out. Hunter highlighted the following best practices for client engagement with indigenous communities:

• Conduct preliminary strength of claim analyses to determine the appropriate level of engagement with indigenous communities;
• Increase capacity funding through investment in education and the environment to foster more opportunities for project participation; and
• Engage early with indigenous communities on project design and execution to develop a long-term relationship with the community.

“Even though the duty lies with the Crown, it’s actually the energy proponents that are out there undertaking the bulk of this work. The reason that they’re doing that is to try and prevent a court decision on the back end of the project saying ‘No, what the Crown didn’t do wasn’t enough.’” –Brendan Hunter

**What Role for Government?**

Much of our discussion focused on industry-indigenous relationships, but it became clear that there is also a role of government to provide necessary information and coordination resources, to make sure that all relevant stakeholders have been consulted, and to ensure commitments are maintained. In Canada, this commitment has been reinforced by the 2016 creation of a permanent working group to ensure the federal government meets its obligations to indigenous communities.

Corey Dekker of Natural Resources Canada (NRCan) highlights how the

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5 The Crown is a reference to the Federal and Provincial governments of Canada.
“prioritization of indigenous traditional knowledge, and early and meaningful community engagement” gave rise to the creation of the Indigenous Advisory Monitoring Committee (IAMC) in 2017. Made up of 16 indigenous members and two non-indigenous members, the first IAMC was formed to provide regulation and monitoring advice to the Government of Canada and the National Energy Board (NEB) for Enbridge’s Line 3 Replacement Program and may serve as a model for future projects.⁶

“The Prime Minister says that ‘there is no relationship more important…to Canada than the one with Indigenous Peoples.’” – Corey Dekker

The initial IAMC process provided government officials and regulators with perspectives from First Nations and Métis peoples, some of which had not been considered before. IAMC Co-Chair Joe Daniels recognized that achieving consensus within affected communities is “tough,” but, a year after the birth of the committee both government and indigenous representatives recognize a collaborative spirit aiming towards consensus and accountability over the project’s full lifecycle.

**North American Case Studies:**

*Enbridge Line 3 Replacement Program and Suncor East Tank Farm Development*

As companies apply the principles of inclusion, consultation, shared benefits, ⁶

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⁶ The Enbridge Line 3 Replacement Program is replacing 1,031 miles of an oil pipeline in the Canadian provinces of Alberta, Saskatchewan, and Manitoba, and the U.S. states of North Dakota, Wisconsin, and Minnesota.
and mutual respect, important lessons are emerging that will be useful for future projects. The Canada Institute - Wilson Center event focused on the specific experiences of Enbridge and Suncor and their indigenous community partners.

Reflecting on Enbridge’s experiences, Roxanna Benoit considers long-term engagement with indigenous communities as a “critical core competency for our company.” Enbridge has taken a life-cycle approach which focuses on continuous engagement with indigenous people in all aspects of the company’s operations. Enbridge’s leadership has made a conscious decision to go beyond compliance requirements and to develop strong, genuine relationships with communities – and not only during periods of growth.

Enbridge’s Line 3 Replacement Project exemplifies the company’s commitment to community investment and capacity building, and incorporates indigenous interests into their investment review process. For example, Enbridge provided more than $300 million in economic opportunity to Indigenous nations and companies during Line 3 construction in Canada. And, at the peak of construction there were more than 1,000 Indigenous People working on Line 3.

Sheldon Wuttunee, a member of the Red Pheasant Cree, emphasizes that it is not a one way-or dependency relationship. “Indigenous communities have many of the answers industry seeks and industry has the capacity that indigenous communities seek.”

Such reciprocity is enhanced when all parties can contribute as full partners. Investment in education is key to building capacity. To support this, Enbridge sponsors the development of the curricula at the Saskatchewan Indian Institute of Technologies (SIIT) to help prepare graduates for careers in the energy sector.

Suncor’s East Tank Farm Development is another successful equity partnership between indigenous communities and the energy companies in North America. The bitumen and diluent storage and transfer facility is located at the Fort Hills site north of Fort McMurray, Alberta and with ownership structured through a C$500 million equity investment by the Mikisew Cree First Nation and the Fort McKay First Nation in partnership with Suncor. Suncor’s Arlene Strom identifies time and commitment as two factors critical for the success of this multi-year initiative. Says Strom, “Our industry has traditionally thought of engagement in terms of “to or for” – either presenting a project as a fait accompli “to” or making a donation “for” a community. At Suncor, we’ve learned that there’s great opportunities that can surface when you work “with” or “of” communities. Getting to know what is important to communities does take time and commitment, but in the end, it’s well worth the effort.”
In 2013, Mark Little, Suncor’s Chief Operating Officer sat down with Fort McKay First Nation Chief Boucher and Mikisew Cree First Nation Chief Steve Courtoreille to begin long-term benefit negotiations. A key outcome of the discussions was getting to know both leaders and their communities very well. Little recounted learning a lot from both of the chiefs, including what it meant to be a leader of a First Nation and representing the needs, wants, hopes, dreams and fears of their community members.

Rather than seeing benefits tied to projects that come and go with economic cycles, both chiefs were looking for long-term revenue for their communities, so they could better plan to support services for their members. That opened the door to a conversation about how funding could help fund education, elder care, job training, and infrastructure.

Melody Lepine, a representative of the Mikisew Cree, illustrated the importance of continuous collaboration throughout the project’s lifecycle. There is a “need to come together to rectify issues and plan ahead.” Lepine attributes the growth of equitable Indigenous-Industry partnerships to the use of reliable dispute resolution mechanisms. When dispute resolution provisions are embedded in a mutual benefits agreement, they provide greater certainty at the level of project implementation.

**Conclusion**

The sustainability of the energy sector is contingent on its capacity to engage with indigenous peoples as both business and community partners. The resilience of this relationship is based on the ability of both parties to come together to mitigate risks and foster life-long economic opportunities.
Event Speakers

**Roxanna Benoit**
Vice President, Public Affairs, Communications and Sustainability, Enbridge

Roxanna has been with Enbridge since April 2013 and has had increasing responsibilities over that time.

As Vice President Public Affairs, Communications and Sustainability, Roxanna is accountable for managing Enbridge's relationships with local, provincial/state and federal governments; our interactions with members of the communities in which we have operations, and in which we are proposing and constructing new projects and fostering and growing relationships with Aboriginal communities.

Roxanna also is responsible for all Enbridge communications activities and the Enbridge brand.

Sustainability and Corporate Social Responsibility also falls within Roxanna’s accountabilities. This includes, amongst other things, disclosure, reporting, climate and ESG policies.

Roxanna was Deputy Minister with the Government of Alberta from October 2011 through March 2013. She served as Deputy Minister of International and Intergovernmental Relations (IIIR) from May 2012 to March 2013. In that role, she provided leadership to build strong relationships with Alberta’s key economic and government stakeholders to advance Alberta’s domestic and international profile and interests. She also oversaw the work of Alberta’s 10 international offices.

From October 2011 to May 2012, Roxanna’s responsibilities included Aboriginal Relations in addition to IIIR. In that portfolio, she oversaw work to improve the well-being of Alberta’s First Nations and Métis people.

Prior to moving to IIAR, Roxanna served as Deputy Chief of the Policy Coordination Office at Executive Council, providing a corporate perspective on strategic planning and policy development and coordination. She also served as the Managing Director of the Public Affairs Bureau, overseeing the development and implementation of the Government of Alberta’s communications initiatives.

Roxanna has a diverse background in law, government and public policy. Prior to joining the Alberta Public Service she was Strategic Policy Advisor with Fraser Milner Casgrain LLP, now Denton’s, in Ottawa.
Roxanna is a member of the Board of Directors of the Canadian Chamber of Commerce, the Alberta Chamber of Resources and she chairs the Executive Business Environment Standing Committee of the Canadian Energy Pipeline Association. Roxanna is also a member of the Law Society of Alberta. She resides in Calgary with her partner Wayne Spencer.

Joe Daniels
Co-Chair, Indigenous Advisory and Monitoring Committee; Member of the George Gordon First Nation

Joe Daniels is the Indigenous Chair of the Line 3 Indigenous Advisory and Monitoring Committee. Joe is a single father of four boys, stepfather of two and grandfather of one. Joe is a proud member of the George Gordon First Nation in Treaty 4 and currently calls the City of Regina home. Mr. Daniels is proud of his strong community values, having been involved with Regina KidSport and the Regina Boys and Girls Club. Joe has served in leadership positions as a Transit Operator with the City of Regina, Diversity Manager with the Regina 2005 Canada Summer Games, Operations Manager with the Regina 2014 North American Indigenous Games, and Aboriginal Sport Manager with SaskSport Inc. In addition, Joe conducts a number of coaching clinics throughout Saskatchewan as a Learning Facilitator with the National Coaching Certification Program. Joe enjoys sports and recreation of all kinds, he stays active biking, running and golfing. Joe has spent many years encouraging, supporting, and promoting sport and recreation access for Indigenous Youth at the local, provincial, national, and international levels.

Laura Dawson
Director, Canada Institute, The Wilson Center

Laura Dawson is Director of the Wilson Center’s Canada Institute. Named one of Canada’s Top 100 foreign policy influencers by the Hill Times, Dawson is a speaker, writer, and thought leader on Canada-U.S., USMCA, TPP, and international trade issues. Previously, she served as senior advisor on economic affairs at the United States Embassy in Ottawa and taught international trade and Canada-U.S. relations at Carleton University. Dawson continues to serve as an advisor at Dawson Strategic, which provides advice to business on cross-border trade, market access and regulatory issues. She is a Fellow at the MacDonald Laurier Institute, and the Canadian Global Affairs Institute. Dawson holds a PhD in political science.
Corey Dekker
Senior Advisor, Indigenous Partnerships Office – West, Department of Natural Resources Canada

Corey Dekker is Senior Advisor and Secretariat Lead for the Line 3 Indigenous Advisory and Monitoring Committee (IAMC) within Natural Resource Canada’s Indigenous Partnerships Office-West, based in Vancouver, BC. Corey has worked for the past 10 years advising the Government of Canada on Indigenous engagement and reconciliation in the context of major resource development. Corey has worked as a senior advisor with multiple federal departments and agencies across Canada, and through those positions on dozens of major resource projects involving multiple sectors (mining, oil, gas, pipelines) and has represented Canada in consultation with over 200 Indigenous groups.

Corey is a status member of the Pine Creek First Nation and holds degrees in Political Science and Government from Simon Fraser University (BA) and the London School of Economics (MSc).

Ruslan Garipov
Scholar, Polar Initiative, The Wilson Center

Ruslan Garipov is the Woodrow Wilson Center Fellow with the Polar Initiative. His research project is on Arctic sustainable development and indigenous peoples’ rights with a focus on relationships between extractive industries and indigenous communities in the Polar region. Prior to the fellowship, Ruslan worked as a Legislative Analyst & Legal Assistant at Homer Law Chartered, a DC-based law firm that focuses on American Indian tribes and Alaska Natives. In 2017, Ruslan worked as a Consultant at the World Bank Group on a project concerning labor market integration of indigenous youth in the Republic of Karelia (Russia). In 2015-2016 Ruslan mentored a joint Russia-Stanford University project on “Mitigating the Risks of Fracking for Industrial Actors and Northern Indigenous Peoples.” Ruslan is an Adjunct Professor at American University School of International Service and an Associate Professor at Kazan Federal University Law School (Russia). He earned his JD magna cum laude and PhD in International Law from Kazan State University (Russia) and LLM in International Legal Studies from American University Washington College of Law. His articles have appeared in journals including the Arctic Review on Law and Politics, Journal of Russian Law, Moscow Journal of International Law, Nordic Environmental Law Journal, and North Dakota Law Review. He is an author of two books: Indigenous Peoples’ Rights Protection in Russia and the US
Brenden Hunter
Partner, Fasken; Member of the Saddle Lake Cree Nation

Brenden Hunter practices regulatory, Indigenous and environmental law, assisting electrical generators, utilities, pipeline owners, oil and gas producers, telecommunications companies and other project proponents. Frequently appearing before regulatory tribunals, Brenden has extensive experience in project and rate-related matters, providing representation and assistance to clients in developing and defending applications, where contested.

Brenden's project experience includes acting for and advising applicants on high voltage electrical transmission facilities, renewable energy projects, including hydro, solar and wind farm projects, telecommunications facilities and oil and gas extraction facilities and pipelines. Brenden also advises and assists regulated utilities with their rate related applications, including rate design and tariff applications. Brenden is a member of one of Alberta's largest Cree First Nations, Saddle Lake Cree Nation. With significant experience engaging with First Nations and other Indigenous groups in Canada from coast to coast, Brenden advises on Indigenous consultation issues and negotiates and drafts a variety of agreements on behalf of clients, including impact-benefit, consultation capacity, environmental and traditional knowledge/land use agreements.

As part of his practice, Brenden routinely retains and collaborates with experts and specialists in many other technical disciplines (e.g., environmental, water resources, GHGs, noise, electric and magnetic fields, historic resources, etc.).

In addition to appearing before the Alberta Utilities Commission, Alberta Energy Regulator, BC Utilities Commission, BC Environmental Appeal Board and National Energy Board, Brenden has appeared before all levels of Courts in Alberta, as well as before the BC Court of Appeal and Federal Court of Appeal. Brenden has also recently appeared before the Manitoba Clean Environment Commission.

In November 2017, Brenden was appointed to the Board of Governors of Athabasca University, one of Alberta's four comprehensive universities and a world-class leader in online and distance education.

Brenden was recognized with a Lexpert 2016 “Rising Stars: Leading Lawyers under 40” award, and is also recognized as a Leading Lawyer to Watch for...
Melody Lepine
Director, Mikisew Cree First Nation

Melody is a member of the Mikisew Cree First Nation and was raised in the beautiful community of Fort Chipewyan. My family and community teachings in environmental values and stewardship at a young age motivated me to advance my education and study environmental conservation sciences at the University of Alberta. This balance in teachings of both traditional knowledge and western science has become my key strength in my professional career. I am honored to have been working directly for our First Nation for the past eleven years, first as the environmental coordinator and now currently as the Director. During my time with the GIR, I have been managing numerous files some of which include six oil sands regulatory interventions, co-developing the Mikisew Cree consultation protocol, numerous traditional land use studies and oil sands application reviews, initiating a community-based environmental monitoring program and participating in multiple government policy initiatives. I am now enrolled in the Masters of Science program of Environment and Management at Royal Roads University and will complete the program in the Fall of 2016.

Olga Puntus
Senior Vice President, Environmental and Social Risk Management, Sustainability and Corporate Responsibility, Wells Fargo & Company

As Head of Environmental and Social Risk Management (ESRM), Olga Puntus leads Wells Fargo’s efforts to understand our customers’ environmental & social impact and performance, and manages environmental and social risks across the enterprise. ESRM team members also engage with key external stakeholders to understand their perspectives about the industries we support, and identify solutions to pressing social and environmental issues.

The ESRM function provides our lines-of-business the clarity and tools they need to make informed decisions when growing relationships in sensitive industries. Our ESRM approach helps us more effectively manage business and reputational risk to Wells Fargo, while at the same time allowing us to more deeply understand our customers’ operations and long-term viability, and protect people, communities and the environment.
Prior to joining Wells Fargo, Olga spent more than 13 years at the International Finance Corporation (IFC) conducting environmental and social risk management, due diligence, supervision, audit and EHS system analyses in the infrastructure, apparel, manufacturing, oil and gas, mining, and health and education sectors. At IFC, she also worked as an Operations Officer in Moscow, where she managed clean energy programs in Europe and Central Asia, and as an Investment Analyst in the Global Financial Markets Department.

Olga Puntus holds a Master’s degree from Humboldt University in Berlin, Germany; an MS in Sustainability Management from Columbia University in New York; and the equivalent of a JD from Belarusian State University in the Republic of Belarus. She is fluent in English, Russian and German, and proficient in Spanish.

**Gare A. Smith**  
Partner, Foley Hoag LLP

Drawing on his extensive corporate and public policy experience, Gare Smith founded the firm’s Corporate Social Responsibility (CSR) and Human Rights practice to help clients adopt policies and practices to address the challenges of globalization. He advises corporations and Indigenous nations and peoples on legal, political, and economic aspects of globalization and crisis management, including developing rights-oriented codes of conduct, compliance programs, and monitoring systems. He also provides guidance regarding the resolution of conflicts with governments, communities, and non-governmental organizations. In 2017 and 2018, his practice was ranked Band 1 by Chambers and Partners.

Gare helps a wide variety of industries to integrate respect for internationally recognized human rights and environmental standards into their management practices and supply chains through effective implementation of the U.N. Guiding Principles on Business and Human Rights and the U.N. Declaration on the Rights of Indigenous Peoples.

Gare conducts Human Rights Impact Assessments and country-specific due diligence regarding the risks associated with social and environmental issues. He provides counsel regarding the implementation of compliance procedures benchmarked on global best practices and programs to address Indigenous rights, labor conditions, environmental stewardship, community relations, asset security, and the rule of law. He also helps clients to manage contentious global business issues.
Gare previously served as Vice President of one of the world’s most recognized clothing brands, with responsibility for global implementation of the company’s code of conduct and government relations. In the public sector, he served as Senior Foreign Policy Advisor and Counsel to Senator Edward M. Kennedy, focusing on human rights, Indigenous Peoples, and national security issues and creating the first voluntary code of conduct for U.S. multinationals. He was appointed by the White House to serve as Principal Deputy Assistant Secretary in the U.S. State Department’s Bureau of Democracy, Human Rights and Labor. His accomplishments in this role included helping to launch President Clinton’s Model Business Principles, and serving as the Head of the U.S. Delegations to the U.N. Working Group on the Declaration on the Rights of Indigenous Peoples, the U.N. Human Rights Commission, and the International Labor Organization.

Arlene Strom
Vice President, Sustainability & Communications, Suncor Energy

Arlene Strom has been with Suncor Energy for 15 years, most recently as the Vice President, Sustainability & Communications. She is responsible for Stakeholder and Aboriginal relations, communications and sustainability, including management of the Suncor Energy Foundation. Prior to joining Suncor Arlene worked at Burnet Duckworth & Palmer LLP as a securities lawyer.

Arlene is a board member of the Calgary Municipal Land Corporation, the Centre for Applied Business Research on the Environment and the Economy at the U of A, the Alberta Lieutenant Governor’s Arts Awards Foundation and a member of the U of C Management Advisory Council for the Haskayne School of Business.
Sheldon Wuttunee
President and CEO, Saskatchewan First Nations Natural Resource Centre of Excellence

Sheldon is a member of the Red Pheasant Cree First Nation, in west-central Saskatchewan, where he has previously served as Chief. He served his community in the capacity of Chief for two consecutive terms from 2006 to 2010. Sheldon was involved in the founding of the Battlefords’ Agency Tribal Chiefs, a Tribal Council consisting of six First Nations. As a Chief, Sheldon was also a board member of the Indian Resource Council of Canada, Saskatchewan Indian Gaming Authority SIGA, Battleford Agency Tribal Chiefs Tribal Council, and the Saskatchewan First Nations Natural Resource Centre of Excellence.

Sheldon previously served as an Educator/Principal from 2001 – 2006. He accepted the position of President and CEO of the Saskatchewan First Nations Natural Resource Centre of Excellence in September 2009.

Sheldon holds a Bachelor of Education degree (With Distinction 2001) from The University of Saskatchewan, as well as possesses many education awards: Bates Award (U of S – Department of Education), Aurora Award (Indian Teacher Education Program 2001), Circle of Honour Award (FSIN – Post Secondary 2002) as well as a recipient of a First Nation award for Social Responsibility in 2009.

He also participated in an International Internship to New Zealand with the Department of Foreign Affairs and International Trade (2001-2002).