

***INCLUDING INDIGENOUS PERSPECTIVES IN POLICY-MAKING PROCESSES:
NATURAL RESOURCE DEVELOPMENT IN NORTHERN ONTARIO***

by

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Abstract

This research seeks to understand the experience of the Atikameksheng Anishnawbek with the Ontario Government, specifically with consultation on legislation pertaining to natural resource development (NRD). It also seeks to build an understanding of whether or not the experiences of Atikameksheng, an Anishnawbek Nation whose territory includes the Sudbury Basin, are applicable to NRD policy-making contexts surrounding Indigenous communities in Treaty 9 near the Ring of Fire. The Ring of Fire is located in remote Cree and Ojibway territories in the Northwest of Ontario. Economic and environmental interests there have resulted in new legislation for natural resource development and land-use management and these remote First Nations are having to interact with the resource development sector for the first time. Following an Indigenous research methodology based on Anishnawbek relationship building principles, qualitative data was collected via semi-structured interviews. Participants came from three groups: Atikameksheng Anishnawbek employees and community members, Ontario Government employees, and/or a mining company. There were five participants in total. Key informant interviews with research participants established that there is a clear gap in terms of consultation for legislative policy making. It is commonly misunderstood that consultation is continually occurring within the NRD sector as it is only happening formally for specific projects, but not for the development of legislation that mandates consultation. The results of this research suggest that the demands of regulatory and consultation processes established by the Crown do not align with the expectations of First Nations. These demands often also outweigh the required resources available for First Nations to effectively participate in this engagement.

Keywords: Atikameksheng; Anishnawbek; Natural Resource Development; Mining; Consultation; Relationship Building; Legislation; Policy-Making, Ontario, Crown, *Mining Act, Far North Act*

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CHAPTER 1

Introduction

“It comes down to the act of drawing lines on a map and having to make sure that ‘this is mine, this is yours’ mentality, that’s not an Indigenous way.” (Participant 4)

The Atikameksheng Anishnawbek, “descendants of the Ojibway¹, Algonquin and Odawa Nations”, are a People whose small First Nation community sits twenty kilometres to the Southwest of the City of Greater Sudbury in Northeastern Ontario, Canada (Atikameksheng Anishnawbek, 2019). The entire city of Sudbury, home to many sites of significant mineral extraction², including those in the Sudbury Basin, sits on the traditional territory of the Atikameksheng Anishnawbek. Wahnapiatae First Nation is a nearby Anishnawbek³ community that shares this territory, but the focus⁴ of this research is Atikameksheng. The experience of First Nation communities in this Northeastern region of Ontario in the last century has been impacted by colonialism and the search for mineral resources (Higgins, 1982). The very provisions granting the Crown⁵ access to these lands, through the signing of the Robinson Huron Treaty – the Treaty in which Sudbury sits – continue to be debated in Crown courts today (CBC, 2019).

The Sudbury Basin has accounted for the major natural resource development projects in Northeastern Ontario; certain mining projects have had an impact on the immediate reserve

¹ The spelling of Ojibway may vary throughout this thesis as I attempt to use the spelling that reflects the Ojibway group I am referring to. Variations might include but are not limited to: Ojibway, Ojibwa, Ojibwe

² The following link is to a document by the Ontario Mining Association that contains overviews of the Sudbury region’s geography and mineral extraction history in comparison to all sites in Ontario:

<https://www.oma.on.ca/en/resourcesGeneral/OMA-Economic-Report.pdf>.

³ The spelling of Anishnawbek may vary throughout this thesis as I attempt to use the spelling that reflects the Anishnawbek group I am referring to. Variations might include but are not limited to: Anishnawbek, Anishinaabek, Anishinaabe. I also attempt to use Indigenous Peoples and Indigenous Nations when referring to multiple Indigenous Peoples or one Indigenous Nation in a broader international context, First Nations for the context in Canada specifically and Aboriginal when referring to a specific legal document that uses this terminology.

⁴ The focus of this research is on the experience of the Atikameksheng Anishnawbek as this project represents one of many that could inform policy making relationships between the Crown and Indigenous Nations.

⁵ Ontario is designated to act as the Crown, the Government of Canada, on a variety of political portfolios including regulation of natural resource development, environmental regulatory processes and infrastructure development. It should therefore be considered as an extension of the Crown throughout this thesis.

territory of the Atikameksheng Anishnawbek and on their traditional territory (greater boundary) (Atikameksheng Anishnawbek, 2013). The long history of interaction this Nation has had with the mining sector means that they have equally had to interact with the legislation set out by the Ontario Government with examples such as the *Mining Act* Modernization process that began in 2011 and had its third and final phase concluded in spring 2018 (Ontario, 2019). Meanwhile, new sites of potential for natural resource development have emerged in the Northwest of the Province, an area called the Ring of Fire, near remote Ojibway and Cree communities and Nations that do not have as long of a history of interaction with this sector or the types of policies that impact developments (Gamble, 2017). In addressing the main research questions, whether or not there is adequate consultation on legislative policy making by Ontario and/or Canada with Indigenous Nations, the value of correlations between Atikameksheng's experience within the resource development sector and the many questions that are being asked by the surrounding Indigenous Nations in Northwestern Ontario will be explored. The findings from this research can assist in identifying areas for increased advocacy with respect to improving specific aspects of relationships between the Crown and First Nations.

Research Purpose and Rationale

This research seeks to understand the experience of the Atikameksheng Anishnawbek with the Ontario Government, specifically concerning natural resource development (NRD) policy consultations. I also seek to build an understanding of whether or not this is applicable to policy-making contexts surrounding Indigenous communities in Treaty 9 near the Ring of Fire. Atikameksheng is located in the Robinson Huron Treaty Territory of 1850, and the Atikameksheng signatory to this Treaty was Chief Shawenekezhik. In building a deeper understanding of historical relations between the Crown and Nations such as Atikameksheng, this research deepens an understanding of the challenges and outcomes of NRD policy making between the perspectives of the Crown and Indigenous Nations.

Comparatively discussing Atikameksheng's experience with government consultation and looking at the community consultation protocols that exist in Atikameksheng and/or in the Ring of Fire communities is a valuable exercise as it can help non-Indigenous stakeholders and government policy-makers understand how their approach is resulting in contentious legislation. To achieve the research aim, I examine the context of the Indigenous communities in the Treaty 9 territory based on a literature review and official statements of Indigenous communities and the Nishnawbe Aski Nation. Understanding the experience of Atikameksheng is based on interviews in the community with elder(s), current and/or former chief(s), councillor(s), and Band employees as well as interviews with mining company representatives, and with government representatives. This is elaborated upon in the methods section. To date, there has not been specific research that seeks to understand how the Ontario Government NRD policy-makers arrive at the development of legislation in relation to the impact that it can have on both the ability of Indigenous communities to work within new legislative frameworks and the relationship building between these Nations and the Province as a result.

A secondary contribution of this thesis is the process itself from the perspective of a non-Indigenous graduate researcher. When initially setting out to explore this topic, the aim was to include multiple Indigenous communities in the Far North of Ontario. After well over a year of difficulty establishing a relationship in the Northwestern region of the province, relatively closer to Sudbury than major centres like Toronto, it became clear that this would not be possible within the parameters and financial restrictions of a master level program.⁶ Part of the master thesis journey gives students the opportunity to engage in valuable research and in particular this research gave the opportunity for a non-Indigenous researcher to

⁶ While this was my initial approach, it was advised by the thesis supervisor at the onset that the thesis idea would be very difficult to achieve. At the early stage, one committee member was able to facilitate a strong contact in the Ring of Fire region. This contact discussed the context with me over the phone on a few occasions over the past two years, but was only able to speak about these issues informally. These calls from time to time were still very helpful in giving me an understanding of the political climate in the Northwestern Ontario Indigenous communities. As a relationship was coincidentally growing with Atikameksheng on an interest and cultural education level, it was brought to my attention by a friend from Atikameksheng that there might be appetite for a similar project in collaboration with Atikameksheng.

attempt learning about the respect and commitment required to build relationships with what turned out to be, one Indigenous community and nation. Interestingly, this process of building relationships in an Indigenous community that is not far from the place of my upbringing, sheds light on the time and dedication required to get to know not just a geographical location, but also members of the community and their perspectives. In looking at this research process as an example for relationship building, it is important to note that from my perspective, the most valuable aspect of the process is the continuing relationship with Atikameksheng after the conclusion of this project. As Smith (2012) explains, the building and continuation of relationships formed from research is an important part of reconciliation.

Thesis Structure

The outline of the research is as follows. Firstly, the literature review outlines information in relation to NRD and Indigenous communities as well as informs the conclusions of this thesis. Following the literature review is the theory and methods chapter that informs this research and the analysis, findings and conclusion make-up the final chapters.

Situating Self

Johnston, McGregor and Restoule (2018), emphasize that researchers have an ethical obligation to build relationships with participants in their research. Further, they also must understand themselves and their own subjectivities. Locating ourselves within our research also helps to ensure that the reasons for undertaking the research are understood at each stage (for summaries of these stages see Johnston, McGregor and Restoule 2018; cf. Absolon 2011). This means that it is important for the researcher to continually locate themselves not only in their writing, but also with each individual research participant. As such, I ensured that I situated myself with research participants, which took place at the beginning of each

interview. This will be elaborated upon in the methodology section, though I touch upon it briefly in this section.

I am a francophone student of Laurentian's Indigenous Relations graduate program, my home community is Espanola, Ontario and I come from mixed European ancestry. I grew-up in a working class family and much of my family's economic sustenance depended on my father's work in the pulp and paper industry. Given that I am a non-Indigenous male with Euro-Canadian roots, through a critical self-reflection, it is not possible to deny that "I am deeply implicated in, and benefit from, colonialism" in Canada (FitzMaurice, 2010, p.356). I am in agreement with FitzMaurice's quote, and his perspective is from the standpoint of a non-Indigenous professor of Indigenous Studies at the University of Sudbury. A significant amount of his work was dedicated to understanding the potentialities of "white obsolescence" within Indigenous research and fields of study (ibid., p.351). Through this research, I hope to help communicate to my Euro-Canadian peers and governments, that we as non-Indigenous individuals must carry the burden and onus of moving our society away from one that has been continually oppressive and self-interested without respect for Indigenous Peoples who have distinct and differing histories, cultures and worldviews. I see this communication taking place not only through the dissemination of this work with those participants from the Ontario government, but also in every day conversation where dialogue on some of the history and knowledge being shared with me is possible. By engaging in this research, I am deepening my understanding of history and perspectives while demonstrating to my euro-Canadian peers, who might not yet have found opportunities to learn about these contexts, that it is possible. I can best position the point of departure for this work by methodologically steering the project with Indigenous methodologies that I further explain in the methodology section.

Growing up, I was presented with a lateral, but close view of how government policies pertaining to land-use and industrial development impacted Anishnawbek Peoples and the environment. Many First Nations near my home were constantly subject to criticism due to their scepticism of proposed industrial or infrastructure projects on their land. For example, the expansion of Ontario Highway 69, to include four lanes of divided highway from Parry Sound to Sudbury has raised heated debate (CBC, 2015). The day-to-day discussions regarding Indigenous Peoples always continue, in some contexts, to emphasize the unwillingness of First Nations to support certain projects rather than the unwillingness of colonial governments to take time in understanding the point of view of many First Nation communities.

In high school, I witnessed racism, prejudice, and a constant ignorance of the discrimination being perpetuated upon some of my fellow students from Indigenous backgrounds. The difficulties for Indigenous students associated with growing up and attending a high school in a white community did not really strike me until I began to develop my own points of view as an adolescent. The lines had been drawn in the sand long ago, and the colour of my skin dictated on which side I belonged. My parents have always taught me to be very open-minded and welcoming of all peoples. These lines drawn within my community were so cemented into our society however, that it seemed normal to simply ignore the true issues that continually exist on our doorsteps. During my undergraduate studies in political science, I was able to put into perspective my experiences from my upbringing, to finally develop a better understanding of the contexts existing in Canada concerning Indigenous Peoples. Some of the Supreme Court Cases I studied (elaborated below), pertaining to traditional land use and oral testimony recognition, led me to asking myself the following reflective questions:

1. Why do many non-Indigenous people in regions like mine, where we live side by side with many Indigenous Peoples, seem incredulous to the unfair treatment of Indigenous Peoples here in Canada?

2. How can I contribute to eliminating the ignorance so many people have to the rightful role of Indigenous Peoples in our socio-economic worlds?

3. And finally, what issues do all Peoples in Northern Ontario hold in common and how can this help to create more collaborative and meaningful relationships?

In studying cases, such as *Delgamuukw v. British Columbia* (1997), I became aware of the problematic dialogue that existed between the Government/Judiciaries of Canada and the Indigenous Peoples. Cases such as this one however, gave me hope that there exists a small realm of opportunity whereby Canadian Governments and Judiciaries can become agents for progress and proper recognition of Indigenous Peoples and their lands. The specific progress that was made in *Delgamuukw v. British Columbia* (1997) that gave me hope was the recognition of oral histories as viable evidence in the Canadian judicial system. Rachel Sieder (2007, p.212) explains, through the analysis of court cases in Guatemala, that “the courts' proactive defense of indigenous rights to difference, autonomy, and protection can be an important factor in the broader struggle to change both government policies and societal attitudes.” In order for this to occur, there must be a shift in research approaches (ibid.). The questions I listed previously act as constant tools with which I can reflect upon as well as inform the basic questions that drives this work – how can we create or re-create good and meaningful relationship between Peoples.

As an adult, I have developed a sense of duty and responsibility with respect to having a role in reconciliation. In discussing reconciliation with Anishnawbek friends, it has become clear to me that reconciliation is not a project that can be taken on by one group of people. It is a process that we must take on together and this can be accomplished by learning from

Indigenous Elders, friends, and colleagues. I am now more driven to ensure that I am doing what I can do with my abilities and skills to advance reconciliation and to support the project of decolonization. Part of this role and responsibility that I have is to listen, learn, and share, as is deemed appropriate, to the understanding and lessons that have been shared with me. I see my responsibility being to share some of these experiences with my non-Indigenous peers so that they also have the opportunity to become inspired and seek this sharing of knowledge.

Understanding the Ring of Fire

As indicated, one of the objectives of this research is to inform a framework to engage with other First Nations in the Ring of Fire, which is in the traditional territory of the Matawa First Nations. This is an area that Hjartarson, McGuinty, Boutilier and Majernikova (2014) outline as having extreme potential for natural resource development. As it relates to the Atikameksheng traditional territory, the mineral development opportunities in the Matawa regions are said to be some of the most promising in Ontario in over a century (ibid.). This puts the Matawa regions on par with a level of economic development potential that could be historically comparable to Sudbury (Hjartarson *et al.*, 2014). On behalf of the Ontario Chamber of Commerce, Hjartarson *et al.* (2014) thoroughly lay out the development potential and characteristics of the region. The given name of the area - the Ring of Fire, comes about because of the 'ring-like' shape of an area projected to have the most substantial amounts of mineral resources. The communities nearest to this area and belonging to the Matawa First Nations Tribal Council are Webequie, Nibinamik, Neskantaga, Eabametoong and Marten Falls First Nations. These First Nation communities are all members of the Nishnawbe Aski Nation and are located in the Treaty 9 territory. The overall region, described by Onley (2010) is "one of the most promising mineral development opportunities in Ontario in almost

a century”, and which spans approximately 5,120 km² as informed by Hjartarson *et al.* (2014, p.5).

The ‘ring’ is located approximately 540 km northeast of Thunder Bay, Ontario. This particular area is home to projected mineral resources of mostly chromite and nickel, but prospectors have widely established that the greater region also has high potential for copper, diamond, zinc, platinum, vanadium, and gold mineral extraction. Within the first 10 years of extraction, the area is projected to generate up to \$9.4 billion in GDP and to sustain up to 500 jobs annually (Hjartarson *et al.*, 2014). Like many regions of Ontario’s Far North, road access is scarce and infrastructure is virtually non-existent. Within the Ring of Fire are the Black Thor chrome deposit and the Eagle’s Nest nickel, copper and platinum group element deposit, both owned by junior mining company Noront Resources Ltd, since 2013. Prior to 2013, major American miner Cliffs Natural Resources Ltd. owned the Black Thor site, but sold its only interest in the mining area to Noront for, \$27.5 million, significantly less than their initial investment of \$550 million, to secure and develop potential natural resource development projects at this site (Hjartarson *et al.* , 2014).

Economic potential attracts major mining proponents while globally recognized Boreal Forests and wetlands gain interest from environmentalists (Gamble, 2017). Therefore, it is likely that the potential for environmental damage in the area from mining is receiving international attention. A secondary consideration with respect to the environmental attention the Ring of Fire is receiving is the approach to protecting the environment. The overarching purpose of this research, however, is of course to explore the importance of approaches to consultation for government policy-making and the impact this can have on future developments. Specifically, the precedents that stand to be set through legislation enacted to guide communities, governments, companies and investors in natural resource development projects. Undoubtedly, such processes would include consideration for the environment and

economic development so it is evident that the main drivers of interest from outsiders to this region can certainly be impacted by such government policies. As mentioned, the Matawa region is being discussed as one that has the extent of economic potential that Sudbury once did and thus the experience of Atikameksheng could offer insight into what the road ahead for the remote First Nations in the Matawa regions are going to be faced with if relationship building and regulatory practices are similar.

The most recent piece of legislation that affects Treaty 9 is the *Far North Act* (2010) of Ontario (FNA). The Act lays-out how communities are required to manage their land through a land-use management process in collaboration with the Ontario Government for natural resource development projects. While this legislation was heralded as a great move by the then Liberal provincial Government and the environmental groups that contributed, including the David Suzuki Foundation, the opposing position of the Nishnawbe Aski Nation is evidence that there needs to be an examination of the policy-making process. The Nishnawbe Aski Nation (2017) has stated that “The *Far North Act* is viewed by First Nations in NAN as an invalid law and a new form of colonialism.” NAN (2017) asserts that “The Act became law over the unanimous and fundamental objections and free, prior and informed consent (“FPIC”) of the NAN people. In spite of its Treaty and international obligations, the federal government of Canada did not intervene to protect First Nations in the process leading up to this Act”. Drawing from their treaty right to consultation (Treaty 9 1964), NAN specifically argued that there was not enough face-to-face consultation in the communities affected by the legislation (2017). The lack of consultation sessions held in communities of Treaty 9 is seen by NAN to have allowed neither for appropriate amounts of discussion on the topic, nor a respectful recognition of the very places that would be affected by the legislation according to NAN’s point of view (2017). In June 2010, the Government of Ontario allocated four days for hearings to be held in some of the communities (Slate Falls

First Nation, Webequie First Nation, Sandy Lake First Nation, Attawapiskat First Nation, and Moosonee). On June 3rd, the Bill passed second reading in the House and the meetings in the communities were cancelled. The Bill received Royal Assent without any community-based consultation as per Figure 3 in Gardner, McCarthy and Whitelaw (2012).

Since then, in Spring 2019, the Ontario Government under Premier Doug Ford have re-opened the book on the FNA and it remains to be seen whether it will survive this government's tenure in Queen's Park (Northern Ontario Business, 2019). Keeping this in mind, the merit and scope of this research is not impacted by these new developments, as potential policies that replace the FNA will serve as additional sites for analysis of policy-making procedures in consideration of their impact on First Nation communities in the North.

CHAPTER 2

Literature Review

“We remind Canada, ‘go back and take a look at the order of Law’. The Treaty is paramount, it supersedes Canada’s constitution.” (Participant 1)

Established on Turtle Island⁷ where numerous Indigenous Peoples lived long before the arrival of European settlers, the Canadian state has most often been at odds with Indigenous Nations on a wide range of issues, including land management and natural resource development (McNeil, 2004, Scholtz, 2013). In the context of mining in Northeastern Ontario, surrounding Sudbury, the city in which I live, the Anishnawbek have been interacting with the mining sector and legislation for quite some time as is apparent from Higgins (1982). The Ojibway and Cree Peoples of the Matawa First Nations are now similarly facing such battles (Gamble, 2017). The literature to date relating to previous legislation, agreements and consultation processes helps to inform this research of the context surrounding consultation with Indigenous Nations. At the same time, it helps us to understand the legal contexts that exist now that may not have existed previously. An appropriate starting point for understanding how new contexts might allow for precedents to be set in Indigenous Nations and government negotiations is the Crown’s legal ‘duty to consult’, and the international law concept of free, prior, and informed consent (FPIC), found in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007). These legal concepts and the history surrounding their emergence underpin one of two main categories of existing research relevant to this thesis. The second focuses on the types of relationships

⁷ Turtle Island is the term that the Anishnawbek use to refer to what we understand as North America and the greater territory. By using this term, I respect and emphasize the different perspectives on land sharing that exist.

Indigenous Nations have in the context of natural resource development and how those can relate to the relationship within Ontario.

Prior to elaborating on legal concepts relevant to this work, it is important to understand what led to the current state of affairs with respect to natural resource development. Mining in North America predates colonial settlement. Early signs of copper extraction on the shores of Lake Superior suggest that Indigenous Peoples engaged in some form of mineral extraction over six thousand years ago (Pompeani, Abbott, Bain, DePasqual & Finkenbinder, 2015). Nineteenth century mineral exploration would reveal clear evidence of copper mining on the “Ojibwe” territories surrounding Lake Superior (Pompeani et al., 2015, p.255). While archeological research largely admits that there were clear declines in mining activity during certain periods including those that led to first contact between Europeans settlers and Indigenous Peoples on Turtle Island, there were nevertheless, intricate systems and considerations made for natural resource use (Pompeani et al., 2015). The approach to caring for and utilizing the earth’s resources however, was and is very different to this day. Imperialist mandates informed the brand of outward exploration that most European powers engaged in following the Treaties of Westphalia and as such, far away territories like those of the Anishnawbek were targeted. The Treaties of Westphalia are important to mention as they led to the end of the Thirty Years War in Europe and importantly, the emergence of the Westphalian system of sovereignty (Krasner 1996). This system was based on political authority, territory and autonomy and it justified, for European empires, the exercise of political authority over “defined geographic space rather than, for instance, over people” (p.116). The mindset that ensued to explore and conquer, along with the emergence of industrial mining throughout the nineteenth and twentieth century then took us to where we are today with the mining industry – an industry inundated with a variety of agreements between mining companies, First Nations and provincial governments. These

agreements have often been arrived at through differing understandings of existing treaties and the inherent rights held by Indigenous Peoples. The differences in many agreements are also due to the area where a mine is proposed, how this might impact an Indigenous Nation, the value of what will be destroyed by the project and of what will be brought to market. While some of these agreements have done very well in attempting to reflect reconciliation for the many years of unrecompensed and environmentally damaging resource extraction, collective Indigenous organizations are not consistently having their rightful expectations met as was noted with reference to the Nishnawbe Aski Nation for example. Hilson (2002) elaborates that a number of factors contribute to the lack of met expectations on the side of the Indigenous communities, notably all in relation to the extent of consultation and capacity building that occurs at the onset of the natural resource development project and throughout the entire lifecycle of such projects.

Legal Concepts and Existing Legislation

The duty to consult, and accommodate when deemed appropriate, is a concept that originated in case law during the 1980s and 1990s and was clarified in the *Haida Nation v. British Columbia* (2004) Supreme Court of Canada case (Brideau, 2019). It established that the duty of the Crown, under Section 35 of the Canadian Constitution Act of 1982 is to recognize the right of Aboriginal⁸ title and where such land is impacted where there may be a claim for Aboriginal title or the potential for one, and to hold conference with appropriate Aboriginal leaders before any final decision is made. The precedent setting decisions in

⁸ The word Aboriginal is a word that has been more recently replaced by the word Indigenous, however, in more modern legal summaries and documents, it has not yet been officially replaced, hence the use of it here when making reference to the Canadian Constitution. Similarly, the word Indian is still maintains its use in legislation under Canadian law, a fact that continues to raise much contention.

Haida Nation v. British Columbia (2004) specifically helped to resolve some of the issues that had not been addressed in the *R. v. Sparrow* (1990) case where the Supreme Court established a framework for interpreting section 35 of the Constitution Act, 1982 (Beaudoin, 2017, Irwin, 2018). Mcleod, Viswanathan, Whitelaw, Macbeth, King, McCarthy and Alexiuk (2015) note that the depth of explanation found in land-use management legislation regarding Section 35 and the duty to consult is not often far below the surface. The study found that as new statutes are being created on this topic, a positive trend toward better recognition of Indigenous rights is evident. This trend is one that “through awareness and advocacy may be consistently implemented within all Ontario land use and resource management statutes, ideally reconfiguring how First Nations are understood and engaged with on decisions and processes” (Mcleod *et al.* 2015, p.10). These processes are of course ones “that affect rights, their communities, and their traditional territories”, which really speaks to the relevance of research on how Indigenous communities in Ontario’s Far North might envision their role within this evolving legal context (Mcleod *et al.*, 2015, p.10).

Moreover, the James Bay and Northern Quebec agreement (JBNQA) is an example of where at face value, a piece of legislation seemed like a positive move toward a better relationship between the Crown and Indigenous Peoples prior to the wide emergence of the duty to consult. This agreement came about because of contention surrounding hydroelectric dam developments in the northern regions of Quebec. Cree and Inuit communities joined via their respective political organizations to take legal action against the government for its taking of territory for these developments. The JBNQA was eventually arrived at through exhaustive negotiations in order to avoid further legal proceedings at the Supreme Court level, actioned by the Indigenous organizations. The actual result of this agreement, however, has been a partnership full of obstacles due to the imbalance of power between the co-managers – Indigenous communities and the Government (Mulranen and Scott, 2005). The

imbalance of power that existed in the negotiations for the JBNQA demonstrated that approaches to engage with Indigenous Nations for creating legislation without a formal recognition of the duty to consult resulted in many of the same failures to create collective acceptance of resulting policies. The *Mining Act* Modernization in Atikameksheng and any other NRD policy consultations are discussed during interviews in consideration of this duty to consult and whether it impacted resulting contention or acceptance from the Indigenous Nations. With that in mind, the fact remains that consultation is not happening at the stage of conceptualizing these policies or legislation.

Moreover, to understand the different ways consultation has evolved since the JBNQA, it is important to consider key legal victories for Indigenous Nations that have occurred at the Supreme Court level. Fidler and Hitch (2007) lay out the existing *stare decisis* conditions⁹ stemming from particular Supreme Court case decisions. These decisions establish how Indigenous title is now understood to exist outside of the legal umbrella of Confederation and is an inherent right of Indigenous Peoples stemming from their occupation of land on Turtle Island long before European settlement. Criteria in the test established to determine ‘Aboriginal Title’, as affirmed in the Canadian legal system by *Tsilhqot’in Nation v. B.C.*, 2014 SCC 44, ensure that there is legal ground on which Indigenous communities can defend themselves from governments or companies seeking to control or profit from their land. Poor and self-interested interpretation of treaties and terms forcefully accounted for the lack of compensation for Indigenous Peoples in, notably, natural resource development projects similar to those being proposed for the Ring of Fire. This is well elaborated upon in McGivov’s (2014, pp.9-10) analysis of *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44:

⁹⁹ Norms or unwritten rules based on precedents set in previous court cases.

“The Supreme Court confirmed that Aboriginal title can include territorial claims and that the occupation requirement for proof is not limited to intensive, regular use of small geographical sites (e.g. fishing spots and buffalo jumps)... The Court in Tsilhqot’in confirmed that a failure to meaningfully consult and accommodate Indigenous people prior to a successful claim for Aboriginal title will leave government and industry exposed to cancelled authorizations and claims for damages.”

The *Tsilhqot’in* case is a prime example that illustrates how contemporary efforts of Indigenous Peoples to be properly consulted and compensated for policies and projects, respectively, developed on their land has been backed up by the supreme judicial authorities of the Canadian system. Yet, there is still a lack of agreement concerning the degree of consultation needed and what that consultation should look like.

Meanwhile, the international community has been taking strides toward creating directives that, if mirrored in domestic legislation, can further deepen our understanding of what adequate consultation looks like. Free, Prior and Informed Consent (FIPC) is a concept that first emerged in the United Nations Declaration on Human Rights and is quite similar in essence to the duty to consult. It is similar in that it illustrates and defines the importance of and undertaking of processes that appropriately give a voice to marginalized communities in the world. With increasing pressure from supra-national organizations such as the UN, to adopt many of its recommendations from newer declarations such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007); member nations now have their reputation on the international stage at stake when working with Indigenous Nations. The continual challenge, however, is the non-binding authority of such declarations from organizations in the international arena and the actual likelihood of national governments appropriately implementing recommendations. The scholarship on this

particular issue has been extensive (e.g. Youngblood, 2008, McGivov, 2014, Ornelas, 2014, Nagai, 2019).

International law has been evolving to include many non-state actors in relation to issues Indigenous Peoples, such as organizations like the United Nations and the International Labour Organization (Anaya, 1998). The United Nations Declaration on the Rights of Indigenous Peoples came as a huge success for Indigenous Nations around the world that worked together to further establish their legal position internationally. Verdier and Versteed (2014) noted in their study on the trends of international treaties being ratified in domestic policy however, that while some countries nowadays seem more receptive to joining international agreements or making commitments, they are generally not any more likely to be implemented within domestic policy. As also similarly discussed in Larson, Johnson and Murphy (2008), implementation relative to global norms often stops short of legislative enshrinement and in the case of the Ainu in Japan, it stops short of even domestically recognizing Indigenous status as would be defined by the international community. Thus, while international legal concepts can certainly provide a platform for advocacy, as discussed by Byrd and Heyer (2008), “what continues to shape policy in countries that emerged through domination over indigenous peoples and their lands is a fundamental denial of settler colonialism in the most extreme sense” (p.2).

On the other hand, Youngblood (2008) explains that international law is but one area of Indigenous diplomacy that can contribute to the affirmation of Indigenous Peoples’ self-determination. Youngblood (2008) affirms that political action and strategy is required with careful consideration of international law to drive home what is affirmed by UNDRIP. He goes on to urge that the contents of UNDRIP and international legal norms not be belittled by nations as their applicability is only to be determined by Indigenous Peoples themselves who are rightfully self-determining. This right can be affirmed by treaties that if legitimately

upheld, act as clear evidence of this very right to self-determination. Domestic policy implementation is not deemed as unimportant however, but rather not to be defined as the one-step needed for rights recognition.

Moreover, research exploring the issues that might arise in policy consultation when such potential relationship dynamics exist as described above, establishes the ways existing legislation has been viewed and arrived at. Mcleod *et al.* (2015) list the type of engagement some existing legislation has with First Nations in Ontario in order to understand to what extent some legislation can impact them. They summarize that the *Far North Act* represents an attempt by the government to ensure consultation and engagement with First Nations for natural resource development, though interestingly it has received many criticisms from the very people it intends to protect. These conclusions are consistent as also found in Gardner *et al.* (2012). If this is explored further, it can be understood that the history accounts for an immediate disposition on the part of the First Nations regardless of what might be contained as Mcleod *et al.* (2015) note that a number of Acts, took fragmented approaches to address the rights and unique needs of Indigenous Nations. This is problematic because when new legislation emerges, without appropriate consultation, that features an entire section on Indigenous rights and consultation such as the *Far North Act*, Indigenous Nations are obviously going to wonder if any part other than that section applies to them (Macleod et al., 2015).

Gardner *et al.* (2012) aimed to analyze the consultation process that occurred between the introduction of Bill 191, now known as the *Far North Act* (2010) of Ontario (FNA), and its Royal Assent in October 2010. The specific emphasis of the study pertained to the suggestions put forward by Indigenous political organizations and the influence of the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP). The role of UNDRIP in the consultation process for this piece of legislation is that despite its lacking

legal status regarding domestic policies, there are many Articles found in its contents that could and have applied to the formulation of the FNA, like FPIC for example. Both Gardner *et al.* (2012) and Mcleod *et al.* (2015) add validity to the findings of this research by comparing the different motivations of First Nations communities for better consultation processes if the general feeling is still that the government's attempt to adequately consult, accounted for the widespread rejection of the FNA amongst the Matawa communities.

Keeping this in mind, it is important to understand for this research that Indigenous community administrative offices such as Band offices are not only having to deal with legislation that they may not be in agreement with, but also the amount of legislation is exhaustive. Briefly, Atikameksheng Anishnawbek has reported that they can be handling 30 different complex project files from one ministry while handling another 20 from another ministry, this will be elaborated upon in the interview analysis.

Relationships in the Context of NRD and Research

Research to date regarding the ways in which governments and Indigenous communities can co-manage projects also helps to inform the kind of processes which have succeeded in other places in fostering positive relationships. Watson (2013) for instance looks at the ways in which many understandings of co-management fail to appropriately represent Indigenous knowledge and perspectives in the actual process of decision-making. Through the analysis of cases of collaboration between Indigenous nations and Alaskan biology research authorities on Migratory Bird management, Watson (2013) outlines ways in which empirically, co-management regulatory knowledge has not been equally co-produced resulting in resistance to the policies that come from this regulatory knowledge. Watson (2013) found that commonly "misunderstanding the 'nature' of their collaborations causes

biologists and managers to measure the system in ways that erases how Indigenous groups already ‘manage’ wildlife: by living through their ethical commitments to their fellow beings” (p.1098). Moreover, Watson (2013) goes on to explain that within collaborative relationships on topics related to the environment, “To develop methodological practices that accord equal power to differing peoples and knowledge systems, this requires that both Western and Indigenous knowledge systems be equal in the ‘co-production’ of regulatory data” (p.1099). This means that when governments in our circumstance were thinking of developing legislation to protect an area rich in minerals from industry, the Indigenous Peoples in the area should be and should have been already at the policy-making table. Some questions potentially answerable through engaging in this type of collaboration at the earliest of stages could be: how the Indigenous community might respond to claim stakes for mining exploration in their territories; how might the land respond to this and how can we ensure community expectations are met within such processes. In addition, and perhaps most important of all, how does the community envision the process of creating rules or protocols to ensure their interests are best protected?

Similarly, Fleras and Maaka (2010) look at this very type of necessity for inclusion at the policy-making table. Fleras and Maaka (2010) note that many of the systems which exist for policy making are “loaded with dominant values, Eurocentric ideals, and vested interests” (p.2). This helped to inform the necessity for their study which looked at Indigeneity in policy in Aotearoa, New Zealand. As concluded by Black and McBean (2016) in their study on the importance of Indigenous participation in environmental decision making as an important aspect of improving Indigenous health, the “politics of indigeneity/aboriginality” have been:

“critical in advancing an indigenous perspective in policy and policy making. Under an indigeneity perspective, emphasis is focused on advancing a principled

relationship by incorporating shifting social realities in sorting out who controls what in a spirit of give and take. A commitment to indigeneity as a visionary policy lens is not intended to displace evidence/empirical based policy research. But a visionary lens may be just as important in advancing the constitutional and policy yardsticks” (p.20).

These considerations and applications must, evidently, be readily visible in the process and resulting legislation.

Furthermore, research on the types of approaches and formats for conducting research with Indigenous communities identifies many of the strategies that could work in the development of legislation. In their article on land and community centred approaches to conducting research with Indigenous Peoples, Styres and Zinga (2013) contend that spaces for dialogue created with full understanding of differing lived realities helps to move things along in a positive way. Styres and Zinga (2013) define consultation as something responsive and emergent. This allows for the theoretical framework for doing research that they elaborate on, that as research between community and researcher evolves, so should the intensity and collaboration. This approach could certainly be applied in a context of policy making and Indigenous nation representation. Policy makers however, do not commonly engage with nations or communities at this stage. If ever, they do so once the legislation has already been written and is headed for Royal Assent. This is elaborated on by participants in this research and is further elaborated upon in the data analysis.

While co-managers do mean to work with one another on a given project or legislation in the context of this research, that interaction must be done so carefully. Not carefully in the sense of being discussed majorly in this research in relation to the respect and honesty required, but rather, carefully in the sense of what will be done with the lessons learned by the co-managers after the project is done. Nadasdy (2003) explains that co-

management might not be in the best interest of Indigenous Peoples. Nadasdy (2003) explains that sometimes the acquired knowledge on the non-Indigenous side can then be used in a way as to not even require future consultation with elders or knowledge keepers. Further, he explains that in the case of the Rugby Range Sheep Steering Committee in southwest Yukon, understandings of the success of co-management and recommendations that came as such from the Committee were not felt to be useful by the Kluane People. This was similarly discussed by Mulranen and Scott (2005) with reference to the JBNQA and its shortcoming.

Armitage (2011) elaborates however, that if challenges of co-management are addressed in a way that is appropriate, co-managers might learn enough from one another to not then use this knowledge in other circumstances without consulting. Armitage (2011) identifies the role of power, shared understanding and normative context as the three main challenges of co-management. In looking at three cases in the Arctic where co-management projects were taken on with Inuit and Inuvialuit Peoples regarding beluga entrapments, Armitage (2011) concluded that these projects certainly allowed for shared learning. Again however, without a deeper analysis of the “underlying power dynamics associated with knowledge co-production and learning”, it is difficult to determine what would be required, in order for such relationships to evolve into broader and political partnerships that are equitable (Armitage, 2011, p.1002).

Recent Legal Consideration

As a final consideration to keep in mind in relation to the objectives of this research, on October 11, 2018, the Supreme Court of Canada ruled that the government of Canada does not have a legal duty to consult with Indigenous Peoples when creating legislation even if it might impact their inherent or Treaty rights. *Mikisew Cree First Nation v Canada*, 2018 SCC

40 summarizes that Mikisew Cree First Nation applied for judicial review of the legality of omnibus legislation effecting environmental protection introduced into parliament in 2012 to the Federal Court. *Mikisew* argued, “that the crown had a duty to consult them on the development of the legislation, since it had the potential to adversely affect their treaty rights to hunt trap, and fish under Treaty No. 8” (*MCFN v Canada*, 2018). The Federal Court then ruled that there was indeed, a duty to consult. On appeal, it was later judged that this original judgement erred and that “when ministers develop policy [by extension, the policy makers that work for the ministers], they act in a legislative capacity and their actions are immune from judicial review” (*MCFN v Canada*, 2018). The reasoning behind this decision stems from underlying constitutional principles that affirm Canada’s judiciary is not to interfere in the domain of the legislature. While the duty to consult “governs the relationship between the Crown and Aboriginal peoples”, in that the Crown has a responsibility to consult or facilitate such consultation of Indigenous Peoples for private sector stakeholders – when particular actions may negatively affect Indigenous rights or touch their land – this responsibility does not extend to the actual development of the laws that are required to put into practice this very responsibility (*MCFN v Canada*, 2018).

Keeping this in mind, *Mikisew Cree First Nation v Canada* elaborates that the duty to consult is part of the honour of the Crown, thus requiring the Government to work in consideration of this concept. As such, one mechanism by which Indigenous nations could contend existing legislation on the basis that it impedes their Indigenous rights under Section 35 of the Canadian Constitution is declaratory relief. While elaborated upon in interviews in the analysis, it must be noted that this hodgepodge of legal concepts and avenues for advancing inherent Indigenous rights acts as a major barrier for meaningful relationship building, particularly given its existence within a binding legal system that’s very jurisdiction is often opposed by Indigenous Peoples on Turtle Island.

CHAPTER 3

Theory and Methodology

“We need to have professional people that we can sit with and who understand the Anishnawbek way of being, the culture, the world view, our people as being a nation and what this is meaning, what kinds of rights that we are having to properly represent our interests.” (Participant 1)

Theoretical Framework

My theoretical framework is informed by Ermine’s (2007) ethical space of engagement theory. Throughout this journey, it was my goal to create spaces where knowledges and perspectives can communicate with each other. Ermine (2007) characterizes a space such as this as the ethical space of engagement. This space “is formed when two societies, with disparate worldviews, are poised to engage each other” and this is fundamentally the case in the context of natural resource development in Canada (Ermine, 2007, p.193). The necessity for dialogue between many Indigenous Peoples and the Canadian government is evident. Ermine (2007) explains that “The discourse surrounding the intersection of Indigenous and Canadian law needs perspectives that create clarity and ethical certainty to the rules of engagement between diverse human communities” (p.196). By doing this research, I look to offer a perspective that is arrived at through appropriate engagement with all parties, indirectly allowing for “disparate worldviews” to engage with each other through my analysis (Ermine, 2007, p.196).

Research Methodology

While seeking to create this ethical space for engagement, I inform my approach with an Indigenous research methodology. This methodology, which can be called relationship-building methodology, is demonstrated through the relationships of the Anishnawbek and *amik* or beaver. Pulling specifically from the relationship the Anishinaabe have with all beings, Kiiwetinepinesiik-Stark (2010) explains that the reciprocity is intended to be embodied in the many stages of their relationship with beavers – stages that required a continual giving and giving back from both the human and the beaver – were intended to inform treaties between human nations. These were not necessarily agreements written down anywhere, but rather agreements that were achieved through initial principles and importantly, practice. In practicing relationships that are reciprocal and thus first understanding the kinds of principles needed to shape these kinds of relationships, colonial governments, for instance, could begin to work collaboratively with Indigenous nations in a way that worked between human/animal nations long before their arrival.

Furthermore, these fundamental principles and the teachings surrounding their applicability to this particular project, being led by a non-Indigenous researcher, can ensure that both Indigenous and non-Indigenous perspectives are sought and shared in an equally good way as to respectfully share the perspectives of both Indigenous and non-Indigenous participants. Moreover, the universality of Anishnawbek relationship building principles allows them to be engaged with by non-Indigenous persons who derive their meaning and value through scholarly sources and most importantly through established relationships with Indigenous elders and knowledge keepers who support and share the applicability of this methodology to this particular thesis and to the life of the researcher. Anishnawbek elders, knowledge keepers, and community members of local First Nations have shaped the

understanding of respect that gave direction to this methodology and the important teachings to keep in mind from the relationship with *amik*.

Moreover, Smith (2012) argues that the West is a system where research is informed “from an archive of knowledge systems, rules and values” (p.44). Seemingly, to omit an Indigenous research methodology from a research project that contains a partnership with an Indigenous community, would lend to perpetuating the alleged superiority Western systems have enjoyed over all others. In working with honesty and respect as my foundational principles as informed by the mentioned oral treaties with animal nations, I guided this research through continual reflection and evaluation of self and process.

Research Structure and Method

This research used a qualitative research method in order to engage in a conversation with participants that had the flexibility of revealing their thoughts on the subjects explored. This was employed in a way that built trust and mutual understanding between I, the researcher, and the participants. Qualitative data also allowed for the engagement of each participants’ narrative and point of view in the research itself as is illustrated in the analysis. Further, as stated in Kingsley, Phillips, Townsend and Henderson-Wilson (2010), “qualitative data can offer a greater insight into an individual’s understanding, meaning and experiences, and thus provide for the building of a story around the studies topic (Berglund, 2001; Ward & Holan, 2001)” (p.3). Crotty (1998 in Martin 2018), explains that “methodology is the strategy, plan of action, process or design lying behind the choice and use of particular methods and linking the choice and use of methods to the desired outcomes” (p.191). In this case, a relationship building methodology informed by Indigenous perspectives requires enough opportunity for dialogue between the researcher and participants. This is best made

possible when the desired goal is to acquire qualitative data that speaks to the questions at hand and allows relationships to be built simultaneously through the exchange of perspectives.

Having discussed the literature and the relevant historical context from the said literature, the primary focus was then to examine any consultation processes the Atikameksheng Anishnawbek have engaged by conducting interviews. The interviews simultaneously focused on some of the potential precedents that can be set within legislative work related to the Ring of Fire area and if the participants had had any direct experience in that area. In addition, follow-up questions also looked to identify key suggestions interviewees might have, to help ameliorate policy-making processes with consideration of the main questions of this research. For example, are Indigenous perspectives appropriately represented in policy-making processes in the context of NRD and how does the case of Atikameksheng compare or help to inform remote region interactions?

Sample, Recruitment, Interview Structure

The key people I interviewed from Atikameksheng were elders, current or former policy advisors, councillors or chiefs. There were five participants in total. The depth of their expertise was significant and agreed upon as appropriate for this particular level of project by the thesis committee and the Atikameksheng stakeholders I continually consulted with. I interviewed representative(s) of relevant Ontario government ministries who have been or are currently in senior policy advisory roles or who work with First Nations in the context of consultation and natural resource management. I also interviewed participant(s) from the mining sector as they are often charged with fulfilling the duty to consult, as it is required of them by the Crown. Each participant has held multiple positions, some across more than one

of the above-mentioned target groups. The interview pool was limited to participants aged 18 or older or who were connected to the negotiations regarding natural resource development policy making. The age of 18 was selected as no person younger than this would have been in a formal role within the described groups at the time of the FNA and/or *Mining Act* modernization.

Recruitment for interviews followed a snowball method. The interviews were conducted using a semi-structured approach. Each interview was an average of one hour in length. The snowball recruitment connected me with people who would be most likely to participate, and it gave more value to the professional or personal connection each participant had to the research since they were able to suggest participants based on their experience in the field. Semi-structured interviews were selected as they best allowed for the elaboration that was needed on these topics as each participant had some significantly different experiences (some similar experiences also). It would therefore have been less adequate to only follow preselected questions that may not appropriately match their experience. The questions were divided into three categories for the three categories of interviewees. They were arrived at through careful consideration of the context, the goal of the project and through consultation with my thesis supervisor, an elder and the Laurentian University Research Ethics Board. The interview questions were as follows.

Questions for Indigenous Policy Advisors or for the first grouping as described:

- What has been your experience in working with the Ontario Government on land-use policy?
- How does your worldview, culture and knowledge get represented in policy-making processes?
- How were you involved in negotiations or consultation processes for NRD policy?

What is needed in NRD policies to better reflect your worldview?

Questions for Government representatives/policy-makers:

- How have you been involved in policy work with the Atikameksheng Anishnawbek?
- How were you involved in the development of the *Far North Act* (2010) of Ontario or any other NRD legislation?
- How did the government approach consultation with the Indigenous communities in the Far North for the FNA or other similar legislation in within Northeastern Ontario First Nations, such as the *Mining Act* modernization?
- Do you think governments adequately include the knowledge and perspectives of peoples impacted by legislation in their policy-making processes? If not, what needs to happen? Do you think this has been the case in Atikameksheng?

Questions for mining company representatives:

- How is your company connected to the Atikameksheng Anishnawbek or the communities of the Ring of Fire?
- How has your company been or continue to be involved in policy consultations?
- Has your company engaged in its own consultation and negotiation with First Nations?
- How do mining companies treat cultural protocols and perspectives when consulting First Nations communities?
- How do government policies affect your company's ability to establish relationships with the First Nations in Northern Ontario?
- How has current legislation affected on-going developments at potential Ring of Fire mine sites?

- How has your relationship with the Indigenous communities in the Ring of Fire area impacted on-going development at potential Ring of Fire mine sites?

Participant Profiles

Participant #	Participant Group
Participant 1	Atikameksheng: elders, current or former policy advisors, councillors or chiefs
Participant 2	Atikameksheng: elders, current or former policy advisors, councillors or chiefs
Participant 3	Mining Sector (Past or Current)
Participant 4	Government: who have been or are currently in senior policy advisory roles or who work with First Nations in the context of consultation and natural resource management
Participant 5	Government: who have been or are currently in senior policy advisory roles or who work with First Nations in the context of consultation and natural resource management

***Semaa* and Gifts**

In my earlier understandings of the giving of tobacco, I had never had the formal opportunity to sit with an elder of a nearby Anishnawbek Nation to understand its ceremonial and cultural significance. As a teenager and young adult, I understood that the giving of tobacco or *semaa* was a commonly understood cultural protocol of respect when seeking partnership with or working with Anishnawbek people on a formal basis. As part of my research journey learning about Anishnawbek relationship building methodologies that I followed for this work, I sat with an Elder and knowledge keepers on separate occasions to learn more about the in-depth understanding of traditional medicines and the particular meaning of offering *semaa* when seeking knowledge from someone. I came to understand this practice as not only a sign of respect, but as an opportunity of also having the person being offered the *semaa*, confirm the honesty with which they share their knowledge.

As I had originally planned to only share *semaa* with those participants I knew are Anishnawbek, I quickly realized that this would force me to make assumptions about my participants, as I had not required participants to initially identify their cultural origins. Through personal reflection and consultation with Anishnawbek mentors of this project, I established that *semaa* could be offered to all participants. Since I was seeking to create an ethical space for engagement, where the testimonies of the Anishnawbek participants would interact with the testimonies of those from other cultures, the offering of *semaa* would recognize the context being explored. Further, given that this project is only permitted by the important partnership that was entered into by the giving of *semaa* and a later Band Council Resolution, the offering of *semaa* allowed me to explain the significance of this project concerning the community partnership and the practical purpose that the findings might have. It also afforded the non-Anishnawbek participants the opportunity to confirm their honesty in

entering this ethical space of engagement by engaging in a cultural practice that reflects Anishnawbek protocols. All participants were of course allowed the opportunity to refuse engaging in a such cultural practice as to ensure their own protocols and cultural practices were respected. All participants graciously and understandingly accepted the *semaa*. Anishnawbek participants also confirmed that the offering of *semaa*, given the community partnership, would be appropriate with non-Anishnawbek participants should they feel comfortable accepting this practice.

Ethics and Consent

In the past, research has been a very dangerous and oppressive experience for Indigenous Peoples and individuals (Smith, 2012). An example of how research can be dangerous to Indigenous Peoples is when there is an un-acknowledged bias or lack of knowledge on the part of the researcher. Findings can then be presented in such a way that does not appropriately reflect what was shared and these findings can then be used to further colonialize Indigenous Peoples by presenting data about them that is inaccurate. As explained in the methodology section, even the foundations of western methodologies established a space where Indigenous perspectives could not be equally represented. For many of these reasons, research ethics boards, such as the Laurentian University Research Ethics Board (LUREB), take a close look at research working with human participants that might be vulnerable as per the Tri-Council Policy document. In an ideal scenario, Research Ethics Boards (REB) established by Indigenous communities would guide researchers in appropriately working with their communities. In the case of Atikameksheng, there is no REB established by the community. For this reason, careful practice was taken to gain the approval from Chief and Council and consult appropriate elders and community members on

the appropriateness of such a project. Then, the necessary steps were taken to gain the LUREB approval which was granted in November 2018. For consent, participants consented in writing: their approval to participate and the use of their testimonies for the purposes of this research. They were also asked to orally consent to being recorded at the start of each interview. Complete anonymity was a necessary option due to the political nature of this topic and the impact it might have on any of the participants if they were in current positions with the various mentioned entities. Participants were invited to select three degrees of anonymity as outlined in the consent form (see Appendix D). Apart from selecting to be completely anonymous, they were also invited to select to have their job title mentioned or both their job title and organization/community.

Dissemination and Giving Back

The nature of natural resource development projects and the economic benefit from such projects, often gives a lot of attention and authority to the way in which decisions are made for their creation. It is vital, in this research context, to use well-balanced and grounded Indigenous research methodologies in order to begin Estrada's (2005) explanation of healing "the division and imbalance perpetuated by oppressive and damaging research" of the past (p.50). In emphasizing the importance of giving back the knowledge to the community and disseminating the research, resulting standards for inclusive policy-making processes served to reflect the balanced relationships First Nation Treaties were intended to fulfill and that documents such as the Truth and Reconciliation Commission of Canada (2015) Final Report sought to promote. There are different ways to appropriately share the research with participants. For this project, a summarized report was deemed appropriate by Chief and Council as part of the original proposal that received a resolution. It was also later approved

as an appropriate way of sharing the work by the Atikameksheng Administrative and Political Leadership. The report is to be in writing and a later presentation possible at the request of the above mentioned individuals and/or Chief and Council collectively. To disseminate the research to other participants and those which the research can also affect, the same summarized report is to be sent with an acknowledgement of all those involved in the development of the project, keeping participants anonymous of course.

CHAPTER 4

Analysis and Findings/Discussion

“So when we look at what the treaty says and look back a year before the treaty was made, there was a commission that came into our territories here and the commissioner sat down with some members from some communities, they talked about not being able to understand this new economy, not being able to understand this new culture, many things about this coming together of Nations, but they put their faith in law with the understanding that nobody will be cheated, nobody will be made to suffer.” (Participant 1)

Analysis

Qualitative data was analyzed using a mostly inductive thematic analysis approach with the creation of codes that then helped to identify common themes in the data. However, as Braun and Clarke (2012, p.58) note, “coding and analysis often uses a combination of both approaches [inductive and deductive]. It is impossible to be purely inductive, as we always bring something to the data when we analyze it.” Deductively speaking, the emphasis on the duty to consult, the *Far North Act*, the *Mining Act* modernization, the imbalance of power in negotiations between First Nations and Ontario, and the importance of the Treaty were all themes that were brought to the interviews through the questions and nature of the project. The analysis within these topics was inductive in that my own preconceptions were self-acknowledged and in order to ensure full understanding and respect within the ethical space of engagement, differing points of view were elaborated through the asking of follow-up questions and clarification during the interview and at later stages through the sharing of transcripts.

Thematic analysis was the most appropriate process for this research as it allowed for the flexibility that is needed to pull information from the very diverse data set. This was important given the variety of positions participants have held in this field. The creation of

major themes that pull from the entire data set is an essential way of presenting it in such a way that appropriately gives attention to each participants' experience. As Braun and Clarke (2012) affirm, "giving voice to experiences and meanings" of the world that we are undoubtedly living in, suits qualitative data in this context because it is purely experiential (p.59).

The mixed inductive and deductive thematic analysis followed the following steps as informed by Braun and Clarke (2012):

1. organize the data into initial codes using Nvivo software (inductive);
2. search for broader themes that combine the initial codes into the key areas of discussion relevant to the research question (deductive/inductive, on paper);
3. review potential themes and clearly define them; and
4. write the report in considering:
 - a. the clear differences and similarities of opinion within these key themes and what those differences and similarities mean from a practical standpoint when thinking about legislative consultation processes; and
 - b. suggestions that can inform the mentioned policy-making framework and how it can be beneficial for future policy surrounding the Ring of Fire

In consideration of my Anishnawbek relationship building methodology, prior to conducting this thematic analysis, each interview was listened to multiple times and as transcription was completed, reading of these interviews was again repeated. This allowed me to become well acquainted with my interviewees' perspectives and not be influenced by the prior lessons I may have gotten from one interviewee as I rearranged the order by which I would listen and review the interviews. As the giving of *semaa* to each participant represented the commitment of honesty that each interviewee would afford to the research and the other participants that their testimonies would interact with, I continually reflected on

the respect I was affording to their testimony and the honesty by which I would report on it. In addition, as throughout this journey I have established many friendships within Atikameksheng, meanings and lessons from interviews continued to evolve over time. Careful consideration of this was essential during the analysis. I have been fortunate to be part of conversations on many topics that relate directly to this project on an informal basis in Atikameksheng that helped to more fully inform the context within which I was working. This I feel was an essential part of appropriately completing this project, but not something that was done as a means to an end as I continue to spend time in the community on a regular basis with friends made along the way.

Coding

At steps one and two mentioned above for the analysis, codes had to be established. Using Nvivo, thematic categorization was done by highlighting common language and narrative at step one. As explained by Basit (2003), coding “involves subdividing the data as well as assigning categories”, as similarly informed in by Dey (1993). In step one, fifteen codes were established through the mentioned process of highlighting common theme and narrative. Then the fifteen specific codes were analyzed manually and each interview was recoded on paper using colour coding to match one or multiple of the three primary codes: legality, practical barriers, and recommendations. In the main, I identified three key Themes, Legality, Practical Barriers and Recommendations. These are described below.

Legality as a primary code is justified as it categorizes sub-codes which pull together instances where interviewees referred to legal proceedings, obligations and/or history that help inform the context being explored. Practical barriers as a primary code is justified as it pulls together reference and explanation of the types of practices, obligations and/or history that impedes movement toward, from the perspective of the participants, good relations. And recommendations as a primary code is justified in that it serves to identify any instance where

participants make recommendations about the relationship between Ontario and First Nations that ultimately informs the later section of the analysis seeking to inform policy making frameworks in this context. While there are debates that exist regarding the effectiveness of electronic software for coding vs. manually coding, both of which were utilized for this research, it is important to note that “the computer and the text analysis packages do not do the analysis for the researcher” (Basit, 2003, 145). Moreover, the division of coding into two respective phases, one being electronic and the other being manual allowed for deeper reflection on the choice of various codes and further deepened the understanding of interviewee testimonies. Structure, objective and justification are contained in the below table.

Primary Code	Sub-code	Definition	Justification
Legality	Consultation	Testimony containing discussion on consultation either in the context of policy-making or between private sector and First Nation	Within contexts of legislative development, given the primary question of the research, sections of discussion on experiences with policy consultation or legal proceedings are directly applicable.
Legality	<i>Far North Act</i>	Instances where participants refer to the <i>Far North Act</i>	Primary piece of legislation used as a contemporary example of policy consultation or lack thereof
Legality	Historical perspectives	Reference to historical facts and/or contexts that impact where we are today	The evolution of each participants experiences or the experience of their nation informs the

			catalysts or barriers to productive relationships
Legality	Inaction	Failure to address past illegal practices	Similar to historical perspectives, participant views on unwillingness of parties to take responsibility for or address wrongdoings that continue to impact the possibility of equal relationship
Legality	Policy-Making	Reference to Ontario government policy making or policy-makers	Understanding the process of policy-makers at the Ontario government from the perspective of internal and external witnesses. Address questions of the adequacy of consultation processes from firsthand experience.
Legality	Self-Determination	First Nations governing themselves free to adhere to develop existing or new processes and practices in context of land-use management and/or broadly	Considering the realities of productive relationships between the Crown and Indigenous Nations with respect to the imbalance of power created by over-arching legislation of the Canadian Governments
Legality	Treaty	Understandings of treaties current or former between nations	Applying the role of existing treaties to the questions of obligations to

			consult on the Crown side and also addressing the complexities of negotiations with the Province of Ontario
Practical Barriers	Authority	Varying types of authority within consultation processes, ministry processes both internal and external, and jurisdictional capacities in policy-making between provincial and federal government	Determining the complexities of/and difficulties that arise with multiple entities responsible for specific areas of policy, consultation, and/or management and enforcement
Practical Barriers	Lack of capacity – financial and education/training	Existing and consistent instances where financial constraints and/or lack of education/training impede or slow policy-making processes or resource development	Understanding where from each perspective, barriers exist caused by lack of funds or educational/training and how this relates to timeliness of projects or effective policy-consultation. Comparison between concepts of time and length of time required for meaningful relationship building.
Practical Barriers	Practical	General reference to logical and/or impossibility of change due to insurmountable challenges which can relate to finances, time, willingness and capacity. Often double coded with lack of capacity sub-code, but distinct in that it is applied in circumstances	Understanding where certain perspectives establish limits for change. Attitudes of participants toward opening up the possibility of new frameworks concerning the many

		where the attitude of the interviewee is at play.	challenges this could entail.
Practical Barriers	Worldview	Instances where worldview is at odds with another from the perspective of the researcher.	Understanding the ways in which certain worldviews cannot permit for certain practices and the role this plays in the overall context of resource development policy.
Recommendations	Collective Voice	Reference to possibilities of combining similar voices to strengthen negotiation capability, mostly in contextual examples of tribal councils or political organizations involving multiple groups	Exploration of participant perspectives on varying models for consultation with consideration of practical barriers publicly referred to or felt by participants.
Recommendations	Sister Nations	Examples of differences and similarities between objectives and experience of adjacent First Nations	Reflection on the applicability of one nation's experience to other similar context through participant testimony on local happenings between for example Atikameksheng and Wahnapiatae or Atikameksheng and Matawa communities near Ring of Fire
Recommendations	Trained People	Agreement of necessity for trained people	When looking at earliest understandings of treaties between First Nations and the Crown, clear desire is expressed for

			<p>between understandings of respective cultures. The importance of this sub code is to inform the later recommendations section on what is needed on all sides in terms of capacity building to meet expectations.</p>
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Findings and Discussion

The interview stage of this research was certainly the most interesting. As a future project, it would be of great value, from my point of view, to have the participants all in one room engaging with one another face to face, this would obviously need to be done in a very careful and culturally appropriate way. Interviews were held wherever the participant felt most comfortable. Depending on the location, it was easier or harder to build rapport with participants without any prior relationship, which I found quite interesting. One participant and I spent nearly an hour chatting prior to the start of the interview; this was in their own home, while some participants were more eager to get on with things. Of the five interviews, which averaged fifteen pages in length, the longest being twenty and the shortest being ten, there were three major themes selected to present the findings after initial steps for coding as described in the previous section. The three major themes Legality, Practical Barriers and Recommendations, emerged from the data in a way that allowed for a fairly chronological and logical unravelling of the dense content shared. This is a key aspect of the thematic analysis method as described by Braun and Clarke (2012) as “the purpose of your [this]

report [thesis] is to provide a compelling story about” the data (p.69). The unravelling conveniently takes us from the historical context, to where we are now, and how and where the participants felt the relationship between the Crown and Indigenous Nations, in this context, is headed or needs to head.

The legality theme is defined as a theme that explores historical legal contexts that exist concerning the relationship Ontario and Canada have with Atikameksheng. Specifically, the applicability of the Treaties or inherent rights as legal tools for enhanced consultation on policies that impact Indigenous Nations in general, the specific impacts of NRD legislation such as the *Far North Act*, the *Mining Act* and also the *Indian Act*, and how they position the Indigenous Nations in these legal relationships with Ontario and Canada. The second major theme, practical barriers, encompasses discussion across interviews pertaining to the following sub-themes and the way in which they impact potential legislative consultation: financial resources, internal ministerial collaboration, worldview, and First Nation to First Nation collaboration. The third and final major theme is Recommendations. It can be defined as the theme which pulls from specific interviewee suggestions and the two prior major themes to help inform based on the data, meaningful processes that can shed light on whether or not increased consultation is desired, what that might look like and/or not look like, and how we get there.

Legality

In the literature review, many key court cases were discussed in the establishment of legal concepts like the duty to consult, however, participants unanimously identified the starting point of the legal (legal in the sense of the British legal system) relationship Atikameksheng has with the Crown with the Royal Proclamation and the later Treaties. As confirmed by Participant 1, an elder from Atikameksheng Anishnawbek who permitted the

use of their title and community, “in 1763 when the Royal Proclamation was presented by Great Britain, it put down the stipulation that is a legal requirement that the Government, the Crown, before it comes onto the land, will make a treaty.” And thus, in 1850, a Treaty was signed as part of the Robinson Huron Treaties, between Chief Shawenekezhik and the Crown, which permitted the sharing of the land on which the Atikameksheng Anishnawbek live as per conditions. The conditions of this Treaty have been widely debated. For example, it was determined by the Supreme Court of Canada that the annuities allocated to each member of the treaty signing nations, \$4, needs to be revisited as to legitimately represent the wealth that has been and is being extracted , as was always the original understanding of the various Indigenous Nations that signed, including Atikameksheng. This has so far represented a great victory for the Atikameksheng Anishnawbek Band members (*Restoule v Canada, 2018*) and now will enter a phase of discussion and negotiation with respect to increased payment and retroactive payments. What was a most shocking revelation for me is the symbolism around the annuity payment process year by year and how it truly does demonstrate an incredible imbalance of power. It was shared by Participant 2 that band members actually go to their band office where they sign a paper and are handed \$4 while observed by an RCMP officer in uniform – a stunning display of colonialism still taking place in 2019. Moreover, Participant 1 admits their rejection of the legal authority Canada or Ontario even has to create laws or to use their traditional territories. This rejection stems from the fact that we have signatories to a Treaty that are and clearly have violated its terms, ultimately calling into question its very validity.

Amongst the participants, this is the starting point for moving from where we once were to where we are now, legally speaking. At the onset of the legal relationship with Canada and Ontario, there is already a lack of recognition on both sides of the authority of the other due to the violations of Treaties or the Royal Proclamation by Canada and Ontario.

Participant 2 expressed in response to a follow up question that sought to gain an understanding of their relationship with the Treaty, “that governments did not uphold the treaty.” The participant goes on to elaborate that the Atikameksheng people were not able to share in the use of the land, but rather had to stay well on their reserve, with “Indian agents at the entry and exit points” lasting until the 1970s. While all participants were in agreement on the failure of the Crown to uphold the conditions of the Treaty, Participant 5 went further to explain that in cases such as *Mikisew Cree First Nation v. Canada*, *Mikisew* could have focused more on the signature of the Governor General as legal space where consultation could occur. The signature gives the official royal assent to legislation once it has passed the House and Senate Chambers respectively. As the Crown is part of Treaties and/or is otherwise obliged to seek a treaty with Indigenous nations as per the Royal Proclamation, they should need to consult at the point of royal assent. They should consult when the legislation is going to impact the conditions of the Treaties or in the absence of treaties, inherent rights recognized within the Canadian system under Section 35 of the *Constitution Act, 1982*. Participant 5 admits however, that they do not see how this could be practical in our current state of affairs. While other participants might not state that such wide consultation with each treaty signatory Nation would be practical, they certainly admit that as far as the law is concerned, it should be legally required. This is further elaborated upon by Participant 1 who likens the treaty relationship Canada has with Atikameksheng to any treaty relationship Canada has with other countries. Only the citizenship of these nations can decide by virtue of their government whether they agree with emerging aspects of the relationship. Participant 1 explains that as *Gimaa*, (not as Chief as that is the title which only holds the power as is granted through the *Indian Act*) “all the authority that you see being exercised or control that’s defined under the British North America Act, section 91 and 92, behaviors and controls and authorities of the province, well I have all those authorities and more so because

I have an openness” to manage the Nation as the citizenry sees fit, that which speaks directly to the emphasis needed on nation-to-nation relationship (re)building.

Moreover, as we move forward in time beyond the making of Treaties and toward the establishment of mines and NRD in the Atikameksheng region (throughout the interviews), three participants felt as though many of the NRD projects were illegal as proper agreement was not made with Atikameksheng or adjacent First Nations in the beginning. The two other participants focused more on the ways to rectify these injustices. Participant 2 states that things need to slow down. Since the continued system does not do right by the First Nations in Ontario, the further we move forward in the context of resource development, the more difficult it becomes to repair these legal relationships. In addition, Participant 2 also explained that it is not only the community members or the companies waiting to drill holes in the ground that need be considered, “there are the animals, there are trees, there’s everything. They need to be thought of. We need to be the voices for them.” Interestingly, as is recognized in the methodology for this research, legal agreements for the Anishnawbek do not exist only on paper with colonial entities, but there are sacred treaties with the land and all of its creatures that must be recognized and offered appropriate respect before disturbing that land. This constitutes a form of law for this Nation.

Legislation, starting with the *Indian Act* and as is added onto it in the context of NRD: the *Mining Act* (Ontario) and in the context of the Ring of Fire, the *Far North Act* (Ontario), tends to exist for those participants of First Nations in a way that is immediately illegitimate. This means that often times, it is not agreeable that the First Nations must provide resources from their operating budgets to handle the volume and breadth of knowledge required to examine lengthy colonial processes. The previous point will be further elaborated in the next section however, it is important to note that all participants recognized the differences between certain ways of doing business with lengthy documents and processes and the

missing capacity on either side to properly understand the opposing worldview in this circumstance. And thus, the legal context we now find ourselves in with respect to this relationship between Indigenous nations and Canada, is a context that has both some functional processes and many that are opposed as identified in the literature surrounding the *Far North Act* for instance. Participant 5 explains that the case law however, really does not provide for a duty to consult with respect to private companies and that for this reason, the Ontario Government needs to have in place, regulatory practices to protect First Nations. This is similar to the often clear double-edged sword that is the *Indian Act* – simply removing many of these regulatory practices and/or legislation is not a viable option at this point in time. The main reason alluded to by participants is of course that without this legislation, Indigenous Nations might not have their inherent rights recognized in everyday processes by Canada and due to the existing imbalance of power within these nation-to-nation agreements, it is important that they continue to be recognized within the Canadian framework.

Participant 3 stated that the most significant issue with the creation of such pieces of legislation, that create regulatory processes for First Nations, is the lack of background work on the part of Ontario, to see the impact changes (for their example, the *Mining Act*) might have on the staff in Band government offices. Participant 3 further expressed how this was most often the case; “Nobody ever came to the First Nation and said, ‘we’re thinking of starting this project so jump on board and let’s talk about it’” in reference to policy changes. For the participant, this often-meant being surprised with massive changes in regulatory processes for NRD projects, but naturally, being the only person working on this for an entire nation. Participant 3 was previously a Consultation Coordinator for their community and agreed for that detail to be shared.

Evidently, this historical context was commonly agreed upon as accurate by each participant and by the literature review. In working in a system that is not working for

Indigenous Peoples, identifying the barriers to either forging a new relationship and path or not, due to the weight of the established system, will be important for developing an understanding of how the recommendations of these participants can be put into practice. Participant 5 discussed at length the role the duty to consult has to play in the new relationships that stand to be created, but explained that there are significant barriers to this as will be discussed. Participant 4 however conceded that, “it’s fundamentally wrong to make a decision that might impact or will impact communities, even though its internal policy documents, without at least engaging with” them. Time is not so much an issue for Participant 4 however, while Participant 5 would certainly love to see this kind of engagement in the real world, they do not think it is possible. The pace of things nowadays is fast and when it comes to the few consultative processes that do take place for actual projects, not policy making, it is obvious why Participant 2 feels as though the representatives of the provincial and/or federal governments are “there to sit there, listen to what you’re saying, write down some stuff however they feel like writing it down, and it doesn’t seem to go anywhere from there.” If that is indeed the case, as is agreed upon from the First Nation point of view in this research, we have a lot of work to do.

Generally, when discussing the legal relationship that exists, participants as described arrived at two major differentiations. On the one hand, there is a clear misunderstanding of how the treaties play a part in the relationship that exists between Indigenous Nations and colonial governments. On the other hand, there is a continued need for that relationship due to the imbalance of power that exists and the impact that eliminating such legal components of this relationship within the Canadian system could leave Indigenous Nations even more vulnerable.

Secondly, participants from the Indigenous Nation perspective do not generally feel that the Ontario government is genuinely interacting with them. Participants of the Ontario

government do not feel as though they necessarily can meet the expectations of their First Nation partners due to the emphasis put on time in today's society, and efficient use of financial and human resources. Evidently, these issues must be addressed, deconstructed and worked on by both sides on an individual and collective nation basis. Individual in the sense that for there to be any progress in the relationships between nations, Ontario and Canada need to understand the full perspective of each individual nation on the full range of issues and they also need to understand those issues which First Nations view in common.

Practical Barriers

In understanding the legal context that got us to where we are now in terms of policy consultation, all participants identified a range of barriers to meaningful relationships that exist due to the policies themselves or the foundation of those policies. It is important to understand that the experience of the participants concerning the *Mining Act* as it is relevant to Atikameksheng and second, the *Far North Act* as it relates to the First Nations in the Matawa First Nations region was both direct and indirect. Direct, in the sense that some participants worked directly with the existing regulatory practices laid out in the *Mining Act* or were in an advisory role to senior government officials or Indigenous communities during the transition in Treaty 9 to the processes in the *Far North Act*. Specifically, the processes within that Act most relevant here are those that guide communities in establishing land-use plans and that dictate the specific areas of treaty territory that cannot be claimed for any type of resource development project. Through the land-use planning process, communities do get to influence which areas are hands-off, but the large area mentioned in the introduction, already identified by the Province as a large conservation area is not subject to this influence, even though it is located directly on the territories of these Cree and Ojibway First Nations.

These specific processes will be elaborated in a later section in order to understand how they relate to possible consultation protocols for policy makers.

The first common barrier identified was the significant lack of financial resources that would otherwise allow for more extensive consultation and relationship building. This same financial barrier was brought up in the context of handling regulatory processes at the Band office level and in terms of the ministries capacity to engage in consultation. Often, it seems that there is a far larger volume of documents to review and respond to for the Band employees. The lack of financial resources not only limits the Band governments to hire additional people, but it equally limits them in attracting suitable candidates from their own communities or from outside. As is understood or agreed upon by all participants, new employees are typically faced with far more work than they can accomplish at a rate of pay that is much lower than the average for such positions in the private sector or with the Ontario government.

Moreover, the resources that are transferred to Bands from ministries for increasing such capacity within the NRD sector have not always been constant and certainly are not, necessarily, to this day. Participant 3 explains that prior to 2010, there were no funds available to support the hiring of a person that would be dedicated to consultation with companies and ministries on any type of NRD or construction project. When they were hired, Participant 3 explains, it was quite overwhelming for many communities as their primary goal was simply on getting the funding in place and someone hired, but then the volume of work and capacity building required was massive. For Atikameksheng, being in the Sudbury Basin means that the volume of requests from companies or from government for assessment of varying projects is high. This we can imagine will be and already has started to be the case in the Matawa First Nations region. A specific example given by Participant 3 was when they first started their position,

“from one mining company alone, there were five file folder boxes that had literally been dropped off by somebody from MNDM [the Ministry of Northern Development and Mines, now Ministry of Energy, Northern Development and Mines] to say, ‘here you go, that’s all the background information that you’re going to need to go through to get up to speed on where Vale¹⁰ is at” (P3).

Participant 1 also makes reference to the above in that without having professional people that can:

“sit with and who understand the Anishnawbek way of being, the culture, the worldview, our people as being a nation and what that is meaning, what kinds of rights that we are having to properly represent our interests,”

Thus, driving the point, that appropriately responding to the Crown or Ontario becomes impossible. Of course, having these people in place can be costly, but Participant 1 contends that Canada and Ontario have an obligation to pay for these kinds of costs due to their being complicit in depriving the community of having people within their communities equipped as such. And funding is not a simple solution, as Participant 3 explains, “it helped, but there should have been more that came along with it, not just here you go, here’s your money.”

There are pieces of this puzzle that even standing alone could require a full-time employee’s efforts – keeping track of all the spending, understanding how much is allowed to be allocated to what, and working with limited amounts within the fund dedicated to training.

Participant 5 affirms that they can imagine it being impossible for First Nation communities to respond to ministry requests as they guess that Band offices are inundated with letters from a number of different ministries: “probably daily about activities that are taking place in their

¹⁰ Vale is a natural resource development company, with major mining operations in Canada, Brazil and around the world. Sudbury, Canada is its main North-Atlantic Headquarters (Auston, 2006).

traditional areas and being asked” to respond within 30 days. Participant 5 also confirms that obviously, there is often not enough time and the community might not have enough information to respond or might need to seek external assistance to understand technical information. Participant 4 shared similar views and further noted that an added issue is the lack of consistency of ministry funding for positions at the Band offices for dealing with the many requests. The Ministry of Energy, Northern Development and Mines (ENDM) does fund positions however, such as mineral development advisers, but the Ministry of Environment, Conservation and Parks (MECP) does not. They do not have enough money for that, while the person on the ministry side dealing with the community might have access to a technical specialist that assists in their review. It should be noted that ENDM has provided fairly extensive funding for additional studies such as values mapping which allows for the employment of community members to explore the history, map out traditional land use areas and so on. These types of projects are not even to provide the ministry with that information, but rather so that the community has the capacity at that time to get some of these important facts documented and readily available to them while facing, as mentioned, an intense volume of requests for information and feedback from proponents and ministries.

The second barrier is the internal processes at the ministry level and cross ministry communication. While communication between ministries and communities was identified by all participants as a critical part of ensuring appropriate relationship building, the communication between ministries was identified as a significant barrier to continued relationship building with communities and maintenance of trust. Since communities are often faced with different processes when dealing with different ministries, they are evidently more taxed in terms of workload due to duplication and/or competing priorities. A specific example given by one participant, of where such regulatory processes between ministry and community complicate things, is where as the Ministry of Energy, Northern Development

and Mines communicates directly with communities and have a number of individuals who can foster the relationships with each community. The Ministry of Environment, Conservation and Parks (MECP), they state, has a more hands-off approach. The participant explained that:

“from MECP’s point of view with communities, there’s a lot of confusion because all of a sudden, a proponent comes and says, ‘oh, I have this project,’ and they’re [the Band] like, ‘what?’ They think that maybe that proponent is the government and they don’t really understand it and then will come in” and ask “what is happening, what is all this information, what is the process for this?”

Therefore, in this instance, the hands-off approach confuses the communities or Band governments.

With regard to the internal and cross ministry communication issues, according to all five interviewees, the number of ministries, regulatory entities, legislative directives, and respective First Nations, makes it very challenging to imagine more extensive consultative practices. Participant 4 elaborates that some policies might be interpreted differently by different ministries or departments which means the approach to engaging with or consulting Indigenous communities might not be consistent. They explain that whereas at EMDM, a significant effort is made to engage with Anishnawbek nations through technical round tables and such (not necessarily at the policy-making stage however), MECP does not. Thus, the resulting circumstance is that one ministry is far more knowledgeable on the needs of respective nations like Atikameksheng and due to a lack of discussion across ministries, lack of adherence to protocols or expectations laid out by the First Nation by these other ministries, creates a general feeling that their voices are not being heard. As a result of this clear problem at the ministry level, Participant 4 explains that a ‘one window process’ is being established to clearly delineate and determine who is the lead on a project, and how it is

going to play out across ministries. One issue however, is that this type of internal protocol is being established without consulting communities who will then have to interact with the ministries and while it attempts to better organize engagement with First Nations, there could be gaps in terms of knowing all the challenges that these Nations face throughout engagement or consultation caused by the lack of communication across ministries.

Moreover, the divisions that exist within ministries themselves also creates more distance between the First Nations impacted by policies and the policy makers. Participant 4 explains that the policy makers are quite removed from the operational people in the ministry that actually engage with and have that relationship with communities. For this reason, Participant 4 explains, “we get bossy, and we put ourselves at the table most of the time.” The reason they put themselves at this table is that in many ways, they feel as though they work mostly with and for the community as they are the person who is to report back the challenges being faced. Further, Participant 4 elaborates,

“We totally put ourselves at the policy-making table, because sometimes, you have staff who have no experience with communities or have no experience with actually implementing what’s in the policy. They have to rely on people who are actually going to communities and doing the work to provide feedback. Definitely, there’s probably a gap there. I’m not sure why there would be a gap. I don’t know if it’s legality, or it’s just, we’re not there yet. They’re not fully understanding that communities need to be engaged to write better policy” (P4).

Evidently, a gap caused partly by the common issue of silos in large organizations (i.e.: independent units that do not recognize or collaborate in their overlapping responsibilities). The resulting impact is also frustration for those working within the ministries as explained by Participant 4, where they identify projects that MECF lead, but MNRF has approvals they need within that project, yet there is no mechanism through which

both ministries can establish who does what, when and the processes that must be followed with respect to the First Nation communities. The environmental assessment is also identified as one that makes it difficult for an Indigenous Advisor within a ministry, as an Environmental Assessment Planner will ask that advisor for a list of communities that might have interest in a particular project requiring an EA. Meanwhile, the advisor within the other ministry has to provide this list without actually having the time to chat with communities in their area.

On the other hand, in acknowledging the communication gaps that do exist and the lack of consultation taking place at more fundamental levels, participant 5 boils it down to a lack of time and resources. Indicating a disposition on values between entities such as First Nation Governments and Ontario Ministries. Participant 5 states that with over two hundred Indigenous reserves (one-hundred and thirty-three First Nations total) in Ontario alone and with the addition of Métis communities, “any thorough and in-depth consultation with that large of number is exceptionally difficult, it’s logistically extremely difficult to accomplish and that’s where we’re struggling to find a way to make that work.” That said, Participant 5 also identified that the range of information from different ministerial entities that First Nations are to understand and engage with is huge, resulting in opposition to certain processes without the appropriate breadth of information communicated and of course the continual oversight role that the ministries play.

The third and final barrier emphasized by the range of participants was the collaborations between First Nations. Government participants, mining company participants and Indigenous Government or community representatives agreed that better collaboration with other First Nations is essential. From the Ontario Government side, this was identified as a key logistical aspect of more meaningful negotiation between Ontario/Canada and First Nations. On the other hand, it must be considered that for the Crown to impose upon

respective First Nations across the province or country, the requirement to speak collectively through political organizations such as NAN or Anishnawbek Nation, is not necessarily favorable for many Nations. As Participant 1 explained, it is often forgotten that prior to the arrival of European Settlers in the region, there were intricate systems in place of governance, treaties, trade and respect. Thus, a movement toward requiring collective bargaining for First Nations in Ontario could fail to recognize the sovereignty of each Nation that pre-dates the establishment of the colonial governance system. Participant 4 explains that there could be instances however where on a policy-to-policy basis, consultation across a wider range of communities is accomplished through the establishment of working groups in collaboration with communities that allow for representation of a wider range. Time is always the major factor however, as views across the range of participants differ on what is a reasonable amount of time for consultation and collaboration, the main intent here, is that representation is vital.

Further, Participant 3 elaborates that the work between First Nations needs to happen and that if it is to be done, it must be done in a respectful way. Just as between highly populated Nations in the world, you have disagreements, the same goes for First Nations in this region. While Participant 3 did not disagree that, the imposition of such a collective negotiation system would be wrong, with consensus among First Nations, “tribal councils or the greater North Shore Tribal Council, those types of organizations if we were all working together within those treaty areas, it would make things a lot easier.” The lack of collaboration amongst First Nations, as explained by Participant 3, is due to the colonial government creating this segregation of communities through the *Indian Act* and “so now to try and get back to it, it’s difficult.” But, Participant 3 has seen the value of discussion and collective negotiation in the Atikameksheng region in terms of accomplishing goals regarding annuity compensation for the Robinson-Huron Treaty Signatories for instance, a case that just

had its only appeal from Ontario denied and appropriate strategies for retro-active payments to First Nation members should be forthcoming. Participant 3 was also involved in many discussions at the inception of the *Far North Act* where the experience of Atikameksheng was useful to share with communities in the Matawa First Nations region through platforms such as the Canadian Aboriginal Mineral Association conference and at the Chiefs of Ontario. Direct communication between communities for assistance though, is not something that Participant 3 witnessed or believes that politics would permit, referencing an example where Webequie might reach out to Atikameksheng or vice versa should it be warranted. Participant 2 outlined many instances where discussions with adjacent First Nations by proximity and thus personal relationships permitted such collaboration. All in all, the possibilities for discussion amongst First Nations are plentiful at their regional and/or provincial organization meetings, but this does not necessarily mean that these First Nations have an interest in being collectively represented as all are fighting for what is already a limited pool of resources.

Participant Recommendations

The third and final major theme is Participant Recommendations and consists of all recommendations made by each participant throughout their interview. This section helps to directly inform the project recommendations in the next chapter. These are presented in no particular order to ensure the order of presentation does not afford any higher value to one participant's recommendations over another. Providing this extensive outline of participant recommendations can help to inform other research and/or work to be done by governments and Indigenous Nations pulling from this project.

Participant 3

1. *Better defining consultation and what constitutes appropriate or meaningful consultation*

When the *Mining Act* began establishing the requirements for companies to consult with First Nations regarding their projects, like Inco¹¹ with Atikameksheng for example, it was not necessarily clear to companies what this process would look like. While there has been a lot of defining done within the *Mining Act* itself and that the companies have a fairly rigid set of guidelines for determining whether they have consulted appropriately, a missing piece is First Nations' involvement in having final say over whether appropriate consultation or consent has been given for a certain project, particularly if it is not on the reserve territory.

2. *Recognizing each First Nation as a Nation*

Also referred to by three out of five participants, Participant 3 explains, “if the larger nation is going to create a policy or an act or anything that has the potential to affect another nation, they should be involved right from the beginning.” This a requirement of Canada or Ontario from the perspective of these three participants as the Royal Proclamation and/or later treaties established the type of relationship that would require this as per the international norms of international relations and collaboration between nations.

3. *Creating opportunities where collective organizations like tribal councils can negotiate directly as a collective with Ontario or Canada depending on the type of policy being discussed.*

¹¹ Inco was the major mining company in the Sudbury region before it was purchased by Vale (Auston, 2006).

Noted as a difficult goal to accomplish in terms of giving up negotiation at the nation to nation level in exchange for negotiation with the collective entity, this was identified as a possible way for First Nations to better align with one another while also gaining power in numbers.

4. More discussion between First Nations experiencing similar challenges

Going hand in hand with this recommendation was the general feeling by this participant that there might need to be more platforms identified for such discussion to happen. Existing platforms include the Chiefs of Ontario, and conferences on relevant topics.

Participant 1

1. Trained People

While having people who can understand technical reports for NRD projects and legal proceedings in the sector, it is also important that Ontario and Canada have trained people that understand the worldview of the First Nation they are working with. Many oral understandings of treaties with the Crown stipulated that there be an education component that goes both ways. Only in learning about one another can we work together. This participant goes further to explain that even those who are presenting these technical reports and so on need to be unbiased and only by learning about the worldview of the Anishnawbek and understanding it can they truly serve the community. Ontario and Canada would have an obligation to pay for these people to be trained and/or for the training of people who already have this worldview.

2. Understanding History

Recognizing the history and understanding the existing obligations of the Crown in terms of what it guaranteed in the Treaties and earlier with the Royal Proclamation. This includes recognizing the sovereignty of each Nation and negotiating with them appropriately. More opportunities must be created for the Crown and for Indigenous

individuals to learn of the history, learn what their grandfathers were saying and what they envisioned for the Nations.

3. *Not Waiting for The Implementation of the United Nations Declaration on the Rights of Indigenous Peoples into Canadian law*

If Canada should commit through legislation to have its laws conform to the stipulations of UNDRIP, a key component is consent. This consent will ensure that before coming onto the land, Canada or Ontario have to, by law, gain consent of the First Nation. This still however, does not go so far as to recognize the First Nations as respective nations in international law, and that is why the second recommendation of this participant is so important. The treaty confirms this, and this participant affirms that this must be recognized.

4. *Redress for owed compensation*

Paying back the First Nations who are owed compensation, such as Atikameksheng, for retroactive annuity increases, and the sale of land. Compensation for timber on the Atikameksheng territory for example was understood to be measured and agreed upon in quantities per square league while the Crown compensated only for that number as would be found in 1 square mile. This was not the deal that was agreed upon in the signing of the Treaty. Other compensation could include compensation for lost traditional resources due to NRD projects prior to having any processes in place for consultation. The issue of annuities is currently being addressed by the Canadian courts, as it has been determined in *Restoule, et al. v. Attorney General of Canada, et al.* that the Crown does have a legal obligation to increase annuity dues to members of the Robinson Huron Treaty of 1850.

Participant 5

1. Negotiation with Collective Organizations

This participant suggests that the relationship between the Crown and First Nations would be much more productive if organizations such as the Anishnawbek Nation had more influence on the implementation of agreements negotiated. They mention that often times they will successfully negotiate something with the Nishnawbki Aski Nation or the Anishnawbek Nation, and the organization endorses the agreement, but admits that it does not have any control over whether or not it will be implemented by the respective nations. This is a recommendation that was not agreed upon widely by the participants in this research, though it is important to note as it relates to some of the recommendations regarding better collaboration amongst similar nations.

2. Using the Senate as a House of Rights-Bearing Individuals

Since this participant feels that a found legal duty to consult before legislation is enacted, as was determined to not be the case as mentioned in *Mikisew Cree First Nation v. Canada* (2018), would operationally account for policy-making coming to a halt both provincially and federally, they propose an alternative mechanism for First Nations. The Senate, currently having the role as the final review and approval mechanism of the House of Commons could become a mechanism that is comprised of elected or appointed individuals by their respective Indigenous Nations, that has the ability to send back policy to House for further review.

3. Better communication with the public

On both sides, it seems that there is a lack of engagement with those not directly involved in their governments' work. Thus, better engagement with the public is needed both on the part of the ministries but also on the part of Band Government and the way in which they reach back into their community. As will be discussed in the next section,

Atikameksheng has developed a community consultation protocol that can act as a great example for other First Nations in similar circumstances.

4. Better collaboration between Ministries and New Accountability Structures

It is noted by this participant, and by other participants, there is also a lack of sharing and communication between ministries that have over-lapping work with First Nations. This not only further complicates things for First Nations, but it also creates more work for them. It also makes it very difficult for a person coming into a new consultation role on the Crown side to get rolling operationally speaking. Some possible solutions have been explored and one that could potentially work better and that was considered somewhere between 2016 to 2019, was to have any one with “a consultation gear position” report to Aboriginal Affairs and not the ministry that they in fact belong to. This would be possible through the creation of a centralized consultation office and any ministry could then tap that consultation office as the main source of knowledge for relationships with respective First Nations. An additional thought for a such office would be to have it report directly to the Governor General of Canada to avoid the political influence that can occur with the current reporting structures. Currently, Ministry employees are accountable to the Minister who is accountable to the Premier, which means political influence is definitely possible.

5. Working Together

In saying that they feel, for better or for worse, Canada and Ontario are here to stay, working together is deemed critical to ensuring the best approach is taken. The land is being shared and in admitting that the land hasn't been shared very well by Canada and Ontario, participant 5 states that they see the desire on both sides to work together to really move things in a direction that works mutually. They state that by alienating the other side of the negotiation table, by not talking, being hostile, things will not change.

Participant 2

1. More collaboration between First Nations

Participant 2 states that the relationships between communities are not as good as they once were and that that is the result of colonialism. The mentality imposed by settlers, that something belongs only to a certain individual or that it's important to draw lines on a map, has divided Indigenous Nations and that continues to hurt them. As signatories to the Treaty, this participant hopes that First Nations can work together more and share more.

2. Better Consultation in the Ring of Fire

In having been witness to much of the unravelling of the Ring of Fire circumstances over the past decade, this participant states that there needs to be more information and consultation from the Ontario side for the Ring of Fire and the legislation surrounding that like the *Far North Act* or any renewed legislation. Communities there need to make a decision only if they agree that there is going to be a lot of change, change in their culture. This participant speaks to this by referencing the culture that was lost in Atikameksheng from their perspective because of colonialism and mining specifically. The connection that the Anishnawbek have with the land means that when the land is physically altered, so is their culture.

3. Slowing down

With respect to policy-making and development for the Ring of Fire, this participant says things need to slow down. Atikameksheng was left in the dust by the mining sector and the development that took place in the City of Greater Sudbury. There are three post-secondary institutions, a large hospital, good schools and meanwhile Atikameksheng is just trying to catch up. This type of injustice cannot be repeated in those communities surrounding the Ring of Fire. Part of this slowing down would also allow the appropriate

technological and/or communication infrastructure to be created in First Nations in similar circumstances to allow for better engagement with community members on decision making for the Nation.

Participant 4

1. Internal Ministry Communications Mechanism

Similar to the fourth recommendation made by Participant 5, Participant 4 references the ‘one window process’ which is currently being worked on by a few Ontario Ministries and led by ENDM. Through the development of this internal process, Participant 4 states that it will be important that there be some consultation with First Nation stakeholders to ensure the process will be beneficial for them. At present, there is no formal process by which First Nations are consulted on processes that impact the way they are consulted by the Ontario Government, but that is not to say there is no consultation on such processes. ENDM for example has done a lot of work to understand the challenges First Nations encounter when working with them on regulatory practices in the *Mining Act* and there have been parts of the *Mining Act* added to help mitigate these challenges. There still though, as mentioned, is no requirement for ministries like ENDM to consult on the additional and/or development of such policies in legislation or internally.

2. Process for consulting on legislation or policy making

Participant 4 lays out the process they feel would work for ensuring consultation at the earlier stages of Ontario or Canadian policy-making:

- Internal (ministry) recognition of a policy needing to be written or developed
- Building a framework around that policy idea (i.e. how it will be used, what will it be used for, getting feedback internally)
- Bringing it to the First Nations in their community and presenting it

- Creating working groups so different representatives from different communities can collaborate on relevant areas of interest and facilitating a way for them to meet
- Provide a review and this feedback to the policy-makers before they write it

3. *Common Consultation Protocol*

This participant's second recommendation is to explore ways that a common protocol for consulting First Nations or a test used to determine when legislators should have to consult for policy-making. Participant 4 admits however, that a such common protocol might not adequately represent differing needs of respective First Nations and that it must be considered that working with each of their respective consultation protocols is needed. This is already done where communities do have consultation protocols or terms of reference, but not for policy-making or legislation.

4. *Weighting Traditional Ecological Knowledge*

Not relating directly to the question of policy consultation, participant 4 affirms the need for a better weighting of traditional ecological knowledge in the assessment of project impact. At present, there is attention afforded to the traditional ecological knowledge within consultation processes with First Nations for projects on their traditional lands, however there needs to be a greater weight or a greater amount of resources dedicated to First Nations for recording important data relevant to the environment and specific areas of their territories.

5. *Sharing with Remote First Nations by First Nations*

With respect to the Ring of Fire, participant 4 believes that it would be very beneficial for nations like Atikameksheng to reach out to the Matawa First Nations to support them in their new interactions with the sector. With limited resources though, it is understandable that Atikameksheng would have competing priorities, but Ontario and Canada should

make opportunities like these possible. Keeping that in mind, participant 4 does mention that resources need to generally be scaled in such a way as to recognize the added challenges of being a remote community and that simply providing opportunities for non-isolated communities like Atikameksheng to share knowledge regarding the sector with those communities is not enough as there are different challenges there.

6. Involving Operational Staff at the Policy Maker's table

Often times, the operational staff like Participant 4, are not involved at the policy-making table. At the very least, they should be as they are the individuals who hold the relationship with each respective First Nation and understand it. By including the operational ministry staff at this table, it can help to further ensure the needs and perspective of the First Nation are being taken into account at the policy-making table, this is not normally the case however.

Existing Consultation Protocols or Terms of Reference

As a final section to this findings and discussion section, I attempt in this subsection to put in mind the existing consultation protocols and terms of reference that Atikameksheng and communities in the Ring of Fire have developed. To be noted is that, consultation protocols and/or guidelines on consultation do exist in Indigenous Nations, but they are specifically designed to notify Ontario or Canada how they want to be engaged with on specific NRD projects. These protocols are not the Nations telling Ontario and Canada what their expectations are for legislation that infringes upon their rights. To draw conclusions relevant to the main point of inquiry for this research, if and what type of consultation is needed for NRD Legislation impacting First Nations, it was important to situate however, where current legislation had supported the development of land-use and or consultation protocols.

For Atikameksheng, existing legislation has not directed or required the development of any particular protocol. Atikameksheng has however drafted a Resource Development Policy document and published a community consultation protocol. The Resource Development Policy has the purpose of protecting Atikameksheng's interests with respect to its land and rights as per the Robinson Huron Treaty. By specifically addressing its expectations and rules for resource development on its reserve and traditional territory, it provides the Ontario government and private sector stakeholders a guide to what they can expect in seeking a project on their territory.

The community consultation protocol, is a document that lays out Atikameksheng's expectations for consultation with community members and their own Band government, but also between the Crown and community members on specific projects. It lays out specifically what types of regulatory practices such as environmental assessments, Atikameksheng will want to play a part in. It also lays out the oversight it expects from the Crown when aspects of the consultation process are delegated to the proponent. It lays out the funding that must be provided for Atikameksheng to participate in consultation and the obligations of the Crown to work between the proponents and the First Nation. What neither of these documents do however, is establish consultation expectations for the development of legislation and regulatory practices. The lack of such documents, which is widely the case in First Nations, means that the expectations of their Nation are only laid out with respect to the existing legislative infrastructure that can be often written in such a way as to avoid the extent of meaningful consultation the First Nation is expecting for respective NRD projects.

The case is the same for the Matawa Nations surrounding the Ring of Fire. To date, through the processes outlined in the *Far North Act*, relevant communities for the scope of this research who have created Terms of Reference with respect to land-use management are Eabametoong and Mishkeegogamang, Marten Falls First Nation, Constance Lake First

Nation and Webequie First Nation (Appendix 2). Widely speaking, these terms of reference allowed for the writing down of land use planning concepts that date back many generations and reflect traditional knowledge of these Nations. These documents were useful in their creation in that Ontario would have some point of reference for where the respective nations stand within their established framework. With that in mind however, there is again the issue of outlined terms of reference within an existing framework. This reality and the fact that these terms of reference only address what is desired to be addressed by the Ontario government do not protect member Nations of the Nishnawbe Aski Nation from future policy changes or legislation. Currently, the Ontario Government is looking at abolishing the *Far North Act* (Northern Ontario Business, 2019), which would leave these land-use terms of reference in an uncertain state of applicability with Ontario's framework to be developed or re-adopted as the Ford Government has yet to provide further instruction regarding the move away from the *Far North Act*.

Key Assumptions and Limitations

The two primary assumptions made prior to analysis regarding the applicability of the data was that the overall findings can help inform Ministries and First Nation governments on best practices when defining expectations for consultation in the context of legislation and therefore, that government practices need improvement. Secondly, that the findings could inform an equal and collaborative policy-making framework for future natural resource development legislation impacting Indigenous Peoples in regions like Northeastern and Northwestern Ontario or further research to that end and therefore, that such a framework is needed. These are assumptions that are made despite the existence of work that discounts the very possibility of appropriate consultation between what may be considered disparate

systems. The assumptions also do not consider the fact that Band governments may not be recognized by their nation as having the proper authority to negotiate on a nation-to-nation basis. In the case of Atikameksheng, the Chief and Council system does act as the primary government when working on policy with the Canadian governments and some perspectives from within the community argue that the role of Chief has been aligned with that of the *Gimaa*, the leader of the nation. Many nations still have hereditary Chiefs that have varying degrees of power or influence when dealing with external governments. It should be recognized that such Band governments are formed as they exist on paper due to the *Indian Act* and colonialism and while this research does not seek to explore different systems of self-governance for Indigenous Nations, it must be noted that this might be an essential part of finding a workable relationship between the nations being discussed in this research.

Furthermore, due to the remoteness of the Ring of Fire area, a limitation is that this project is not able to provide an in-depth understanding of how the communities in the Ring of Fire area are experiencing developments other than from secondary data that is publicly available. Further research would do well to look directly at how each community has experienced consultation and at the correlations that can exist between poor consultation sessions, disappointing legislation and various markers of health within communities if the communities find this research valuable. Overall, a more community-based project in multiple remote communities would be very valuable to understanding what policy consultation has looked like so far and how it can be better from the perspective of each community.

Additionally, the emphasis of western societies on moving toward more environmentally friendly practices in industry also stands to be elaborated upon in further research. While leading environmental activists and scholars are often promoting the use of Indigenous knowledge as an essential source for sustainability concepts, Indigenous Peoples

are faced with the challenge of having their voices and epistemologies heard as much wider reaching systems that are not merely applicable when it is suitable for the majority. While this research does assume that Indigenous knowledges are valuable in terms of their environmentally conscious nature, by only recognizing these epistemologies within sustainability contexts, we are failing to recognize the much broader applicability of Indigenous ways of knowing. Worldview is of greatest importance in collaboration amongst partners as it shapes the resulting decisions. Further research could look into how knowledges and culture can play a part in a wide variety of contexts, not simply natural resource development.

Lastly, a significant limitation in this research is the number of participants. Only five participants were interviewed. The inclusion of more participants would lead to a more comprehensive understanding of the Indigenous perspectives and would improve the validity of research findings.

CHAPTER 5

Additional Considerations, Recommendations and Conclusion

“Using not an Indigenous worldview, they’re looking at it in, ‘I’m a property owner. I own land. This is my land.’ Whereas an Indigenous person is, ‘We don’t own the land. This land is here for us to be able to take care of and conserve. To ensure that the land’s there for – and healthy for our future generations.” (Participant 2)

Additional Considerations

Links to UNDRIP

Participant recommendations and observations have many links to the United Nations Declaration on the Rights of Indigenous Peoples. I note that interviews were not designed in such a way to create links with participant recommendations and UNDRIP, but it is important to examine where these links exist as to assess how, as mentioned, documents like UNDRIP have, for significant periods, already established ways for colonial government to adjust their approach to relationships with Indigenous Peoples. These key links will also inform the recommendations of this research found in the final chapter. Evidently, the recommendation to implement UNDRIP into Canadian law does not require much analysis as per how it links to the UNDRIP articles.

Perhaps the most appropriate starting point is to consider how Articles 3 to 5 relate to a number of the participant recommendations. All of these articles refer to Indigenous Peoples’ right to self-determination, specifically with respect to determining political status, pursuing economic, social and cultural development, and managing local affairs (UNDRIP, 2008). In looking at the participant recommendations, the multiple recommendations that touch on the pace at which First Nations are expected to respond to ministries or proponents

within the developed policy frameworks, the process or establishment of mechanisms by which First Nations can have an equal say in the establishment of legislation that impacts their own governance, and the way in which First Nations come together as a collective for negotiation, would be more meaningfully engaged upon if the starting point in discussions was rid of the discussed imbalance of power. This imbalance of power evidently, is a result of the lack of recognition on the part of the Crown that they are indeed working with justifiably sovereign nations. Articles 3 to 5, if implemented into Canadian law, would address this.

Moreover, Article 18 states that Indigenous Peoples have a right to participate in any decision-making that can impact their rights. This would mean the appointment of representatives by the First Nation that would represent them at the decision-making table for the development of legislation, for example. Recommendations on the development of a such mechanism in place of the Canadian Senate could be explored through the implementation of this article. Similarly, recommendations regarding a process for consultation on legislation or policy-making would be explored.

Finally, through Article 26, the establishment of regulatory practices under the *Mining Act* that are not accepted by First Nations could be re-evaluated, as would stipulations of legislation like the *Far North Act* and the exclusion of certain amounts of land for conservation purposes. Article 26 affirms the right to full management of land for First Nations and that protection of such lands should be legally recognized though not without direction from those First Nations. NAN's position on the FNA was that this was not acceptably worked-out throughout the consultation process as mentioned in the literature review. Further, Article 27 calls for the implementation by the state, "in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, custom and land tenure

systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.” Indigenous Peoples would of course have the right to participate in a such process. This would set relationships up in a way as to ensure expectations of respective First Nations are met by the proposed policies or legislation of the Crown.

Generally, UNDRIP is in essence, a legislative document that if implemented would create conversations that ultimately help guide Canada and Ontario in working with Indigenous Nations. What is commonly misunderstood and as was discussed across the full spectrum of opinions by participants in this research is the objectives of the First Nations communities. As signatories of the Treaty, Atikameksheng committed itself to a good relationship with the Crown, and this was never accomplished as a result of the Crown’s practices. Today however, the objective remains to establish a relationship that appropriately recognizes the rights of the People. This would more readily be accomplished through the initial implementation of UNDRIP, to allow for continual dialogue that participants in this research are stating is absent in many instances and many pieces of legislation.

In addition, Articles such as Article 32, stating that Indigenous Peoples have the right “to determine and develop priorities and strategies” to develop their lands puts emphasis on how important it is for them to do so. Arguments on the side of the narrative that try to exploit First Nations on the premise that there would be no environmental oversight or accountability would be addressed here. Further, as First Nations face health, social and infrastructure challenges, the Canadian State would still be responsible for providing financial support both through the earlier mentioned Articles of redress and through Article 39 stating that access to appropriate financial resources to enjoy the rights found within UNDRIP are provided by the state. As part of its obligations to Indigenous Peoples through treaties and the Royal Proclamation, First Nations would have the right to demand this.

Implementing UNDRIP

As it is clear that UNDRIP would address many of the participant recommendations, what then, are the challenges Canada is facing to implementing it? In reviewing the scholarship on the matter there are three categories of challenges relevant to this research that I contend can be mitigated through appropriate dialogue that takes into account many of the important cultural, reflective, and ethical considerations this research does. The three categories of challenges are constitutional/legal, political and practical.

Constitution and legal issues arise due to the differing context that Canada faces from region to region with respect to Indigenous Nations and the different agreements it has with them. While the rights of Indigenous Peoples solidified by the Royal Proclamation and enshrined under section 35 of the Canadian Constitution are certainly not going to be called into question by the implementation of UNDRIP, it remains unclear from the perspective of scholars such as Isaac and Hoekstra (2018) why this question might even be asked or pondered in proposals like that of Bill 262. Bill 262 was not successful in passing Senate approval, it would have put Canada on track to implementing UNDRIP in 2019. It would also need to be considered how Canada is to handle the implementation of UNDRIP with respect to its legislation that contravenes it. The Canadian Government can logically expect that the amount of resources that would be required for a such legislative overhaul will be significant and thus this breeds questions surrounding the obligation to do so. Another question discussed by some participants in this research would be whether or not UNDRIP would be implemented constitutionally and/or whether or not if due to the impact it has on the constitution it would require the same process for passing as a constitutional amendment. This would further complicate this process and further provide opportunity for colonial narratives to prevail.

Political challenges relate more so to the public and the management of the Treaty and/or constitutional relationships the Canadian people have with Indigenous Nations. While the political climate has arguably shifted with the emergence of mentioned Supreme Court Case victories on the respective Indigenous Nations' side and Canada's commitment to UNDRIP as previously mentioned, the Canadian electoral process does not necessarily leave much opportunity for marginalized communities to see their political aspirations transformed into legislation. Youngblood (2008) explains that such implementation is not more than a reiteration of the facts, that Indigenous Peoples are sovereign and that the Supreme Court of Canada supported this in noting that "the Human Rights Covenants define the realm of the right to self-determination – a peoples' pursuit of its political, economic, social, and cultural development – in terms that are normally attainable within the framework of an existing state. It emphasized that the self-determination of peoples is consistent with the maintenance of the territorial integrity of those states. It determined that "there is no necessary incompatibility between the maintenance of the territorial integrity of existing states and the right of a 'people' to achieve a full measure of self-determination," meaning that as the sovereignty of Indigenous Nations is defined by their own existence, as is backed up by the Canadian Constitution, the Royal Proclamation and the Treaties, UNDRIP is rightfully a tool that can already be used (p. 96). That is not to say that it would not be even clearer, should it be implemented into Canadian legislation.

Practical problems that arise are those that are again linked with resources and the norm of the Canadian governance structure. In implementing such legislation, Canada would finally be committing to properly working with Indigenous Nations to realize their expectations and rights. Within political discourse, Canadian leaders speak of their commitment to Indigenous Nations, such as Prime Minister Justin Trudeau stating "We need to get to a place where Indigenous peoples in Canada are in control of their own destiny", the

implementation of such a declaration would be unprecedented and would directly impact Canada's so claimed sovereignty within its own borders to govern and oversee all the lands (CBC, 2018). It would be required to put resources into appropriate levels of consultation or it would not be able to attain any of its economic goals. It may also need to redefine many of its development goals as to ensure they appropriately respect the land in the ways that Indigenous Nations rightfully expect them to. This would be an outstanding display of true commitment to Indigenous Nations, though it would require a complete reshaping of practical structures, resource focus and communications to non-Indigenous Canadians who would be impacted. This is however, Canada's obligation as a state recognized within the international community and it cannot continue to speak to other Nations of their lack of commitment to human rights, if it does not make this commitment. In October 2019, the provincial legislature of British Columbia announced plans to table legislation to implement UNDRIP, making it the first Canadian Government entity to do so. Further research will be merited into the way in which this is achieved should the passing of the bill be successful.

Informing Guidelines and Recommendations

At this juncture, I pull from the participant recommendations and the literature, important points to consider that could be utilized to inform guidelines that Ontario could be provided from a Nation like Atikameksheng with respect to legislative NRD policy-making. I feel that this is the best way to portray the key themes that would address my research aim as well as position the ideas and insights of the literature and the interviewees. At a glance, it is also an easier way to elicit steps useful for informing better guidelines.

When the Ontario or Canadian Government wishes to develop a Bill, Policy or Regulatory Directive that might impact the work, processes, treaty rights, constitutional

rights, and/or management of territory of an Indigenous Nation, it should consider the following:

1. Treaty signatories and Indigenous Nations who have rights as per section 35 of the Canadian Constitution are respective Nations that also exist under their own institutions and should be consulted with as would any other Nation Canada consults with regarding domestic laws that have an international impact.
2. Consultation and free, prior and informed consent do not generally apply to all Nations in the same way. Indigenous Nations have respective expectations and understandings of these concepts.
3. An openness to working together must exist and for this to exist, Indigenous Nations cannot be unrecognized in their existing alongside Canada, not within Canada and not as part of its domestic policy.
4. Indigenous Nations have their own respective governance systems and knowledges and as such, do not necessarily have the resources continually in place to interact with Canada and Ontario on regulatory practices and NRD projects, this does not mean they do not want to participate.
5. Indigenous Nations need people from Ontario and Canada to learn about their culture and worldview so that when they sit with them to negotiate complex agreements, there is an equal level of understanding of respective worldviews at the table.
6. Canada and Ontario must work toward the implementation of UNDRIP as it appropriately recognizes the collective human rights that Indigenous Peoples hold as per international covenant.
7. Ontario and Canada must recognize the lack of financial redress for years of resource exploitation on Indigenous territories and negotiate legislative policy, regulations

and/or directives with an understanding that these resources and any further resources must be appropriately compensated for.

8. Indigenous Nations may have an openness to negotiating collectively, but this cannot be accomplished without agreement of all Nations.
9. Canada and Ontario must be willing to wait for appropriate capacity on both the part of the Indigenous Nation and the part of the Crown to be built.
10. An acknowledgement must be made for the existing imbalance of power the Crown enjoys with Indigenous Nations and this must be rectified in accordance with the understanding and action required on the part of the Crown with respect to these guidelines.

This research has clearly demonstrated the interconnectedness of continued imbalances of power and a continued lack of consultation on legislation. The guidelines above can help inform education for those that think about what their processes should be when attempting to consult with a First Nation such as Atikameksheng. With an understanding of where these ten points come from, the entity seeking to engage would be far better positioned for a collaborative relationship.

Conclusion

This research sought to answer whether or not Ontario adequately consults with First Nations regarding its natural resource development legislation. Further, is there a link between the answer to that question and a general opposition to newly developed legislation in this context? The scholarship generally agrees that the level of opposition with natural resource development legislation clearly illustrates the need for better consultation between

partners. Legal concepts and existing legislation are not appropriately promoting the growth of more meaningful relationships between the Crown and Indigenous Nations under the Canadian legal framework because even with concepts like the duty to consult, Canada is still fully entitled to its legislative functions and Canadian laws impose upon Indigenous Nations and their governance. With that in mind, in order to understand the range of perspectives interacting within the mechanisms formed as a result of contentious legislation, it was important to gather experienced insights from participants of the three obvious groups; government, Indigenous Nations, and natural resource development companies. In partnering with the Atikameksheng Anishnawbek, this research was able to shed light on the historical context that exists with respect to the Anishnawbek's relationship with Ontario.

Atikameksheng's relationship with Ontario was not revealed as a positive relationship. The struggle that the nation has faced as a result of resource development and the legislation that has come along with that from Ontario have not yet ended as the Nation tries to build capacity at a rate that exceeds its capabilities. At the same time, from the Atikameksheng perspective and as is agreed from the government participants, there is not enough capacity on the side of Ontario to properly understand what is required to enter into a relationship with Atikameksheng that can be mutually beneficial. This however, does not mean that Ontario and Atikameksheng have not found ways to work together. Rather, it means that there is still a lot of learning to be done and Ontario must make this a priority. This prioritization must be done both in the sense of allowing the time for Atikameksheng to build the capacity it needs to fully engage in resource development if it desires this, and for Ontario to build its own capacity by better getting to understand the worldview and knowledge of the Atikameksheng Anishnawbek.

Given the newly proposed development in the Northwest of Ontario in the Ring of Fire where many Ojibway and Cree communities are, Atikameksheng's historical experience

and the resulting recommendations could be relevant to those communities interacting with Ontario and Canada's legislation and regulations in this context for the first time. The historical experience of Atikameksheng provides that Ontario and Canada must be even more diligent, as they can see how their behaviour in resource development has not served Atikameksheng in the sense that they are fully wanting to and benefiting from their engagement in resource development. If the Cree and Ojibway communities agree to engage in the resource development on their lands in this Ring of Fire Area (and this must always be the first way of establishing what is possible by the Crown or companies), then a careful process of evaluating how a relationship that is mutually agreed upon can form, is essential. This has not often been the case in the Crown's interaction with Atikameksheng dating back nearly two hundred years ago.

Key informant interviews with research participants established that there is a clear gap in terms of consultation for legislative policy making. It is commonly misunderstood that consultation is continually occurring within the natural resource development sector as it is only happening formally and legislated as such, for specific projects, but not for the development of legislation that mandates this such consultation for example. For this reason, regulatory practices and consultation processes between stakeholders and the Atikameksheng Anishnawbek have continued to become increasingly more demanding and draining for the typical under resourced Band office. This is not unlike the circumstances faced all over, and participants have interacted in a variety of contexts within and with Indigenous Nations from coast to coast to coast. While the recent case, *Mikisew Cree v Canada* established within the Canadian legal system that the Crown does not have a duty to consult with Indigenous Nations on its legislative functions, including policy making, it is apparent from key informant interviews that this is needed in some way for more meaningful relationships to be built between nations like that of the Atikameksheng Anishnawbek and Ontario.

Throughout the journey that this thesis provided, engaging with an Indigenous community as a non-Indigenous person and an outsider, fundamentally required engagement with an Indigenous research methodology. By informing research that explores the importance and history of building relationships around policy, with a methodology that is founded in the very principles that guide relationship building for the community of focus, learning about protocols and understanding the perspectives of participants became methodical. Methodical in the sense that, the interaction I had as a researcher with the culture of the Anishnawbek guided me to question my approach and the words I selected in my interactions with participants. The process of conducting this research has embodied the sentiment with which I set-out to complete it. Similarly, when thinking about the types of processes needed for good relationships to be formed between the Crown and Indigenous Nations, I look to this project as a way of understanding how someone can build a relationship with any group of people or human being. The trust, respect and learned ability to listen in a way that is expected within a culture that is not your own can guide us to reconciliation. The imbalances of powers can be overcome, when we take on these journeys ourselves, in the hopes that our research will speak to the shapers of our future generations.

References

- Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against Contemporary Colonialism. *Government and Opposition*, 40(4), 597-614. Retrieved from www.corntassel.net/being_indigenous.pdf.
- Anderson, K. & Jack, C. (2006). Learning to listen: Interview techniques and analyses. In Robert Perks and Alistair Thomson (Eds.), *Oral History Reader* (pp. 157-72). New York: Routledge.
- Appiah-Opoku, S. (1997). *Indigenous institutions: A resource for environmental impact assessment and planning in Ghana*. Available from ProQuest Dissertations & Theses Global.
- Armitage, D. (2011). Co-management and the co-production of knowledge: Learning to adapt in Canada's Arctic. *Global Environment Change*, 21(3), 995-1004. Retrieved from <https://www.sciencedirect.com/science/article/pii/S0959378011000665>.
- Atikameksheng Anishnawbek. (2013). *Community Plan 2013*. Naughton.
- Auston, I. (2006). Brazilian Mining Company to Buy Inco of Canada. Retrieved from <https://www.nytimes.com/2006/09/25/business/worldbusiness/25canada.html>.
- Barlow, M., & Clarke, T. (2002). *Blue Gold: The Battle Against Corporate Theft of the World's Water*. Google Books. Available from <https://books.google.ca>.
- Basit, T. (2003). Manual or electronic? The role of coding in qualitative data analysis. Retrieve from Taylor and Francis Online.
- Beaudoin, G., Sparrow Case (2018). In *The Canadian Encyclopedia*. Retrieved from <https://www.thecanadianencyclopedia.ca/en/article/sparrow-case>.
- Black, K., & McBean, E. (2016). Increased indigenous participation in environmental decision-making: A policy analysis for the improvement of indigenous health. *International Indigenous Policy Journal*, 7(4), 1-24. <https://search-proquest-com.librweb.laurentian.ca>.
- Bopp, J. & Bopp, M. (2004). *The sacred tree* (Fourth ed.). Twin Lakes, WI: Lotus Press. Retrieved from <https://books.google.ca/books>.
- Brideau, Isabelle. (2019). The Duty to Consult Indigenous Peoples: Background Paper. Retrieved from https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201917E.
- CBC. (2019). Robinson-Huron Treaty annuities case enters phase two. Retrieved from <https://www.cbc.ca/news/canada/sudbury/robinson-huron-treaty-annuities-phase-two-1.5323002>.
- CBC. (2015). First Nations want 'fair deal' in Hwy 69 four-laning. Retrieved from <https://www.cbc.ca/news/canada/sudbury/first-nations-want-fair-deal-in-hwy-69-four-laning-1.2984468>

- Environics Institute for Survey Research. (2016). Canadian Public Opinion on Aboriginal Peoples Final Report. Retrieved from <http://www.environicsinstitute.org>.
- Ermine, W. (2007). The ethical space of engagement. *Indigenous Law Journal*, 6 (1), 193-203. Retrieved from tspace.library.utoronto.ca.
- Estrada, V. M. J. (2005). The tree of life as a research methodology. *Australian Journal of Indigenous Education*, 34, 44-52. http://hdrnet.org/212/1/jimenez_estrada_2005.pdf.
- Fidler, C., & Hitch, M. (2007). Impact and benefit agreements: A contentious issue for environmental and Aboriginal justice. *Environments*, 35(2), 49-69. <http://search.proquest.com.librweb.laurentian.ca>.
- FitzMaurice, K. (2011). Apologies, truth, and reconciliation: Indigenous knowledge and the decolonization of Aboriginal and non-aboriginal relations in Canada. In M. Henck, M. Moss, and S. Volz, *White Indian Relations: Moving Into the 21st Century*. Retrieved from https://www.academia.edu/11273392/Apologies_Truth_and_Reconciliation_Indigenous_Knowledge_and_Decolonization_in_Canada.
- FitzMaurice, K. (2010). Are white people obsolete? Indigenous knowledge and the colonizing ally in Canada. In L. Davis, *Alliances: Re/Envisioning Indigenous-Non-Indigenous Relationships* (21). Retrieved from https://www.academia.edu/11123415/Are_White_People_Obsolete_Indigenous_Knowledge_and_the_Colonizing_Ally_in_Canada.
- Fixico, D. (1998). Ethics and responsibilities in writing American Indian history. In Devon Abbott Mihesuah (Eds.), *Researching and Writing about American Indians* (pp. 84-99). Lincoln: University of Nebraska Press. Accessible from <https://books.google.com/?hl=en>.
- Fleming, A. E. (2015). Improving business investment confidence in culture-aligned indigenous economies in remote Australian communities: A business support framework to better inform government programs. *International Indigenous Policy Journal*, 6(3), 1-36. <http://search.proquest.com.librweb.laurentian.ca>.
- Fleras, A., & Maaka, R. (2010). Indigeneity-grounded analysis (IGA) as policy (-making) lens: New Zealand models, Canadian realities. *International Indigenous Policy Journal*, 1(1), 1-34. <https://search-proquest-com.librweb.laurentian.ca>.
- Gardner, H. L., Tsuji, S. R. J., McCarthy, D. D., Whitelaw, G. S., & Tsuji, L. J. S. (2012). The *Far North Act* (2010) consultative process: A new beginning or the reinforcement of an unacceptable relationship in northern Ontario, Canada? *International Indigenous Policy Journal*, 3(2), 1-23. <http://search.proquest.com.librweb.laurentian.ca>.
- Gamble, J. (2017). What's at stake in Ontario's Ring of Fire. Retrieved from <http://www.canadiangeographic.ca/article/whats-stake-ontarios-ring-fire>.

- Kiiwetinepinesiik Stark, H. (2010). Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada. *American Indian Culture and Research Journal*, 34(2), 145-164.
<https://www.uvic.ca/socialsciences/politicalscience/assets/docs/faculty/stark/AICRJ-stark.pdf>.
- Kingsley, J., Phillips, R., Townsend, M., & Henderson-Wilson, C. (2010). Using a qualitative approach to research to build trust between a non-aboriginal researcher and aboriginal participants (australia). *Qualitative Research Journal*, 10(1), 2-12. Retrieved from <https://search.proquest.com/docview/854276699?accountid=12005>.
- Higgins, E.G. (1982). *Whitefish Lake Ojibway Memories*. Cobalt: Highway Book Shop.
- Hilson, G. (2002). An overview of land use conflicts in mining communities. *Land Use Policy*, 19, 65-73. Retrieved from Science Direct.
- Hjartarson, J., McGuinty, L., & Boutilier, S. with Majernikova, E. (2014). Beneath the surface: Uncovering the economic potential of Ontario's Ring of Fire. *Ontario Chamber of Commerce*, 1-35. Available from <http://www.nadf.org>.
- Irwin, R., Duty to Consult (2018). In *The Canadian Encyclopedia*. Retrieved from <https://www.thecanadianencyclopedia.ca/en/article/duty-to-consult>.
- Loomis, T. M. (2000). Indigenous populations and sustainable development: Building on indigenous approaches to holistic, self-determined development. *World Development*, 28(5), 893-910.
<https://search-proquest-com.librweb.laurentian.ca>.
- McGivov, B. (2014). *Indigenous Peoples Law*. Toronto: Indigenous Peoples Law Corporation.
- McLeod, F., Viswanathan, L., Whitelaw, G. S., Macbeth, J., King, C., McCarthy, D. D., & Alexiuk, E. (2015). Finding common ground: A critical review of land use and resource management policies in Ontario, Canada and their intersection with first nations. *International Indigenous Policy Journal*, 6(1). <http://search.proquest.com.librweb.laurentian.ca>.
- McNeil, K. (2004). The Vulnerability of Indigenous Land Rights in Australia and Canada. *Osgoode Hall Law Journal*, 42(2).
<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1380&context=ohlj>
- Mikisew Cree First Nation v Canada, 2018 SCC 40 [2018] 2 SCR 765. Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17288/index.do>
- Mulrennan, M., & Scott, C. (2005). Co-management—An Attainable Partnership? Two Cases from James Bay, Northern Quebec and Torres Strait, Northern Queensland. *Anthropological*, 47(2), 197-213. <http://www.jstor.org.librweb.laurentian.ca>.
- Nadasdy, P. (2003). *Hunters and bureaucrats*. UBC Press. Accessed on <https://www1.laurentian.ca/library>.

- Nagai, F. (2019). Implementing the rights of indigenous peoples in Japan: Implications and challenges of forest certification for the Ainu. *The International Journal of Human Rights*, 23(1-2), 249-266. <http://search.proquest.com.librweb.laurentian.ca>.
- Nishnawbe Aski Nation. (2017). Ontario's *Far North Act*. Retrieved from <http://www.nan.on.ca/article/ontarios-far-north-act-463.asp>.
- Northern Ontario Business. (2019). Matawa chiefs reject Ford gov't dumping Far North Act. Retrieved from <https://www.northernontariobusiness.com/>.
- Ontario, ENDM. (2019). Mining Act. Retrieved from <https://www.mndm.gov.on.ca/en/mines-and-minerals/mining-act>.
- Ornelas, R. T. (2014). Implementing the policy of the U.N. declaration on the rights of indigenous peoples. *The International Indigenous Policy Journal*, 5(1), 1-20. Retrieved from <https://search.proquest.com.librweb.laurentian.ca>.
- Pardy, B., & Stoehr, A. (2012). The failed reform of Ontario's mining laws. *Journal of Environmental Law and Practice*, 23, 1-15. <https://search-proquestcom.librweb.laurentian.ca>.
- Patel, A., Rapport, D. J., Vanderlinden, L., & Eyles, J. (1999). Forests and societal values: Comparing scientific and public perception of forest health. *Environmentalist*, 19(3), 239-249. <https://search-proquest-com.librweb.laurentian.ca>.
- Pompeani, D. P., Abbott, M. B., Bain, D. J., Depasqual, S., Finkenbinder, S. (2014). Copper mining on Isle Royale 6500-5400 years ago identified using sediment geochemistry from McCargoe Cove, Lake Superior. *The Holocene*, 25(2), 253-262. Retrieved from journals.sagepub.com.
- R.F., Ellen, Peter Parkes, Alan Bicker. (2000) *Indigenous Environmental Knowledge and Its Transformations*. Google Books. Available from <https://books.google.ca/books>.
- Scholtz, C. (2013). *Negotiating claims: the emergence of indigenous land claim negotiation policies in Australia, Canada, New Zealand, and the United States*. Routledge.
- Shahjahan, R.A. (2005). Mapping the field of anti-colonial discourse to understand issues of Indigenous knowledges: Decolonizing praxis. *McGill Journal of Education*, 40(2), 213-240. <http://search.proquest.com.librweb.laurentian.ca/docview/202720830?accountid=12005>.
- Sieder, R. (2007). The judiciary and indigenous rights in Guatemala. *International Journal of Constitutional Law*, 5(2), 211-241.
- Styres, S. & Zinga, D. (2013). The community-first land-centred theoretical framework: Bringing a 'good mind' to indigenous education research? *Canadian Journal of Education*, 36(2), 284-313. <http://search.proquest.com.librweb.laurentian.ca>.
- Smith, L. T. (2012). *Decolonizing Methodologies: Research and Indigenous Peoples* (Second ed.). Dunedin: Otago University Press.
- Tasker, J. CBC. (2018). Trudeau promises new legal framework for Indigenous people. Retrieved from <https://www.cbc.ca/news/politics/trudeau-speech-indigenous-rights-1.4534679>.

- The Far North Science Advisory Panel. (2010). *Science for a Changing Far North. The Report of the Far North Science Advisory Panel*. A report submitted to the Ontario Ministry of Natural Resources. Available from www.ontario.ca/farnorth.
- Throsby, D., & Petetskaya, E. (2016). Sustainability concepts in indigenous and non-indigenous cultures. *International Journal of Cultural Property*, 23(2), 119-140.
<http://dx.doi.org.librweb.laurentian.ca>.
- Truth and Reconciliation Committee of Canada. (2015). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Myrobust.com. Retrieved from
http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf.
- UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at:
<https://www.refworld.org/docid/471355a82.html> [accessed 3 December 2019]
- Udofia, A., Noble, B., & Poelzer, G. (2015). Community engagement in environmental assessment for resource development: Benefits, enduring concerns, opportunities for improvement. *Northern Review*, (39), 98-110. <https://search-proquest-com.librweb.laurentian.ca>.
- Walker, R., & Jojola, T. (2013). *Reclaiming Indigenous Planning*. Google Books. Available from <https://books.google.ca>.
- Watson, A. (2013). Misunderstanding the "nature" of co-management: A geography of regulatory science and indigenous knowledges (IK). *Environmental Management*, 52(5), 1085-1102.
<http://dx.doi.org.librweb.laurentian.ca>.

Appendix A



Laurentian University
Université Laurentienne
Tel/Tél : 705-675-1151 ext./poste 3706
Fax/Télec. : 705-671-3833

May 8th, 2018

RE: Consultation Research

Chief Miller,

My name is Joseph Burke. I am writing you this letter to express my interest in doing research as part of my Master of Indigenous Relations program at Laurentian University in Atikameksheng. I have been fortunate to spend a lot of time over the past year getting to know members of your community and I would be honoured to dedicate much of my thesis to this region. I am originally from Espanola and now reside in Sudbury.

The topic of my research is First Nations' experience with government consultation processes in the context of land-use management and mining policy.

My goal is to conduct interviews with key community members (Chief, Councillors, policy advisors, Band employees) who have been involved in consultation processes. I propose to compare Atikameksheng's experiences with the published experiences of other First Nations in Ontario in this context and discuss the types of protocols that can be put in place or are already in place to ensure First Nations are being treated fairly in consultation processes.

The overall purpose of this research would be to gather the perspective of Atikameksheng on consultation and show the differences and similarities that exist between your expectations and how the government has approached consultation in the past and currently. This will help to create a final report as part of the research that identifies the importance of cultural and community protocols for consultation in First Nations.

At this stage, I am committed to working with you on the goals and direction of the research. In order to move beyond the proposal stage at Laurentian, I would require a letter from you or the appropriate person stating that there is interest in me working on this kind of project.

I am very passionate and dedicated to this work and I hope that research like this can be heard by governments and the mining sector. The relationship between governments, the mining



Laurentian University
Université Laurentienne

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sector, and Indigenous communities should be balanced and my work is dedicated to looking at how this balance can either be made possible or continue to exist through community consultation protocols.

I greatly appreciate the time and consideration you have put into reading this proposal and I look forward to hearing from you. I can be contacted via email at jx_burke@laurentian.ca, at 705-918-2882 or at the number and extension in the header.

Sincerely,

A handwritten signature in blue ink that reads "Joseph Burke".

Joseph Burke
Laurentian University

Appendix B



*Atikameksheng
Anishnawbek*

25 Reserve Road
Naughton, ON
P0M 2M0

Telephone: (705) 692-3651
Fax: (705) 692-5010

Web Site:
www.atikamekshenganishnawbek.ca

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Infrastructure*

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Director of Education and Social
Service*

*Carmen Wabegijig-Nootchtai
Director of Health & Community
Wellness*

July 18, 2018

Joseph Burke
Laurentian University
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

Dear Mr. Burke:

This letter is in response to your letter dated May 8, 2018, to do research in Atikameksheng as part of your Master of Indigenous Relations program.

I would like to inform you that your request was approved by Chief and Council on July 5, 2018, by Motion# 2018-2019-136.

As a next step I would like to request a meeting with you to further discuss your proposed project to have a better understanding of what your needs are from Atikameksheng Anishnawbek.

Should you have any questions or concerns regarding this letter please feel free to contact me at any time by email at rpaishegwon@wlfm.com or by phone at 705-692-3651 ext. 211.

We look forward to working with you on this project.

Sincerely,

Robert Paishegwon
Lands Manager



APPROVAL FOR CONDUCTING RESEARCH INVOLVING HUMAN SUBJECTS
Research Ethics Board – Laurentian University

This letter confirms that the research project identified below has successfully passed the ethics review by the Laurentian University Research Ethics Board (REB). Your ethics approval date, other milestone dates, and any special conditions for your project are indicated below.

TYPE OF APPROVAL / New <input checked="" type="checkbox"/> / Modifications to project / Time extension	
Name of Principal Investigator and school/department	Joseph Burke, Masters program in Indigenous Relations, supervisor, Darrel Manitowabi
Title of Project	Including Indigenous Knowledges and Perspectives in the Policy-Making Process: Natural Resource Development in Northern Ontario
REB file number	6016008
Date of original approval of project	November 16, 2018
Date of approval of project modifications or extension (if applicable)	
Final/Interim report due on: (You may request an extension)	November, 16, 2019
Conditions placed on project	

During the course of your research, no deviations from, or changes to, the protocol, recruitment or consent forms may be initiated without prior written approval from the REB. If you wish to modify your research project, please refer to the Research Ethics website to complete the appropriate REB form.

All projects must submit a report to REB at least once per year. If involvement with human participants continues for longer than one year (e.g. you have not completed the objectives of the study and have not yet terminated contact with the participants, except for feedback of final results to participants), you must request an extension using the appropriate LU REB form. In all cases, please ensure that your research complies with Tri-Council Policy Statement (TCPS). Also please quote your REB file number on all future correspondence with the REB office.

Congratulations and best wishes in conducting your research.

Rosanna Langer, PHD, Chair, *Laurentian University Research Ethics Board*

INFORMED CONSENT TO PARTICIPATE IN A RESEARCH STUDY

Full Study Title: Including Indigenous Knowledges and Perspectives in the Policy-Making Process: Natural Resource Development Policy in Northern Ontario

Principal Investigators:

Student: Joseph Burke

Supervisor: Dr. Darrel Manitowabi

This is a study for the Master of Indigenous Relations Program at Laurentian University.

Phone: 705-675-1151 ext.3706

Email: jx_burke@laurentian.ca

INFORMED CONSENT

You are being asked to consider participating in a research study. A research study is a way of gathering information on a treatment, procedure or program or to answer a question about something that is not well understood. This form explains the purpose of this research study, provides information about the study procedures, possible risks and benefits, and the rights of participants.

Please read this form carefully and ask any questions you may have. The researcher will explain this form and all information concerning the study to you verbally. Please ask the researcher to clarify anything you do not understand or would like to know more about. Make sure all your questions are answered to your satisfaction before deciding whether to participate in this research study.

Participating in this study is your choice (voluntary). You have the right to choose not to participate, and you have the right to withdraw from the study and stop your participation at any time. If you decide to stop participating, your data will be removed. If you require support due to any reason related to the nature of this research, please consult the research participant support services information sheet provided to you with this letter and again at the time of the interview.

INTRODUCTION

You are being asked to consider participating in this study because of your experience with consultation processes relating to Natural Resource Development between your organization or government and the Ontario Government and/or the Atikameksheng Anishnawbek. This research is for the thesis study of the Master of Indigenous Relations Program. The main supervisor of this research is Dr. Darrel Manitowabi.

WHY IS THIS STUDY BEING DONE?

This study serves the purpose of examining policy-making processes of the Ontario Government and the consultation processes with First Nations communities in the context of Natural Resource Development. It seeks to understand the perspectives of First Nations, Government representatives and mining sector representatives. Specifically, the aim is to examine how cultural protocols and knowledge of the Atikameksheng Anishnawbek relate to policy-making processes for Natural Resource Development and land-use. The knowledge gained from understanding perspectives of the Atikameksheng Anishnawbek, the Ontario Government and mining companies can help to inform policy-making processes in the future in similar circumstances.

WHAT WILL HAPPEN DURING THIS STUDY?

You will be interviewed for a maximum of 1 hour where I will ask you 3 to 5 questions related to your experience. The structure of the interview allows for a lot of flexibility in terms of what will be discussed. If you wish to continue for more than 1 hour or less than 1 hour, it will be permitted as per your wishes. With your permission, I would like to record the interview. You will be asked at the time of the interview.

WHAT ARE THE RISKS OR HARMS OF PARTICIPATING IN THIS STUDY?

It is possible that a question we ask may be stressful for you or make you uncomfortable. You may choose to decline to answer questions or stop the interview at any time if you experience any discomfort. You do not need to answer questions that make you uncomfortable or that you do not want to answer.

Due to the political nature of this project, you may face social risks associated with the different opinions others might have regarding natural resource development or collaboration on related policies. **To ensure you have control of how your testimony is shared please select (by circling) one of the below options, you can select only parts of option 2 and 3 also if you prefer to be specific:**

- 1)I want to be completely anonymous
- 2) It is ok to share my job title or my former job title
- 3) It is ok to share my job title or former job title and the community, company or department I work or worked for

Please note that your name will be kept completely confidential at all times and that your testimony will only be referred to regarding general consultation processes so that you cannot be identified due to your participation in a specific process as part of your position.

WHAT ARE THE POTENTIAL BENEFITS?

Individual Benefits - You may or may not benefit directly from participating in this study. As a participant you will be given the chance to influence future research projects based on your own educational priorities and information needs.

Benefits to the Scientific/Academic Community - The academic community will benefit from this research by learning about and drawing conclusions from the experiences of representatives from an Indigenous community, the Ontario Government and representatives from the mining sector regarding consultation processes with Indigenous communities on Natural resource Development Policy. This knowledge can help to promote future research that seeks to create meaningful dialogue between the mentioned groups on issues related to Natural Resource Development Policy and potentially lead to better and more inclusive consultation processes.

ARE STUDY PARTICIPANTS PAID TO PARTICIPATE IN THIS STUDY?

You will be gifted a Laurentian mug as a show of appreciation for your participation regardless of whether or not you withdraw at any stage of the interview.

HOW WILL MY INFORMATION BE KEPT CONFIDENTIAL?

All information that is collected, used or disclosed for this study will be handled in a confidential manner. Anything that you say or do in the study will not be attributed to you personally. Anything that we find out about you that could identify you will be shared according to your choice of anonymity in the risks section of this form. Reports based on the gathered data will contain no information that might link an individual with a particular quote. The information obtained will be kept in a locked filing cabinet in the office of the researcher and be only available to the investigator's team. The recording files will be kept on an encrypted google drive. The information (raw data) will be deleted immediately following the conclusion of the project.

INFORMATION ABOUT THE STUDY RESULTS

You will be informed of the results of this research when it is completed. A summary report will be sent to all participants.

WHAT ARE THE RIGHTS OF PARTICIPANTS IN A RESEARCH STUDY?

You have the right to receive all information that could help you make a decision about participating in this study. You also have the right to ask questions about this study and your rights as a research participant, and to have them answered to your satisfaction, before you make any decision. You also have the right to ask questions and to receive answers throughout this study. You have the right to anonymity and your information will be kept strictly confidential.

If you have any questions about this study you may contact the person in charge of this study, Joseph Burke, whose contact information is found at the top of this form.

If you have questions about your rights as a research participant or any ethical issues related to this study that you wish to discuss with someone not directly involved with the study, you may call **Research Ethics Officer, Laurentian University Research Office**, telephone: 705-675-1151 ext 3681, 2436 or toll free at 1-800-461-4030 or email ethics@laurentian.ca.

DOCUMENTATION OF INFORMED CONSENT

You will be given a copy of this informed consent form after it has been signed and dated by you.

Full Study Title: Including Indigenous Knowledges and Perspectives in the Policy-Making Process: Natural Resource Development in Northern Ontario

Principal Investigator: Joseph Burke

Supervisor: Dr. Darrel Manitowabi

Name of Participant: _____

Participant

By signing this form, I confirm that:

- This research study has been fully explained to me and all of my questions answered to my satisfaction
- I understand the requirements of participating in this research study
- I have been informed of the risks and benefits of participating in this research study
- I have been informed of any alternatives to participating in this research study
- I have been informed of the rights of research participants
- I have read each page of this form

Name of participant/
(print)

Signature

Date