

DUTY TO CONSULT WITH FIRST NATIONS

Presentation to
OEMC CAOs
DECEMBER 3, 2007

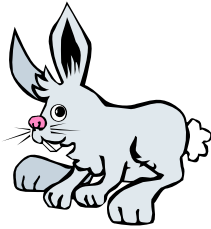
CORPORATE LESSONS

- So, we will be going through change
- Here's three lessons from large corporations to help you survive change....

CORPORATE LESSON 1



A crow was sitting on a tree, doing nothing all day.



A small rabbit saw the crow, and asked him, "*Can I also sit like you and do nothing all day long?*"

The crow answered: "*Sure, why not.*"



So, the rabbit sat on the ground below the crow, and rested.

All of a sudden, a fox appeared,



Jumped on the rabbit... and ate it.

CORPORATE LESSON 1

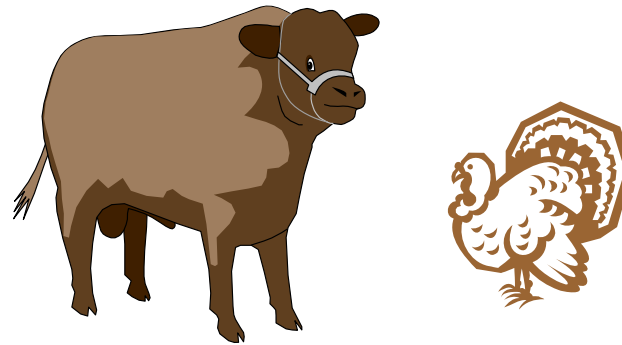
Moral of the story is....

To be sitting and doing nothing
you must be sitting very, very high up.



CORPORATE LESSON 2

A turkey was chatting with a bull.



"I would love to be able to get to the top of that tree," sighed the turkey, *"but I haven't got the energy."*

"Well, why don't you nibble on some of my droppings?" replied the bull. They're packed with nutrients."

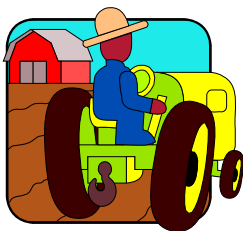
The turkey pecked at a lump of dung and found that it actually gave him enough strength to reach the first branch of the tree.

The next day, after eating more dung, he reached the second branch.

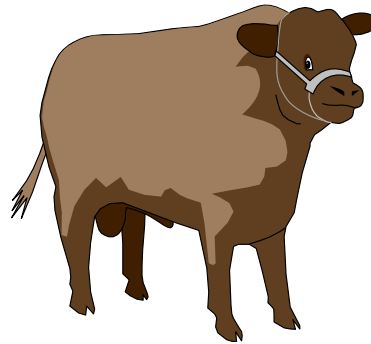
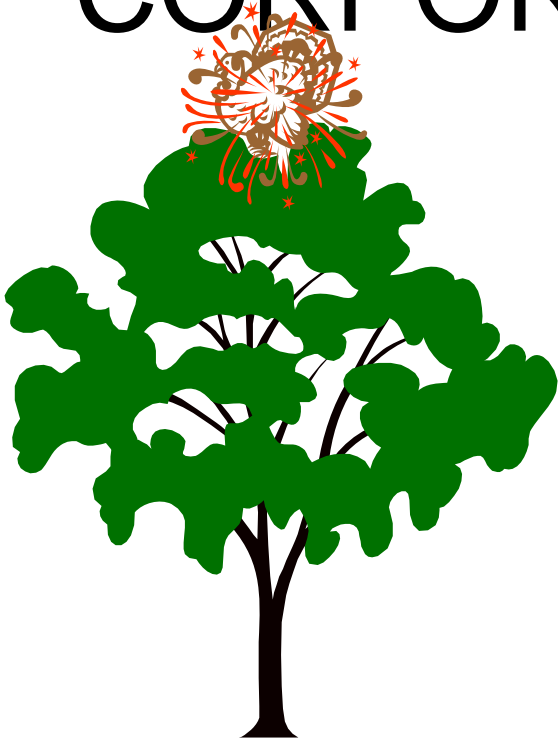
Finally after a fortnight, there he was proudly perched at the top of the tree

Soon he was spotted by a farmer

Who promptly shot the turkey out of the tree.



CORPORATE LESSON 2



Moral of the story:

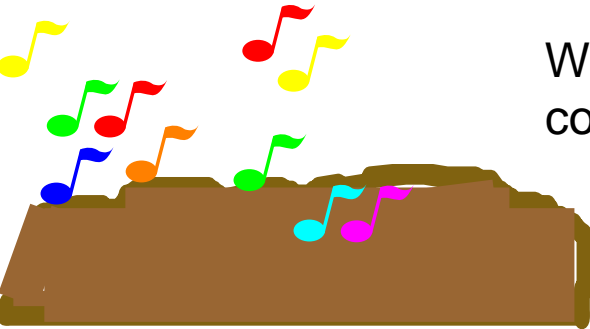
Bullshit might get you to the top,
but it won't keep you there.

CORPORATE LESSON 3

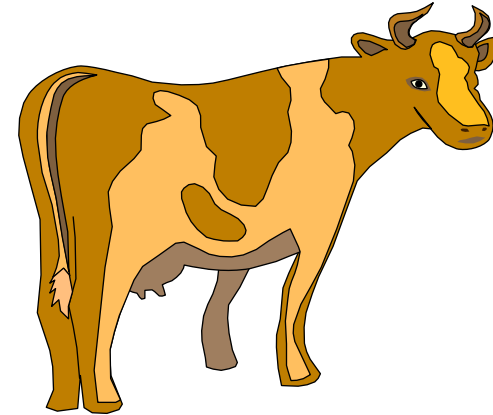


A little bird was flying south for the winter.

It was so cold, the bird froze and fell to the ground in a large field.



While it was lying there, a cow came by and dropped some dung on it.



As the frozen bird lay there in the pile of cow dung, it began to realise how warm it was. The dung was actually thawing him out!

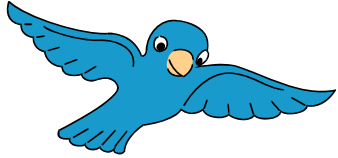
He lay there all warm and happy, and soon began to sing for joy.

A passing cat heard the bird singing and came to investigate.

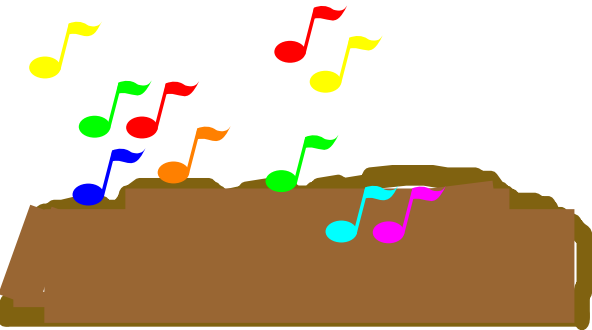
Following the sound, the cat discovered the bird under the pile of cow dung, and promptly dug him out and ate him!



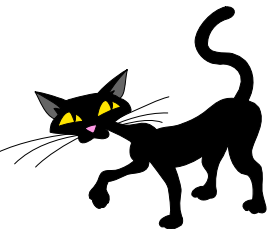
CORPORATE LESSON 3



The morals of this story are:



- 1) Not everyone who drops shit on you is your enemy.**
- 2) Not everyone who gets you out of shit is your friend.**
- 3) And when you're in deep shit, keep your mouth shut**



Constitutional Rights

- Section 35(1) of the *Constitution Act* states: “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed”.
- Defines who are Aboriginal peoples.
- Protects Aboriginal and treaty rights which include land claims already established or which may be asserted.

Key Court Decisions

- Haida Nation
- Taku River
- Mikisew Cree
- All decisions obligate duty to consult on the Crown.
- Applies to both federal and provincial governments.
- Municipal Governments???????

Aboriginal and Treaty Rights

Aboriginal Rights

- Practices, customs or traditions e.g. hunting and fishing.

Treaty Rights

- Signed agreements between aboriginals and the Crown
- Treaty rights often include:
 - Creation of reserves;
 - Payment of money;
 - Continued right to hunt, fish and trap.

Duty to Consult

- Required if Crown's decision has or could potentially have an adverse effect on Aboriginal peoples' legal or traditional rights.
- Senior governments are working to fulfil their consultation obligations.

Consultation/Engagement

- Can be based on:
 - Aboriginal or treaty rights
 - Good neighbour Policy or Program approach
- Nature, scope and content of duty to consult usually not one size fits all
- Approaches to consultation/engagement can:
 - Flexible based on the circumstances
 - Relationship based

Relevance to Municipalities

- FN assertions often based on:
 - archaeological/burial site issues raised in the development process;
 - impact of development on the future settlement of land claims and hunting and fishing practices.
- Consultation and Notification just good business considering potential impacts

Grand River Notification Agreement

- Existing Agreement seen as enhancement
 - applies to part of the Haldimand Tract;
 - involves southern municipalities, Grand River Conservation Authority, federal and provincial governments;
 - not viewed by H/SN as effective consultation.

Ontario's Draft Consultation Guidelines

- Released June 2006 by Ontario Secretariat of Aboriginal Affairs (OSAA).
- OSAA Draft Guidelines:
 - guidance to Ministries to fulfill their duty to consult obligations
 - assist in determining whether consultation is required
 - issues to consider in developing a consultation approach
- Engagement process underway on guidelines – both Aboriginal peoples and non-Aboriginal stakeholders
- Guidelines provided to Chiefs of Ontario at annual conference in June 2006; waiting to hear back on how they want to be engaged on Guidelines.

CHALLENGES???

- DUTY TO CONSULT? TRIGGERS?
- WITH WHOM DO YOU CONSULT?
- WHO PAYS FOR IT?
- HOW LONG DOES IT TAKE?
- ACCOMMODATION?
- DO THE NATIVES HAVE A VETO?

Conclusion

- FN rights given almost 25 years ago
- Duty to consult designed to protect FN rights
- Courts not the only way to effectively deal with issues
- Building positive relationships with FN will likely prove to be the best approach