

# Attawapiskat suicide crisis may lead Indigenous groups to improve IBA bargaining

Thursday, April 21, 2016 5:22 PM AT

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*Market Intelligence*

Earlier this month, the remote northern community of Attawapiskat was rocked by a wave of suicide attempts.

In the month of March, 28 Attawapiskat residents attempted suicide. The community declared a state of emergency April 9, with another dozen attempting to take their lives shortly thereafter.

The James Bay community, located 700 kilometers north of Sudbury, has long been contending with persistent underemployment, as well as drug and alcohol abuse following the intergenerational impacts of Canada's residential school program, which pulled Indigenous youth from their families and caused widespread emotional trauma.

The crisis in the Cree community shocked Canadian politicians, who rushed to show solidarity with the northern hamlet. Prime Minister Justin Trudeau called the situation "heartbreaking," and the Ontario provincial government said it would provide up to C\$2 million for a youth regional unit. Federal politicians, including Indigenous and Northern Affairs Minister Carolyn Bennett and MP Charlie Angus, the New Democratic Party critic for Aboriginal affairs, touched down in Attawapiskat on April 18, vowing to work with the community to address its multitude of challenges.

Attawapiskat members have criticized both federal and provincial governments for their lack of attention and assistance. They have also criticized De Beers Canada Inc., which has been developing the Victor diamond mine some 90 kilometers away from the remote community.

"Haven't heard fr DeBeers in Attawapiskat since we had our crises but yet DeBeers wants our support letter so they can do their exploration," Attawapiskat Chief Bruce Shisheesh tweeted on April 14.

Frustration with the diamond mining company stretches back to 2005, when community members say De Beers dumped sewage from the Victor mine into the Attawapiskat lift station, causing pipes in local houses to burst and plunging the community into a severe housing shortage and overcrowding, the Aboriginal Peoples Television Network reported in 2011.

Community members are also frustrated with how little the town has benefited from diamond exploration and production.

Attawapiskat member Charles Hookimaw told SNL Metals & Mining on April 18 that De Beers is not complying with the Impact Benefit Agreement, or IBA, that it negotiated with the Cree community in November 2005. Hookimaw was on the committee that negotiated the IBA but did not vote to support it.

According to the negotiated terms, De Beers was obligated to look first to Attawapiskat to hire workers, and if they could not find workers in the community, then the company was expected to look at other neighboring First Nation communities.

"That happened for a little while," Hookimaw said. "Now positions are posted all over the place. ... [De Beers] have other people down south come up."

The community was supposed to provide more than 100 employees at the mine, Hookimaw said. But the actual number of workers from Attawapiskat amounts to between 63 and 90.

Hookimaw is also distressed by how little Attawapiskat receives financially from De Beers' activity.

"We get at least C\$2 million a year from De Beers," he said. "That's a fraction of what they're making."

However, Isabella Tatar, who heads First Nations consulting firm CIITO Strategies Inc., cautions against laying too much of the blame for Attawapiskat's dire situation at the foot of De Beers Canada, pointing to the long history of strained Aboriginal relations with provincial and federal governments. "Apportioning blame is a bit difficult," she said. "I don't get the sense that the conversations going on around Attawapiskat are really focused on what the role of the company should be."

De Beers did not respond to requests for comment.

In May 2015, the Canadian Broadcasting Corp. reported that De Beers Canada paid only C\$226 in royalty payments to the Ontario government in 2013-14. According to Northern News Services, the total value of Victor's production in 2013 was C\$392 million.

Hookimaw alleged that Attawapiskat saw no royalty payments.

The IBA with De Beers will likely be symbolic of what not to do when negotiating with mineral companies, former National Chief Delbert Riley told SNL on April 14.

"They were obviously on the wrong end of the deal," he said. "Now, they've been relying on government funding because the deal they negotiated was probably not to the best of their interest."

### **Issues with IBA negotiation and implementation**

If De Beers' prickly relationship with Attawapiskat has contributed to the community's current difficulties, where did they go wrong and how can the system of IBAs be changed to guarantee greater community satisfaction?

The issue at the outset that may hold some mining companies back from consulting local Aboriginal groups is an inability to meet locals on their own terms, former chief Riley said.

"A lot of these mining companies haven't been able to form a connection to First Nation people," he said. "There are cultural barriers that each culture has."

Another potential pitfall to crafting an IBA that benefits both parties is the inexperience of many bands in negotiating these kinds of agreements, according to Miller Thomson LLP partner Sandra Gogal, who has negotiated several IBAs.

"Some communities further north may not have any experience dealing with mining companies and may not know how [mining activities] will impact their community," she said. "The economic footprint and other impacts may not be foreseen."

Communities also need to know what their needs are and what they aim to receive from resource companies, she added.

"If unemployment is rampant in a particular community, then in that chapter [of the agreement] we discuss employment, training, workplace conditions. Throughout the process, we're going to find obstacles, such as what do [Aboriginal groups] need to become employable, and we work to reduce the barriers," Gogal said.

"Mining companies are fabulous at being able to do stuff like that in conjunction with government programs."

Rob Campbell, the National Aboriginal Services director at national consulting firm MNP, said negotiations could not be considered a success if the community was unaware of their needs.

"Ensuring that everyone has a fair level of understanding about the subject matter, making efforts to make sure things are communicated in a way that lends itself to that kind of dialogue, that's one thing that needs to occur," he told SNL on April 18.

Post-negotiations, having enough staff on the First Nation side is critical to ensuring the company follows through, Campbell observed.

"You may have people changing on the community side, those who were at the table," he said. "They may migrate to other things, due to elections or any number of factors, and therefore, the knowledge of the agreement and expectations and awareness starts to dissipate."

Hookimaw agreed that it is essential to have individuals whose sole job is to monitor the agreements.

"It's hard to make sure that the new chief is going in the same direction [as the original IBA]," he said.

"At the end of the day, it's up to the IBA coordinator to make sure that the [agreement] is being implemented," he said. "There should at least be a staff [member] for IBA implementation, because it's a huge project."

In Attawapiskat, there is only one person in that role.

"There's a limit to what can be done," Hookimaw said.

Setting up a framework to facilitate long-term cooperation is crucial to maintaining good relations, Gogal said.

"If, for example, you don't put provisions in the agreement that makes it live for the life of the mine, you're going to have problems. Each agreement will have an annual review, in which the company will meet with the community to discuss. It's the obligation of the company to go into the community every year," she said.

"It's one of the things we do when we wrap up an agreement," Gogal added. "We work with the company to develop a system so that they don't fall into liability for breaching the agreement."

### **Proposed solutions to ensure greater Aboriginal benefits from mining operations**

Making IBAs transparent for all to see could help Aboriginal bands prepare for negotiations with mining companies. As of now, the financial details on most IBAs are known only to the negotiating parties.

"It could certainly be beneficial for people to get the key points, if not the intricacies of the agreement," Campbell said. Understanding what to expect out of talks with companies could also help Aboriginal groups be better prepared.

But Gogal was unconvinced.

"I don't necessarily think that the disclosure of agreements would be the answer. I don't think one size fits all. Every community needs something different. My fear is, companies would just take an agreement off the shelf and change the names."

Hookimaw would prefer to see his community receive a larger proportion of the mine's earnings.

In British Columbia, that option is available under government resource revenue sharing policy, first introduced in 2008. Under this new framework, the province became the first jurisdiction in Canada to share provincial revenue from mining projects with First Nations affected by mining activity.

In 2010, two agreements were signed with Aboriginal groups. The first saw the Stk'emlupsemc and Skeetchestn First Nations sign a revenue sharing deal over New Gold Inc.'s New Afton gold mine, which anticipates the First Nations groups receiving one-third, or C\$30 million, of estimated provincial royalties. The second agreement saw the McLeod Lake Indian Band sign a deal over Thompson Creek Metals Co. Inc.'s Mount Milligan copper-gold mine, which will provide the community with an estimated C\$35 million to C\$38 million to be distributed over the mine's 23-year mine life.

The industry supported the revenue sharing plan from the outset, and remains satisfied that it is beneficial for the mining sector, the Association for Mineral Exploration British Columbia's Vice President, Glen Wonders, told SNL on April 20.

"I think it's a good way of broadening opportunity, and increasing acceptance of the mineral project despite the impact it might have on the Aboriginal lifestyle," Wonders said. "It's a way to facilitate reconciliation with First Nations, and

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benefits flow to the local people in a long-term manner from the mine."

The Prospectors & Developers Association of Canada also supports the measure.

"PDAC continues to advocate for a broader adoption of [Government Revenue Resource Sharing] policy across Canadian jurisdictions and encourages governments to implement mechanisms that seek to share resource revenues with Aboriginal communities, to the extent that they do not result in changes to the tax burden placed on companies," PDAC President Bob Schafer told SNL on April 20.

Since British Columbia adopted the framework, five other Canadian jurisdictions have followed suit, including the three territories, which comprise Yukon, Northwest Territories and Nunavut, as well as Newfoundland and Labrador, and Quebec, Schafer said.

In January, the Manitoba government said it was committed to sharing 25% of mining taxes on new mines with Indigenous communities.

Ontario still has not committed to fully implementing the framework, however, and the provincial Ministry of Northern Development and Mines did not respond for requests for comment.

Even though the adoption of the GRRS system would come too late to help the Attawapiskat community, it may prevent other communities from future crises, or at the very least, help these groups better address the challenges.

Hookimaw said he's heard that the Matawa First Nations are negotiating for GRRS on any development in the Ring of Fire region.

There are grounds to hope for more inclusion of First Nation concerns in mine development, CIITO head Tatar said.

"There has been a shift within the government," especially in the way the Ontario provincial government views Aboriginal input in mining projects, Tatar said.

"We may not see it on the ground, but there is a sea change happening."

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