

Indigenous, Industry and Government Perspectives on Consultation in Resource Development*

Brendan Boyd*
Sophie Lorefice†
Jennifer Winter‡

Introduction and Context

Involving Indigenous¹ Peoples in resource and economic development in a way that respects their rights and needs is an issue Canada — governments, individuals and businesses — struggles with. The evolution of Indigenous Peoples’ rights and expanding nature of development means projects are increasingly proposed in locations which are on or near the traditional territories of Indigenous Peoples, which impacts the rights of Indigenous Peoples and triggers the Crown’s fiduciary duty to consult. In many instances project approvals are still subject to court challenges from Indigenous communities or groups. While these cases represent a small portion of the total incidences where the duty to consult is triggered, they often become the subject of intense political and public debate and have a negative impact on the relationship between Indigenous Peoples, the Canadian state and non-Indigenous society. Examples include the Trans Mountain and Northern Gateway

* We thank the Social Sciences and Humanities Research Council for funding this research, and Kiran Gurm, Kristy Peterson and Brittney Whittaker for their excellent research assistance.

* Assistant Professor, Economics and Political Science, Grant McEwan University. Email: boydb26@macewan.ca.

† Second-year law student, Faculty of Law, University of Calgary and former Energy and Environmental Policy Research Associate, School of Public Policy, University of Calgary. Email: slorefic@ucalgary.ca.

‡ Assistant Professor, Department of Economics and Scientific Director, Energy and Environmental Policy Research Division, School of Public Policy, University of Calgary. Email: jwinter@ucalgary.ca.

¹ We note that only recently has the Canadian government used the word ‘Indigenous’; instead, the term ‘Aboriginal’ is used in the context of Canada’s constitution and includes First Nations, Inuit, and Métis. We choose to use the term Indigenous as the most inclusive collective noun, as recommended by Indigenous Foundations (2017) and Joseph (2016). Our use of alternative terms reflects the use of those terms in works cited in order to maintain scholarly accuracy and the intent of the original work.

pipelines in B.C., hydraulic fracturing for oil and gas exploration in New Brunswick and Nova Scotia, seismic testing in Canada's north near Clyde River, and hydroelectric and mining projects in B.C. These cases can create the perception that resource development and the protection of Indigenous lands, rights and culture are mutually exclusive outcomes. It may seem that improvements or changes in government consultation processes and industry engagement activities will do little to resolve disputes or satisfy aggrieved parties.

However, many have argued that the dichotomy posed for Indigenous communities between economic development and the preservation of rights and traditional practices is overdrawn (Notzky 1995; Anderson 1999, 2002; Slowey 2009; Angell and Parkins 2011). As noted in the introductory chapter, Indigenous Peoples are not just passive recipients of the impacts of resource development. In addition, Indigenous Peoples' cultures and ways of life are not a remnant of the past, threatened by present day trends and activities. Like all cultures, they are constantly changing and responding to the external environment. Participating in resource development has the potential to empower Indigenous groups and give them greater capacity to navigate and manage these changes, while preserving their rights and identity (Slowey 2009). We argue that this requires consultation and engagement processes that consider the different worldviews, perspectives and understandings of Indigenous Peoples.

Creating more equitable and mutually-beneficial relationships among Indigenous communities, resource development companies and government begins with developing a better understanding of these groups' unique perspectives on consultation and supporting engagement activities, and the differences or similarities between them.² In this chapter we identify these

² Consultation, in the context of this chapter, refers to the Crown's obligation to meaningfully consult with Indigenous Peoples prior to the Crown making a decision or taking a course of action that may affect their rights and privileges, in accordance with Section 35 of the *Constitution Act* and the many subsequent Supreme Court and

groups' unique perspectives on consultation and engagement activities, and the differences or similarities between them. We analyze policy statements and guideline documents related to consultation and engagement produced by Indigenous groups, government and industry to examine these groups' perspectives on key issues associated with consultation and engagement.

Bridging the differences between frames or worldviews is an important first step in improving consultation and engagement with Indigenous groups in resource development decisions (Boyd and Lorefice 2018). Unless relations with industry and government improve, Indigenous groups will continue to use the legal system to be heard, given their historical success (Gallagher 2011). The legal system is a time-consuming and financially costly avenue for dispute resolution and often impedes the development of positive relations. Thus, finding common ground amongst Indigenous Peoples, governments and industry on engagement and consultation practices is imperative to the future of resource development and the Canadian economy, and ultimately to the reconciliation of the relationship between Indigenous Peoples and the rest of Canada.

The remainder of the chapter is organized as follows. First, we present a short outline of the research approach and methodology. Most of the chapter is a discussion of the results of our analysis. We provide a detailed review of policy documents, comparing the use and frequency of identified keywords, such as “consultation,” “reconciliation,” “veto” and “consent.” Following our review, we conclude with a summary of our results and identify some areas of future research based on our analysis.

Federal Court of Appeal rulings in this matter. Project proponents are frequently required to engage with Indigenous communities in support of the Crown fulfilling its obligations. Engagement refers to a broad range of actions taken by companies and government departments as they interact with Indigenous Peoples for the purpose of finding common ground when a project, proposed by a company, is being assessed by the relevant authorities.

Research Approach and Methodology

The documents used in the analysis are policy statements or guidelines, designed to inform and guide individuals and organizations in implementing the duty to consult or in engaging with Indigenous communities. Policies or guiding documents were gathered through an extensive online search and separated into the three categories: Indigenous groups, industry and government. The search produced 61 documents: 17 from industry, 22 from Indigenous groups and 21 from government; the list is reported in the appendix. The industry documents include documents from companies and industry associations. Documents from Indigenous groups include documents from First Nations, Indigenous political institutions, and Indigenous associations. The number of documents from each group is not the same; however, exact symmetry is difficult to achieve and not necessarily valuable because every document varies in length.

Using NVivo software, which is designed to allow the systematic coding and organization textual data, we conducted a quantitative content analysis, counting the instances of a reference (Viasmoradi, Turunen and Bondas 2013). We assessed and compared the frequency of occurrence of keywords in the documents in each category (Indigenous groups, government and industry). This provides an indication of the level of importance placed upon central concepts by each of the groups. Each word search included stemmed words. For example, counts of the term “sustainable” included the word “sustainability” as well, and the term “relationship” also included its plural, “relationships.” To ensure that differences in word counts are not related to differences in the number and length of documents, the number of mentions are reported and analysed per every 10,000 words.

The documents include Indigenous groups in different regions of the country; all provinces, the federal government, and the Government of Northwest Territories³; and a cross-section of resource industries. However, caution should be exercised when generalizing about how each group understands consultation or how they believe it should be implemented. This is particularly true for Indigenous groups; in many Indigenous cultures, knowledge and history is shared and passed down orally rather than in written form. Thus, many of the protocols and guidelines that Indigenous groups have regarding consultation may not be captured in a review of publicly available documents. Given that there are hundreds of First Nation, Inuit and Metis communities in Canada, it is difficult to make conclusive generalizations about a common approach to consultation and engagement. Finally, we do not intend to speak for the Indigenous Peoples, groups and communities whose documents have been included in this chapter. The final source of information and interpretation of these documents is, of course, the communities and organizations who created them. Nevertheless, these publicly available documents provide a window into the understandings, motivations and issues that Indigenous groups, along with government and industry, have regarding consultation processes.

Detailed Review of Policy Documents

Drawing on the approach of Boyd and Lorefice (2018), we examine several areas where differing views from Indigenous groups, industry and governments may create barriers to the meaningful involvement of Indigenous People in resources development. These include the terms used to describe Indigenous Peoples involvement in resource development; the connection to reconciliation; and whether the duty to consult provides a veto to or requires consent from Indigenous Peoples. We also compare these groups' perspectives on key issues associated with the

³ Yukon and Nunavut are excluded, as they did not have publicly accessible policy documents at the time of writing.

process of consultation and engagement, including delegation of the duty to consult to third parties; provision of capacity supports, the time allotted for discussion and debate, information sharing and transparency from project proponents; and the inclusion of traditional knowledge in decision making.

Consultation, Engagement and Accommodation

As discussed above and elsewhere in this book, the duty to consult is prescribed and shaped by the Canadian courts. Legal definitions notwithstanding, different terms are used to describe Indigenous Peoples' involvement in resource development. The terms consultation and engagement are often used in concert or even synonymously. However, consultation refers more to the Crown's legal obligation to meaningfully consult with Indigenous Peoples prior to making a decision or taking a course of action that may affect their rights and privileges, in accordance with Section 35 of the Constitution Act and the many subsequent Supreme Court and Federal Court of Appeal rulings in this matter. Engagement refers to a range of actions taken by private companies as they interact with Indigenous Peoples to find common ground on a proposed project. Engagement activities can support the Crown fulfilling its legal obligations but is a broader term. Thus, we would expect industry to use the term engagement more than government and Indigenous groups which are involved directly in the duty to consult. Often engagement is viewed as a deeper form of involvement that allows for a back-and-forth dialogue and greater participation by the group being engaged. Consultation is a narrower process where feedback is received from a stakeholder on a decision or plan that is almost fully formed. Comparing the incidence of these two terms gives us insight into how each group views the involvement of Indigenous Peoples in resource development decisions.

A key component of the duty to consult, explicitly stated by the courts, is that Indigenous Peoples must be accommodated when it is found that their rights are infringed upon. But Indigenous groups indicate that there is too much focus on the initial consultation procedures and whether the duty to consult is being conducted fairly, compared to the time spent on ensuring the processes lead to substantive outcomes through accommodation, including amendments to a project, revenue sharing, economic development opportunities, access to resources and capacity building (Hupcacasath First Nation 2006; First Nations Leadership Council 2013). We would expect Indigenous groups to use the term accommodation more than government and industry.

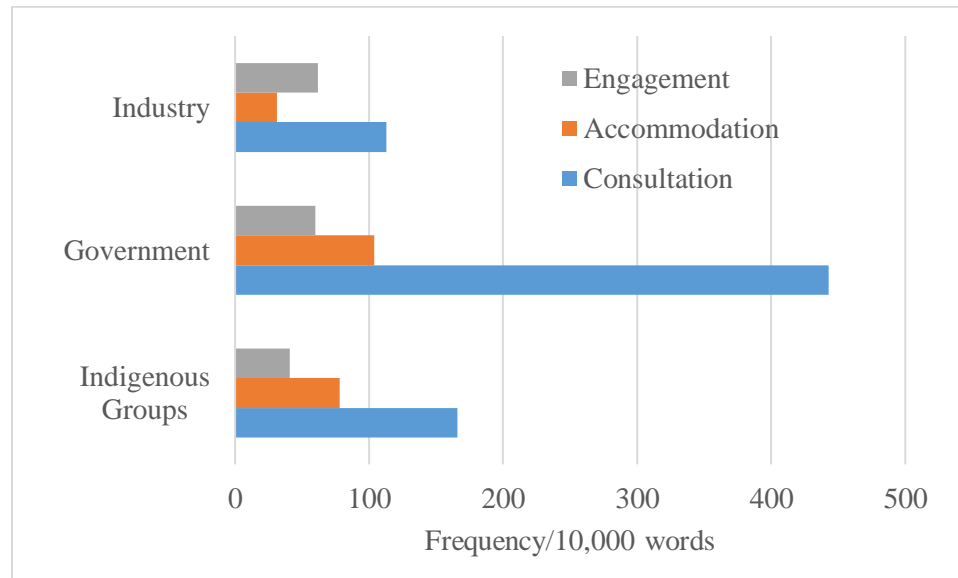
To assess how often the terms consultation, engagement and accommodation were used, we compared their frequency across each group's documents. Figure 1 shows that industry used the term engagement the most of all three actors. However, all three groups used the term less frequently than consultation. Both consultation and accommodation appear more in government documents than those of Indigenous groups and industry. However, the difference between the frequencies of use of each term is greatest among government documents. It is also worth noting that the frequency of use for both terms is the highest amongst any other term examined.⁴

Governments tend to view accommodation more as a process of seeking compromise in an attempt to harmonize conflicting interests and stress that a commitment to the process does not require a duty to agree (Gouvernement du Quebec 2008; Government of British Columbia 2014; Government of Nova Scotia 2015). Industry does not make frequent mention of accommodation, though Association for Mining Exploration British Columbia (2015) takes a similar approach as

⁴ The exception is "accommodation", which has a frequency of only 31 per 10,000 words in industry documents.

government in highlighting that consultation does not necessarily mean reaching agreement, but provides a forum for discussion.

Figure 1: Frequency of Use of “Consultation”, “Engagement” and “Accommodation”



As discussed above and elsewhere in this book, the duty to consult is prescribed and shaped by the Canadian courts. However, notwithstanding the legal definition, the general concept of consultation may be used with different meanings. For example, there are several definitions of consultation in the documents we examined. The Government of B.C. (2010) states that “consultation in its least technical definition is talking together for mutual understanding.” From industry, the Association for Mining Exploration British Columbia (2015) states “consultation and engagement are about sharing information, listening to and respecting concerns raised, and looking for ways to address those concerns in a manner that is reasonable and commensurate with the nature, scope and duration of the exploration activities being carried out.” The Assembly of First Nations of Quebec and Labrador (2005) suggests that “consultations are an excellent opportunity for First Nations to exercise their jurisdiction over, and their social and economic interest in, lands and natural resources.” These definitions showcase differences in how each group approaches

consultation. For Indigenous groups, it is about political and legal empowerment. This contrasts with the other definitions, which use language oriented to strengthening existing relationships and processes.

Canadian court cases have also emphasized that consultation must be meaningful. However, as with consultation, definitions and interpretations may differ. Indigenous groups that addressed meaningful consultation suggested that it required being engaged early, allowing sufficient time for input to be prepared and considered, and having a say in strategic planning decisions (Kluane First Nation 2012; Meyers Norris Penny n.d.; Nak'azdli Nation n.d.). AANDC⁵ (2011) states “a meaningful consultation process is characterized by good faith and an attempt by parties to understand each other’s concerns, and move to address them.” This means consultation is “carried out in a timely, efficient and responsive manner; transparent and predictable; accessible, reasonable, flexible and fair; founded in the principles of good faith, respect and reciprocal responsibility; respectful of the uniqueness of First Nation, Métis and Inuit communities; and, includes accommodation (e.g. changing of timelines, project parameters), where appropriate” (AANDC 2011). Governments also recognize that meaningful consultation is an iterative process rather than a single action or event (Fisheries and Oceans Canada 2006; Nova Scotia 2015; AANDC 2011). For example, AANDC (2011) indicates that departments and agencies are encouraged to develop long-term working relationships and processes rather than working together only on an ad hoc or case-by-case basis. Industry documents did not provide a clear definition of

⁵ Canada’s Indigenous relations ministry has undergone several transformation. Originally the Department of Indian Affairs and Northern Development (the legal title), its applied title changed to Aboriginal Affairs and Northern Development Canada (AANDC) in 2011, and then to Indigenous and Northern Affairs Canada in 2015 (Derworiz and Albers 2018). It dissolved into Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada in 2017. In 2018, Crown-Indigenous Relations and Northern Affairs Canada became Crown-Indigenous Relations and the northern affairs portfolio moved to a new ministry of Intergovernmental and Northern Affairs and Internal Trade. Throughout this chapter, we refer to the documents produced by the ministry as published at the time.

meaningful consultation. The Calgary Chamber of Commerce (2015) indicates the need for a clear definition, but does not offer one. Several industry documents did note the importance of involving Indigenous Peoples in determining the process itself and ensuring it is acceptable and informed by the interests of Indigenous communities (Canadian Association of Petroleum Producers 2006; Association for Mining Exploration British Columbia 2015; Canadian Wind Energy Association n.d.).

As noted by Boyd and Lorefice (2018), some Indigenous groups suggest that the duty to consult comes from the unique, nation-to-nation relationship between Indigenous Peoples and the Crown. These documents outline that consultation should be driven by the political will to establish and maintain this relationship as opposed to fulfilling a legal requirement (Assembly of First Nations of Quebec and Labrador 2005; Federation of Saskatchewan Indian Nations n.d; National Centre for First Nations Governance n.d.a). Government documents tend to view the purpose of the duty to consult as fulfilling legal requirements (for example, AANDC 2011; Government of Alberta 2014). The Government of Alberta (2014) states that the purpose of its policy is “to be consistent with case law and demonstrate a practical approach to meeting the requirements established by the courts.” There are a few exceptions; notably, the Government of British Columbia (n.d.) and the Government of Nova Scotia (2015). The B.C. policy on consultation emphasizes the need for “government-to-government relationships where First Nations are rights-holders not stakeholders” (Government of British Columbia n.d.). Industry documents stress mitigating uncertainty faced by resource companies, which affects their operations and ability to raise capital, through effective relationships (Alberta Chamber of Resources 2006; Canadian Association of Petroleum Producers 2006; Association for Mining Exploration British Columbia 2015; Canadian Wind Energy Association n.d.). The Alberta Chamber of Resources (2006) states

“corporate image and reputation have become important in marketing goods and services, and even in the ability to access certain markets. A positive image with respect to Aboriginal relations can be a significant competitive advantage in the marketplace.”

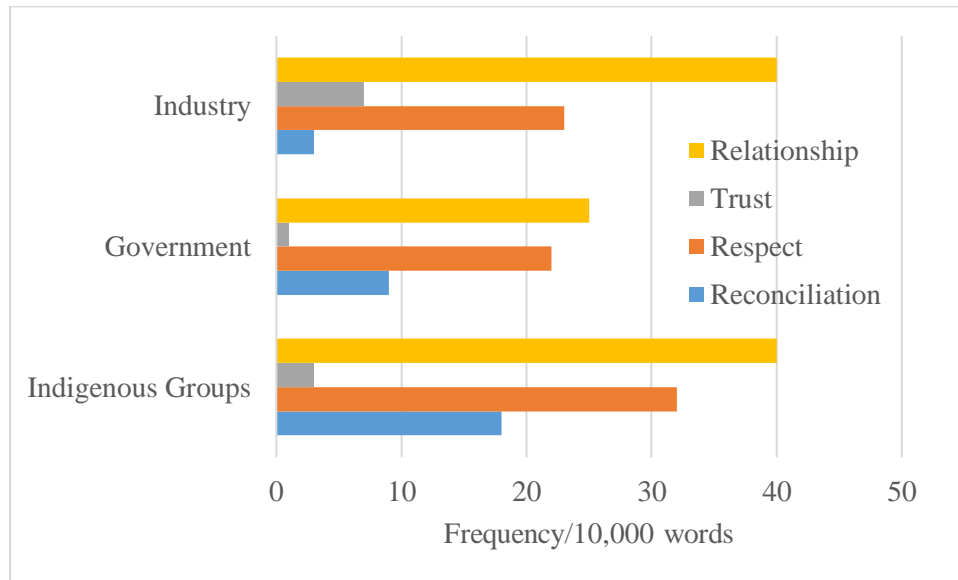
Perspectives on Reconciliation

In the reason for decision of the *Clyde River* case, Justices Karakatsanis and Brown state “this court has on several occasions affirmed the role of the duty to consult in fostering reconciliation.” The principle of reconciliation refers to “establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country” (Truth and Reconciliation Commission 2015). Thus, reconciliation could be an important purpose or motivator for engaging in consultation. To assess how important reconciliation in resource development was to each group, we compared the frequency with which each used the terms “reconciliation,” “relationship,” “respect,” and “trust” (Figure 2). Documents from Indigenous groups referenced reconciliation 18 times per 10,000 words. This was twice as frequent as government and six times more frequently than industry. Trust was mentioned seven times per 10,000 words by industry, three times by Indigenous groups and one time by governments. Of note is the importance all three groups placed on the word “relationship,” with equal occurrences in Indigenous and industry documents (40 per 10,000), and higher frequency than respect.

Approximately half of the government documents accounted for the references to reconciliation. As an example of the language used, AANDC’s consultation policy states “the Crown’s efforts to consult and, where appropriate, accommodate Aboriginal groups whose potential or established Aboriginal or Treaty rights may be adversely affected should be consistent with the overarching objectives of reconciliation” (AANDC 2011). Just under half of Indigenous groups’ documents mentioned reconciliation at least once. The National Centre for First Nations

Governance (2009) states that “the consultation and accommodation process is driven by the primary purpose of reconciliation.” Less than a quarter of industry documents mentioned reconciliation as part of the process of consultation and engagement.

Figure 2: Frequency of Use of “Relationship,” “Trust,” “Respect” and “Reconciliation”



One document, from the First Nations Leadership Council, indicated that it does not see a good faith attempt at reconciliation through consultation by government: “rather than building the relationships, trust and momentum required for the transformational change that reconciliation requires, the Crown’s approaches to consultation and accommodation are fueling growing impatience, frustration, and conflict” (First Nations Leadership Council 2013). The First Nations Leadership Council argues that the number of court challenges against government decisions, such as the approval of the Northern Gateway and Kinder Morgan pipelines, highlights that the duty to consult has not been implemented in a way that advances reconciliation.

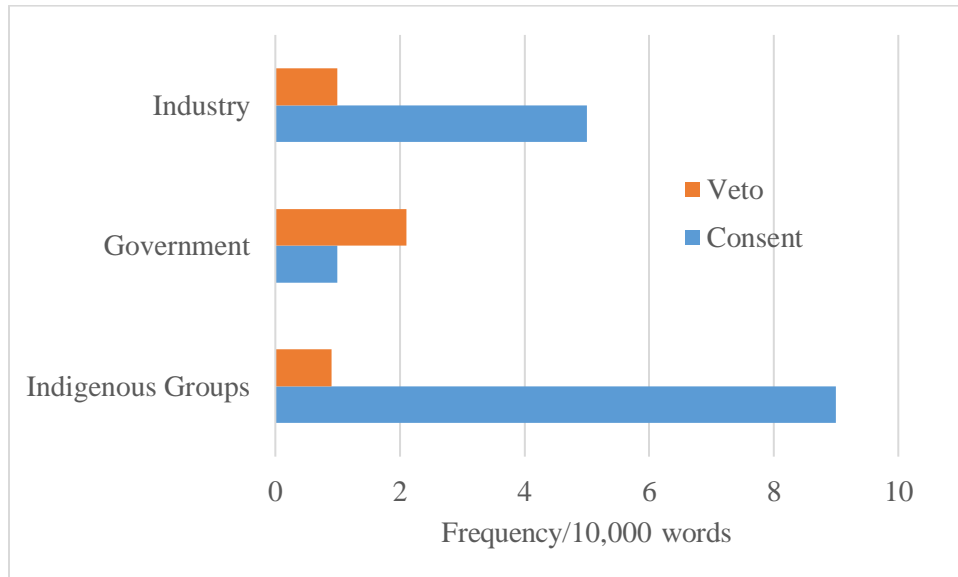
[Differing Perspectives on Consent versus Veto](#)

Whether Indigenous communities or nations have a veto (and whether consent is the same as a veto) when resource development infringes upon their rights remains an unsettled question that is

slowly being resolved through the court system. The use of the terms consent and veto in the documents examined sheds light on the perspectives of the three groups and how the rights of Indigenous Peoples are interpreted.

Figure 3 compares the frequency with which Indigenous groups, government and industry used the terms “veto” and “consent”. Indigenous groups mentioned consent nine times per 10,000 words, while industry and government referenced the term four times and once per 10,000 words respectively. Conversely, government used the term veto 2.1 times per 10,000 words, approximately twice as frequently as Indigenous groups and industry. Perhaps not surprisingly, the documents produced by Indigenous groups highlight the language used by the courts which indicates that consent is required (Hupacasath First Nation 2006; Kluane First Nation 2012; Nak’azdli Nation n.d.). Government and industry documents focus on the courts’ assertion that the duty to consult does not grant Indigenous Peoples a veto on projects (AANDC 2011; Government of Alberta 2013; Association for Mining Exploration British Columbia 2015; Mining Association of Manitoba 2016). The document from the First Nations Leadership Council (2013) provides an interesting perspective in arguing that no actor has a veto if true reconciliation is the goal. The First Nations Leadership Council suggests that this reflects the tradition of many Indigenous groups of consensus-based decision making, where deliberation continues until all parties agree on a decision. Further, the document indicates that, while Indigenous groups may not desire to completely stop a project on their own, the notion that it would move forward without their agreement demonstrates a lack of respect for their concerns and rights.

Figure 3: Frequency of Use of “Veto” and “Consent”

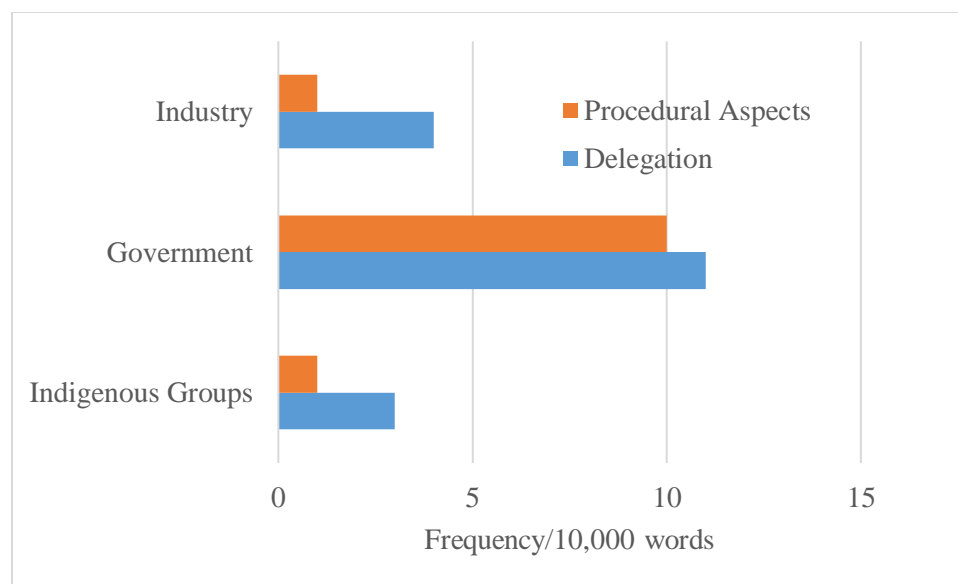


Delegation of Procedural Aspects of Consultation

Canadian governments can delegate procedural aspects of the duty to consult to third parties (*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41). We examined the frequency of use for the terms “delegation” and “procedural aspects” to compare how important this concern was for each group. As Figure 4 shows, governments discuss delegation and procedural aspects of the duty to consult much more frequently than Indigenous groups or industry. Government documents state that procedural aspects involve meeting with Indigenous communities, sharing and discussing information, identifying project impacts and implementing mitigation measures (Government of Alberta 2013; Government of Nova Scotia 2015; Government of B.C., 2014). The rationale identified in the documents is that proponents are generally in a better position to fulfill this role because they have intimate knowledge of the project (for example, Government of B.C., 2014). This can be seen by some Indigenous groups as the Crown shirking its responsibility and not promoting positive relations. For example, the First Nations Leadership Council (2013) indicates that just because delegation is legally permissible

does not mean it is appropriate, acceptable, desirable or meaningful. Industry’s primary concern is having clarity on what they are responsible for and a smooth transition to government consultation when issues are outside their authority, such as a royalty-sharing agreement (for example, Canadian Chamber of Commerce (2016)).

Figure 4: Frequency of Use of “Procedural Aspects” and “Delegation”



Timing of Consultation

An important concern for Indigenous groups was that consultation processes are often rushed, and that insufficient time is dedicated to establishing trusting relationships and allowing for respectful and meaningful consultation (for example, Assembly of First Nations of Quebec and Labrador 2005; First Nations Leadership Council 2013). Indeed, the Federal Court of Appeal ruled that federal government consultation on the Northern Gateway pipeline was “brief, hurried and inadequate” (*Gitxaala v. Canada*, 2016 FCA 187, sec. 325). However, one industry document expressed concerns about timeline extensions delaying a project and increasing uncertainty (Calgary Chamber of Commerce 2015). Government documents discuss timing of consultation relative to statutory requirements, but the Government of Saskatchewan (2013) also stressed the

importance of voluntary engagement prior to formal processes. This document highlighted the potential for early engagement to address problems before they arise and building working relationships with Indigenous communities. The document indicated that early engagement is important when determining the level of capacity funding necessary to ensure that members of Indigenous communities can adequately participate in consultation processes. The Assembly of First Nations of Quebec and Labrador (2005) suggested that seasonal customs and traditions of Indigenous Peoples should also factor into timing, thus creating a need for flexibility in terms of government and industry consultation processes.

Capacity Building

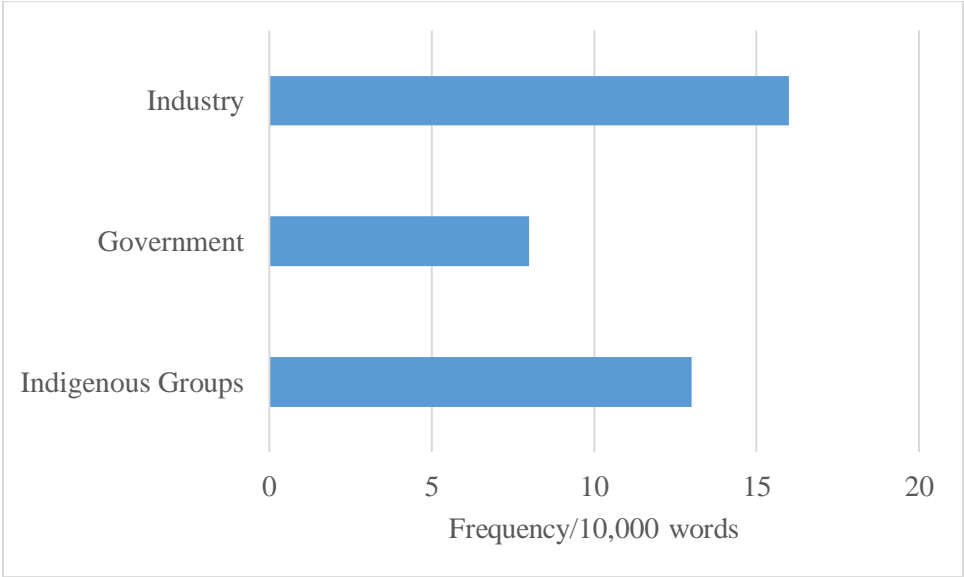
Capacity building refers to attempts to increase revenue, skills, infrastructure, etc., in Indigenous communities to address asymmetries in wealth, power, and knowledge, which can limit effective implementation of the duty to consult and engagement. The issue was important to all groups, but potentially most important to industry which mentioned the term “capacity” twice as frequently as government, with mentions by Indigenous groups falling about midway between the other two (Figure 5).

Governments recognize their responsibility and are generally amenable to providing capacity support (for example, Government of Manitoba (2009) and AANDC (2011)). Of particular interest is a Government of Alberta program, the First Nations Consultation Capacity Investment Fund, which provides ongoing support for communities to participate in consultation processes and is funded by industry (Government of Alberta 2013). As noted previously, project proponents are not legally obliged to provide supports through the duty to consult.⁶ But Indigenous

⁶ Although, the Government of Newfoundland and Labrador (2013) indicates that “since Aboriginal consultation is included as part of the project assessment, proponents are required to provide reasonably necessary capacity-funding to facilitate the provision by Aboriginal organizations of pertinent information on potential impacts of project specific activities on asserted Aboriginal rights and any required financial compensation.”

groups, government and industry all note that it can help build relationships and trust (for example, Kluane First Nation (2012), Government of Saskatchewan (2013), and Association for Mining Exploration British Columbia (2015)). However, the Association for Mining Exploration British Columbia raises concerns about support provision, including their ability to fund supports, ensuring funding is commensurate to the level of consultation, and ensuring that it benefits the entire community, not just a few individuals. Capacity issues can be exacerbated by the high number of consultations that many communities are required to participate in and the potential for fatigue in communities (Government of Northwest Territories 2012). One community has called on government and industry to look for more creative ways, beyond monetary support, to ensure the full involvement of Indigenous Peoples in consultation processes (Hupacasath First Nation 2006).

Figure 5: Frequency of Use of “Capacity”

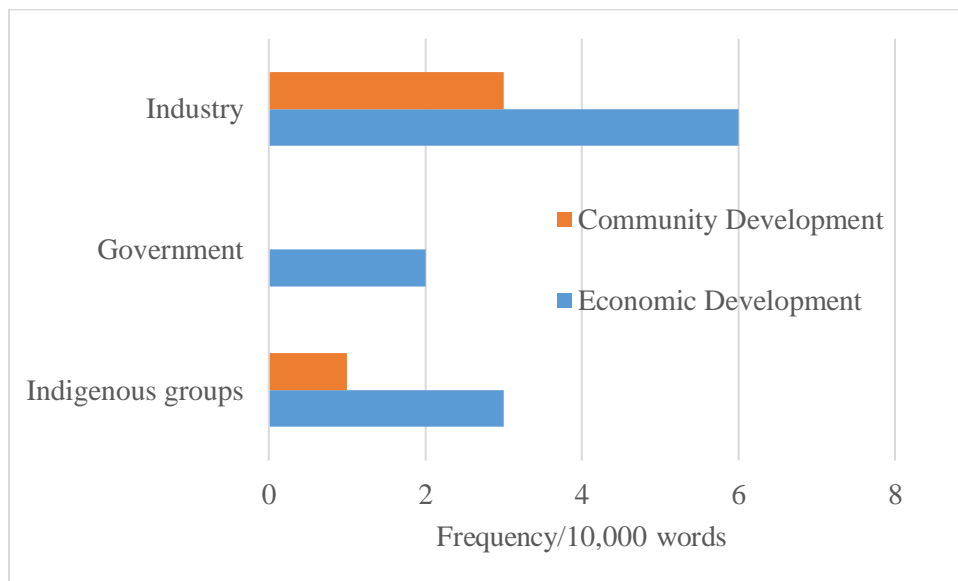


Economic and Community Development

A key point raised by the B.C. First Nations Energy and Mining Council (2008) is that communities should benefit from resource development on their traditional territories, not just be

compensated or accommodated for the impacts of development. Industry tends to think of these benefits as directly related to the project (Alberta Chamber of Resources 2006; Cameco 2014; BluEarth Renewables 2015). This includes job opportunities and skills training, opportunities for local businesses to provide services and revenue sharing or partnership agreements. Increasingly, Indigenous communities are thinking beyond immediate job opportunities to revenue-sharing, partnerships, equity and other agreements, which provide more direct involvement in projects and contribute to community development (Hupacasath First Nation 2006; B.C. First Nations Energy and Mining Council 2008; National Centre for First Nations Governance 2009).

Figure 6: Frequency of Use of “Community Development” and “Economic Development”



However, we found that even though industry mentioned economic development more than community development, they referenced both more than Indigenous groups. The Prospectors and Developers Association of Canada (2014) states that “industry can view this situation as a ‘double tax,’ given that companies pay fees, taxes and royalties to federal, provincial and territorial governments, as well as contribute funds to Aboriginal communities through commercial arrangements.” It is also important to note that discussion of training and education often focused

on trades, rather than employment at the management and executive level (Alberta Chamber of Resources 2006; Cameco 2014; Forest Products Sector Council n.d.). The Forest Products Sector Council document also notes that more opportunities need to be created for Indigenous women.

Information Sharing and Transparency

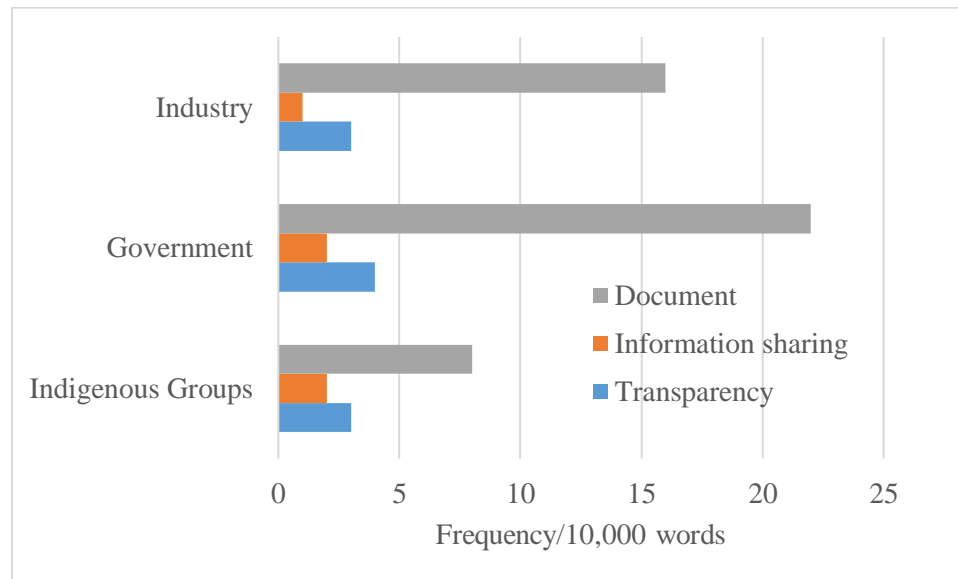
Lack of information sharing and transparency in consultation and engagement processes was a common barrier referenced by all groups. Figure 7 demonstrates Indigenous groups and government discussed the issue more frequently than industry. Government policies stress the importance of documenting all activities and materials that are undertaken related to consultation to demonstrate to the courts how it has fulfilled its legal obligations (Fisheries and Oceans Canada 2006; AANDC 2011; Government of Newfoundland and Labrador 2013). This includes events, telephone calls, emails, site visits, and notifications about activities. Governments encourage project proponents to record all engagement activities as well, and share them with government, as they can contribute towards the Crown's responsibility. For Indigenous groups, the issue is the transparency and communication of project information and government decision making (Canadian Business Ethics Research Network 2011; National Centre for First Nations Governance n.d.-a).

Government and industry warn that essentially no conversations should be off the record because this information may be required to prove to the courts that consultation occurred (AANDC 2011; Government of Saskatchewan 2013). However, this can potentially impede the establishment of good relationships. The First Nations Leadership Council (2013) states that “no relationship, whether Crown-Aboriginal, federal-provincial, spouses, or otherwise can be enlivened if every contact or engagement is on the record.” The Federation of Saskatchewan Indian Nations (n.d.) indicates “First Nations need to approach all discussions cautiously and with a view

that all discussions with the Crown may ultimately be presented as evidence in a Court to determine whether the Crown is justified in infringing a First Nation's Treaty or First Nation rights or First Nation title and document, confirm and retain all dialogue." Indeed, we found that Indigenous groups reference the terms document(s) and documentation significantly less than industry and government.

An important concern for governments was coordinating information among departments and agencies to improve communication and decision making within government (Government of Alberta 2014; Government of Nova Scotia 2015). This included formal processes, like centralized record keeping, and informal avenues, like meeting and discussions among departments. For industry, a priority was having face-to-face meetings with communities, rather than by phone or email, to establish relationships (BluEarth Renewables 2015; Calgary Chamber of Commerce 2015). Members of all groups noted the importance of providing information in an accessible and culturally appropriate format, rather than long technical reports (for example, Canadian Energy Pipeline Association (2014), Government of Saskatchewan (2013), Assembly of First Nations of Quebec and Labrador (2015); Suncor (n.d.)). This was an important component of the *Clyde River* decision, where the proponents provided what the courts referred to as a "practically inaccessible document dump" where "only a fraction of this enormous document was translated into Inuktitut" ([2017] SCC 40: sec. 49).

Figure 7: Frequency of Use of “Document,” “Information Sharing” and “Transparency”



Note: The “document” frequency count includes the sum of document and documentation.

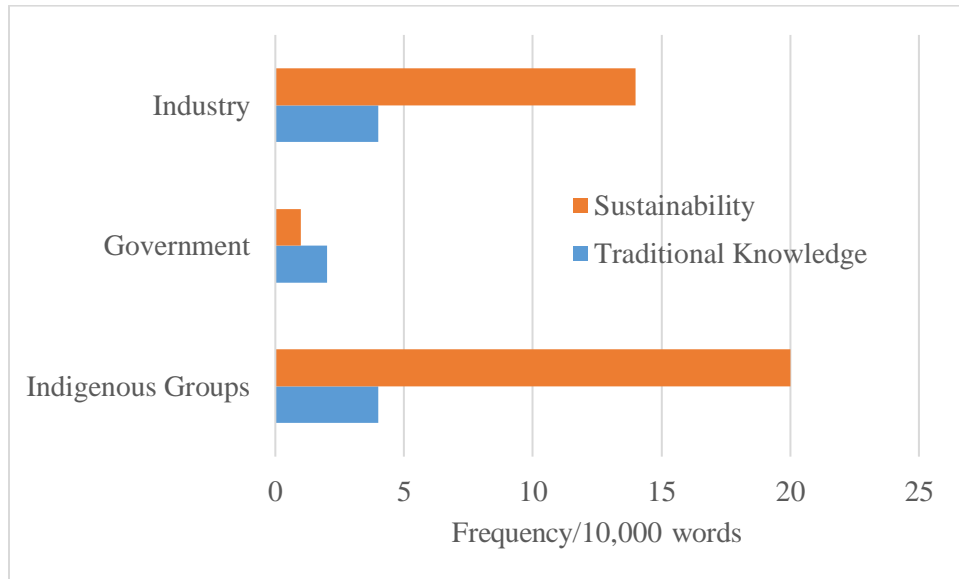
Traditional Knowledge

As mentioned above, the lack of inclusion of traditional knowledge in decision-making processes has been a barrier to effective consultation in the past. This theme was discussed in the documents of all groups; however, Indigenous groups and industry mentioned traditional knowledge twice as frequently as government (Figure 8). There is an acknowledgement within government and industry that efforts should be made to understand and consider this when consulting and engaging. For example, the Alberta Chamber of Resources (2006) states “the first step is to understand cultural differences; the next step is to bridge them — not to change them.” Some industry documents suggest the inclusion of traditional knowledge can improve project development, in addition to defining Indigenous rights and providing more fulsome participation in decision making (Association for Mining Exploration British Columbia 2015; Mining Association of Manitoba 2016). This is in line with scholars who have noted that Indigenous knowledge can improve decision-making and should be incorporated into environmental assessment processes

(O’Faircheallaigh 2007; Lambrecht 2013). Indeed, discussion of sustainability originates primarily from Indigenous groups and industry. The main themes include concerns regarding the protection of traditional land, the benefits of self-monitoring of approved projects, the provision of land-use guidelines to project proponents and the importance of negotiating long-term employment. The Government of B.C.’s (n.d.) consultation guideline is one of the few government documents that encourages the use of Indigenous knowledge of the land as a means of preserving the environment.

Working towards the inclusion of Indigenous knowledge in a meaningful way is difficult and requires more than simply reading a report or viewing information, without someone to explain it. For example, the First Nations Leadership Council (2013) stresses the need to have elders or knowledge holders present during the decision-making process to interpret and communicate traditional knowledge, rather than simply making maps or charting important sites. The importance of elders and other informal leaders in preserving, protecting and promoting culture and tradition was an important theme emerging from our analysis. Industry and government frequently identified the need to connect and develop relationships with these groups (Government of Saskatchewan 2013; Association for Mining Exploration British Columbia 2015). This is not just to involve these groups, as it was noted the involvement can also improve the project. The Government of B.C. (n.d.), in a document for proponents on building relationships with First Nations, states “First Nations hold a wealth of knowledge about the diversity and interactions among plant and animal species, landforms, watercourses and other biophysical features. Companies may benefit from this knowledge in order to build new practices for protecting and conserving resources, including heritage resources individuals, in addition to formal band or tribal leadership.”

Figure 8: Frequency of Use of “Sustainability” and “Traditional Knowledge”



Note: The “traditional knowledge” frequency count includes the sum of traditional knowledge, traditional ecological knowledge, indigenous knowledge, aboriginal knowledge and local knowledge.

Summary and Conclusions

The goal of this chapter was to provide a quantitative analysis of policy statements and guideline documents related to consultation and engagement produced by Indigenous groups, government and industry to assess their understandings of key issues and concepts. Our research has uncovered several key conclusions that should be considered in the design of consultation and engagement processes.

The term consultation was the most common way Indigenous groups, government and industry talked about Indigenous involvement in resource development. Discussion of broader engagement and substantive accommodation was less common. Somewhat surprisingly this was the case for industry, even though they are not directly responsible for fulfilling the legal duty to consult. However, the government used the term consultation substantially more, in comparison to the two other terms. This suggests that governments may be more concerned with fulfilling the

formal requirements of consultation rather than the broader spectrum of activities that could fall under engagement. It also supports the hypothesis that government is less concerned with the substantive accommodation than the procedural requirements of consultation.

Indigenous groups' documents revealed that resource development is often thought of in the context of reconciliation. This concept is much less prominent in industry and government documents. The perspective provided by Indigenous groups is that resource development cannot be approached as a regular business or government transaction - it is a distinct and unique relationship. The primary reason for this is that Indigenous communities and nations are rights holders, not just stakeholders. While the concepts of reconciliation and respect are much less frequently referenced by government and industry documents, the term relationship was used with the same frequency in industry documents as Indigenous group's documents (40 per 10,000), indicating an attitude more in line with the concept of reconciliation than might otherwise be inferred.

In terms of the concept of accommodation, there was relatively similar frequency of use by Indigenous groups (78) and government (104). However, our textual analysis reveals different viewpoints. Indigenous groups' language reflects substantive components of accommodation, such as changes to projects and compensation. In contrast, the government documents discussed accommodation as part of reaching compromise and focused on procedural aspects.

One instance where perspectives and objectives differed was around the timing of consultation. An important concern for Indigenous groups was that consultation processes are often rushed, and that insufficient time is dedicated to establishing trusting relationships and allowing for respectful and meaningful consultation. There is a clear tension between the time required for meaningful consultation and business risk due to delays, increasing costs and lost

windows of opportunity. Interests are not aligned in this case, and documents offered little in the way of solutions to this conundrum.

Our analysis revealed that the capacity of Indigenous communities to fully participate in consultation and engagement was recognized as a challenge by all three groups. As a corollary, effectively addressing the challenge through capacity-building and the provision of supports was also recognized as an issue. Industry documents also noted financial concerns associated with industry-provided support for capacity-building and community and economic development.

Another point of alignment amongst the three groups was the concept to information-sharing and transparency. While the concepts were not very important in terms of frequency of use, all groups agreed that transparency is a positive element of relationship-building. On the negative side, however, is government's focus on documentation and the procedural aspect of information-sharing, something that was often viewed negatively in the documents of Indigenous groups.

The lack of inclusion of traditional knowledge in decision-making processes was a theme discussed in the documents of all groups, and was acknowledged as a barrier to effective consultation. Indigenous groups and industry documents were more focused on the concept of sustainability. Some industry documents suggest the inclusion of traditional knowledge can improve project development, in addition to defining Indigenous rights and providing more fulsome participation in decision making.

Finally, we note that there is significant scope for cooperation between Indigenous communities, academics, industry, and government to improve both our understanding of consultation and engagement in theory and the processes used in practice. There has been little examination of how consultation is implemented in practice. The case law surrounding the duty to

consult provides some direction by outlining the legal requirements and how they must be fulfilled. However, these decisions do not provide detailed insight into how consultation and engagement occurs on the ground or identify lessons regarding how consultation and engagement should be conducted.

Scholars have begun to examine how the duty to consult has been implemented, including issues with delegation, asymmetries in information and funding, and the cumulative effect of consultation on Indigenous communities (Booth and Skelton 2006; Ritchie 2013). This chapter contributes to this line of inquiry by examining the written statements of the actors involved in the process about the conduct of consultation. We identify and expand upon barriers to consultation and how they are viewed by Indigenous groups, government and industry. The limitation of our work is that it was not feasible in the scope of this project to determine how closely these guidelines and statements are followed in practice. Clearly, more work is needed in this area to understand how consultation and engagement occur in practice. This could include case studies of specific processes and communities or surveys of consultation officials, industry and community members. While other chapters in this volume attempt to address this gap, they are a starting point for better understanding.

Several Indigenous groups' documents suggest that existing processes, such as environmental assessments, are unlikely to satisfy the duty to consult unless they are particularly robust (Assembly of First Nations of Quebec and Labrador 2005; First Nations Leadership Council 2013). In addition, a common theme from our analysis is that meaningful consultation requires involving Indigenous Peoples in the design of the consultation process itself. Therefore, future work should examine what processes, mechanisms and tools are seen by Indigenous Peoples as

representing their interests, culture and traditions and which processes are more effective in reaching mutually agreeable outcomes. The other chapters in this book are a start in this direction. Third, as argued by Sossin (2010), while the duty to consult aims at achieving procedural fairness for Indigenous Peoples and respect for their constitutional rights, it is not yet clear whether it will lead to outcomes that are more just. Indeed, there is an opportunity for more research on the link between consultation and engagement activities and the outcomes of development in communities. Papillon and Rodon (2017) examine the impact of resource development on communities more broadly using mining near Inuit communities as a case study, finding mixed benefits. However, their work demonstrates the length of time required to assess the impact of development, as the authors examine changes in the communities over five decades. They also note that it is difficult to measure precisely what the benefit of greater consultation in resource development is for Indigenous communities. Thus, determining whether the emergence of the duty to consult in Canadian law has led to substantive improvements in Indigenous communities' socio-economic status is difficult at best, though Wyatt and Dumoe in this book provide some evidence.

Appendix: List of Documents in Detailed Review

Government

- Gouvernement du Quebec. 2008. *Interim Guide for Consulting the Aboriginal Communities*, accessed via https://www.autochtones.gouv.qc.ca/publications_documentation/publications/guide_inter_2008_en.pdf.
- Government of Alberta. 2013. *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, accessed via <http://indigenous.alberta.ca/documents/GoAPolicy-FNConsultation-2013.pdf?0.6419062380364693>.
- Government of Alberta. 2014. *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2014*, accessed via http://indigenous.alberta.ca/documents/First_Nations_Consultation_Guidelines_LNRD.pdf.
- Government of British Columbia. 2010. *Updated procedures for meeting legal obligations when consulting First Nations*, accessed via <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations>.
- Government of British Columbia. 2013. *Guide to involving proponents when consulting First Nations in the environmental assessment process*, prepared by British Columbia Environmental Assessment Office, accessed via http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations/proponents_guide_fn_consultation_environmental_assessment_process_dec2013.pdf.
- Government of British Columbia. 2014. *Guide to involving proponents when consulting First Nations*, accessed via <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations>.
- Government of British Columbia. n.d. *Building Relationships with First Nations: Respecting Rights and Doing Good Business*, accessed via http://www.bcbc.com/content/594/WorkingWithFirstNations_v02.pdf.
- Government of Canada, AANDC (Aboriginal Affairs and Northern Development Canada). 2011. *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011*, accessed via <http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>.
- Government of Canada, Fisheries and Oceans Canada. 2006. *Consultation with First Nations: Best Practices*, accessed via <http://www.dfo-mpo.gc.ca/Library/329385.pdf>.
- Government of Manitoba. 2009. *Interim Provincial Policy For Crown Consultations with First Nations, Métis Communities and Other Aboriginal Communities*, accessed via <https://www.gov.mb.ca/imr/ir/resources/pubs/interim%20prov%20policy%20for%20crown%20consultation%20-%202009.pdf>.

- Government of New Brunswick. 2011. *Government of New Brunswick Duty to Consult Policy*, accessed via <http://www2.gnb.ca/content/dam/gnb/Departments/aas-saa/pdf/en/DutytoConsultPolicy.pdf>.
- Government of Newfoundland and Labrador. 2013. *The Government of Newfoundland and Labrador's Aboriginal Consultation Policy on Land and Resource Development Decisions ("The Policy")*, accessed via https://www.gov.nl.ca/ias/wp-content/uploads/aboriginal_consultation.pdf.
- Government of Northwest Territories. 2007. *The Government of the Northwest Territories' approach to consultation with Aboriginal Governments and organizations*, accessed via https://www.eia.gov.nt.ca/sites/eia/files/aboriginal_consultation_approach.pdf.
- Government of Northwest Territories. 2012. *Respect, Recognition, Responsibility: Government of the Northwest Territories' Approach to Engaging with Aboriginal Governments*, accessed via <http://www.assembly.gov.nt.ca/sites/default/files/12-06-08td23-173.pdf>.
- Government of Nova Scotia, Office of Aboriginal Affairs. 2012. *Proponents' Guide: The Role of Proponents in Crown Consultation with the Mi'kmaq of Nova Scotia*, accessed via <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10655268.pdf>.
- Government of Nova Scotia. 2015. *Government of Nova Scotia Policies and Guidelines: Consultation with the Mi'kmaq of Nova Scotia*, accessed via https://novascotia.ca/abor/docs/April%202015_GNS%20Mi'kmaq%20Consultation%20Policy%20and%20Guidelines%20FINAL.pdf.
- Government of Ontario. 2017. *Draft guidelines for ministries on consultation with Aboriginal peoples related to Aboriginal rights and treaty rights*. First published November 2015; updated February 2017. Accessed via <https://www.ontario.ca/page/draft-guidelines-ministries-consultation-aboriginal-peoples-related-aboriginal-rights-and-treaty>.
- Government of Ontario. 2016. *Environmental assessments: consulting Indigenous communities*. First published July 2013; updated December 2016. Accessed via <https://www.ontario.ca/page/environmental-assessments-consulting-indigenous-communities>.
- Government of Prince Edward Island. n.d. *Government of Prince Edward Island Provincial Policy on Consultation with the Mi'kmaq*, accessed via <http://www.gov.pe.ca/photos/sites/aboriginalaffairs/file/Provincial%20Policy%20on%20Consultation%20with%20the%20Mikmaq%20-%20Revised%20March%202014.pdf>.
- Government of Saskatchewan. 2010. *First Nation and Métis Consultation Policy Framework*, accessed via <http://publications.gov.sk.ca/documents/313/98187-Consultation%20Policy%20Framework.pdf>.
- Government of Saskatchewan. 2013. *Proponent Handbook Voluntary Engagement with First Nations and Métis Communities to Inform Government's Duty to Consult Process*, accessed via http://publications.gov.sk.ca/documents/313/94455-Proponent_Handbook.pdf.

Indigenous Groups

- Assembly of First Nations. 2011a. *Environmental Assessments and Major Projects Policy Considerations*, accessed via [http://www.afn.ca/uploads/files/environmental assessments & major projects policy considerations.pdf](http://www.afn.ca/uploads/files/environmental_assessments_&_major_projects_policy_considerations.pdf).
- Assembly of First Nations of Quebec and Labrador. 2005. *Consultations Protocol of First Nations of Quebec and Labrador*, accessed via http://fnqlsdi.ca/wp-content/uploads/2013/05/protocole_consultation_2005_en.pdf.
- B.C. First Nations Energy and Mining Council. 2008. *Mining and Mineral Exploration Plan*, accessed via <http://fnemc.ca/?portfolio=mining-and-mineral-exploration-plan>.
- B.C. First Nations Energy and Mining Council. 2010. *Sharing the Wealth: First Nation Resource Participation Models*, accessed via <http://fnemc.ca/?portfolio=sharing-the-wealth>
- Canadian Business Ethics Research Network. 2011. *CBERN-NNK Knowledge Needs Research Summary: Report to the CBERN/Naskapi Steering Committee and the Naskapi Community*, accessed via <https://www.cbern.ca/content/uploads/sites/4/2016/03/CBERN-NNK-Report-English-Final.compressed.pdf>.
- Canadian Council for Aboriginal Business. n.d. *Progressive Aboriginal Relations*, accessed via <https://www.ccab.com/wp-content/uploads/2016/08/PAR-Overview.pdf>.
- First Nations Leadership Council. 2013. *Advancing an Indigenous Framework for Consultation and Accommodation in BC*, accessed via http://fns.bc.ca/wp-content/uploads/2016/10/319_UBCIC_IndigActionBook-Text_loresSpreads.pdf.
- Federation of Saskatchewan Indian Nations. n.d. *Federation of Saskatchewan Indian Nations Consultation Policy*, accessed via <http://caid.ca/FSINConPol.pdf>.
- Hupacasath First Nation. 2006. *Hupacasath Land Use Plan Phase 2*, accessed via <http://hupacasath.ca/wp-content/uploads/2016/03/LUP-Phase2-2006.pdf>.
- International Institute for Sustainable Development. 2001. *Integrating Aboriginal Values into Land-Use and Resource Management*, accessed via https://www.iisd.org/pdf/skownan_final_nopics.pdf.
- International Institute for Sustainable Development. 2004. *Out of Respect: The Tahltan, Mining, and the Seven Questions to Sustainability*, accessed via http://www.iisd.org/pdf/2004/natres_out_of_respect.pdf.
- Kluane First Nation. 2012. *Proponents Engagement Guide*, accessed via <http://www.kfn.ca/documents/lands-resources-heritage/KFN%20Proponent%20Engagement%20Guide%20KFN%202012-01-10.pdf>.
- Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process n.d. <https://www.aadnc-aandc.gc.ca/eng/1100100031918/1100100031919>.
- Meyers Norris Penny LLP. 2009. *Best Practices for Consultation and Accommodation*, prepared for New Relationship Trust, accessed via <http://www.newrelationshiptrust.ca/wp-content/uploads/2017/04/consultation-and-accomodation-report.pdf>.

- Nak'azdli Nation. n.d. *Nak'azdli Nation Stewardship Policy*, accessed via <https://nakazdli.files.wordpress.com/2015/05/stewardship-policy1.pdf>.
- National Centre for First Nations Governance. 2009. *Crown Consultation Policies and Practices Across Canada*, accessed via http://fngovernance.org/publication_docs/NCFNG_Crown_Consultation_Practices.pdf.
- National Centre for First Nations Governance. n.d.(a). *Consultation Fact Sheet 2: Consultation Procedures/Steps*, accessed via http://fngovernance.org/resources_docs/Consultation_Steps_Factsheet.pdf.
- National Centre for First Nations Governance. n.d.(b). *Consultation Fact Sheet 4: Accommodation*, accessed via http://fngovernance.org/resources_docs/First_Nation_Accommodation_FactSheet.pdf.
- Tahltan Nation. 2013. *Tahltan-BC Government Shared Decision-Making Agreement 2013*, accessed via <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-a-z-listing/tahltan-central-council>.
- Wet'suwet'en First Nation. n.d. *Natural Resource Project Development Protocol*, accessed via <http://www.wetsuweten.com/territory/mining/>.

Industry

- Alberta Chamber of Resources. 2006. *Learning from Experience Aboriginal Programs in the Resource Industries*, accessed via <http://www.acr-alberta.com/Portals/0/Learning%20From%20Experience-Aboriginal%20Programs%20in%20the%20Resource%20Industries.pdf?ver=2016-03-01-162953-617>.
- Association for Mining Exploration British Columbia. 2015. *Aboriginal Engagement Guidebook: A Practical and Principled Approach for Mineral Explorers*, accessed via <http://amebc.ca/wp-content/uploads/2017/04/aboriginal-engagement-guidebook-revised-may-2015.pdf>.
- BluEarth Renewables Inc. 2015. *Aboriginal Relations Policy*, accessed via http://www.blueearthrenewables.com/wp-content/uploads/2014/12/BluEarth_ARPolicy_12Jan2015_Final.pdf.
- Calgary Chamber of Commerce. 2015. *The Consultation Conundrum: Examining Aboriginal consultation in Alberta*, accessed via <http://www.calgarychamber.com/sites/default/files/Calgary%20Chamber%20-%20Aboriginal%20Consultation%20Report.pdf>.
- Canadian Chamber of Commerce. 2016. *Seizing Six Opportunities for More Clarity in the Duty to Consult and Accommodate Process*, accessed via <http://www.chamber.ca/media/blog/160914-seizing-six-opportunities-for-more-clarity-in-the-duty-to-consult-and-accommodate-process/>.

- Cameco Corporation. 2014. *Aboriginal Peoples Engagement*, accessed via https://www.cameco.com/sustainable_development/2014/supportive-communities/aboriginal-peoples-engagement/.
- Canadian Wind Energy Association. n.d. *Best Practices for Community Engagement and Public Consultation*, accessed via <http://canwea.ca/pdf/canwea-communityengagement-report-e-final-web.pdf>.
- Canadian Association of Petroleum Producers. 2006. *Developing Effective Working Relationships with Aboriginal Communities*, accessed via <http://www.capp.ca/publications-and-statistics/publications/100984>.
- Canadian Energy Pipeline Association. 2014. *CEPA Consultation Framework: Principles, Objectives and Guidelines*, accessed via <http://www.cepa.com/wp-content/uploads/2011/06/CEPA-Consultation-Framework-20131.pdf>.
- Forest Products Sector Council. 2011. *Conversation and Collaboration: Building the future Canadian forest products sector with Aboriginal talent*, accessed via <http://www.fpac.ca/publications/FPSC-CSPF-Final-English-Report-Conversation-and-Collaboration.pdf>.
- International Council on Mining and Metals. 2013. *Indigenous peoples and mining position statement*, accessed via <https://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement>.
- Imperial Oil. n.d. *Indigenous relations guiding principles and guidelines*, accessed via http://cdn.imperialoil.ca/~media/imperial/files/community/indigenous_relations_gp_and_guidelines.pdf.
- Mining Association of Canada. 2008. *Towards Sustainable Mining Framework: Mining and Aboriginal Peoples*, accessed via <http://mining.ca/sites/default/files/documents/TSMAboriginalandCommunityOutreachFramework.pdf>.
- Mining Association of Canada. 2015. *TSM Assessment Protocol: A Tool for Assessing Aboriginal and Community Outreach Performance*, accessed via <http://mining.ca/sites/default/files/documents/TSM-Aboriginal-and-Community-Outreach-Protocol-2015.pdf>.
- Mining Association of Manitoba. 2016. *2016 Aboriginal Engagement Handbook*, accessed via https://www.mines.ca/docs/Aboriginal_Engagement_Handbook_Final.pdf.
- Prospectors and Developers Association of Canada. 2014. *Government Resource Revenue Sharing with Aboriginal Communities: A Jurisdictional Review*, accessed via <http://www.pdac.ca/pdf-viewer?doc=/docs/default-source/default-document-library/pdac-grrs-report-2014.pdf>.
- Suncor. 2017. *Aboriginal Relations*, accessed via <http://www.suncor.com/sustainability/community-consultation/aboriginal-relations>.

References

- Anderson, R. 1999. *Economic development among the aboriginal peoples in Canada: The hope for the future*. Concord, ON: Captus Press.
- Anderson, R. 2002. "Entrepreneurship and aboriginal Canadians." *Journal of Development Entrepreneurship*, 7(1), 45-65.
- Angell, A. and Parkins, J. 2011. "Resource development and aboriginal culture in the Canadian north." *Polar Record* 47(240), 69-79.
- Assembly of First Nations. 2011b. *Submission to the House of Commons Standing Committee on the Environment and Sustainable Development: Canadian Environmental Assessment Act Seven-year Review*, accessed via <http://www.afn.ca/uploads/files/parliamentary/ceaa.pdf>.
- Beckley, T., Martz, D., and Nadeau, S. 2008. "Multiple capacities, multiple outcomes: Delving deeply into the meaning of community capacity," *Journal of Rural and Community Development* 3(3) 56-75.
- Berkes, F. 1993. "Traditional ecological knowledge in perspective," in J. T. Inglis (Ed.). *Traditional Ecological Knowledge: Concepts and Cases*. Ottawa: International Program on Traditional Ecological Knowledge and International Development Research Centre.
- Booth, A., & Skelton, N. 2006. "'You spoil everything!' Indigenous peoples and the consequences of industrial development in British Columbia," *Environment, Development and Sustainability* 8(3), 685-702.
- Boutilier, S. 2017. "Free, prior, and informed consent and reconciliation in Canada: Proposals to implement articles 19 and 32 of the UN Declaration on the Right of Indigenous Peoples," *Western Journal of Legal Studies* 7(1), Article 4.
- Charowsky, Z. 2011. "The aboriginal law duty to consult: An introduction for administrative tribunals," *Saskatchewan Law Review* 74, 213-230.
- Cameron, E. and Levitan, T. 2014. "Impact benefit agreements and the neoliberalization of resource governance and indigenous-state relations in Northern Canada," *Studies in Political Economy* 93, 25-52.
- Coates, K. and Crowley, B. 2013. *The way out: New thinking about Aboriginal engagement and energy infrastructure to the West Coast*, MacDonald-Laurier Institute. Ottawa. Retrieved from <http://www.macdonaldlaurier.ca/files/pdf/2013.05.30-MLI-3NorthernGateway-WebReady-vFinal.pdf>.
- Coates, K. and Speers, S. 2016. *Building a new Aboriginal opportunities agenda*, MacDonald Laurier Institute. Ottawa. <http://www.macdonaldlaurier.ca/files/pdf/MLICommentaryCoatesSpeer-03-16-WebReadyV2.pdf>.

- Derworiz, Colette E. and Albers, Gretchen. 2018. "Federal Departments of Indigenous and Northern Affairs," *The Canadian Encyclopedia*, first published October 14 2008, updated July 18, 2018. Accessed September 2018.
<https://www.thecanadianencyclopedia.ca/en/article/aboriginal-affairs-and-northern-development-canada>.
- Dylan, A., Smallboy, B. and Lightman, E. 2013. "Saying no to resource development is not an option: Economic development in Moose Cree First Nation," *Journal of Canadian Studies* 47(1), 59-90.
- Fidler, C. and Hitch, M. 2007. "Impact and benefit agreements: A contentious issue for environmental and aboriginal justice," *Environments Journal* 35(2), 49-69.
- Gallagher, B. 2011. *Resource rulers: Fortune and folly on Canada's road to resources*. Bill Gallagher (publisher).
- Gannan, R., Ciliska, D. and Thomas, H. 2010. "Expediting systematic reviews: methods and implications of rapid reviews," *Implementation Science* 5(56) doi: 10.1186/1748-5908-5-56.
- Gardner, H., Kirchhoff, D. and Tsuju, L. 2015. "The streamlining of the Kabinakagami River hydroelectricity project environmental assessment: What is the 'duty to consult' with other impacted aboriginal communities when the co-proponent of the project is an aboriginal community?" *The International Indigenous Policy Journal* 6(3).
- Gibson, R., Hassan, S., Holtz, S. Tansey, J. and Whitelaw, G. 2005 *Sustainability assessment: Criteria, process and applications*. London, Earthscan.
- Graben, S. and Sinclair, A. 2015. "Tribunal administration and the duty to consult: A study of the National Energy Board," *University of Toronto Law Journal* 65(4), 382-433.
- Grant, M. and Booth, A. 2009. "A typology of reviews: an analysis of 14 review types and associated methodologies," *Health Information and Libraries Journal* 26(2), 91-108.
- Green, B., Johnson, C. and Adams, A. 2006. "Writing narrative literature reviews for peer-reviewed journals: secrets of the trade," *Journal of Chiropractic Medicine* 5(3), 101-117.
- Hill, R., Grant, C., George, M., Robinson, C., Jackson, S. and Abel, N. 2012. "A typology of indigenous engagement in Australian environmental management: Implications for knowledge integration and social-ecological system sustainability," *Ecology and Society* 17(1), 23.
- Hogg, P. 2009. "The constitutional basis of aboriginal rights," in M. Morellato, (Ed.). *Aboriginal Law Since Delgamuukw*. Aurora: Canada Law Book.
- Imai, S. 2017. "Consult, Consent and Veto: International Norms and Canadian Treaties," in Michael Coyle and John Borrows (Eds.), *The Right Relationship*. Toronto: University of Toronto Press.

- Indigenous Foundations. 2017. "Terminology," University of British Columbia. Accessed August 2017. <http://indigenousfoundations.arts.ubc.ca/terminology/>
- Joffe, P. 2016. "'Veto' and 'Consent' – Significant difference," Assembly of First Nations. http://www.afn.ca/uploads/files/2015_usb_documents/veto-and-consent-significant-differences-joffe-final-july-31-15.pdf
- Joseph, B. 2016. "Indigenous or Aboriginal which is correct," Indigenous Corporation Training Inc. [Blog] <https://www.ictinc.ca/blog/indigenous-or-aboriginal-which-is-correct>.
- Karjala, M., Sherry, E. and Dewhurst, S. 2004. "Criteria and indicators for sustainable forest planning: A framework for recording Aboriginal resource and social values," *Forest Policy and Economics* 6, 95-110.
- Knotsh, C. and Warda, J. 2009. *Impact benefits agreements: A tool for healthy Inuit communities*. Ottawa: National Aboriginal Health Organization.
- Lambrecht, K. 2013. *Aboriginal consultation, environmental assessment and regulatory review in Canada*. Regina: University of Regina Press.
- Lemelin, R., M. Dowsley, B. Walmark, F. Siebel, L. Bird, G. Hunter, T. Myles, M. Mack, M. Gull, M. Kakekaspan, The Washaho First Nation at Fort Severn, and The Weenusk First Nation at Peawanuck. 2011. "Wabusk of the Omushkegouk: Cree-Polar Bear (*Ursus maritimus*) interactions in North Ontario," *Human Ecology* 38(6): 803-815.
- Maclean, K., Robinson, C. and Natcher, D. 2015. "Consensus building or constructive conflict? Aboriginal discursive strategies to enhance participation in natural resource management in Australia and Canada," *Society and Natural Resources* 28, 197-211.
- Mullan, D. 2011. "The Supreme Court and the duty to consult aboriginal peoples: A lifting of the fog," *Canadian Journal of Administrative Law and Practice* 24, 233-260.
- Noble, B., and Udofia, A. 2015. *Protectors of the land: Toward an EA process that works for Aboriginal communities and developers*. MacDonald Laurier Institute. Retrieved from <http://www.macdonaldlaurier.ca/files/pdf/Noble-EAs-Final.pdf>
- Notzke, C. 1994. *Aboriginal Peoples and Natural Resources in Canada*. Concord, ON: Captus University Publications.
- Notzke, C. 1995. "A new perspective in aboriginal natural resource management: Co-management," *Geoforum* 26(2), 187-209.
- O'Faircheallaigh, C. 2007. "Environmental agreements, EIA follow-up and aboriginal participation in environmental management: The Canadian experience," *Environmental Impact Assessment Review* 27, 319-342.
- O'Faircheallaigh, C. 2010. "Aboriginal-mining company contractual agreements in Australia and Canada: Implications for political autonomy and community development," *Canadian Journal of Development Studies* 30(1-2), 69-86.

- Papillon, M. and Rodon, T. 2017. "Proponent-Indigenous agreements and the implementation of the right to free, prior and informed consent in Canada," *Environmental Impact Assessment* 62, 216-224.
- Parsons, R. and Prest, G. 2003. "Aboriginal forestry and Canada," *The Forestry Chronicle* 79(4), 779-784.
- Peach, I. 2016. "Who speaks for whom? Implementing the Crown's duty to consult in the case of divided Aboriginal political structures," *Canadian Public Administration* 59(1), 95-112.
- Popowich, M. 2007. "The National Energy Board as intermediary between the Crown, Aboriginal Peoples, and Industry," *Alberta Law Review* 44(4), 837-861.
- Promislow, J. 2013. "Irreconcilable? The duty to consult and administrative decision makers," *Constitutional Forum* 22(1), 63-78.
- Reed, M. 2008. "Stakeholder participation for environmental management: A literature review," *Biological Conservation* 141, 2417-2431.
- Ritchie, K. 2013. "Issues associated with the implementation of the duty to consult and accommodate aboriginal peoples: Threatening the goals of reconciliation and meaningful consultation," *UBC Law Review* 46(2), 397-438.
- Rodon, T. and Lévesque, F. 2015. "Understanding the social and economic impacts of mining development in Inuit communities: Experiences with past and present mines in Inuit Nunangat," *The Northern Review* 41, 13-39.
- Shanks, G. 2006. *Sharing in the benefits of resource development: A study of First Nations-industry impact benefits agreements*. Ottawa: Public Policy Forum.
- Slowey, G. 2009. "A fine balance," in A. Timpson (Ed.), *First Nations, first thoughts*. Vancouver: UBC Press.
- Sosa, I. and Keenan, K. 2001. *Impact benefit agreements between aboriginal communities and mining companies: Their use in Canada*. Canadian Environmental Law Association, retrieved from <http://www.cela.ca/sites/cela.ca/files/uploads/IBAeng.pdf>.
- Sossin, L. 2010. "The duty to consult and accommodate: Procedural justice as aboriginal rights," *Canadian Journal of Administrative Law and Practice* 23, 93-113.
- Truth and Reconciliation Commission of Canada. 2015. *TRC Final report*. Accessed via <http://www.trc.ca/websites/trcinstitution/index.php?p=890>
- Vaismoradi, M., Turunen, H. and Bondas, T. 2013. "Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study," *Nurse Health Sciences* 15(3), 398-405.
- Wismer, S. 1996. "The nasty game: How environmental assessment is failing aboriginal communities in Canada's North," *Alternatives Journal* 22(4), 10-17.

Wyatt, S., Fortier, J-F., Greskiw, G. Hébert, M., Nadeau, S., Natcher, D., Smith, P. and Troster, R. 2010. *Collaboration between Aboriginal peoples and the Canadian forestry industry: a dynamic relationship*. Sustainable Forestry Management Network. Edmonton.