Key Principles for Indigenous and non-Indigenous Collaborative Impact Assessment in Canada

by

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A thesis

presented to the University of Waterloo

in fulfilment of the

thesis requirement for the degree of

Master of Environmental Studies

in

Social and Ecological Sustainability

Waterloo, Ontario, Canada, 2022

Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

Abstract

Impact assessment (IA) is an influential planning tool used to evaluate the potential effects, benefits, and risks of project-level resource development. Indigenous peoples are often disproportionately affected by the adverse consequences of resource exploitation. However, the processes employed in Canadian IA to engage with Indigenous people have faced criticism, particularly on the following five matters: scope and coverage of impacts are inadequate; funding is insufficient; Indigenous knowledge is largely ignored; Indigenous communities do not set the terms of IAs; and Indigenous consent is not required as a condition of approval for projects that will affect Indigenous people or territories. Recently, changes in law and policy have given rise to a growing literature on collaborative IA (where the assessment is conducted by a non-Indigenous authority in partnership with Indigenous authorities) in Canada. This research employs an integrative literature review and a case study analysis to identify and evaluate the most commonly stated foundations of collaborative IA, and therefore the apparent underlying basis of the broad Canadian experience to respect and empower (without integrating) both Indigenous and non-Indigenous objectives, perspectives, and distinct ways of knowing in collaborative IA.

Acknowledgements

I would like to express my deepest appreciation to my professor and supervisor, Bob Gibson, for your continued support throughout this process. Your mentorship, patience, and good spirits were invaluable to me.

Thank you to Dan McCarthy and Neil Craik, for your time and for the expertise you brought to this work.

Thank you to the Ontario Association for Impact Assessment, who saw value in this work. Thank you to Mark Knight and Leslie Greener at Stantec Consulting Ltd., who saw value in me.

Lastly, I would like to thank my husband, Jameson Pfeffer, for your unwavering moral support. Thank you for believing in me even when I didn't believe in myself. Words cannot truly express my gratitude.

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List of Abbreviations

AIP	Agreement-in-Principle
CBA	Cost-benefit analysis
CEAA	Canadian Environmental Assessment Act
DFR	Diamond Field Resources
EA	Environmental assessment
EARP	Environmental Assessment and Review Process
EIA	Environmental impact assessment
EIS	Environmental Impact Statement
EMA	Environmental Management Agreement
ESIA	Environmental and social impact assessment
FNMPC	First Nations Major Projects Coalition
FPIC	Free, prior, and informed consent
GNWT	Government of the Northwest Territories
IA	Impact assessment
IAA	Impact Assessment Act
IBA	Impact and benefit agreement
IK	Indigenous knowledge
ITKC	Innu Traditional Knowledge Committee
JBNQA	James Bay and Northern Québec Agreement
KEQC	Kativik Environmental Quality Commission
LIA	Labrador Inuit Association
LILCA	Labrador Inuit Land Claims Agreement
LNG	Liquified natural gas
MOU	Memorandum of Understanding
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVRMA	Mackenzie Valley Resource Management Act
NEPA	National Environmental Policy Act
MNIA	Naskapi Montagnais Innu Association
SCC	Supreme Court of Canada
t/d	Tonnes-per-day
TEK	Traditional ecological knowledge
TOR	Terms of Reference

TRC	Truth and Reconciliation Commission
TUS	Traditional Use Study
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
VBNC	Voisey's Bay Nickel Company
VC	Valued component

Situating Myself and the Research

I am engaging in this research as a non-Indigenous settler living, studying, and working within the territory of the Haudenosaunee, Anishnaabe, and Neutral Peoples. The University of Waterloo is situated within the Haldimand Tract, lands promised to the Six Nations in the Haldimand Treaty of 1764. This research is influenced by my own background and experiences, and I recognize the limitations that these experiences bring.

This research was largely conducted throughout the COVID-19 pandemic. The impact of COVID-19 on research was significant. Throughout 2019-2022, methods of data collection that involved fieldwork and face-to-face research, particularly with vulnerable populations, were disrupted. The chosen methods of this research, primarily desktop review, were selected so as to comply with on-going lockdown requirements and to ensure the safety of those potentially involved, myself included.

1 Introduction

1.1 Research Purpose and Justification

The involvement of Indigenous peoples is a central goal of many impact assessment (IA) processes in Canada (see, for example, Impact Assessment Act, 2019; Mackenzie Valley Resource Management Act, 1998; Nunavut Planning and Project Assessment Act, 2013; Yukon Environmental and Socio-Economic Assessment Act, 2003). Indigenous societies have occupied the land mass now known as North America since time immemorial and have therefore been uniquely, disproportionately and often adversely affected by increasingly large-scale development following the arrival of European settlers (Borrows, 2017). Despite the important roles that Indigenous peoples should have in IA, their concerns have largely been unheeded or discounted in both current and historic Canadian IA systems due to continuing oppressive colonial imposition of European sovereignty (G. Gibson et al., 2018). Indigenous authorities and communities are, more often than not, awarded little to no power over the assessment process itself or the decisions resulting from it. Indeed, the "Crown-led and proponent-driven" IA processes that dominate major project approvals in the Canadian resource extractive industry have left little room for meaningful Indigenous engagement (G. Gibson et al., 2018). As a result, IA is largely viewed by many Indigenous peoples as a colonial tool through which governments can make tokenistic gestures toward Indigenous rights and title while expediting economically attractive resource development projects (Eckert et al., 2020).

In broad terms, IA is a planning tool used to evaluate the potential environmental, social, economic, and other effects and risks of prospective undertakings (R. B. Gibson, 2012). In Canada, IA was first established as a federal policy and has since evolved into a complex network of federal, provincial, territorial, and Indigenous processes, most of them now based in law.

In 2016, in fulfillment of an election campaign promise, the newly-elected Liberal government began a formal review of the Canadian federal IA process. An independent Expert Panel was established in 2016 to conduct nationwide public consultations and provide a report to the Minister of Environment and Climate Change of its findings (Doelle & Sinclair, 2019). Legislative reform began in the fall of 2017 and Bill C-69, which included the new IA law, was introduced to the House of Commons in February of the following year.

The federal government passed Bill C-69 on June 21st, 2019, and it came into effect on August 29, 2019. While the Impact Assessment Act (IAA) retained the fundamental structure of its controversial predecessor, it provided for promising changes. Alongside commitments to

sustainability (ss. 22(1)(h)), climate change (ss. 22(1)(i)), and regional and strategic assessments (s. 93-94), the law contains more deliberate language for the inclusion of and, most notably, partnerships with Indigenous authorities (ss. 6(1)(e) and (f)) (Impact Assessment Act, 2019).

The enactment of the IAA with deliberate language for collaborative involvement of Indigenous peoples was, by 2019, a recognition of established obligations that were largely born of the resilience of Indigenous peoples in confronting assimilationist practices and colonial violence, which eventually led to the recognition of Indigenous rights in Canadian law and policy (Borrows, 1997, 2017).

The IAA enables federal-level collaborative IA, including partnerships with Indigenous jurisdictions, and represents a shift in philosophy from what is seen in earlier Canadian environmental legislation, including IA. However, the IAA does not require Indigenous and non-Indigenous collaborations or specify how they will be carried out. Some of the leading IA scholars have noted that much of the language of the IAA is nebulous and its effectiveness will depend largely on associated regulation, guidance, and institutional practice (Doelle & Sinclair, 2019; R. B. Gibson et al., 2020). As of 2022, the government of Canada has issued a number of relevant guidance documents, including the *Practitioner's Guide to Federal Impact Assessments under the Impact Assessment Act* (Government of Canada, 2022).

In anticipation of collaborative efforts occurring more often as a result of the IAA's enactment, the objective of this research is to synthesize a broad selection of sources pertaining to Indigenous involvement in environmental management to develop broadly-applicable key principles of collaboration as a vehicle for empowering Indigenous roles in Indigenous and non-Indigenous collaborative IA. To develop the key principles, an integrative review of publications involving collaborative actions in IA, land and resource management, and environmental law was conducted in order to establish a comprehensive and comparative understanding of the literature.

Five tentative key principles were synthetized from the integrative review: **(1) redistributed decision-making power, (2) governance and participative capacity, (3) common goals and vision, (4) sustainability focus, and (5) braided collaboration**. In order to test the practicability of the tentative key principles, two exemplary case studies of collaborative action between Indigenous and non-Indigenous authorities were selected. The two case studies, the Voisey's Bay Mine and Mill Project and the NICO Cobalt-Gold-Bismuth-Copper Project, were selected from a broader group of cases by exploring the different categories of Indigenous roles in collaborative action, including Indigenous-led studies, collaborative partnerships, and independent Indigenous-led IA.

This research aims to refine the tentative key principles for use as a basis for considering implications for potential future Indigenous and non-Indigenous collaborative IAs. Furthermore, it is intended that the five tentative key principles derived from the literature will provide a useful structure for reviewing case experience as well as for the broader revision of assessment process design, guidance and practices involving Indigenous interests and jurisdictions.

1.2 Methods Overview

1.2.1 Integrative Literature Review

The purpose of the integrative review was two-fold. The first purpose was to synthesize scholarship from multiple schools of thought so that new knowledge and perspectives may emerge (Torraco, 2005). Second, the integrative review sought to inform development of a tentative list of key principles that should be taken into account in the design and application of an impact assessment process that involves collaboration between Indigenous and non-Indigenous authorities.

Integrative literature reviews ultimately seek to generate new information from the synthesis of multiple qualitative studies and therefore have an important role in qualitative research. Cooper and Hedges (1994) have noted that, as studies within a problem area accumulate, there is an increasing need for "the periodic collecting, evaluating, and integrating of scholarship in order to bring coherence and perspective" (Cooper & Hedges, 1994).

Publications were collected via searches of academic databases and through expert recommendation. Publications on Indigenous and non-Indigenous relationships in impact assessment and environmental management, including Indigenous participation, co-management, knowledge integration, and self-governance were selected for review. Scholarship was further restricted to Canadian sources in order to bound the research within the specific contexts for Canadian IA laws, though future research in nation-states with similar colonial histories, such as New Zealand and Australia, may provide complementary insight. The literature review was largely iterative. It found that literature surrounding these topics is largely from three major schools of research: impact assessment, land and resource management, and environmental law. The publications reviewed consisted of academic journal articles, news articles, books, theses and dissertations, and grey literature (primarily government statements and reports, national and international agreements, and case-specific IA documentation).

1.2.2 Case Study Selection and Analysis

Clark and Joe-Strack (2017) note that comparative research, particularly in Indigenous-Crown co-management in resource development in Canada, is largely lacking, but a necessary practice (Clark & Joe-Strack, 2017). Case studies are effective tools in research that concerns real-life situations involving contemporary and complex social phenomena (Yin, 2018). Two cases of Indigenous and non-Indigenous collaborative IA in Canada were purposively chosen to test the validity and utility of the tentative key principles informed by the integrative literature review:

1. The Voisey's Bay Nickel Mine Impact Assessment ("the Voisey's Bay case") – 1993-1999, Newfoundland and Labrador, Canada
2. The NICO Cobalt-Gold-Bismuth-Copper Project Impact Assessment ("the NICO Project case") – 2007-2013, Northwest Territories, Canada

The case study analysis is undertaken in **Chapters 5 and 6**. The case study analysis provides an in-depth review of the historical context of the Indigenous and non-Indigenous relationships, the key events of the impact assessments, and the ways through which each of the tentative key principles are demonstrated within each case. The resulting case findings were used to test and adjust the tentative key principles.

1.2.3 Influence of the COVID-19 Pandemic on Research Methods

Other research methods, such as semi-structured interviews, were considered for this project. However, due to the continuing limitations of the COVID-19 pandemic, including restrictions on travel and face-to-face research (particularly with vulnerable populations), this method was deemed not feasible. The chosen research methods were selected due to their relative safety during the pandemic and to ensure compliance with on-going lockdown measures.

2 Situating Indigenous and Non-Indigenous Collaborative Impact Assessment

This chapter explores the diverse literature surrounding the evolution of Canadian impact assessment regimes, the nature of historic and current Indigenous and non-Indigenous relationships in Canada, and the implications of the nation's history in collaborative IA.

2.1 Impact Assessment in Canada

Impact assessment (IA), also known as environmental assessment (EA) and environmental impact assessment (EIA), is utilized throughout the world as a planning tool to identify and assess the potential impacts of a proposed undertaking.

The federal system in Canada divides legislative responsibilities between the federal and provincial governments. The territorial governments, unlike provinces, derive their distinct powers from the federal government and through modern land claims agreements. Similarly, a number of Indigenous governments have established powers through modern land claim agreements. Each jurisdiction's legislative powers are largely independent of one another, though many areas of legislative concerns overlap. That is the case, for example, with matters addressed by IA laws. Despite the independence of legislature, impacts assessment laws in Canada and throughout the world have common as well as divergent characteristics and have experienced and overall (albeit largely unsteady and hesitant) progression in the past fifty years. This section will explore the origins and evolution of the distinct IA regimes throughout Canada, with particular focus on the federal IA process.

2.1.1 The Origin of Impact Assessment

The first impact assessment laws originated from the United States' *National Environmental Policy Act* (NEPA) enacted in 1969. Prior to IA, cost-benefit analysis (CBA) was the primary means through which government and industry identified and assessed project effects (Noble, 2015). CBA, while effective for analyzing the financial feasibility of an undertaking, is limited to the consideration of assigned monetary values to project components and effects, which puts the analysis at risk to uncertainty, particularly with regard to intangible human and environmental concepts, such as environmental services, recreation, and cultural heritage (Noble, 2015).

The NEPA, in contrast, required project proponents to report publicly on the potential biophysical and socio-economic impacts of the proposed project as well as the effects of different alternatives to their proposed methods. Moreover, unlike CBA, the assessment requirements were

anticipatory, aiming to eliminate or mitigate environmental impacts by modifying the design of an undertaking prior to construction and operation rather than responding to damages as they arise (Muldoon et al., 2020). While the impact assessment requirements within the NEPA did not lead to a legally-enforceable decision on potential undertakings, non-compliance with the NEPA was challengeable in court.

2.1.2 Impact Assessment at the Federal Level

Following the enactment of the NEPA in the United States, the Canadian federal government faced substantial public pressure to develop its own impact assessment laws. The Canadian government, however, was reluctant to restrict its own decision-making authority with legislation that would potentially subject it to litigation (Muldoon et al., 2020). As a result, the government introduced the Environmental Assessment and Review Process (EARP) in 1972, an IA regime that was based on non-enforceable federal policy rather than entrenched in law. While federal authorities were expected to conduct IAs on proposed projects that had the potential to cause environmental damage, there was little, if any, follow-up monitoring or penalization for non-compliance, and thus little incentive to conduct compliant assessments (Muldoon et al., 2020).

After a decade of weak assessments and non-compliance that culminated in a number of court battles regarding the ambiguity of the EARP requirements, Canada began development of a legislated impact assessment regime (Muldoon et al., 2020).

2.1.2.1 The Canadian Environmental Assessment Act, 1995

The *Canadian Environmental Assessment Act* (CEAA 1995) was introduced in 1990 and enacted in 1995 following a series of amendments. While not the first law-based IA regime in Canada (Ontario's *Environmental Assessment Act* was passed in 1975 and was based largely on the United States' NEPA), CEAA 1995 represented the first federal-level IA law in Canada. The *Act* covered most projects under federal jurisdiction with the potential to cause environmental damage or create public concern and offered three distinct assessment processes depending on the significance of the proposed development (R. B. Gibson, 2012). CEAA 1995 required consideration of cumulative effects, encouraged follow-up monitoring, offered limited funding for public engagement, and focused on biophysical effects, though it provided discretionary authority to require the consideration of project alternatives and a broad range of environmental and social effects (R. B. Gibson, 2012; Muldoon et al., 2020).

The *Act* was not without its faults, however. Despite efforts to enter into cooperative agreements with other Canadian jurisdictions, reconciling the vague and overlapping federal, provincial, and

territorial constitutional responsibilities, as well as their distinct IA regimes, often resulted in considerable implementation difficulties (R. B. Gibson, 2012). Furthermore, assessments under CEAA 1995 were frequently subject to delays and lengthy timelines and was often criticized by project proponents for impeding economic development. These criticisms were further provoked by the economic recession of 2008-2009, which prompted Canadian policy-makers to prioritize re-establishing economic stability and eliminate barriers to economically attractive ventures.

2.1.2.2 The Canadian Environmental Assessment Act, 2012

In April 2012, an omnibus budget bill titled the *Jobs, Growth and Long-term Prosperity Act* was tabled by the federal government, which introduced the new CEAA 2012 alongside other significant amendments of existing laws (Doelle, 2012; R. B. Gibson, 2012). Unlike its predecessor, CEAA 2012 was fast-tracked through to legislative drafting without any preceding proposals or public consultations (R. B. Gibson, 2012). Debate surrounding the new IA regime and the omnibus budget bill largely consisted of 'economy versus environment' rhetoric, citing the economic recession and the proposed Enbridge Northern Gateway pipeline (which had been stalled by the IA process and related conflicts since 2006) as an illustration of an overall problematic process (R. B. Gibson, 2012). CEAA 2012 came into force in July 2012, just three months following its introduction to the House of Commons.

Many of the leading scholars in impact assessment have noted the regressive nature of CEAA 2012 (see, for example, Bond et al., 2014; Bond & Pope, 2012; Doelle, 2012; Gibson, 2012; Morgan, 2012; Muldoon et al., 2020; Noble, 2015; and Sinclair & Diduck, 2016). To summarize, the changes introduced by CEAA 2012 to the federal IA process largely countered the understanding of IA 'best practice' in academic literature, including:

- Ministerial discretion, processual substitution and equivalency drastically curtailed the number of assessments at the federal level and generally shifted IA responsibilities to other authorities in lieu of cooperation or harmonization;
- The federal regime's application to projects was significantly restricted, where only pre-defined significant undertakings included under the *Regulations Designating Physical Activities* (or project list regulation) may be subject to an IA;
- Assessments were required to consider only a set of narrowly-defined environmental components under federal jurisdiction, which failed to address the interactions and interconnections of project-related social, economic, and biophysical impacts, and excluded the consideration of project alternatives;

- The IA process was late-triggering and designed as a "post-planning regulatory hoop" to encourage hasty approvals rather than an anticipatory process meant to integrate environmental considerations into project planning and decision-making (R. B. Gibson, 2012); and
- Public engagement opportunities were restricted throughout the federal IA process, from the decline in the overall number of assessed undertakings, to the narrowed assessment scope, to the sharply restricted windows for public comments induced by tight timelines, to introduction of the concept of 'interested parties' which allowed only individuals with specific interests or expertise in a given project to participate in public hearings.

The inadequacy CEAA 2012 and its strategic focus on economic advancement to the detriment of environmental protection brought forth academics' concerns with Canada's IA policy to mainstream understanding, which initiated more public discussions of the need for a more reliable, transparent, and participative federal process.

2.1.2.3 The Impact Assessment Act, 2019

In 2016, the newly-elected federal government launched an impact assessment law reform initiative to address the deficiencies of CEAA 2012 and restore public trust in federal-level IA (Gélinas et al., 2017). An independent Expert Panel was established to conduct nationwide public consultations and develop recommendations for the new IA law. The resulting *Impact Assessment Act* (IAA) was introduced to the House of Commons in February 2018 as part of Bill C-69 alongside the *Canadian Energy Regulator Act*, the *Navigation Protection Act*, and a number of amendments to other legislation. Following over a year of debate and additional public consultations, Bill C-69 was passed in June 2019 and the IAA came into force in August 2019 (Impact Assessment Act, 2019).

Despite recommendations from the Expert Panel for more drastic processual transformation, the IAA retained many of the controversial elements of CEAA 2012, including implementation that is reliant on a project list regulation, primarily proponent-driven assessment responsibilities, legislated timelines (albeit less strict), and reliance on political level decision-making (Doelle & Sinclair, 2021; R. B. Gibson et al., 2020; Muldoon et al., 2020). At the same time, the IAA introduced a number of potentially significant advances, including:

- Mandatory consideration of an undertaking's positive contributions to sustainability, covering positive and adverse environmental, social, economic and health effects and

intergenerational interests, rather than focusing on minimizing negative effects on the biophysical environment;

- More deliberate language for the inclusion of and partnerships with Indigenous authorities, as well as respect for Indigenous rights and knowledge;
- The addition of a planning phase that would enable earlier public engagement and guidance for project proponents;
- Provisions for discretionary strategic and regional impact assessments that could address significant cumulative effects and policy issues that are often beyond the scope of project-level assessment; and
- Consideration for the undertaking's effects on Canada's environmental and climate change commitments (Impact Assessment Act, 2019).

2.2 Indigenous Peoples and Impact Assessment

Canada is a multi-jurisdictional nation with First Nations, Métis and Inuit peoples residing within its borders. Indigenous societies have existed in North America since time immemorial, and utilized strategic environmental planning and resource management practices long before first contact with European settlers (Borrows, 1997, 2005). These practices, such as selective and rotational harvesting, controlled burning, and collective management of common property resources were developed over thousands of years of close observation of the surrounding environment and subsisting of natural resources (Turner & Berkes, 2006). As such, deeply intimate understandings of the environment were cultivated into intricate and widely successful resource management and conservation systems.

In the lands now most commonly known as Canada, European imposition of sovereignty brought the dominance of western forms of economic activity, eventually including western industrial development and increasingly large-scale resource extraction ventures. Lands that had been managed by Indigenous societies were abruptly taken up and irrevocably changed for the sake of development, more often than not without the consent of the affected communities (Borrows, 1997; G. Gibson et al., 2016).

These ventures rarely considered the environmental and social concerns associated with large-scale resource development until the introduction of impact assessment in the early 1970s (G. Gibson et al., 2016). IA is now a primary legislated vehicle through which Indigenous groups can voice their concerns and exercise their rights regarding potential undertakings on their traditional

lands. Despite this, IA has regularly failed to meet the needs and recognize the powers of Indigenous participants (Mainville & Pelletier, 2021). In this section, the historical influences on Indigenous rights and title are explored, as well as their implications for Indigenous collaboration in IA.

2.2.1 The Evolution of Indigenous Rights and Title

Throughout the history of Canada, the Crown has made considerable effort to expunge or weaken Indigenous rights and sovereignty (Belanger, 2018; Isaac, 2012). Despite these efforts, Indigenous resistance to subjugation and assimilation has led to significant advances in the recognition of Indigenous rights and title in Canadian law (Borrows, 2017; Isaac, 2012).

While the early interactions between Indigenous groups and settlers were diverse and multifaceted, treaties were a common characteristic of historical Indigenous-European relationships. Between 1701 and 1923, over seventy treaties were signed by Indigenous and Crown representatives, many of which hold legal power under Canadian law to this day (Belanger, 2018). Though the terms within historic treaties vary, generally speaking, treaties would consist of an agreement of the exchange of Indigenous lands for goods, payments and other promises made on behalf of the Crown (Isaac, 2012).

Indigenous signatories typically interpreted the signing of treaties as a declaration of a mutually beneficial relationship between autonomous peoples, and for a brief period experienced mutual economic growth (Belanger, 2018). For the Indigenous participants, the actual authority of the treaties came from the oral negotiations between signatories, which often included ceremonial and traditional customary practices, rather than the exact letter of the law (Isaac, 2012). Eventually, however, European settlers began utilizing treaties as an inexpensive and efficient way of documenting land cessions and a legal justification for territorial dispossession (Belanger, 2018).

The significance of treaties was officially entrenched in settler law following England's victory in the Seven Years' War. The Royal Proclamation of 1763, issued by King George III, stated that lands were to be reserved for the Indigenous peoples that occupied them unless bought or ceded via treaty:

> "And whereas it is just and reasonable, and essential to our Interest and the Security of our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts

of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds" (Royal Proclamation, 1763).

The Royal Proclamation represents the Crown's first formal recognition of Indigenous rights and title. Conversely, however, the Proclamation also asserts the idea of British supremacy as a means of reinforcing the Crown's political and economic power in North America; contradictorily affirming the rights of Indigenous peoples to their lands (if unceded), while allowing for those rights to be expunged at will (Borrows, 1997).

Following the signing of the last Numbered Treaty in 1923, development occurred rapidly throughout much of Canada. While some provinces had developed land tenure systems stemming from Indigenous-Crown treaties, others (in particular British Columbia, Québec, the northern territories, and the maritime provinces) allowed non-Indigenous development to occur without much consideration for Indigenous rights and title (Isaac, 2012). Indigenous affairs were instead regulated by federal legislation, principally the *Indian Act*, rather than by treaty (Isaac, 2012).

Many European settlers (and eventually, Canadian governments) have struggled against recognizing their fiduciary duty to Indigenous peoples since it was established by the Royal Proclamation. Due to the Crown's failure to live up to the spirit of treaties and the nation-to-nation relationships they represent, Indigenous peoples have often utilized the Canadian court system to assert their rights (Borrows, 1997; Isaac, 2012). In the early 1970s, an unprecedented decision by the Supreme Court of Canada (SCC) affirmed the existence of Indigenous title prior to statutory law (*Calder v. A.G.B.C.*, 1973). This ruling compelled the federal government to address the pressing issue of Indigenous comprehensive land claims (i.e., the assertions of Indigenous groups' historic use and occupation of traditional territories that had not been previously recognized under treaty) (Isaac, 2012).

The *Calder* decision, alongside decades of Indigenous activism, sparked the first negotiations for modern treaties and land claim agreements between Indigenous peoples and Canada. The first modern treaty was signed in 1975 by the Grand Council of the Crees of Québec, the Northern Québec Inuit Association, the Québec and Canadian governments, and Hydro-Québec (Isaac, 2012). Notably, the JBNQA recognized the Inuit and Cree's legal title of significant tracts of land, provided roughly $225 million CAD in development and compensatory funds, and restored institutions of local self-government (Isaac, 2012). As of 2020, an additional 25 modern treaties and land claim agreements have been concluded, covering more than 600,000 square kilometres of land (Government of Canada, 2020).

Alongside sparking the first modern land claims agreements, Indigenous resilience against colonial and assimilationist pressures led to the most significant instances of the recognition of Indigenous rights in Canadian law, including the inclusion of Section 35 of the patriated Constitution, which recognizes and affirms Indigenous and treaty rights (Constitution Act, 1982). In 1990, the *R. v. Sparrow* case established that the Crown required justification to infringe upon Indigenous rights in existence prior to the patriation of the Constitution and required that the Crown include consultation with affected Indigenous groups as an aspect of a justified infringement (*R. v. Sparrow*, 1990). The *Sparrow* definition was later upheld by the 1997 *Delgamuukw v. British Columbia* case (*Delgamuukw v. British Columbia*, 1997) and was extended to Indigenous interests and rights that are yet to be legally proven in the 2004 *Haida Nation* and *Taku River Tlingit First Nations* decisions (*Haida Nation v. B.C. (Minister of Forests)*, 2004; *Taku River Tlingit First Nation v. B.C. (Project Assessment Director)*, 2004). Moreover, in 2014, the SCC unanimously granted legal title of 1,700 square kilometres of traditional land to the Tsilhqot'in Nation in an unprecedented recognition of Indigenous consent rights, and rejected the Crown's overly intensive test for proving Aboriginal title (*Tsilhqot'in Nation v. British Columbia*, 2014).

While considerable uncertainties have yet to be addressed, the evolution of Indigenous and treaty rights in Canadian law indicates that Indigenous peoples have regained some substantial power in Canada (Imai, 2008). This has more recently been recognized by the federal and provincial governments in Canada in policy, statutory law and commitments made in international agreements. For instance, following the release of the Truth and Reconciliation Commission (TRC) Report in 2015, the Council of the Federation released a statement of commitment to reconciliation with Indigenous peoples on behalf of the provincial and territorial governments, and some provinces (e.g., British Columbia and Ontario) have since established specific policy goals for reconciliation (R. B. Gibson et al., 2020).

In 2016, the federal government signed onto the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which sets out 46 articles on the unique rights of Indigenous peoples, including the right to self-determination, the right to autonomy and self-governance, the right to free, prior, and informed consent (FPIC), and protection from loss of language, assimilation, and discrimination (UN General Assembly, 2007). The UNDRIP was, in 2021, recognized in federal law under the *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act* (Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act, 2021).

2.2.2 Implications for Indigenous and non-Indigenous Collaborative IA

The resource development industry around the world often faces resistance, conflict, uncertainty, and change (Sinclair & Diduck, 2001). Despite the recent progression of international and domestic Indigenous policy, the treatment of Indigenous peoples in IA has been and continues to be especially problematic in Canada, primarily due to enduring colonial institutions of unilateral power and oppression (Hoagland, 2016). Collaborative IA is one means through which Indigenous peoples may be able to take leadership roles in projects and strategic undertakings that affect their traditional lands.

2.2.2.1 Reconciliation and Systemic Transformation

Canada's history begins with wide-scale, deliberate, and explicit colonization and assimilation efforts to suppress and eradicate the influence of the Indigenous peoples that reside within its borders. Modern Indigenous-Crown relationships, including those established during the impact assessment process, are formed within this historical context (Belanger, 2018; G. Gibson et al., 2016).

In 2009, three individuals (chairperson Honourable Justice Murray Sinclair and commissioners Marie Wilson and Chief Wilton Littlechild) were appointed as the Truth and Reconciliation Commission of Canada (TRC), whose mission was to unveil the truth about Canada's Residential School system (TRC, 2015a). They collected nearly seven thousand statements from residential school survivors from across Canada, totalling over 1,300 hours of audio and visual recordings. In 2015, the TRC released its final report in which they made 94 calls to action, which can be categorized into two groups: legacy, to "redress the deep, residual cultural and psychological damage of residential schools", and reconciliation (TRC, 2015b).

The TRC, now disbanded and replaced with the National Centre for Truth and Reconciliation, defined reconciliation as "establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal [*sic*] peoples" (TRC, 2015a). Consequently, reconciliation involves the decolonization of current Indigenous-Crown relationships in a manner that encapsulates an acknowledgement of past and prevailing wrongdoings and stimulates action toward restoring Indigenous peoples' status as self-determined authorities with recognized influence and ability (Kirkness & Barnhardt, 1991; TRC, 2015a).

The *Indian Act*, a deeply problematic law that was first enacted in 1876 and remains Canada's primary law governing Indigenous development, is a prime example of the pervasive colonial attitudes in Canadian institutions (Belanger, 2018). The *Indian Act* was first created as a means

of discouraging Indigenous cultures and facilitating the assimilation of Indigenous peoples into Canadian society; the *Act* criminalized ceremonial practices such as the potlach and the Sundance, offered enfranchisement (i.e., the right to vote) to Indigenous peoples who renounced their 'Indian' status, and disbanded traditional and hereditary governance systems in favour of municipal-style governments (Belanger, 2018). Today, while the most egregiously oppressive provisions have since been amended, the *Indian Act* still contradicts the importance of nation-to-nation relationships and empowers the Canadian government to control Indigenous livelihoods, such as band government structure and operations (Belanger, 2018; Centre for First Nations Governance, 2017).

A nation's laws represent its fundamental social beliefs (Belanger, 2018). Currently, most IA laws in Canada do not explicitly recognize Indigenous peoples as sovereign authorities with distinct powers and ability. As such, impact assessment legislation can be utilized as a tool for restructuring Indigenous-Crown relations in environmental management so that they move beyond basic legal requirements and towards fostering nation-to-nation relationships (R. B. Gibson et al., 2020). In this way, collaborative IA could allow opportunities for systemic transformation as a steppingstone to reconciliation. Collaborative work in IA requires a critical evaluation of the prevailing colonial approaches while working toward the establishment of a regime that allows Indigenous peoples to assert their rights and powers within impact assessment and environmental management more broadly (R. B. Gibson et al., 2020; McNeil, 2016; Morellato, 2008; NCFNG, 2009).

2.2.2.2 Indigenous Knowledge and Impact Assessment

According to UNESCO (2017), Indigenous knowledge (IK) "refers to the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings" (UNESCO, 2017). In impact assessment literature, IK is most commonly discussed within the bounds of 'traditional ecological knowledge' (TEK), which is defined in Berkes (1999) as "a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission, and about the relationship of living beings (including humans) with one another and with their environment" (Berkes, 1999). While IK and TEK are similar, it is important to make the distinction between them for two reasons: First, IK is not necessarily restricted to ancient or 'traditional' belief and practice, as it is continually evolving today. Second, IK encompasses all aspects of daily life (social, cultural, spiritual, environmental, and economic aspects) whereas TEK is largely bounded within environmental aspects. Given the complex and interconnected considerations in impact

assessment, and to align with current Canadian IA law, this paper will continue to use 'Indigenous knowledge' as the standard term.

Academic literature has underscored the importance of IK for decades, particularly in the fields of health, education, ecology, and more recently environmental management and policy (Berkes, 1999; Donoghue et al., 2010; Hoagland, 2016; Nadasdy, 2006). Literature has also noted the importance of IK to the empowerment and survival of Indigenous communities; Hoagland (2016) noted that the loss of IK throughout North America would result in an equal decline in language, culture, and traditional practices (Hoagland, 2016).

2.2.2.3 From Indigenous Exclusion to Indigenous Authority

The meaningful involvement of Indigenous communities has been an ongoing challenge in IA since its conception. Indeed, arguably the most common theme in literature surrounding Indigenous engagement is criticism of Canada's current and former IA processes (see, for example, Arsenault et al., 2019; Baker & Westman, 2018; Booth & Skelton, 2011; Eckert et al., 2020; Galbraith et al., 2012; G. Gibson et al., 2016; Kirchhoff et al., 2013; Larsen, 2018; Noble, 2016; Papillon & Rodon, 2017; Udofia et al., 2017; Usher, 2000; and Wismer, 1996). Numerous authors have noted that persistent processual failings are pervasive throughout Canadian IA regimes, including inadequate scoping and coverage of impacts (thereby excluding or discouraging potentially affected communities from participating); proponents, consultants, and government practitioners with insufficient training or experience; and largely reductionist, technically-oriented processes that lack inclusivity (D. R. Armitage, 2005; Doelle & Sinclair, 2019; Hoagland, 2016; Nadasdy, 2006).

Moreover, a number of authors have observed an enduring unwillingness of Crown authorities to transition to a process in which the legitimacy and powers of Indigenous peoples are recognized and affirmed in project decision-making (D. R. Armitage, 2005; Clark & Joe-Strack, 2017; Doelle & Sinclair, 2019; Donoghue et al., 2010; Sinclair & Diduck, 2017). Indeed, shifting power dynamics away from the Crown has been an ongoing source of conflict in IA throughout Canada (D. R. Armitage, 2005; Sinclair & Diduck, 2017). This conflict is illustrated by the disparities between the Expert Panel's recommendations and the final version of the IAA, which maintained the political-level decision-making process of its controversial predecessor (Doelle & Sinclair, 2019).

While some authors, such as Doelle and Sinclair (2019) and R. B. Gibson (2020) noted that the introduction of the IAA enables responses to some of the inadequacies of federal-level IA (for

example by introducing a relatively early planning phase during which Indigenous peoples must be consulted, the elimination of full delegation powers, and new language on the rights and roles of Indigenous peoples in IA), it remains too early to draw full conclusions on the transformative power of the new regime in application. That being said, the enactment of the IAA with deliberate language for collaborative involvement of Indigenous peoples signaled, by 2019, recognition of Canada's established obligations as well as Indigenous peoples' inherent right to self-determination. Indeed, the IAA appears to represent a shift in philosophy that is largely unprecedented in Canadian environmental legislation, let alone impact assessment.

2.3 Desirable Characteristics of Indigenous and non-Indigenous Collaborative Impact Assessment: Tentative Key Principles of Indigenous and non-Indigenous Collaborative IA

Due to the complex and often overlapping nature of the division of powers between jurisdictions in Canada, collaborations among federal, provincial, territorial, and Indigenous authorities are often necessary (R. B. Gibson et al., 2020). In IA, an added complexity is the requirement for involving not only those with constitutional duties, but also parties that may be *affected* by the proposed undertaking.

Collaborative IA is one means through which Indigenous communities can secure benefits from prospective undertakings and minimize adverse effects as well as assert their rights over their traditional lands. Armitage (2005) defined 'collaboration' as "both a process and a set of institutionalized arrangements around which different interests and groups seek to achieve commonly agreed upon goals" (D. R. Armitage, 2005). Similarly, the Firelight Group have defined "co-managed impact assessment" as an IA process in which "one or more Indigenous groups assess a proposed project alongside the Crown agency, which has a duty to review the project under existing impact assessment legislation" (G. Gibson et al., 2018).

While collaboration in impact assessment has been relatively uncommon in Canada, particularly outside of the Northern territories, there is a rich history of Indigenous and non-Indigenous partnership in environmental management more broadly (R. B. Gibson et al., 2020).

The following sections provide an overview of the desirable characteristics to build and deliver in Indigenous and non-Indigenous collaborative IA as identified within the literature – decision-making, funding and governance, overall objectives for IA, goals for collaboration, and the recognition of distinct ways of knowing – as a foundation for identifying the key principles for design and implementation of IAs with effective Indigenous roles.

2.3.1 Decision Making

The UNDRIP denotes the importance of free, prior, and informed consent (FPIC) with regard to decisions that affect the lands and rights of Indigenous peoples. Despite the federal government's commitment to the UNDRIP, the right to FPIC remains firmly off the table for Indigenous groups whose traditional lands are affected by resource development in most IA regimes (Boutilier, 2017; Papillon & Rodon, 2017, 2020). Prior to the enactment of the IAA, a 'standard' IA by the federal government involved ultimate project decisions made unilaterally (with minimum standards for consultation) by a Responsible Minister (RM), appointed by the Crown on the advice of the Prime Minister or Cabinet (Doelle, 2012). As a result, project decisions have been made at the political level, often with little transparency, and may not have accurately represented the needs of those most affected by the potential undertaking (Doelle & Sinclair, 2019; Sinclair & Diduck, 2016). Furthermore, such relationships are largely paternalistic and perpetuate the colonial ideology that Indigenous groups 'know no better' and must be subject to the rulings and authority of Canadian governments (Borrows, 1997, 2017; Milloy, 2008).

Numerous studies (D. R. Armitage, 2005; D. R. Armitage & Plumber, 2010; G. Gibson et al., 2018; R. B. Gibson et al., 2020; Kirchhoff et al., 2013; Papillon & Rodon, 2020; Sinclair et al., 2008; Sinclair & Diduck, 2016, 2017) have noted the need for, and initial steps towards, redistribution of decision-making power in project and strategic-level IA, particularly in instances that involve Indigenous communities. For instance, Armitage (2005) sought insights into collaborative impact assessment in the Northwest Territories, Canada, with focus on the *Mackenzie Valley Resource Management Act* (MVRMA). He noted that the MVRMA framework established an "explicitly collaborative assessment process involving the creation of regionally distributed organizations with defined roles, responsibilities, and decision-making autonomy" that were more responsive to changing conditions than traditional, centralized processes (D. R. Armitage, 2005). Moreover, Sinclair and Diduck (2017), in discussion of public participation in impact assessment, stated that redistributing decision-making power helped ensure that decisions were made within the context that they affected, thereby improving engagement and facilitating long-term community sustainability (Sinclair & Diduck, 2017).

A number of studies (Hunsberger et al., 2020; Sinclair & Diduck, 2016, 2017; Wang, 2020) pointed to Sherry R. Arnstein's ladder of citizen participation as a means of understanding power-sharing in IA (Arnstein, 1969). There are eight 'rungs' on Arnstein's ladder, signifying eight levels of citizen participation. The lowest 'rungs' are nonparticipative – engagement efforts are little more than manipulative efforts to gain public support or minimize active public hostility. The

middle 'rungs' refer to tokenistic efforts, in which information sharing and consultations are conducted, but there are few channels for feedback or direct influence. Finally, the highest 'rungs' directly involve the redistribution of power, from partnerships between authorities and the public to exclusive public control. These studies argue that the lower 'rungs' of public participation, including nonparticipative and tokenistic efforts, are insufficient for IA due to the significant risks associated with negative project impacts and low credibility assessment processes and decisions.

2.3.2 Funding and Governance

Indigenous communities have often cited technical, political, and financial capacity issues as a primary barrier to meaningful engagement in IA (D. R. Armitage, 2005; D. R. Armitage & Plumber, 2010; G. Gibson et al., 2018; Kirchhoff et al., 2013; Noble, 2015; Sinclair & Diduck, 2016). While participant funding programs are a requirement under some Canadian IA regimes, the funding can often be insufficient and late, limiting an Indigenous group's ability to engage actively throughout the entirety of an assessment (G. Gibson et al., 2018). Additionally, legislated participant funding can be inconsistent between different IA regimes as well as between large- and small-scale undertakings (Sinclair & Diduck, 2016). Inconsistencies in funding can also result from politically-motivated funding cuts to Indigenous representative bodies, as in the case of the nation-wide cuts in 2012 which reduced annual allocations to Indigenous organizations and tribunal councils by as much as 80% (Kirchhoff et al., 2013).

Steps to enhance governance and participative capacity can reduce the discrepancies of resources between proponents, the government, and affected communities (G. Gibson et al., 2016, 2018; Sinclair & Diduck, 2016). The literature identified a number of ways Indigenous groups can strengthen their governance and participative capacity, many of which are dependent on the context of the potential undertaking, the level of IA, and the existing relationship (or lack thereof) between the community and the Crown (D. R. Armitage, 2005; D. R. Armitage & Plumber, 2010; G. Gibson et al., 2018). One method is for Indigenous authorities to secure impact and benefit agreements (IBAs) with the project proponent, which have in some cases obliged the latter to provide the former with roles in effects monitoring and benefits such as employment, training, and revenue sharing (Archibald & Crnkovich, 1999). Research into the effectiveness of IBAs has reported mixed results, however, with a number of studies determining that IBAs have failed to meet the needs of Indigenous communities (Cox, 2013; McCreary et al., 2016). Others argue for the advantages of external agreements (e.g., modern land claim agreements) between Indigenous communities and the Crown as a means of securing long-term financial capacity and political influence (Archibald & Crnkovich, 1999; Wang, 2020).

2.3.3 Overall Objectives for IA

Traditionally, impact assessment regimes focus primarily on the identification and mitigation of an undertaking's potential negative effects (in some cases only the adverse biophysical effects), with limited consideration of a project's positive contributions (R. B. Gibson, 2006; Noble, 2015) Scholarship has increasingly noted the need for consideration of sustainability in IA and environmental management more broadly (Castleden & Skinner, 2014; Doelle & Sinclair, 2019; Galbraith et al., 2012; R. B. Gibson, 2002, 2006; R. B. Gibson et al., 2020; Hipwell et al., 2002; Hoagland, 2016; Sinclair et al., 2008). Sustainability is a concept with many interpretations and definitions. In IA, sustainability is more accurately described as a core objective of overall lasting wellbeing with an associated, comprehensive scope. Objectives for sustainability-based approaches are therefore twofold: building resilience in systems that provide valued and necessary lasting benefits, and directing transformation of detrimental systems that support undesirable patterns and trajectories (R. B. Gibson et al., 2020; Hobbs et al., 2014; Olsson et al., 2014).

The goal of contributions to lasting wellbeing covers the entire assessment regime. This comprehensive and farsighted goal is of particular use to Indigenous interests and rights because (in contrast to merely mitigating significant adverse environmental effects), it is compatible with common characteristics of Indigenous worldviews and embraces the full range of integrated Indigenous concerns.

Canada as a whole both continues unsustainable practices (e.g., greenhouse gas emissions, and stresses on biodiversity and ecological systems) and is taking some promising steps towards a more sustainable future, with particular commitments to climate change mitigation, renewable energy, ecosystem conservation and restoration, conscientious urban planning and development, and poverty reduction (R. B. Gibson et al., 2020; Government of Canada, 2019). Similarly, IA in Canada has begun taking on a more sustainability-oriented approach, with more attention to regional and strategic effects as well as project-level ones, and cumulative effects (R. B. Gibson et al., 2020). In IA, a sustainability-based agenda moves beyond the minimization of negative effects of individual projects to also consider project and strategic-level alternatives, seeking "the best options for multiple, mutually reinforcing, fairly distributed and lasting gains" (R. B. Gibson et al., 2005).

All of these aspects present complex challenges and opportunities that affect Indigenous peoples and lands (R. B. Gibson et al., 2020). As such, a holistic and proactive approach to IA is critical for collaborative assessments between Indigenous and non-Indigenous authorities (R. B. Gibson

et al., 2020). An overall agenda that focuses on positive contributions to sustainability, while also minimizing adverse effects would ensure that communities would derive actual, lasting benefits from undertakings that affect them. It would also ensure that the assessment's scope is comprehensive and context-specific, with particular attention to the specific effects on Indigenous peoples, including effects on Indigenous rights, language and culture, and traditional practices (R. B. Gibson et al., 2020).

2.3.4 Goals for Collaboration

In many Canadian IA regimes, the terms of reference for individual assessments are set by the responsible government authority and the project proponent, with limited input from other IA participants, including the affected Indigenous communities (Noble, 2015, 2016; Udofia et al., 2017). While the redistribution of final decision-making power is important, Indigenous communities often have unique traditional and cultural values that may not be adequately recognized without their direct and *early* involvement in setting the terms of an IA (Bohensky et al., 2013; Bohensky & Maru, 2011; Udofia et al., 2017). IA terms that have been set unilaterally can and have led to bitter disputes and legal action to the significant cost of all parties (Noble, 2016). Indeed, mutually respectful relationships require that all parties begin with equal footing and open dialogue so that the IA is driven by a vision shared by both Indigenous and non-Indigenous actors (D. R. Armitage, 2005; Bartlett et al., 2012; Sinclair & Diduck, 2017).

Studies and grey literature tend to agree on the need for consensus and trust in Indigenous and non-Indigenous collaboration (Doelle & Sinclair, 2019; G. Gibson et al., 2018; R. B. Gibson et al., 2020; V. V. Gibson, 2008; Imai, 2017; Jones & Jenkins, 2008; Larsen, 2018; MIAC, 2016; Nadasdy, 2006; Papillon & Rodon, 2017; UN General Assembly, 2007). Gibson (2008) stated that every emerging Indigenous and non-Indigenous relationship "requires the generation of codes, rules and agreements" to establish accountability between parties (V. V. Gibson, 2008). Thus, the development of binding agreements is an important aspect of the creation of common goals. An overall focus on sustainability in IA would facilitate more easily defined and shared goals and vision for Indigenous and non-Indigenous collaborative arrangements.

2.3.5 Distinct Ways of Knowing

Indigenous-Crown collaborative assessments both attempt to address the issues of and arise with institutions that are a part of a legacy of colonial oppression and assimilationist practices that continue to impact Indigenous communities today (Bohensky et al., 2013; Bohensky & Maru, 2011; R. B. Gibson et al., 2020). Attentiveness to the distinct histories, contexts, and ways of

knowing of Indigenous communities is therefore critical in collaborative IA (Clark & Joe-Strack, 2017). Moreover, this involves systemic transformation, which Olsson et al. (2014) define as "radical, systemic shifts in values and beliefs, patterns of social behavior, and multilevel governance and management regimes" (Olsson et al., 2014). In the past, integration (where non-dominant knowledge structures are molded to fit into already institutionalized ones) has been the primary approach to including Indigenous voices in IA (Bohensky et al., 2013; Bohensky & Maru, 2011; R. B. Gibson et al., 2020). Merging Indigenous and non-Indigenous paradigms, however, can be problematic, especially when Indigenous systems are incorporated merely as a tool for assuaging the shortcomings of, or filling the gaps within, western science and are therefore valued based on their usefulness to western processes (Bohensky et al., 2013; Bohensky & Maru, 2011; R. B. Gibson et al., 2020). For instance, a number of studies have dubbed Indigenous understandings the "missing piece", neglect of which led to the mismanagement of natural resources, such as wildfire suppression, pesticide use, deforestation, and the introduction of invasive species (Donoghue et al., 2010; Hoagland, 2016). Indigenous knowledge is also often portrayed as a "complementary approach" to western science, to be used exclusively as a means of affirming or validating western science or vice-versa (Hoagland, 2016). This selective approach, where the 'most appropriate' elements are fit into existing institutional structures, can lead to misrepresentation and underrepresentation of Indigenous knowledge in environmental management (R. B. Gibson et al., 2020; Jimmy et al., 2019).

In the last two decades, more attention has been focused on respect for Indigenous approaches to environmental management, as distinct from western approaches, as well as restoration of Indigenous legal and governance structures (Borrows, 2005; Castleden et al., 2017; Castleden & Skinner, 2014; R. B. Gibson et al., 2020; TRC, 2015a). 'Two-eyed seeing', for example, is an Indigenous methodology originally developed by Mi'kmaq Elder, Albert Marshall, who described the concept as "learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of western knowledges and ways of knowing […] and learning to use both these eyes together, for the benefit of all" (Marshall, 2004). While originally designed as an approach to education, in recent years its application has expanded to health and ecological conservation (Bartlett et al., 2012). The 'two-roads approach' is a comparable co-governance structure developed by Fort McKay First Nation and oil sands operators in Alberta, Canada (L'Hommecourt et al., 2022).

Similarly, 'braiding' is an emerging concept in collaborative action that seeks to strengthen the integrity of both Indigenous and non-Indigenous sensibilities and to ensure that the two orientations are afforded equal degrees of legitimacy and respect (Jimmy et al., 2019). Jimmy et

al. (2019) utilize the 'bricks' and 'threads' analogy to illustrate the diversity of ways of knowing and being between Indigenous and Western peoples and systems. Bricks represent ideologies that prioritize individualism, order, external validation, and linear time (Jimmy et al., 2019). Threads, on the other hand, represent those that prioritize community, balance, inherent worth, and cyclical time (Jimmy et al., 2019). These ideologies can be further visualized as the goal of building lasting material legacies (i.e. brick walls and monuments) contrasted with the goal of sustainability and "the continuity of life", in threads with no footprints left behind (Jimmy et al., 2019).

Braiding differs from integration in that it does not attempt to combine multiple 'brick' and 'thread' approaches to create something new, nor does it attempt to select elements from each approach and merge them together (R. B. Gibson et al., 2020; Jimmy et al., 2019). Rather, braiding is a continuous process of moving towards the generative "edge-interface" of the brick and thread sensibilities, interrupting dominant colonial and paternalistic systems, and creating a transformative process that is both contextually appropriate and sensitive to the differences in ideologies, histories, and ways of being that make up each sensibility (Jimmy et al., 2019). Figure 1, reproduced from Jimmy et al. (2019), illustrates the progress towards generative and braided approaches in project decision-making.

Brick/Building (Transcendence)			Braiding	Threads/Weaving (Immanence)		
Non-generative	Tipping	Generative		Generative	Tipping	Non-generative
Means and/or ends imposed with a presumption of desirability, without understanding of different sensibilities, or with tokenistic consultation; paternalistic presumption: "we are doing this for you, and therefore you should be grateful"	Tokenistic consultation only with those who already are likely to agree (or not to challenge); predefined outcomes; involving the minimum of people impacted; doing it "for show" (no genuine interest)	Ability to engage genuinely with multiple forms of expertise; involves those who are directly affected; self-critical; resilient; patient	**Decisions made together in a mutually defined process that centres the people impacted (in terms of decision and power); collective accountability; attention to different sensibilities**	Ability to read the context, to translate different needs, to communicate to different capacities of understanding, to navigate complexities, calling in rather than calling out (translations, patience, flexibility)	Being overwhelmed by the level of contextual or imposed demands; passive resistance to (tokenistic) consultation	Refusal to engage, to translate or to negotiate the terms of engagement; idealization of an alternative/single way; calling out; making it personal

Figure 1: Towards braiding in organizations decision-making, reproduced from Jimmy et al. (2019).

2.4 Knowledge Synthesis: Common Themes of Indigenous and Non-Indigenous Collaboration

Publications on a broad spectrum of Indigenous and non-Indigenous relationships in environmental management were collected via incremental searches of academic databases and through expert recommendation. The literature was then refined to Canadian experiences to bound the research within the specific context of Canadian IA laws. The selected publications were then evaluated and sorted into five overarching thematic categories, as presented in subsections 2.3.1 to 2.3.5. Below, these themes are refined further into the desirable characteristics to build and deliver in Indigenous and non-Indigenous collaborative IA.

The evolution of Indigenous law and Indigenous and non-Indigenous relationships has been an important factor in driving the progression of IA law in Canada. As a result, there are practical needs for an understanding of effective involvement beyond the Crown's fiduciary duties, including the need for Indigenous communities to be involved more effectively; and the need for proponents, administrative agencies, and other impact assessment players to navigate methods for Indigenous and non-Indigenous relationship building, including the recognition of Indigenous right to free, prior, and informed consent.

Indigenous-Crown relationships in which the Crown is the sole decision-maker perpetuate paternalistic and colonial ideologies, and likely do not reflect the concerns and needs of the affected Indigenous groups (Smith, 1999). The redistribution of decision-making power, in which the affected Indigenous groups have equal say in project and IA decisions, helps ensure that decisions are made within the context on which they have the most impact rather than at the political level (Sinclair & Diduck, 2017).

Capacity concerns are one of the most cited barriers to effective Indigenous engagement (D. R. Armitage, 2005; D. R. Armitage & Plumber, 2010; G. Gibson et al., 2018; Kirchhoff et al., 2013; Noble, 2015; Sinclair & Diduck, 2016). To ensure effective, meaningful, and fair participation, there must be concerted effort to lessen the discrepancy of recourses between proponents, the Crown, and Indigenous communities.

While it is standard practice for IA regimes to mitigate significant adverse environmental effects, sustainability-based approaches assess an undertaking's contributions to lasting wellbeing, through which they build resilience in systems that provide valued and necessary lasting benefits while directing transformation of detrimental systems that now support undesirable patterns and trajectories (R. B. Gibson et al., 2020). The overarching goal of sustainability in IA is therefore

compatible with common characteristics of Indigenous worldviews and embraces the full range of Indigenous concerns.

While it is critical that Indigenous authorities have final decision-making powers, Indigenous communities have unique traditional and cultural values that may not be adequately recognized without their direct and early involvement in setting the terms of an IA (Udofia et al., 2017). To facilitate IAs that seek to establish mutually respectful relationships between the Crown and affected Indigenous communities, all parties must begin with equal footing and open dialogue so that the IA is driven by common goals and a shared vision for the outcome of the assessment (D. R. Armitage, 2005; Sinclair & Diduck, 2017).

The integration of Indigenous and non-Indigenous knowledge systems has been the norm in many IA regimes, such as with the inclusion of IK to assuage the shortcomings of, or fill the gaps within, western science. This form of knowledge integration, however, can lead to the underrepresentation or misrepresentation of the marginalized form of knowledge (Donoghue et al., 2010; Hoagland, 2016). Collaborative efforts that are braided (the continuous process of moving toward the generative "edge-interface" of the distinct ways of knowing) rather than integrated create a transformative process that is both contextually appropriate and sensitive to the differences in ideologies, histories, and ways of being of the Indigenous and non-Indigenous authorities (Jimmy et al., 2019).

Based on the issues and experience presented above, the five the most evident common principles of Indigenous and non-Indigenous collaborative IA are: **(1) redistributed decision-making power, (2) governance and participative capacity, (3) sustainability focus**, **(4) common goals and vision,** and **(5) braided collaboration**. An overview of the nature and intent of each principle and its application is provided in Table 1 below. These tentative key principles should be taken into account in the design and application of legislated provisions and associated guidance for collaborative assessments involving Indigenous authorities and in the negotiation of particular collaborative IA processes that involve Indigenous authorities.

Table 1: Overview of the Nature and Intent of the Five Key Principles and their Application to IA.

Overarching Theme	Key Principle	Summary
Decision-Making	Redistributed Decision-Making Power	The involvement of affected Indigenous communities in which they have central roles and responsibilities in IA and project decision-making in order to ensure that decisions are made within and are responsive to the context that they affect.

Funding and Governance	Governance and Participative Capacity	Affected Indigenous groups are provided with consistent and sufficient resources to meaningfully and collaboratively participate in an IA.
Overall Objectives for IA	Sustainability Focus	The IA's core objective is overall lasting wellbeing, with specific consideration for the complex and unique effects to Indigenous peoples, including effects on Indigenous rights and lands, language and culture, and traditional practices.
Goals for Collaboration	Common Goals and Vision	Indigenous peoples are directly involved in setting the terms of the IA as early as necessary in the form of binding agreements based on mutual respect and open dialogue between parties.
Distinct Ways of Knowing	Braided Collaboration	The IA follows a mutually defined process centred on the affected Indigenous community, where the distinct ways of knowing of each party are distinctly recognized and afforded legitimacy and respect equivalent to that given to non-Indigenous understandings.

The different circumstances across the nation (e.g., IAs in the northern territories will differ from those in the southern provinces, as will those between different provinces) entail a need for different sets of options for collaborative assessments. Distinct Indigenous societies with distinct lands, issues, and deliberative processes, as well as individual cases and contexts, will permit and demand different approaches.

2.5 Summary

This chapter explored the vast literature base of the evolution of impact assessment in Canada, the critical role of Indigenous peoples in IA, and Indigenous and non-Indigenous collaborative efforts in environmental management. From this integrative literature review, five tentative key principles of Indigenous and non-Indigenous collaborative IA were synthesized: **(1) redistributed decision-making power, (2) governance and participative capacity, (3) sustainability focus**, **(4) common goals and vision,** and **(5) braided collaboration**. The following chapter discusses the variety of Indigenous roles in IA to cover the distinct contexts of Indigenous communities throughout Canada.

3 Indigenous Roles in Collaborative IA and Case Study Selection

While the tentative key principles established in **Chapter 2** are important when developing a collaborative framework involving Indigenous peoples and authorities, there exist significant contextual differences across the nation that may impact Indigenous and non-Indigenous relationships in IA. Some of these differences were discussed in the previous chapter: different jurisdictional duties and IA regimes, distinct Indigenous and treaty rights, and the existence of modern land claims agreements that specify their own assessment regimes and powers. Other differences that are more contextually specific, such as different issues; levels of controversy and potential for a mutually satisfactory agreement; different levels of existing capacity within the Indigenous authority; the stronger and weaker negotiating positions of the Indigenous authorities involved; and different levels of established and trusted relations between the Indigenous authority and the other key players (such as the Crown and/or project proponent) are important considerations in collaborative IA. As a result, a spectrum of collaborative mechanisms can be applied to IA depending on the circumstances and realities surrounding a proposed project or strategic initiative (G. Gibson et al., 2018).

In this chapter, different Indigenous roles in collaborative IA will be explored to cover the distinct contexts of Indigenous communities throughout Canada. It is important to note that the roles discussed below are not exhaustive, nor are they mutually exclusive. The roles identified could typify the core assessment process in some individual cases, but there could also be individual assessment cases with components reflecting various different arrangements and roles. The roles were chosen for the purpose of this discussion because they are commonly utilized frameworks for collaborative IA, as identified by the First Nations Major Projects Coalition (FNMPC). They also represent distinct openings for Indigenous influence, whether it be influence over the information identified and evaluated in the assessment, the conclusions of the assessment, and/or the decisions made about the project being assessed.

3.1 Indigenous Roles in Collaborative IA

The FNMPC identified three broad categories of Indigenous roles within federal-level IA in its 2020 *Guide to Effective Indigenous Involvement in Federal Impact Assessment*:

1. Indigenous-led studies, in which Indigenous groups conduct their own studies within the context of a Crown-led IA with guidance and/or funding from either the project proponent or Crown authority;

2. Collaborative assessments, in which a partnership is formed between an Indigenous group and either the project proponent or Crown authority for the purpose of conducting an IA; and

3. Indigenous-led assessments, in which Indigenous groups conduct their own independent IA parallel to the Crown authority's assessment (FNMPC, 2020).

Each of the Indigenous roles identified by the FNMPC exhibits different levels of influence over the IA process and, by extension, over the conclusions drawn within the assessment: Crown-led assessments that are **informed by** in-depth Indigenous involvement; 'true' collaborative assessments that are conducted **in partnership** with affected Indigenous groups; and **independent** Indigenous-led assessments.

The roles identified above go beyond the standard participatory requirements in federal-level IA. Indigenous-led studies and collaborative assessments involve collaborative arrangements between the affected Indigenous group(s) and a non-Indigenous authority, while Indigenous-led assessments aim to create an IA process that is independent from the Crown process. **Figure 2** provides an overview of the different categories of Indigenous roles as they pertain to the level of independence from non-Indigenous authorities in IA.

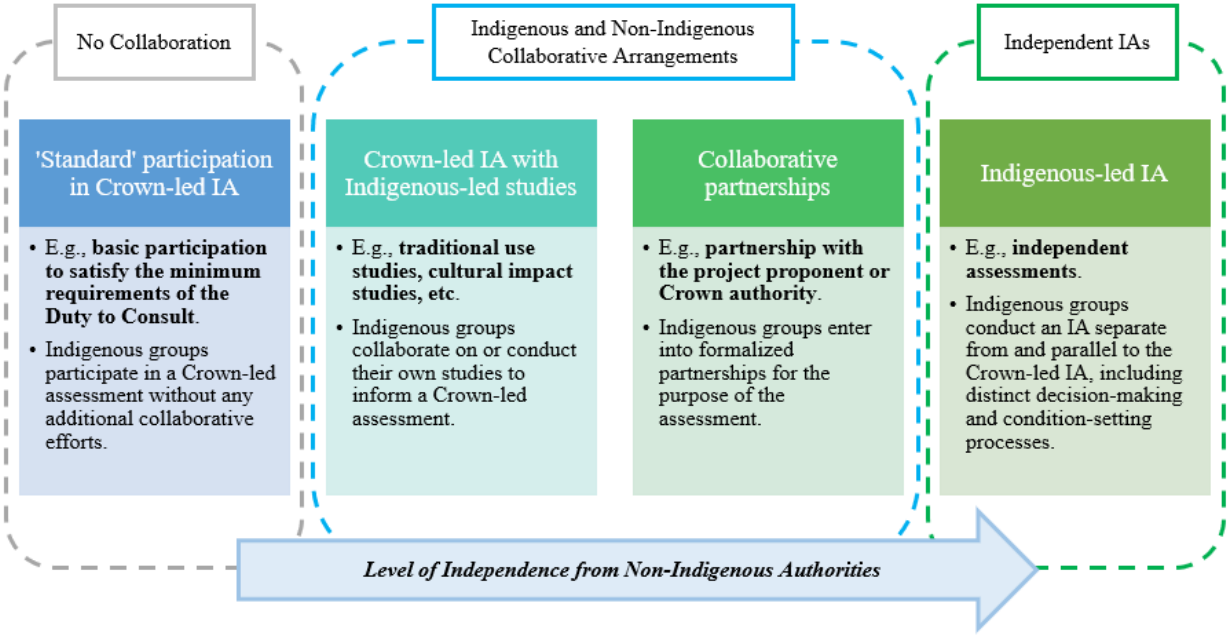

Figure 2: Indigenous Roles in Collaborative Impact Assessment. Based on FMNPC (2020) and G. Gibson et al. (2018).

The following sections discuss the strengths and limitations the Indigenous roles in the three categories on the right in Figure 2. Example cases of Indigenous-led studies, collaborative

partnerships, and Indigenous-led IAs are provided to illustrate how these roles are utilized in real-life situations, as well as to inform the case study selection process.

3.1.1 Crown-led Impact Assessment with Indigenous-led Studies

Indigenous-led studies involve the collection and evaluation of information performed by or in collaboration with affected Indigenous communities in order to inform an established Crown-led or proponent-led assessment (FNMPC, 2020). Indigenous knowledge, land-use, and cultural impact studies are common types of Indigenous-led studies, though they can explore a wide range of considerations (FNMPC, 2020).

The active involvement of Indigenous communities in carrying out studies to inform Crown-led IAs allows for a number of important benefits. First, it ensures that the affected community retains control over the collection and interpretation of their knowledge. This is particularly important as more undertakings are assessed under the IAA, as the consideration of IK provided for the purpose of the IA (s.84(1)(b)) and the ways in which IK was utilized for decision-making purposes (s.59(3)) are legal requirements (Impact Assessment Act, 2019). Ensuring that Indigenous groups retain control of their knowledge reduces the risk of misinterpretation or underrepresentation by non-Indigenous practitioners.

The misrepresentation of IK could also risk the integrity of the IA. IK is valuable for understanding socio-ecological linkages and identifying impact pathways that may otherwise be overlooked by western science, particularly with regard to areas of spiritual and cultural significance (FNMPC, 2020). Indigenous-led studies also allow for some flexibility with regard to the capacities and needs of different Indigenous groups, as they are conducted within a Crown IA regime with (albeit varying, depending on the regime) established access to funding and expertise.

Additionally, Indigenous-led studies are likely to have lasting value for Indigenous authorities and communities for multiple uses beyond contribution to the immediate IA process. Potential uses include capacity building, collecting baseline information for consideration of other and future undertakings, and identification and clarification of issues and opportunities needing attention beyond the scope of the assessment.

Indigenous-led studies within an established Crown-led framework also present a number of limitations. The conclusions drawn by the assessment, as well as the decision-making process, are often determined by the Crown with limited input from the affected Indigenous communities, particularly in regions without established land claims agreements. Thus, once the studies have

been conducted and submitted for the purpose of the IA, Indigenous groups have little control over how the information is utilized in decision-making.

Moreover, Indigenous-led studies are costly, and the breadth and depth of the study depends on the resources available to the affected Indigenous group. The FNMPC estimated that Indigenous-led baseline studies make up approximately 40% of the total overall costs for Indigenous groups to participate in an IA, with an average overall reported spending of nearly $500,000 per Indigenous group per IA (FNMPC, 2020). Moreover, some types of Indigenous-led studies (such as Indigenous land use and cultural impact studies) are not a legal requirement in many IA laws in Canada (FNMPC, 2020). Access to government funding and expertise therefore varies by jurisdiction and the interpretation of broad legislative requirements (for example, the requirement for attention to 'cultural effects' in Ontario's *Environmental Assessment Act*). Non-Indigenous authorities may also be inclined to utilize proxy studies of publicly-accessible IK rather than fund new studies (FNMPC, 2020).

One case that exemplifies Indigenous-led studies is the *Innu Kaishitshissenitak Mishta-shipu*. This report was the product of an Indigenous knowledge study by the Innu Nation for the Lower Churchill Hydroelectric Generation Project proposed by the provincial Crown corporation Nalcor Energy. The project consisted of two hydroelectric generation facilities on the lower Churchill River in Labrador, one at *TshIAshku-nipi* (Gull Island) and one at *Manitu-utshu* (Muskrat Falls), and would require flooding 126 square kilometres for the facilities' reservoirs (P. Armitage, 2007; Nalcor Energy, 2009).

The Innu Nation's Indigenous knowledge study covered the *Mishta-shipu* valley, which encompassed both the Gull Island and Muskrat Falls locations of the Lower Churchill Project (P. Armitage, 2007). The report primarily described the efforts and conclusions of the Innu Traditional Knowledge Committee (ITKC), which was established in November 2006 for the purpose of the proposed Lower Churchill Project and was comprised of ten Innu men and women (P. Armitage, 2007). The result was a detailed discussion of the Innu's knowledge of the *Mishta-shipu* valley, including geography and land uses, animal habitat and behaviour, and previous experiences with past similar projects such as the Upper Churchill Hydroelectric Project (P. Armitage, 2007).

The *Innu Kaishitshissenitak Mishta-shipu* report had a direct influence on the work and report of the joint review panel heading the Lower Churchill Project IA in a number of ways. For instance, the potential impacts raised by the Innu community (for example, impacts to *atik^{u}*, *mashk^{u}* and *amishk^{u}*, (or Caribou, Black Bear, and Beaver) as well as impacts to *namesh* and *nipi* (or fish and

water quality)) were reflected in the valued ecosystem components identified for the purpose of the IA (P. Armitage, 2007; Nalcor Energy, 2009). Furthermore, in recognition of the negative impacts identified by the Innu as community cultural heritage losses as a result of the loss of landscapes, the joint review panel recommended the "implementation of commemorative initiatives for lost sites (such as installation of plaques and storyboards)" (Page, 2017).

The *Innu Kaishitshissenitak Mishta-shipu* report also recognized a number of procedural limitations. Time and funding constraints posed the most significant barriers for the study and limited the volume of IK that could be included (P. Armitage, 2007). The study was conducted for the purpose of an IA and was therefore constrained to the time limits and budget of the assessment. Additionally (and, in part, as a result of time and budget constraints), the study relied on a number of records from Innu Elders from Mingan and Davis Inlet (formerly occupied by the Mushuau Innu peoples), documented by anthropologist Daniel Clément from 1990 to 1998. While the studies were extensive and involved months of field investigations alongside the Mushuau Innu peoples, documentation was not validated by Sheshatshiu Innu Elders, and therefore relied on the assumption that the knowledge was relevant enough (P. Armitage, 2007).

Importantly, the report itself recognizes its limitations in face of the need to distill Indigenous knowledge from complex intertwined social and ecological structures for the purpose of the IA:

> "The representation of TEK in reports such as this one decontextualizes and therefore distorts the knowledge. […] [W]e must recognize that a report of this nature cannot do full justice of lifetimes of experience on the land, and all nuances of Innu thinking and discourse about the natural world" (P. Armitage, 2007).

The limitations of the report and the Lower Churchill IA as a whole are most directly reflected in the outcomes of the IA: the joint review panel presiding over the IA process determined that the undertaking was likely to have significant adverse effects on aquatic, terrestrial, wetland, and riparian habitats; fish and caribou; fishing and seal hunting; and Indigenous culture and heritage, and advised that the project should not proceed should alternative methods of meeting electricity demands be identified (Joint Review Panel, 2011). Despite this recommendation, the government of Canada decided that the "significant provincial, regional, and national benefits" substantially outweighed the adverse effects identified by the Panel, all of which would have direct, significant impacts on the Innu community (Government of Canada, 2012).

3.1.2 Collaborative Partnerships

The Firelight Group, an Indigenous-owned consultant that provides research, planning, and consultative services to Indigenous and local communities, has identified three general types of collaboration in impact assessment:

1. A "co-managed" assessment with a Crown authority;
2. A "co-developed" assessment with a project proponent; and
3. An independent Indigenous-led assessment (G. Gibson et al., 2018), which will be discussed in **Section 3.1.3**.

These assessment mechanisms differ from Indigenous-led studies primarily in the available avenues for joint decision-making; the primary purpose of an Indigenous-led study is to inform an IA, where a Crown agency and/or the project proponent would have final decision-making power. Where a collaborative partnership exists between an Indigenous group and decision-making authority, the Indigenous group will have a degree of influence over the outcome of an IA, depending on the nature of the agreement. The following sections will explore co-managed and co-developed IA in more detail.

3.1.2.1 Co-Managed Assessments with the Crown

Co-managed assessments are those that are led collaboratively by an Indigenous group and a government agency that has legislated authority to conduct an IA for a given project. A legal agreement between the Indigenous group(s) and the Crown is typically required for co-managed assessments. These agreements are negotiated for the purpose of a specific project IA, or defined through broader legal negotiations (e.g., land claims agreements) or through legislation for application to defined sets of undertakings in a jurisdiction or related jurisdictions (G. Gibson et al., 2018).

For Indigenous groups, co-managed project assessments and co-managed assessment regimes provide a number of strategic advantages. First, there are opportunities for power-sharing in co-managed IA between the Crown and the Indigenous communities involved, particularly in IA outcomes and project decision-making (Hotte et al., 2019). A collaborative partnership between an Indigenous group and a Crown authority, for example, where the Indigenous group has recognized authority to determine whether a proposed project is acceptable, can create avenues for building relationships based on trust rather than control, and challenges the existing

imbalance of powers within the Canadian colonial setting (Hotte et al., 2019; Nadasdy, 2005, 2006).

The IA process elements may also be negotiated to ensure that the outcomes of the IA reflect the objectives of the participating Indigenous group(s), such as the incorporation of Indigenous knowledge and the delivery of lasting benefits for Indigenous communities. This would ground the IA in the diverse historical and cultural contexts of distinct communities involved and allows for the acknowledgement of different ways of knowing (Clark & Joe-Strack, 2017).

Indeed, many of the advantages of co-managed IA stem from the recognition of Indigenous peoples' ability to assert their rights and influence over IA and project outcomes. In effect, there exists a broad spectrum of arrangements for co-managed IA that range from involvement in a limited capacity at the process level to more significant nation-to-nation relationships with joint decision-making (G. Gibson et al., 2018; Hotte et al., 2019). As a result, the outcomes of co-managed assessments that have occurred in Canada have been widely mixed with regard to meeting the objectives of Indigenous participants (G. Gibson et al., 2018). This disparity is largely due to the institutional structure of IA in Canada: where there is no legislated or otherwise legal agreement for joint decision-making (i.e., recognition that approval requires the Indigenous group's consent), the Crown holds final decision-making power. This power imbalance perpetuates the colonial system that is institutionalized in IA instead of challenging it.

An example that demonstrates progressive power-sharing efforts for its time is the 1997 Memorandum of Understanding (MOU) to establish the joint review panel for the Voisey's Bay nickel mine IA. The MOU was established between the federal and provincial governments, the Innu Nation, and the Inuit of Labrador, and provided considerable means through which the Indigenous groups could influence the IA. For instance, all four signatories of the MOU were given the power to recommend the appointees for the joint review panel (Government of Canada et al., 1997). It also ensured that the panel would report its findings to the Indigenous groups alongside the responsible Canadian federal and provincial Ministers (Cleghorn, 1999).

However, despite the MOU and consistent participation throughout the IA process, the Innu Nation and Inuit of Labrador's right to informed consent on the development of the mine was not recognized, and key panel recommendations for the benefit of the Indigenous groups (e.g., completing land claims and IBA negotiations prior to approving the project for construction) were not accepted by the Crown.

A co-managed IA that was based on a more comprehensive agreement between an Indigenous group and the Crown is the Fortune Minerals NICO Project IA, in which the Tłı̨chǫ Land Claim and Self-Government Agreement and the *Mackenzie Valley Resource and Management Act* (MVRMA) were the basis for the collaborative partnership between the government of the Northwest Territories and the Tłı̨chǫ government.

The Tłı̨chǫ government has the authority to "pass and enforce laws, delegate its powers and authority, and establish its own governance structure and its internal management" (G. Gibson et al., 2016). They were therefore central to the IA process and project decision-making, and ensured that key concerns of the Tłı̨chǫ community were assessed, such as the consideration of Indigenous knowledge and expertise (G. Gibson et al., 2016, 2018).

3.1.2.2 Co-Developed Assessments with the Project Proponent

There are numerous distinct uncertainties associated with Crown-led impact assessment for both Indigenous groups and project proponents—risk of legal intervention and ineffective participation processes leading to procedural delays, primarily. These uncertainties, alongside the existing legal requirement to consult and accommodate, have pushed proponents to take a proactive role in Indigenous engagement in order to secure their support for proposed projects that may affect the community's rights and lands (Papillon & Rodon, 2017). While every IA process in Canada provides avenues through which Indigenous peoples can voice their concerns and have dialogue with project proponents, opportunities for communities to influence project decision-making remain fairly limited (Papillon & Rodon, 2017).

In a co-developed assessment, the collaborative relationship is formed between the proponent of an undertaking and the affected Indigenous group (G. Gibson et al., 2018). Establishing a mutually beneficial relationship early in the planning process (and before the onset of an IA) can reduce legal and procedural uncertainties and provide important benefits to both the proponent and the community. For the proponent, there is opportunity to obtain consent or a "social licence" from the affected community, thereby mitigating the potential for legal risks and Indigenous-driven procedural intervention in the formal IA (G. Gibson et al., 2018; Papillon & Rodon, 2017). It is also an opportunity to add value to the project and business as a whole. By fostering ongoing positive relationships with Indigenous businesses and talent there is opportunity for partnerships in the future. For the Indigenous group, a meaningful relationship with the project proponent is essential, particularly in areas where there is no established recognition of Indigenous authority, as well as with projects that may have compounding or uncertain effects (Papillon & Rodon, 2017). Furthermore, it facilitates earlier Indigenous involvement in project planning and the opportunity

to work directly with the proponent, which allows for more explicit and tangible influence on project outcomes.

Like co-managed IA, there is a spectrum of co-developed arrangements that vary by when, on what, and to what degree an Indigenous group is engaged in project decision-making. While some partnerships may involve an Indigenous partner from the outset of the proposed project where the Indigenous group has influence over major project decisions (e.g., location, routing, and other project components), others may offer more limited involvement in areas specific to Indigenous interests (e.g., land, culture, and socio-economic effects) (G. Gibson et al., 2018).

A common mechanism through which Indigenous-proponent partnerships are formed is an impact and benefit agreement (IBA). In fact, as the right to free, prior, and informed consent has emerged as a priority in IA in Canada, as has the importance of IBA negotiations as a tool for securing Indigenous consent (Papillon & Rodon, 2017). An IBA is a negotiated arrangement through which a project proponent provides an affected Indigenous group with various community benefits and protections (e.g., revenue flows, contracting opportunities, roles in monitoring and follow-up programs, and influence in on-going project management) (Papillon & Rodon, 2017). However, research findings on IBA effectiveness are mixed. On the positive side, IBAs provide an avenue through which Indigenous peoples can secure important benefits for their community both within the context of the IA and beyond (Caine & Krogman, 2010; Cox, 2013; Papillon & Rodon, 2017). For instance, IBAs can establish monitoring roles for community members and ensure that specific valued environmental, cultural, and socio-economic components are considered in the IA. The confidentiality of IBAs may also allow Indigenous communities to leverage supplementary funding from other sources (Caine & Krogman, 2010). Within or outside of the context of the IA, Indigenous communities are often able to negotiate for employment and training opportunities, business partnerships, revenue sharing and compensation, and other valuable benefits to the community (Caine & Krogman, 2010; Cox, 2013; Papillon & Rodon, 2017).

Some limitations of IBAs result from the power dynamics at play in IBA negotiations and proponent-Indigenous partnerships generally, particularly due to the direct way through which Indigenous peoples are affected by project decisions (Caine & Krogman, 2010; Papillon & Rodon, 2017, 2020). Proponent-Indigenous partnerships that are fostered through IBA negotiations often focus on mitigating direct project effects rather than addressing the broader context of community sustainability and the project's cumulative environmental, socio-economic, and cultural impacts (Papillon & Rodon, 2017). The lack of transparency and the absence of any kind

of institutionalized structure in IBA negotiations also poses significant concerns regarding whether the implied Indigenous consent to a project (as a result of accepting the IBA) is sufficiently free and informed (Caine & Krogman, 2010; Cox, 2013; Papillon & Rodon, 2017). Additionally, while IBA confidentiality can be beneficial for some communities, the lack of legal standards to regulate IBA negotiations may introduce power imbalances between the project proponent and affected Indigenous group, particularly where Indigenous groups have no legal authority in project decision-making.

An example of an IA that was jointly developed by Indigenous groups and a project proponent is the Sivumut Project, which involved the expansion of the Raglan nickel-copper mine in Nunavik, northern Quebec. The Raglan mine began commercial production in 1998 and is currently owned by Glencore Canada Ltd.

Glencore began applying for the required permits to expand its mining operations at Raglan and develop additional mineral deposits within company lands in 2016, and extend the project's lifespan from 2020 to 2041 (Glencore Canada, 2017). The Sivumut Project consists of a two-phase expansion of the existing mine: 'Phase II', which will involve two additional underground mines that will operate for 8-15 years, and 'Phase III', which will involve three additional underground mines that will operate for five years (Glencore Canada, 2017).

The Sivumut Project was subject to the James Bay and Northern Quebec Agreement (JBNQA), which dictates that all "major mining operations (excluding explorations)" are subject to the Environmental and Social Impact Assessment (ESIA) process established under Title II of the Québec *Environment Quality Act* (JBNQA, Schedule 22, Section 1, 1975). Furthermore, the IBA that had been previously negotiated for the original Raglan mine in 1995 ensured that any new development at the mine would require a joint assessment of its potential impacts (G. Gibson et al., 2018). The IBA, titled the Raglan Agreement, has three Inuit signatories: the Makivik Corporation, which is a collective organization established under the JBNQA, and the Salluit and Kangiqsujuaq communities (The Raglan Agreement, 1995).

The Raglan Agreement established the Raglan Committee, a collective of representatives from the Inuit parties and the Raglan mine that facilitates the enforcement of the Agreement and communication between the parties (The Raglan Agreement, Section 8, 1995). To support the review of the Sivumut Project, the Raglan Committee established the Sivumut Sub-Committee, which consisted of members from the Inuit signatories and from Glencore. Its mandate, which was jointly developed by the Raglan Committee and Glencore, involved a comprehensive review of the project ESIA report and the collective development of mitigation and monitoring measures

(G. Gibson et al., 2018). The Sub-Committee was also mandated to perform a review of the Raglan Agreement itself, which resulted in an annex to the Agreement to support the management of the Sivumut Project (G. Gibson et al., 2018).

The Sivumut Sub-Committee's joint review of the ESIA report was entirely separate from the legislated ESIA process governed by the JBNQA. The formal assessment was conducted by the Kativik Environmental Quality Commission (KEQC), which in turn provided its recommendations to the Government of Québec for the final decision and the issuance of the Certificate of Authorization (G. Gibson et al., 2018). While ultimate decision-making power was held solely by the Crown in this case, the Sub-Committee's review of the ESIA report prior to its submission to the KEQC ensured that the Inuit groups had direct influence on the Project both within and without of the established assessment process. Indeed, the Sub-Committee's mandate was to "focus the parties on changes to the project and to the management and operation of the project in Inuit lands", which ultimately carried over into the Crown's final decision (G. Gibson et al., 2018).

The existing relationship between the Indigenous groups and the proponent established by the Raglan Agreement greatly facilitated the two-way dialogue that led to mutually agreed-upon Project decisions before the onset of the formal IA process. This case is therefore bound within the context of pre-existing goodwill between parties, the continually reinforced relationship demonstrated by the Raglan Committee, and the foundational legal obligations set out by the Raglan Agreement. A similar result is therefore not guaranteed in contexts where the proponent and Indigenous group do not agree or do not have an existing good-standing relationship.

Moreover, it is important to note that Glencore covered only 20% of the total costs of the review, with the Makivik Corporation assuming the remaining 80% (G. Gibson et al., 2018). Makivik's existing participative capacity was therefore integral to the success of the collaborative efforts demonstrated in this case.

3.1.3 Indigenous-Led Impact Assessments

In recent years, FPIC has become increasingly acknowledged as a fundamental element of Indigenous involvement in impact assessment. Despite this, Canadian governments have been reluctant to embrace the principle in its entirety, and debates pertaining to the implications of FPIC are ongoing (Papillon & Rodon, 2020). The standard for Indigenous involvement in IA throughout the majority of Canada is consultation within an institutionalized colonial regime in which affected Indigenous peoples have little control over decision outcomes (Papillon & Rodon,

2020). In light of this continued Crown resistance to facilitating FPIC effectively through established assessment processes, many Indigenous groups have moved to develop their own processes through which they can operationalize their own system of consent, separate from (and typically running parallel to) Crown-led processes (Papillon & Rodon, 2020).

Indigenous-led IA differs from the Indigenous and non-Indigenous collaborative arrangements discussed in the above sections largely by having a more comprehensive scope (particularly in matters related to Indigenous concerns, such as culture, language, and IK), by asserting unilateral Indigenous decision-making authority and self-determination, and by being independent from Crown- or proponent-led regimes. G. Gibson *et al.* (2018) define an independent Indigenous IA as an instance where "an Indigenous group sets up its own assessment process for a project, complete with a defined and largely or completely internalized assessment process and a formal decision-making and condition-setting process" (G. Gibson et al., 2018). Specifically, they note the requirement for a "discrete consent process that is free to provide or withhold consent" (G. Gibson et al., 2018). There are, however, cases of Indigenous-led assessment that were completed under Indigenous control but were influential largely through the formalized non-Indigenous IA process, and not authoritative beyond the existing colonial institution (Papillon & Rodon, 2020). Thus, there is a broad spectrum of Indigenous-led assessment regimes that can range from Indigenous-controlled processes subject to the institutionalized process, to fully independent Indigenous-led assessments that carry their own authoritative powers.

Indigenous groups benefit from Indigenous-led IAs as they move beyond the legal right of consultation and establish the right of self-determination as a fundamental element of the IA process. Furthermore, Indigenous-led IAs are community-driven processes that bound the IA within the context of those that are affected by the undertaking.

However, Indigenous-led IAs tend to require significant existing institutional and financial capacity than the other forms of collaborative IA discussed (G. Gibson et al., 2018; Papillon & Rodon, 2020). Moreover, in areas where there is no existing legal expression of Indigenous self-determination that can work as a foundation on which to exert political influence (such as a land claim agreement), the success of such a regime is dependent on whether it is recognized by the ultimate decision-making authority (Papillon & Rodon, 2020).

A prime example an IA led by an Indigenous group is the Squamish Nation assessment of the Woodfibre Liquified Natural Gas (LNG) Project in Squamish, British Columbia. The project involved the construction and operation of a LNG plant at a former pulp mill site located in the Squamish historic village of Swiyat on the Squamish River (FNEMC, 2019). The plant was

originally proposed by Woodfibre LNG Limited in 2013, received approval from the Squamish Nation in 2015, and was approved through the Crown IA process in 2016. The Project is currently owned by Pacific Oil and Gas.

The primary goal of the IA process developed by the Squamish Nation was to establish an informed consent process for undertakings within their territory and to enable joint decision-making between the Squamish and British Columbian governments (FNEMC, 2019). The assessment process sets out the requirement for a legally binding Framework Agreement between the Squamish Nation and the project proponent, which establishes what is to be done and by whom in the various phases of the assessment as well as mandatory conditions for the proponent (FNEMC, 2019).

The Squamish process ran concurrently with—and independently from—the provincial IA for the project. Thus, the Squamish Nation were able to strategically include Squamish values within their own assessment that would have otherwise been omitted or inadequately considered within the Crown process. For example, while the provincial process employed "valued components" (VCs) that would be evaluated based on the significance of individual project effects, the Squamish Nation utilized its own language of "guiding topics" to evaluate the overall acceptability of the Woodfibre LNG plant (G. Gibson et al., 2018). Additionally, the provincial process considered "heritage resources" as the sole VC pertaining to culture, which excluded the consideration of Squamish knowledge and laws. The Squamish process brought forth a more comprehensive review of IK, and as a result, the values of the Squamish community were represented and validated through project decision-making (G. Gibson et al., 2018).

Ultimately, the Squamish Nation set out 25 legally-binding conditions for project approval, including the requirement to obtain the community's consent through the negotiation of an IBA (G. Gibson et al., 2018). In October 2015, the Squamish Nation voted to approve the project, and the project was approved through the provincial process the following year.

While this case sets a precedent for Indigenous-led IAs in Canada, several key factors empowered the influence of the Squamish Nation in the assessment of this project. First, the Squamish Nation, like many Indigenous groups through British Columbia, had never signed any treaties with the Crown or (from a Canadian legal standpoint) ceded any part of their lands (Squamish Nation, 2021). Thus, since the project was located centrally within Squamish territory, the Squamish Nation had solid legal jurisdiction in exerting their Indigenous Rights and Title as recognized and affirmed by the Canadian Constitution. Moreover, Woodfibre LNG Limited was particularly receptive to participating in and funding the Indigenous-led process, and the

relationship was further strengthened by the legal agreement establishing the Squamish process (G. Gibson et al., 2018). Finally, British Columbia was investing heavily in the LNG industry at the time, having released the *British Columbia Natural Gas Strategy: Building B.C.'s Economy for the Next Decade and Beyond* the year prior (British Columbia Ministry of Energy and Mines, 2012). The provincial government therefore had considerable stake in ensuring that the project was approved with few delays, and strongly urged the proponent to collaborate with the Squamish Nation directly (G. Gibson et al., 2018).

3.2 Summary

This chapter has discussed three overarching categories of Indigenous roles in IA. Each role presents distinct strengths and limitations for Indigenous participants, as well as different levels of independence from non-Indigenous authorities. **Table 2** provides an overview of the strengths and limitations of each of the categories of Indigenous roles in IA.

Table 2: Summary of the Strengths and Limitations of Indigenous Roles in Collaborative IA.

Categories of Indigenous Roles in IA	**Strengths**	**Limitations**
Indigenous-led Studies	• Affected communities retain control over the collection and interpretation of their knowledge. • IK is less likely to be misrepresented or underrepresented, which would risk the integrity of the IA.	• Indigenous groups have little control over how the information presented in the studies is utilized for decision-making by proponents or the Crown. • Some types of Indigenous-led studies are not a legal requirement in many IA laws in Canada, and access to funding varies by jurisdiction. • Non-Indigenous authorities may prefer to use proxy studies of publicly accessible IK rather than fund new studies.
Collaborative Partnerships	**Co-managed IAs with a Crown authority** • A number of opportunities are provided for power-sharing in IA outcomes and project decision-making. • Process elements can be negotiated to reflect the objectives of the affected Indigenous group (e.g., incorporation of IK and	**Co-managed IAs with a Crown authority** • Unless a legal agreement for joint decision-making is in place, final decision-making powers will remain with the Crown (and the assessment outcomes may not reflect the objectives of the Indigenous participants).

	providing lasting benefits to the community). • The broad spectrum of available arrangements can be tailored to an Indigenous group's interest in the project and capacity limitations.	
	Co-developed IAs with a project proponent • Proponent obtains a "social licence" from the affected community (lowers risk of legal risks and/or Indigenous-led procedural intervention). • Value is added to the project and business by building relationships with Indigenous talent and expertise. • Alternative pathways for influence on an undertaking are provided where there is no legal recognition of Indigenous authority. • Explicit and tangible influence on a project can be exercised early in the planning process and before the start of a formal IA.	**Co-developed IAs with a project proponent** • Types of arrangements will vary by proponent, and therefore the level of influence the partnership provides will vary. • Indigenous and proponent partnerships in IA (e.g., IBAs) are largely unregulated, and maintain imbalanced power dynamics in Crown-led IA.
Indigenous-led IA	• Indigenous self-determination is a fundamental element of the IA. • The process is centred within the context and control of the affected Indigenous community.	• Significant existing institutional and financial capacity is required. • Success of the regime is dependent on whether the Indigenous government leading the assessment is recognized by an ultimate decision-making authority.

The following chapter discusses the selection of case studies for the purpose of testing the tentative key principles for Indigenous and non-Indigenous collaborative IA that were synthesized in Chapter 2.

4 Testing the Tentative Key Principles for Indigenous and non-Indigenous Collaborative IA through Case Studies

In **Chapter 2**, five tentative key principles of Indigenous and non-Indigenous collaborative IA were synthesized from an integrative review of literature pertaining to collaborative action in environmental management. In **Chapter 3**, various Indigenous roles in IA were introduced to cover the distinct legal, political, and institutional contexts of Indigenous communities across Canada. In light of the findings of **Chapters 2** and **3**, two case studies were selected in order to test the validity and utility of the tentative key principles for establishing an effective means of empowering Indigenous roles in IA.

The process for selecting two case studies began with identification of five candidate cases, all of which featured Indigenous and non-Indigenous collaboration in IA: the Lower Churchill Hydroelectric Generation Project; the Voisey's Bay Mine and Mill Project; the NICO Cobalt-Gold-Bismuth-Copper Project; the Raglan Mine Sivumut Project; and the Woodfibre Liquified Natural Gas (LNG) Project.

The following criteria were used to select the two detailed case studies for the purpose of illustrating and testing application of the five tentative key principles:

- Most likely to have lessons relevant in many assessments involving Indigenous interests, including the ability to test to validity and utility of the tentative key principles of collaborative IA;
- Most likely to reveal means to enhance the influence of Indigenous knowledge, understandings, and authorities in the assessment findings and associated decision-making, including post-approval implementation to end-of-life;
- Involving an IA that has been completed (or advanced enough in the process to establish an experiential record and reveal implications for implementation) and is well documented;
- Involving an IA that is recent enough to reflect the current Canadian law and recognized obligations and possibilities in future IA; and
- Exemplifies a number of options for Indigenous roles in collaborative IA.

The two cases selected are the **Voisey's Bay Mine and Mill Project** and the **NICO Cobalt-Gold-Bismuth-Copper Project**. These cases were chosen to demonstrate distinct contexts and

experiences from different regions and regulatory processes in Canada as well as to exemplify a number of Indigenous roles in collaborative IA. They both represent IAs that have been completed in the last 20-30 years, which ensures that they will have relevant lessons for future IAs. However, the longer record Voisey's Bay case permits examination of the results in practice and the more recent NICO case reflects the changes in context since the Voisey's Bay experience. Both cases also demonstrate elements of each of the categories for Indigenous roles in IA.

For each case, an extensive overview of the case's historical context is provided to situate the existing relationship between the Indigenous and non-Indigenous authorities prior to the initiation of the IA. Then, an in-depth review of IA documents, public comments, and academic literature is provided to create a detailed overview of the assessment process in each case. The cases are then deconstructed and evaluated based on each of the five tentative key principles in order to establish how each principle is demonstrated in both cases.

5 Voisey's Bay Case Study

This chapter provides an in-depth overview of the Voisey's Bay case study, as synthesized from academic literature, IA documents, and public comments (as described in **section 1.2**). The discussion of the Voisey's Bay case will follow the following structure:

- a brief introduction to the case and associated IA, including the current status of the project;
- a detailed description of the historical relationship between the Indigenous and non-Indigenous authorities involved in the case;
- a detailed description of the Voisey's Bay assessment process, from initiation to post-IA monitoring and follow-up; and
- a discussion of the case in which it is deconstructed and evaluated for the presence and (if present) the utility of each tentative key principle.

5.1 Overview of the Voisey's Bay Case

The Voisey's Bay Mine and Mill undertaking is a fly-in, fly-out nickel and copper mine on the northern coast of Labrador, approximately 35 kilometres southeast of Nain, the northernmost permanent Inuit settlement (see **Figure 3**). Since beginning operations in 2005, the mine has produced at least 6,000 tonnes of nickel-cobalt-copper concentrate per day. The copper concentrate produced by the mine is processed and distributed through a facility in Long Harbour, Newfoundland. The mine currently employs approximately 500 individuals, over half of whom are Indigenous people, with an additional 400 jobs to be established once underground operations begin (Vale, 2017). The project was initially owned by Diamond Fields Resources (DFR), which created the Voisey's Bay Nickel Company (VBNC) to oversee the development of the Voisey's Bay orebody. Inco Limited, formerly one of the largest nickel producers in the world, acquired DFR prior to referring the project to an IA. In 2006, Inco Limited was purchased by Vale Limited, a Brazil-based multinational mining company.

Figure 3: Map of the Regional Area of the Voisey's Bay Project.

The Voisey's Bay project site is within the overlapping territories of the Inuit of Labrador and the Innu Nation, who are the primary Indigenous collaborators in the IA. The Labrador Inuit are descendants of the Thule People and were represented by the Labrador Inuit Association (LIA). At the time of the Voisey's Bay IA, the LIA had a mixed membership of roughly 5,200 Inuit and Kablunangajuit (descendants of European settlers) residing primarily in seven communities: Nain (the largest community with a population at 1,200 in the late 1990s), Postville, Hopedale, Makkovik, Rigolet, Upper Lake Melville, and North West River (Griffiths et al., 1999). The LIA was replaced by the Government of Nunatsiavut in 2005, which now represents over seven thousand individuals (Nunatsiavut Government, 2020).

The Innu Nation (originally the Naskapi Montagnais Innu Association) is the governing body that represents the distinct Sheshatshiu Innu and Mushuau Innu peoples. At the time of the IA, the Innu Nation had a membership of roughly 1500, who lived primarily in the communities of Sheshatshiu and Utshimassits (then also known as Davis Inlet) on the eastern coast of Labrador (Nunatsiavut Government, 2020). In 2002, the Mushuau Innu relocated from Utshimassits

(meaning “the place of the boss”) to Natuashish, a forty-four square kilometre area of inland Labrador more suited to the Innu’s traditional practices (R. B. Gibson, 2006). As of 2019, the Innu Nation represents approximately 3200 people, the majority of whom reside in Natuashish and Sheshatshiu.

5.2 Historical Context

Both the Inuit of Labrador and the Innu Nation have a long history with European settlers spanning hundreds of years. Nevertheless, until the mid-1900s neither Indigenous group had much direct contact with Canada, largely due to their relative remoteness. Prior to the Voisey’s Bay IA, neither the Inuit of Labrador nor the Innu Nation had ever ceded their territory or entered into treaties with Canada (R. B. Gibson, 2006).

The Labrador Inuit traditionally lived nomadically and travelled along the northern and eastern coasts of Labrador as seasonal marine and land resources became available (Brice-Bennett et al., 1977). Though the Inuit had had sporadic interactions with Europeans for centuries, Europeans did not settle north of Groswater Bay until the arrival of Moravian missionaries in the 1760s. Nain was the first community established by the Moravians in 1771 (Brice-Bennett et al., 1977). The Moravians and other European traders brought previously unknown diseases that contributed to a significant decline in Inuit populations (Brice-Bennett et al., 1977).

The arrival of the Moravians also introduced the fur trade to Labrador, and over time the Inuit became largely dependent on the developing trade economy (Borlase, 1993). The Labrador Inuit maintained regular trade with Moravians until the Hudson’s Bay Company took over their operations in the 1920s. In the 1940s, the fur trade economy collapsed, and the Hudson’s Bay Company completely ceased operations in Northern Labrador. As a result, many Inuit were abruptly relocated throughout the Nunatsiavut region by the provincial government, causing significant social and economic traumas that are felt by Inuit communities to this day (Nunatsiavut Government, 2020).

The Sheshatshiu and Mushuau Innu were nomadic communities prior to and following first contact with European settlers (Byrne & Fouillard, 2000). Prior to the mid-twentieth century, the Innu Nation primarily interacted periodically with traders and Roman Catholic missionaries. In 1935, the Newfoundland Ranger Force was established to enforce laws and provide welfare payments to isolated areas throughout Labrador, thereby becoming the primary link between Innu communities and the Newfoundland government (Higgins, 2008).

When Newfoundland was brought into Confederation in 1949, its government had no existing systems or policies in place to manage Indigenous affairs. Under the pretense of wishing to avoid disenfranchising Newfoundland's Indigenous population, both the provincial and federal governments elected to not extend the *Indian Act* into the province (Higgins, 2008). Instead, Canada agreed to provide funding to the Newfoundland government for the delivery of public services to Indigenous communities.

In the late 1960s, Newfoundland utilized this funding to build permanent settlements and schools in Sheshatshiu, which had previously been used as a seasonal trading post, and Utshimassits (Byrne & Fouillard, 2000). Innu children were required to attend Eurocentric schools, otherwise families were barred from welfare and allowance payments, thereby forcing the Innu to remain stationary for most of the year (Byrne & Fouillard, 2000). As their traditional way of life was migratory and their hunting grounds were in the inland of Labrador, the social and cultural impacts of static life within coastal communities were largely devastating (Byrne & Fouillard, 2000).

Following Confederation, industrial development boomed sporadically in Newfoundland, with mining, forestry, and energy projects occurring frequently on Indigenous lands without their permission. The Upper Churchill Hydroelectric Project was especially devastating to the Innu Nation; it flooded thousands of kilometres of invaluable caribou hunting grounds and Innu burial sites (P. Armitage, 2007).

In the 1970s, in order to protect their lands and traditional livelihoods from inappropriate development, and in part bolstered by media coverage of the controversial 1969 White Paper that argued for repealing the *Indian Act* in the rest of Canada, the Innu and Inuit of Labrador organized into political groups with the mission to promote the voices and cultural traditions of the communities they represented. In 1973, the newly-established the Labrador Inuit Association filed a land claim with Canada for lands and seas spanning across approximately 116,000 square kilometres of northern Labrador and northeastern Quebec. Three years later, the Innu formed the Naskapi Montagnais Innu Association (NMIA) and filed a land claim with Canada for approximately 200,000 square kilometres of land in central Labrador. The NMIA was renamed the Innu Nation in 1990.

Land claims negotiations faced considerable delays into the 1990s, largely due to the province's unwillingness to participate and the federal government's refusal to move forward without the province's participation (Archibald & Crnkovich, 1999). Extractive development was allowed to continue on Innu and Inuit lands throughout negotiations and this led to considerable conflict

between Indigenous communities and the government and development interests (Archibald & Crnkovich, 1999; Cleghorn, 1999). In particular, the NMIA became involved in major conflicts with the Canadian government over low-level military flight training out of the Goose Bay airbase, activities that have severely disrupted their hunting and other traditional practices (Pushchak, 2002).

5.3 The Voisey's Bay Impact Assessment

The Voisey's Bay IA was completed in 1999 with decisions issued by the federal and provincial governments. Surface mining operations began at Voisey's Bay in 2005, and in 2016, the proponent began construction of the mine's underground expansion. **Table 3** provides an overview timeline of the IA's significant events.

Table 3: A Timeline of Significant Events in the Voisey's Bay IA.

1993	Nickel deposit discovered at Voisey's Bay by Diamond Fields Resources.
1996	Diamond Fields Resources and its subsidiary, the Voisey's Bay Nickel Company (VBNC), is acquired by Inco Limited for 4.3 billion CAD. The Inco-owned VBNC registers the Voisey's Bay Mine and Mill undertaking for an impact assessment.
January 1997	Canada, the Government of Newfoundland and Labrador, the LIA, and the Innu Nation sign a Memorandum of Understanding (MOU) and a five-person Joint Review Panel is appointed to conduct the IA.
March 1997	Review Panel issues its draft Environmental Impact Statement (EIS) guidelines.
April-May 1997	Review Panel oversees scoping sessions in Labrador communities.
June 1997	Review Panel releases final version of the EIS guidelines.
September 1997	The Innu Nation and LIA halt the early construction of a temporary airstrip and road on appeal in court.
December 1997	VBNC submits the EIS for public comment and information requests.
July 1998	Review Panel decides that the EIS has adequate information to support discussion at public hearings.
September-November 1998	Review Panel holds public hearings in Newfoundland and Labrador communities.
March 1999	Review Panel issues its final report.
August 1999	Canada and Newfoundland and Labrador governments accept most recommendations from the Review Panel's report. Despite the overall acceptance of the Project, negotiations between the proponent and the provincial government over whether the ore concentrate will be smelted within the province come to an impasse, and further discussions are halted.

June-July 2002	Negotiations between VBNC and the provincial government resume and the Project is approved with the provision that ore concentrate will be smelted in Newfoundland. IBAs with the Innu Nation and the LIA are also ratified, and include provisions for revenue sharing, employment and training, and an environmental co-management body to oversee post-IA monitoring.

In 1993, one of the world's richest nickel deposits was discovered off the eastern coast of Labrador at Voisey's Bay by Diamond Fields Resources (DFR). Following its discovery, land claims negotiations between the federal government and the Innu and Inuit of Labrador were abruptly expedited to secure Canada's stake in the Voisey's Bay orebody. The discovery also initiated an "exploration boom" throughout Innu and Inuit territory, with over 250,000 additional mineral claims bought throughout half of Labrador in 1995 alone (Cleghorn, 1999).

In an effort to assert their land rights, the Innu Nation delivered an eviction order to DFR in 1995 for failure to seek their consent to conduct mineral explorations within Innu territory (Innu Nation, 1994). The Inuit of Labrador similarly contacted DFR, stating that Voisey's Bay was within Indigenous territories and any further operations would require permission from both the Innu and Labrador Inuit (Innu Nation, 1994). DFR agreed to meet with Innu and Inuit representatives in December 1995. Following an impasse in negotiations with DFR, a group of Innu from Utshimassits took up occupation of the project site, initiating a two-week standoff with RCMP officers (R. B. Gibson, 2006).

In 1996, DFR was purchased by the Toronto-based company Inco Limited for 4.3 billion CAD, rendering the VBNC a wholly-owned subsidiary. Following its acquisition, the VBNC submitted the Voisey's Bay Mine and Mill undertaking for an impact assessment, which the provincial and federal governments agreed to conduct jointly. In order to establish a harmonized provincial-federal IA process and recognize the vested interests of the Inuit of Labrador and Innu Nation, government officials initiated negotiations for a Memorandum of Understanding (MOU) agreement.

The MOU, signed by the LIA, Innu Nation, Newfoundland and Labrador government, and Canada on January 31, 1997, outlines the entirety of the Voisey's Bay impact assessment process, including:

- the IA's Terms of Reference (TOR);
- the appointment of the independent Review Panel and the selection of its members;
- the IA's scope and anticipated timeline; and

- the environmental, social, and economic factors to be considered throughout the IA (Government of Canada et al., 1997).

The Review Panel, comprised of four members and one Chairperson, was appointed from a list of nominees selected by the MOU signatories immediately following the release of the MOU. In March 1997, the Review Panel released its draft Environmental Impact Statement (EIS) guidelines, which delineated the factors on which the VBNC would report in its EIS (Griffiths et al., 1999). In April and May 1997, number of scoping sessions were held in the Inuit communities of Nain, Postville, Hopedale, Makkovik, and Rigolet, as well as the Innu communities of Sheshatshiu and Utshimassits with the purpose of providing community members the opportunity to inform the Review Panel on issues that ought to be considered in the EIS (Griffiths et al., 1999).

The final EIS guidelines were issued in June 1997, and the proponent delivered its EIS six months later. Following another seven months of written public submissions and information requests to the proponent, the Review Panel declared the EIS sufficient to move forward with public hearings (Griffiths et al., 1999). From September to November 1998, the review panel held twenty-eight public hearing sessions in eleven communities across Labrador, including four sessions in Nain, three in Utshimassits, and thirteen in the Happy Valley-Goose Bay area. The hearings covered a broad range of technical and community issues, such as women's rights, impact and benefit agreements (IBAs), and effects on marine environments, wildlife, local and regional economies, and traditional livelihoods (Griffiths et al., 1999).

The Review Panel issued its report in March 1999, detailing 107 recommendations for conditions to accompany the project's approval (Griffiths et al., 1999). Importantly, the panel recommended that the project's lifespan be sufficient to minimize the mine's boom-bust effect on local economies, that land claims and IBA negotiations be finalized prior to project approval and that the proponent initiate a co-managed monitoring program with the Innu Nation and Inuit of Labrador (R. B. Gibson, 2006). Following five months of deliberations, the federal and provincial government agreed to most of the panel's report but rejected the recommendations to conclude the land claims and IBA negotiations before the construction of the mine (R. B. Gibson, 2006). The Innu Nation and LIA responded to this decision with legal action and asserted that the federal government had not met its fiduciary duty when it approved the project prior to the conclusion of the land claims and IBA negotiations (Hipwell et al., 2002).

Another recommendation issued by the review panel involved the negotiation of an environmental co-management agreement, through which the project could be monitored and

potential future resource development in northern Labrador could be reviewed by all four Indigenous and non-Indigenous parties (Government of Newfoundland and Labrador, 2002). While the Crown agreed to the negotiation of a project-specific agreement, it rejected the recommendation for a regional environmental co-management regime.

The Voisey's Bay project stalled from 1999 to 2001 as the provincial government and the VBNC reached an impasse over the feasibility of smelting the mine's products within the province (R. B. Gibson, 2006). This impasse also halted the negotiations involving the affected Indigenous communities, which further strained the relationship between the Indigenous and non-Indigenous parties (Kenny, 2015). Negotiations began again in earnest in 2002, including IBA and environmental co-management agreement negotiations with the LIA and Innu Nation, and the principal project agreements were signed in June of that year (R. B. Gibson, 2006).

The environmental co-management agreement, titled the *Voisey's Bay Environmental Management Agreement* (EMA) was signed in 2002 by the federal and provincial governments, the Innu Nation, and the LIA. The EMA established an Environmental Management Board, which consisted of two representative members from each party and one chair (Government of Newfoundland and Labrador, 2002).

Land claims negotiations continued throughout the entirety of the Voisey's Bay IA. In 2005, the LIA and the federal and provincial governments signed the Labrador Inuit Land Claims Agreement (LILCA). The LILCA settlement area covers 72,520 square kilometres of land and nearly fifty thousand square kilometres of sea. The northernmost ten thousand square kilometres of settlement area were reserved for the Torngat Mountains National Park Reserve, in which the Inuit have retained special rights (see **Figure 4**, Torngat Mountains National Park Reserve is indicated in green).

Under the agreement, 15,800 square kilometres of land, including the communities of Nain, Postville, Hopedale, Makkovik, and Rigolet are wholly owned by the Labrador Inuit and are governed by the Nunatsiavut Government. The Voisey's Bay area is excluded from Inuit Settlement lands, though a number of provisions within the LILCA apply to it. The Nunatsiavut Government is allotted five percent of Newfoundland and Labrador's revenue from the Voisey's Bay area, and the lands may be incorporated into the Settlement Area after the project is closed.

The LILCA also establishes the Inuit of Labrador's right to "make laws in relation to the assessment of the Environmental Effects of proposed undertakings, projects, works or activities in Labrador Inuit Lands" (ss. 11.3.3). Furthermore, the agreement establishes the Inuit

Environmental Assessment Process (Part 11.4), which ensures that the Inuit of Labrador would have decision-making authority, alongside the Crown, on projects within Inuit settlement lands (ss. 11.2.1).

Land claim negotiations with the Innu Nation remain in progress, though an Agreement-in-Principle (AIP) was signed in 2011. The AIP recognizes Innu hunting, trapping, and fishing rights in approximately seventy thousand square kilometres in inland Labrador, 13,000 square kilometres of which the Innu will have recognized ownership (see **Figure 4**).

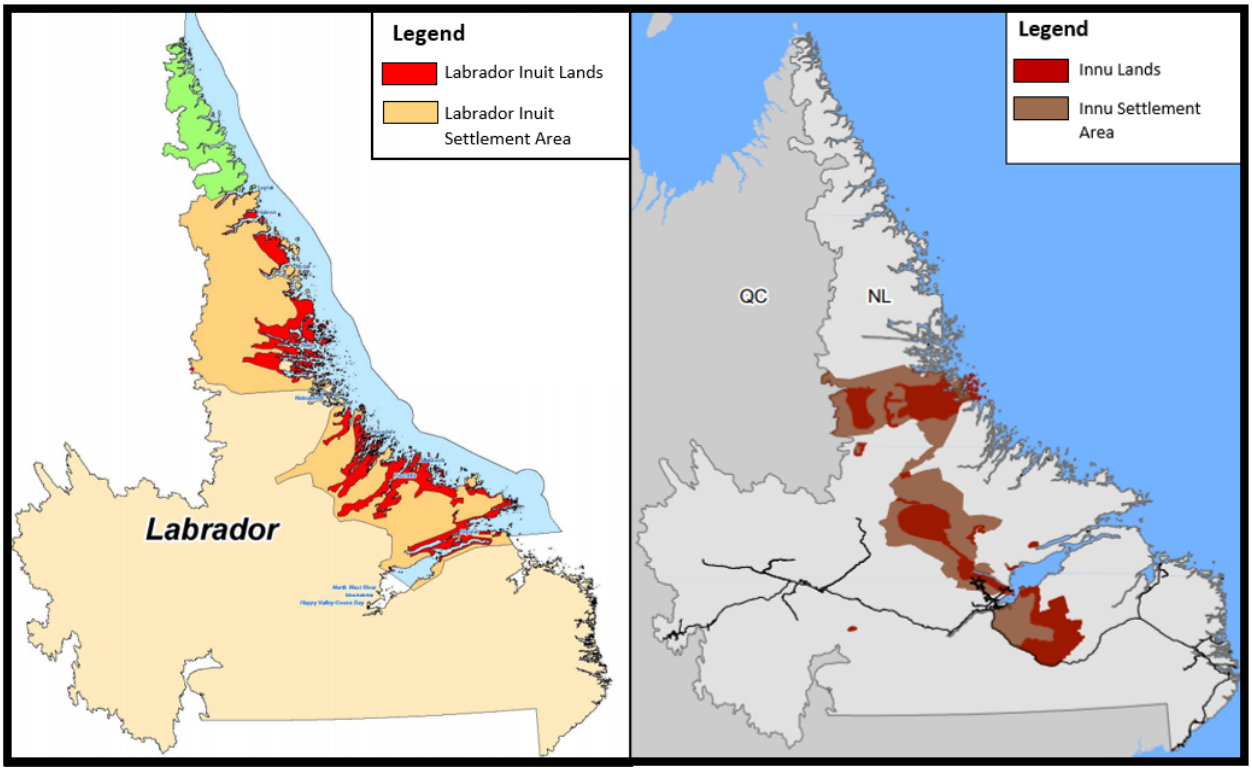

Figure 4: Maps of the Labrador Inuit Land Claims Agreement Settlement Area (left) and the Innu Nation Agreement-in-Principle Settlement Area (right). Maps are Derived from their Respective Land Claim Agreement Documents.

5.4 Application of the Tentative Key Principles to the Voisey's Bay Case

5.4.1 Redistributed Decision-Making Power

Power sharing efforts in the Voisey's Bay impact assessment process were progressive for the time. The a joint assessment was carried out under both the provincial and federal IA laws under an agreement among four actors with significantly different and conflicting goals for the project (R. B. Gibson, 2002). The IA was subject to a Memorandum of Understanding with the Innu Nation and the Inuit of Labrador, which ensured that many of the Indigenous groups' concerns were considered throughout the assessment. The MOU also ensured that the review panel would report

its findings to the presidents of the Innu Nation and the LIA as well as the Canadian responsible Minister (Cleghorn, 1999).

While the MOU and consistent participation in public hearings ensured that the Indigenous groups in the Voisey's Bay IA had a demonstrable effect on project decisions, their right to consent on the construction of the project was not recognized in law. In practice, their influence was significantly assisted by the province having parallel goals for long-term provincial benefits. However, the project decisions remained within the hands of the federal and provincial governments (R. B. Gibson, 2002, 2006).

The IA review panel, nevertheless, clearly acknowledged the importance of the Indigenous groups' approval of the project. The panel focused in particular on the 1997 *Delgamuukw v. British Columbia* ruling, stating that the decisions of the case implied that "consultation and, in some cases, full Aboriginal consent" ought to be a requirement for the Voisey's Bay project (Griffiths et al., 1999). Furthermore, the review panel emphasized the involvement of the Indigenous communities in project follow-up and monitoring programs, recommending that "parties negotiate an environmental co-management mechanism" for permitting and monitoring requirements following the IA's completion (Griffiths et al., 1999).

The EMA and resulting Environmental Management Board provided equal representation among all four parties. However, the Board had no decision-making authority; rather, it served as an advisory committee to the responsible federal and provincial ministers (Government of Newfoundland and Labrador, 2002). Additionally, the Board focused heavily on permitting requirements during project construction, and ceased activities once the project began operations (Kenny, 2015).

Land claims negotiations ran concurrently with the Voisey's Bay IA. The Innu Nation and Inuit of Labrador had submitted land claims in the 1970s, and negotiations had stalled until 1994, when they were expedited alongside the Voisey's Bay IA. Thus, it seems likely that one of the Crown's key goals in the negotiations was to secure its stake in the economically attractive mineral deposits at Voisey's Bay. While the Innu Nation and Inuit of Labrador were able to secure some benefits by utilizing one process as a lever for better practice in the other process and vice versa, the federal and provincial governments rejected the Indigenous groups' requests not to conduct the IA until after the land claims negotiations were finalized.

It is clear from this case that the desirability of good faith negotiations is beyond doubt. However, the reality in most cases like Voisey's Bay is that priorities will differ, and the distribution of power

in the current institutionalized IA frameworks that govern that majority of Canadian development projects is uneven (Hunsberger et al., 2020; Udofia et al., 2017). While the federal and provincial governments wanted to promote the mine as economic development, the Innu Nation and Inuit of Labrador were able to use that government priority successfully as a lever to drive serious land claims negotiations. Thus, this case demonstrates a strong link between land claims (and associated agreements on the redistribution of decision-making authority) and the prospects for credible and mutually beneficial economic development decision-making.

5.4.2 Governance and Participative Capacity

Throughout the Voisey's Bay IA, the Canadian Environmental Assessment Agency (now the Impact Assessment Agency of Canada) provided $150,000 in funding for community groups to participate in the assessment process, including those specifically representing the voices of Innu and Inuit women (Cox, 2013). With funding from the project proponent, the Innu Nation formed a task force that held a number of community meetings from which they collected the concerns and opinions of the Innu people (Hipwell et al., 2002). The resulting report, *Between a Rock and a Hard Place*, detailed the mandate of the Innu people with regards to the undertaking, of which the most pressing issues included the need to complete land claims negotiations before construction began and to emphasize that consent would not be given unless they completed an IBA with the proponent (Cleghorn, 1999; Hipwell et al., 2002). VBNC also provided funding so that the Innu Nation could conduct socio-economic baseline studies, from which the video documentary titled *Ntapueu* ("I Speak the Truth" in English) was created, detailing the impacts of development on their communities (Cleghorn, 1999).

Despite the apparent disadvantages of the land claims and IBA negotiations running concurrently with the IA, the LIA and the Innu Nation were able to use the different processes strategically to influence the others. Both groups used the IA public hearings to express outstanding concerns in the IBA negotiations with the proponent (McCreary et al., 2016). Women's groups in particular used the concurrent processes to their advantage by drawing public attention to the need for equal benefits for women from the IBAs, which culminated in the creation of the VBNC's 'Draft Women's Employment Plan'. Though the plan imposed only limited responsibilities on VBNC, its development is an indication that Indigenous concerns were being heard and answered (McCreary et al., 2016).

5.4.3 Sustainability Focus

The Voisey's Bay review panel set and an unprecedented high standard for the time with regard to ecological and social sustainability (R. B. Gibson, 2002). The MOU and the review panel's Terms of Reference (TOR) expanded the assessment's scope beyond the federal law's definition of 'environment' to include "social, economic, recreational, cultural, spiritual and aesthetic" factors (Hipwell et al., 2002). The founding documents also provided for the consideration of Indigenous knowledge and cumulative effects, which, while progressive, had not been unheard of in Canadian IA (R. B. Gibson, 2006).

Unlike most processes at the time that focused primarily on the identification and mitigation of an undertaking's potential negative effects, the Voisey's Bay review panel established the need to demonstrate "the extent to which the Undertaking may make a positive overall contribution towards the attainment of ecological and community sustainability, both at the local and regional levels" (Griffiths et al., 1997). The test applied to the proposed project was therefore much more demanding than was typical for IAs of the time by requiring the proponent to provide demonstrable lasting benefits on top of reducing potential negative impacts (R. B. Gibson, 2006). This focus on sustainability was apparent in the panel's recommendations, which stressed the importance of the project's lasting benefits to the affected communities and the completion of the land claims and IBA negotiations before beginning construction (R. B. Gibson, 2006).

In the eventual negotiated approval of the proposed Voisey's Bay mine, one of the more significant changes to the initial proposal was reducing the daily concentrator production rate from 20,000 tonnes-per-day (t/d) to 6,000 t/d, ensuring that the mine would have a substantially longer lifespan (R. B. Gibson, 2006). The prolonged lifespan of the mine, according to the review panel, would delay the negative boom-bust effect of the mine's eventual closure and would "enable workers to earn pensions and accumulate savings beyond one generation, and to develop industrial and business skills that could support new economic activities" (Griffiths et al., 1999).

However, the mine's longer lifespan is not sufficient for ensuring long-lasting contributions to sustainability. A mine is still a temporary economic venture with time-limited opportunities for the affected communities (R. B. Gibson, 2006). Though the mine did provide opportunities for building capacities of various kinds that would serve beyond the life of the mine, long-lasting benefits for the local communities, including the capacity to pursue more diversified economic opportunities as well as the recognition of decision-making authority for future development, were largely established in land claims negotiations and were treated as beyond the scope of the IA (R. B. Gibson, 2006).

5.4.4 Common Goals and Vision

The Voisey's Bay IA demonstrated a number of innovative strategies for conflict resolution and consensus between the Indigenous and non-Indigenous actors (R. B. Gibson, 2006). The Memorandum of Understanding, signed in 1997 by the federal and provincial governments, the Innu Nation, and Inuit of Labrador, set the terms for a single, harmonized IA conducted by an independent review panel (R. B. Gibson, 2006). Moreover, the MOU ensured that all four signatories would recommend the appointees for the assessment panel (Government of Canada et al., 1997). This was of particular importance to the Innu Nation, who had had poor experiences with "weak" review panels in the past, chiefly the review panel for the IA of low-level military flight training at the Goose Bay airbase (Cleghorn, 1999; Pushchak, 2002).

The review panel also allotted significant attention toward facilitating exhaustive discussions of contentious matters in order to establish common ground and create solutions, such as the discussions surrounding winter shipping (R. B. Gibson, 2006). The Innu Nation and particularly the Inuit of Labrador were concerned about the effects of creating shipping routes through landfast ice, including: the disruption of traditional practices and travel routes; increased safety risks for ice users; disturbances to marine animals and birds during critical breeding times; impacts resulting from oil and concentrate spills; and disruptions to offshore fisheries (Griffiths et al., 1999). While the discussions did not result in consensus, the VBNC adopted an "extended shipping season" in which shipping activities would halt "from the time the winter freeze-up begins until the ice reaches a thickness of 20 cm, allowing the landfast ice to stabilize before icebreaking begins" as well as during April and May, a critical time for breeding marine animals (Griffiths et al., 1999). Furthermore, the ice-breaking vessel would form bridges of ice from backwash along the shipping corridor to facilitate crossing (Griffiths et al., 1999).

Impact and benefit agreements between the proponent and the Indigenous groups were also essential throughout the IA and to the review panel in particular. One of the panel's 107 recommendations for the approval of the project was the completion of IBA negotiations prior to the project's construction (Griffiths et al., 1999). The federal government's decision, however, ignored the panel's recommendation, and construction was approved before the IBA negotiations were concluded (Cleghorn, 1999).

Moreover, despite consistent participation throughout the process, the Inuit and Innu people were at times forced to resort to protest by way of occupation and legal action so that their rights would be respected and their voices would be heard (R. B. Gibson, 2006). The Indigenous groups were able to halt the construction of a temporary airstrip that would not have been subject to an

IA, and in 2000 filed legal action against the federal government, claiming that Canada had not met its fiduciary duty to the Innu Nation and the Inuit of Labrador when it approved the project prior to the conclusion of the land claims and IBA negotiations (Hipwell et al., 2002). This lawsuit was ultimately stalled when negotiations between the proponent and the province came to a stand-still regarding the feasibility of smelting the mine's concentrates locally (Hipwell et al., 2002).

5.4.5 Braided Collaboration

The legal and political context in which the Voisey's Bay impact assessment was conducted is of particular importance to the potential for applying the concept of braiding. The numerous agreements in this case—namely, the Memorandum of Understanding, the IBAs between the proponent and the two Indigenous groups, the EMA, and the land claims agreements—represent a complicated relationship between multiple parties with vastly differing histories, goals, and responsibilities. Whether these agreements represent a braided process (as described in **subsection 2.3.5**), however, is debatable. It is clear that the review panel was aware of the history of conflict and poor relations between the Indigenous communities and the provincial and federal governments and made considerable effort to restore some faith in the IA process (R. B. Gibson, 2006). The Memorandum of Understanding was largely unprecedented, with requirements established by both Indigenous parties as well as the federal and provincial governments that went beyond the foundational IA laws. For instance, a broader understanding of 'environment' as well as the consideration of the project's positive contributions to sustainability established a more comprehensive and farsighted assessment process (R. B. Gibson, 2006). Additionally, requiring that all parties of the MOU be involved in the appointment of members to the review panel helped to ensure both that the appointees would be credible in the eyes of all signatories, and that they would represent a multitude of perspectives and priorities (Cleghorn, 1999).

The panel's handling of IK was also commendable. The diverse forms of Indigenous knowledge (the LIA chose to bring panels of IK experts to present at technical hearings, whereas the Innu Nation favoured written baseline studies and the video documentary *Ntapueu*) were afforded equal degrees of legitimacy and respect as western science (Griffiths et al., 1999). Furthermore, in both the Innu Nation and the LIA's cases, the use of non-Indigenous intermediaries was largely limited to avoid the misrepresentation of community knowledge (Usher, 2000).

However, the process as a whole was materially western, with some Indigenous components and substantive concerns fitted throughout. The IA was wholly governed by the federal and provincial

assessment processes, and project decisions were made unilaterally by the Crown. While some elements of the IA that were directed by the review panel demonstrated a more generative relationship, in which authorities were able to engage with different forms of knowledge brought forth by the affected communities, the process largely favoured conforming Indigenous systems into the dominant, institutionalized one (i.e., in terms of the 'bricks and threads' metaphor detailed in **subsection 2.3.5**, lacing threads into an existing brick wall).

5.5 Summary

The Voisey's Bay Nickel Mine IA was an exemplary case of Indigenous and non-Indigenous collaborative action for its time. The review panel demonstrated a largely unprecedented recognition of Indigenous right to self-determination, as exemplified by the MOU, the panel's focus on the 1997 *Delgamuukw v. British Columbia* ruling, and their emphasis on Indigenous involvement in the project follow-up program and monitoring with the recommendation for an environmental co-management agreement. The involved Indigenous groups also leveraged the separate but concurrent IBA negotiations and IA process to drive serious land claims negotiations. However, the Indigenous groups did not have recognized decision-making authority throughout the IA process and beyond (for example, in the case of the EMA and resulting Environmental Management Board, which served only as an advisory board during project construction).

Funding from both the proponent and the Crown facilitated multiple Indigenous-led studies, namely, the report *Between a Rock and a Hard Place* and the video documentary *Ntapueu*. While these studies helped inform the IA of Indigenous-related concerns, including the need to complete IBA and land claims negotiations before construction began, they had little impact on the final project decisions.

The review panel further emphasized the importance of the consideration of the project's contributions to local sustainability, which led to the eventual decision to extend the lifespan of the mine. This, in turn, delayed the negative boom-bust effect of the project's eventual closure, and allowed communities to accumulate resources and skills beyond the mine's end of life.

The review panel's efforts toward conflict resolution and the development of common goals were also commendable. For example, while discussions regarding the effects of winter shipping did not reach a full consensus (as the VBNC preferred year-round shipping and the affected Indigenous communities preferred no winter shipping at all), extensive mitigation measures were put in place to reduce the adverse effects of breaking landfast ice. Despite these efforts, however,

the Innu Nation and the Inuit of Labrador resorted to protest and legal action on multiple occasions.

Finally, some elements of the IA demonstrated a more generative process, particularly those directed by the review panel (for example, the consideration of IK in which authorities were able to engage with different forms of knowledge brought forth by the affected communities). However, the process as a whole was materially western, and favoured conforming Indigenous systems into the institutionalized one.

While the Voisey's Bay case study demonstrates a progressive leap into collaborative action for the time, it also demonstrates a number of shortcomings that lessen the extent to which Indigenous concerns were addressed in the assessment, thereby creating barriers to effective Indigenous and non-Indigenous collaboration. The findings presented within this chapter will be discussed further and in more depth in Chapter 7, which evaluates both cases as they relate to each other and adjusts the five tentative key principles. The following chapter discusses the second case study to be evaluated in this research, the NICO Project Case Study.

6 The NICO Project Case Study

This chapter provides an in-depth overview of the NICO Project case study, as synthesized from academic literature, IA documents, and public comments (as described in **section 1.2**). The discussion of the NICO Project case will follow the following structure:

- a brief introduction to the case and associated IA, including the current status of the project;
- a detailed description of the historical relationship between the Indigenous and non-Indigenous authorities involved in the case;
- a detailed description of the NICO Project assessment process, from initiation to post-IA monitoring and follow-up; and
- a discussion of the case in which it is deconstructed and evaluated for the presence and (if present) the utility of each tentative key principle.

6.1 Overview of the NICO Project Case

The NICO Cobalt-Gold-Bismuth-Copper Project is a proposed open pit mine in the Northwest Territories, roughly 50 kilometres northwest of the Tłı̨chǫ community of Whatì. The mine's production rate will be approximately 4,650 tonnes of ore concentrate per day once in operation. The concentrate will be transferred to a Saskatchewan facility for processing and distribution. The project is wholly owned by Fortune Minerals Limited (henceforth referred to as Fortune Minerals), which purchased mineral claims for the project in the 1990s.

The project site is located within Wek'èezhìi, lands that are collaboratively managed by the Tłı̨chǫ Government and Canada, within a region known to the Tłı̨chǫ as *ası̨ı̨ ̀edets'eeda dı ̀ı ̀le*, meaning "the place we go where we can survive" in English. The Tłı̨chǫ were the sole Indigenous group involved in the NICO Project IA. They are a distinct group within the Dene Nation and primarily reside in four communities within Wek'èezhìi: Whatì, Behchokǫ̀, Gamètì, and Wekweètì (NWT Bureau of Statistics, 2019). As of 2019, there are nearly 3,000 Tłı̨chǫ people residing within Wek'èezhìi (NWT Bureau of Statistics, 2019).

Behchokǫ̀ is the largest and most southerly Tłı̨chǫ community, roughly 100 kilometres northwest of Yellowknife, and is the only community currently accessible by road year-round. Nearly 70% of the Tłı̨chǫ population resides in Behchokǫ̀ (NWT Bureau of Statistics, 2019). Whatì, Gamètì, and Wekweètì are currently only accessible via a network of winter roads for roughly three months of the year, as well as by air service year-round (Kuntz, 2012).

6.2 Historical Context

Tłı̨chǫ traditional lands, situated east of the Mackenzie River, comprise nearly 300,000 square kilometres between Great Slave Lake and Great Bear Lake. Prior to European contact, the Tłı̨chǫ lived nomadically, following an interconnected network of trails throughout their territory (Tłı̨chǫ Government, 2014). Life skills were taught through oral tradition and practical experience; the Tłı̨chǫ language is therefore inextricably connected to the land (Tłı̨chǫ Government, 2014).

The Tłı̨chǫ became involved in fur trade with white settlers at the beginning of the nineteenth century, particularly after Fort Rae, the first trading post within Tłı̨chǫ territory, was established. Over time, western influences shifted the Tłı̨chǫ way of life as communities became reliant on the trade economy and government funding (Tłı̨chǫ Government, 2014).

Following the country's confederation in 1867, federal officials were eager to secure the Crown's sovereignty over the resource-rich lands in the west for settlement and industrial development. As per the Royal Proclamation, this expansion required the legal cession of Indigenous territories. As a result, the Crown rapidly pursued treaties with numerous Indigenous groups, seeking legal dominion over large swathes of territory in exchange for reserve lands, unrestricted hunting and fishing rights, and monetary payments (Fumoleau, 2004). These treaties, known now as the Numbered Treaties, were finalized between 1871 and 1921 and cover much of the lands between Southern Ontario and British Columbia, as well as the Northwest Territories (see **Figure 5**).

Figure 5: Map of the Areas Covered by the Numbered Treaties, Expounded from Historic Treaties and Treaty First Nations in Canada Infographic (CIRNAC, 2013).

Prior to the 1920s, the lands north of Great Slave Lake were of little interest to the Crown, as they were seen as unsuited for development (Kuntz, 2012). Federal officials therefore refused any requests for treaty negotiations until the discovery of the oil deposits to the west of Great Bear Lake, which sparked the first negotiations for a treaty encompassing the Northwest Territories (Fumoleau, 2004).

Treaty 11, concluded in Fort Rae 1921, was the last and most far-reaching of the Numbered Treaties. Indigenous signatories were primarily Dene, among which were the Tłı̨chǫ, Gwich'in, and Sahtu. The Treaty sought the cession of territories spanning over 950,000 square kilometres to the north and west of Great Slave Lake.

The Tłı̨chǫ represented the largest collective of people in the Northwest Territories at roughly eight hundred individuals. They were represented by Chief Mǫhwhì at Fort Rae for Treaty negotiations. Mǫhwhì was known to show considerable knowledge of Tłı̨chǫ history, as well as strength and outspokenness, and was therefore given leadership of the Tłı̨chǫ (V. V. Gibson, 2008). Treaty 11 was understood as a peace treaty between the Tłı̨chǫ and the white settlers, who assured Mǫhwhì that his people's lives would not be affected (Kuntz, 2012). When signing, Mǫhwhì stated to the Fort Rae settlers that "as long as the sun rises, the river flows, and the land does not move, that we would not be restricted from our way of life into the future" (V. V. Gibson,

2008). The Tłı̨chǫ territory as defined by Treaty 11 was henceforth called *Mǫwhì Gogha Dè Nų̣tłèè* for Chief Mǫhwhì (Kuntz, 2012).

Resource exploration and extraction activities accelerated after the conclusion of Treaty 11, particularly after the discover of gold in Yellowknife in the 1930s (Fumoleau, 2004). The following gold rush sparked a surge in migration and industrial development in the territory, largely without the permissions of the Tłı̨chǫ and other Indigenous groups (Kuntz, 2012).

In August 2003, the Tłı̨chǫ, the federal government, and the Northwest Territories signed "the first combined land, resources and self-government agreement in the Northwest Territories" (GNWT EIA, 2020). The *Tłı̨chǫ Land Claims and Self-Government Agreement* (henceforth referred to as 'the Tłı̨chǫ Agreement') recognized the Tłı̨chǫ Government's ownership and management rights of 39,000 square kilometres within *Mǫwhì Gogha Dè Nų̣tłèè* (GNWT EIA, 2020; see **Figure 6**).

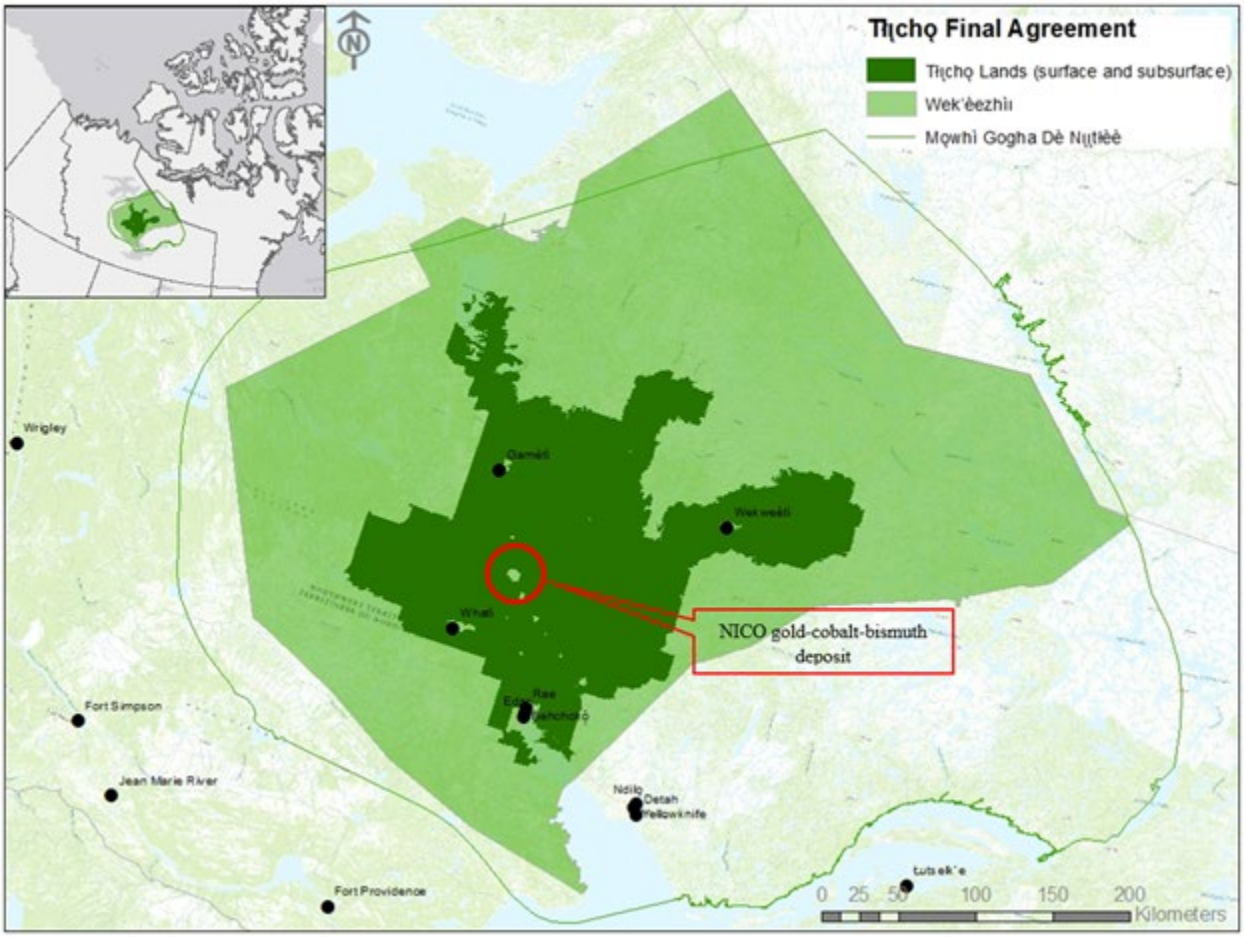

Figure 6: Map of areas covered by the Tłı̨chǫ Agreement. The NICO Project, indicated in red, is not situated on, but is wholly surrounded by, Tłı̨chǫ lands, as the proponent purchased mineral claims for the area in 1996, six years prior

to the conclusion of the Tłı̨chǫ Agreement. The Tłı̨chǫ therefore have no recognized ownership rights to the mineral deposits.

The Tłı̨chǫ Government was established following the conclusion of the Agreement as the law-making authority on Tłı̨chǫ-owned lands. Its powers include:

- the enactment and enforcement of laws within Tłı̨chǫ lands;
- the management, use, and protection of Tłı̨chǫ lands, including both surface and subsurface resources, fish, and wildlife;
- the creation and enforcement of land-use plans for Tłı̨chǫ lands;
- the establishment of government structures, agencies, or institutions; and
- the administration of the rights recognized by the Tłı̨chǫ Agreement (GNWT EIA, 2020).

6.3 The NICO Project Impact Assessment

The NICO Project IA was completed in 2013 under the *Mackenzie Valley Resource Management Act* (MVRMA) impact assessment process. As of 2022, the NICO project has completed the final stages of the permitting process and stands to begin construction once the proponent has secured adequate funding (Fortune Minerals Ltd., 2020). **Table 4** provides an overview of the IA's timeline of significant events so far.

Table 4: A Timeline of Significant Events in the NICO Project IA.

November 2007	Fortune Minerals submits first application to the Wek'èezhìi Land and Water Board. The Board rejects the application.
2008	Fortune Minerals submits second application to the Wek'èezhìi Land and Water Board, excluding the project components that are outside the mineral claim land. The Board accepts the application.
February 2009	The NICO Project is referred to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for an impact assessment. MVEIRB initiates scoping consultations.
November 2009	The MVEIRB issues the IA's Terms of Reference.
May 2010	The Tłı̨chǫ Government files a Request for Ruling on the appropriateness of the inclusion of the spur road and a potential all-season road in the Terms of Reference. The MVEIRB denies the Request for Ruling and allows the IA to proceed.

June 2011	Tłı̨chǫ Government initiates lawsuit against the MVEIRB, claiming that they acted beyond their jurisdiction by allowing the IA to proceed. The Supreme Court of the Northwest Territories upholds the MVEIRB's decision, and the Tłı̨chǫ Government files for appeal.
February 2012	The Tłı̨chǫ Government withdraws its appeal.
June-August 2012	The Tłı̨chǫ Government conducts a Traditional Use Study.
August 2012	The MVEIRB conducts public hearings in Tłı̨chǫ communities and in Yellowknife.
September 2012	The Tłı̨chǫ Government submits the Traditional Use Study to the MVEIRB.
October 2012	The MVEIRB conducts additional public hearings in Tłı̨chǫ communities with blocked times for Tłı̨chǫ women and youth.
January 2013	The MVEIRB issues its report.
July 2013	The Canadian and Tłı̨chǫ Governments approve the MVEIRB's report.

Fortune Minerals initially submitted a licensing and permitting application for the NICO Project to the Wek'èezhìi Land and Water Board in November 2007. This application included project components both within and outside the mineral claim land held by Fortune Minerals, most notably a fifty-kilometre spur road from the project site to the community of Whatì. Since the proponent had not demonstrated right of access to the Tłı̨chǫ lands surrounding the claim land, the Board did not accept the application. The following year, Fortune Minerals submitted an application that detailed only project elements that were within the claim block and stated that a future application would be submitted for the spur road once they had received the proper approvals. This application was accepted by the Board and deemed complete.

In February 2009, the NICO Project was referred to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) by Indian and Northern Affairs Canada (now Crown-Indigenous Relations and Northern Affairs Canada). The MVEIRB, established in 1998, is a co-managed, independent advisory authority whose primary responsibilities include conducting impact assessments in the Mackenzie Valley (Wang, 2020).

Following the NICO project's referral, the MVEIRB began its information-gathering phase, in which it conducted scoping sessions in Yellowknife, Whatì, Behchokǫ̀, and Gamètì, and received submissions from interested parties regarding what factors ought to be considered throughout the IA. Among these submissions were concerns from the Tłı̨chǫ Government regarding the inclusion of two potential access roads: the fifty-kilometre spur road from the project site to the community of Whatì, and a potential 97-kilometre all-season road connecting Whatì to the Yellowknife highway (see Figure 7). The Tłı̨chǫ Government stated that the roads, particularly the

all-season road, should not be included in the IA since the Government of the Northwest Territories had made no official plans for the construction of the road (Tłı̨chǫ Government, 2009). The viability of the NICO project, however, depended on the construction of the all-season road in order to transport materials to and from the site year-round (Kuntz, 2012).

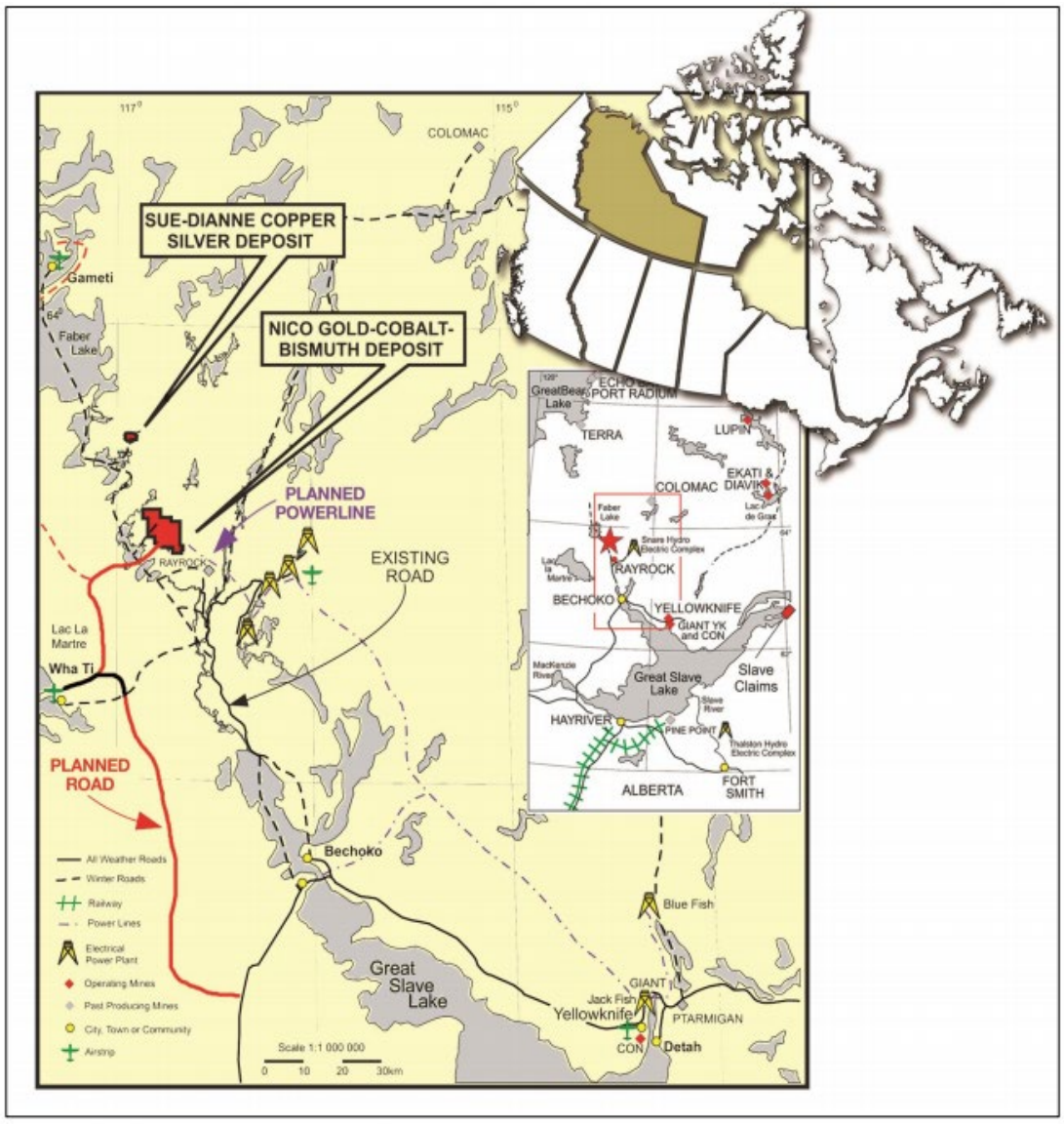

Figure 7: The Locations of the NICO Project, the Spur Road, the Existing Winter Road, and the Potential All-Season Road from Whatì to Highway 3. Retrieved from the Fortune Minerals Limited Feasibility Study (Burgess et al., 2014).

The MVEIRB issued the IA's Terms of Reference (TOR) nine months following the project's referral to an IA. Among other considerations, the TOR covered the potential effects of the construction and use of both potential access roads (MVEIRB, 2009). The following year, the Tłı̨chǫ Government filed a Request for Ruling with the MVEIRB for the exclusion of the potential all-season road from the TOR. It stated that, as the proponent had not yet secured the appropriate

approvals to cross Tłı̨chǫ lands and no formal plans had been made for its construction, its inclusion in the IA was premature (*Tłı̨chǫ Government v. MVEIRB*, 2011). The MVEIRB denied the Request for Ruling and allowed the IA to proceed.

In June 2011, the Tłı̨chǫ Government applied for judicial review of the MVEIRB's actions, stating that the Board had "exceeded its jurisdiction" by denying its Request for Ruling and allowing the IA to continue (*Tłı̨chǫ Government v. MVEIRB*, 2011). The Tłı̨chǫ Government claimed that both roads were "speculative" or "hypothetical" for two principal reasons: at the time, a moratorium on development within Tłı̨chǫ lands was in place, and no licensing or permitting applications had been submitted for the construction of either road (*Tłı̨chǫ Government v. MVEIRB*, 2011). The Supreme Court of the Northwest Territories ruled in favour of the MVEIRB, stating that the all-season and spur roads were not hypothetical *in the context of the NICO Project*, since they must be built for the project to be feasible, and therefore the Board was within its jurisdiction to allow the IA to proceed with the established TOR (*Tłı̨chǫ Government v. MVEIRB*, 2011). They further stated that the contextual interpretation of the MVRMA (from which the Review Board derives its powers) provides the Board with a relatively flexible scoping power that is not limited to "undertakings that have been the subject of applications for licenses and permits" (*Tłı̨chǫ Government v. MVEIRB*, 2011). While the Tłı̨chǫ Government filed for an appeal immediately following the NWT Supreme Court's decisions, it discontinued the appeal the following year (Kuntz, 2012).

The NICO project IA resumed pace in 2012. The Tłı̨chǫ government initiated a Traditional Use Study (TUS) in June of 2012 and conducted interviews with community members over three months (Kuntz, 2012). Two rounds of public hearings were held by the Review Board the same year, including four days in late August in Whatì, Behchokǫ̀, and Yellowknife, as well as two additional days in October in Behchokǫ̀ as per the request of the Tłı̨chǫ Government (Kuntz, 2012). These additional hearing dates provided the opportunity for the Tłı̨chǫ Government to present the findings of the TUS and for Tłı̨chǫ women and youth to provide oral statements (MVEIRB, 2012). The Review Board issued its report early 2013 (Kuntz, 2012). The project was subsequently approved the same year with decisions from the Tłı̨chǫ and Canadian governments (Erasmus & Tłı̨chǫ Government, 2013; MVEIRB, 2013).

Following the central project's IA, an assessment was conducted for the all-season road that would connect the Yellowknife highway and Whatì. The 97-kilometre gravel road was initially proposed jointly by the Tłı̨chǫ Government and the Government of the Northwest Territories to the MVEIRB in 2016 (Government of Northwest Territories, 2020).

In June 2014, the Government of the Northwest Territories issued water and land use licences to Fortune Minerals for proceeding with the NICO project. At the time, the company still needed to secure project financing and to make its initial payment for the required closure bond (Fortune Minerals Ltd., 2014). In its most recent report, Fortune Minerals states,

> The Company has also initiated Tlicho Participation Agreement negotiations and is advancing discussions with the Tlicho Government toward completing agreements on the NICO development.
>
> Fortune continues to pursue off-take agreements and financing solutions with the objective of commencing construction activities as soon as project financing is secured (Fortune Minerals Ltd., 2019).

6.4 Application of the Tentative Key Principles to the NICO Project Case

6.4.1 Redistributed Decision-Making Power

The NICO project impact assessment was conducted under the *Mackenzie Valley Resource Management Act* assessment process. The MVRMA was enacted in 1998 following the signing of the Gwich'in and Sahtu Dene Comprehensive Land Claim Agreements (1992 and 1993, respectively), and was subsequently amended when the Tłı̨chǫ Agreement was signed in 2003 (Wang, 2020). As a result of the self-government provisions within the Tłı̨chǫ Agreement, the Tłı̨chǫ government became a legislated decision-maker under the MVRMA assessment process (ss. 131.1).

The Tłı̨chǫ government is a special case in that it is a legally self-governing authority with the power to "pass and enforce laws, delegate its powers and authority, and establish its own governance structure and its internal management" (G. Gibson et al., 2016). The Tłı̨chǫ government was therefore centrally involved in project decisions throughout the entirety of the process, and consistently influenced key elements of the IA, such as the use of Indigenous knowledge, project scope, and Indigenous consultation (G. Gibson et al., 2016).

For instance, the Tłı̨chǫ government conducted a traditional use study (TUS) entitled *Asi Edee T'seda Dile: Tłı̨chǫ Nation Traditional Knowledge and Use Study*, which complied thirty-one interviews from community members. The TUS sought to document the past, present, and future uses of *ası̨ ı̨̀ edets'eeda dı̀ı̀le* and the surrounding lands, the lands already lost to previous development, and the likely impacts of the NICO project on the Tłı̨chǫ's traditions and use of the

area (Olson et al., 2012). The study was largely project-specific and focused on detailing the uses and activities of Tłı̨chǫ men and women close to and within the project boundaries (Kuntz, 2012).

The TUS was utilized by the Tłı̨chǫ government as a substantial leverage point throughout the IA. Effects on valued ecosystem components identified by the TUS interviewees, such as caribou, water, and traditional values, were instrumental considerations in the development of impact mitigation and follow-up programs (Kuntz, 2012). The TUS was also instrumental in early engagement with community members, as well as the addition of two more public hearing dates, with time explicitly reserved for Tłı̨chǫ women and youth (G. Gibson et al., 2018; Kuntz, 2012).

Ultimately, the Tłı̨chǫ government is required to decide the suitability of any undertakings that are on or affect Tłı̨chǫ lands (G. Gibson et al., 2018). In July 2013, the Tłı̨chǫ government accepted the Review Board's recommendations for the approval of the NICO project with only slight modifications to its final report (Erasmus & Tłı̨chǫ Government, 2013).

6.4.2 Governance and Participative Capacity

The Tłı̨chǫ government negotiated financial support from both the territorial government and the proponent to participate in the NICO project IA. While this was not enough to cover the full cost of participation, the Tłı̨chǫ government was also able to provide its own funding (G. Gibson et al., 2018). As settled land claimants, the Tłı̨chǫ government has had consistent and long-term access to political and financial resources. Most notably, as a result of the Tłı̨chǫ Agreement, the federal government has provided the Tłı̨chǫ a total of $152 million, as well as access to a portion of government royalties from resource production within the Mackenzie Valley (GNWT EIA, 2020).

The Tłı̨chǫ government used these funds to conduct in-depth IK studies, contract specialized technical experts and carry out community discussions, thereby ensuring that community values and livelihoods were central to the assessment (G. Gibson et al., 2018).

6.4.3 Sustainability Focus

The NICO project impact assessment was conducted under the MVRMA, which differs from historical Canadian impact assessment regimes in that it takes a largely holistic approach, utilizing an integrated framework for resource management, land use planning, and IA (D. R. Armitage, 2005). The MVRMA takes into consideration the environmental, social, cultural, and economic effects of potential undertakings, with particular regard for the safeguarding of Indigenous peoples' ways of life and wellbeing (ss. 115(1)). It also brought forth a cumulative effects monitoring regime (originally established as an obligation in the Sahtu, Gwich'in and

Tłı̨chǫ land claims agreements) for the entirety of the Mackenzie Valley, which explicitly involves the equal consideration of western and Indigenous knowledges (D. R. Armitage, 2005; Potter, 2016).

In the NICO case, to ensure that the Tłı̨chǫ received lasting benefits from the project, IBA negotiations were established as a condition for the approval of the project. Ensuring that negotiations occur after the completion of the IA guarantees that the Tłı̨chǫ government will begin the discussions with a clearer understanding of the project's impacts, risks, and benefits (G. Gibson et al., 2018). This, in turn, provides the Tłı̨chǫ government greater certainty and influence to ensure negotiations will revolve around the creation of sustained net benefits for the Tłı̨chǫ people, such as revenue sharing, employment and training opportunities (G. Gibson et al., 2018).

6.4.4 Common Goals and Vision

The NICO project IA was developed within the context of the Tłı̨chǫ Agreement and subsequent amendments to the MVRMA, which ensured that the process was built on a foundation of previously negotiated common goals. For instance, women and youth were engaged consistently throughout the IA process, particularly in the TUS and the public hearings. This reflects the importance of the role of women and youth in both environmental stewardship and the traditional livelihoods in Tłı̨chǫ culture (Kuntz, 2012). Indigenous knowledge, primarily in the form of the traditional use study, was also considered extensively throughout the IA and was allotted equal consideration and respect as western science (G. Gibson et al., 2018).

The NICO IA did involve conflict, however. Though the project was submitted for review in 2009, the IA did not begin in earnest until 2012 due to disagreements regarding the project's scope (Kuntz, 2012). The terms of reference for the NICO mine involved the use of a potential all-season road that would connect the community of Whatì to the Yellowknife highway, which would then be connected to the NICO project area via a spur route (MVEIRB, 2009). At the time, the Tłı̨chǫ government felt that the project's viability relied entirely on the future construction of the all-season road through Wek'èezhìi, for which the proponent had not obtained the appropriate licences and which would not be subject to the IA (Kuntz, 2012).

Despite assertions from the Tłı̨chǫ government that the mine assessment was premature, the Review Board recommended that the project proceed through the IA process (Kuntz, 2012). This decision resulted in a lawsuit in which the Tłı̨chǫ government claimed that the all-season road was "hypothetical" and therefore had not yet received their approval to cross their lands (*Tłı̨chǫ Government v. MVEIRB and Fortune Minerals Ltd*, 2011). The Northwest Territories Supreme

Court disagreed and decided that the Review Board had not exceeded its jurisdiction in allowing the IA to continue (*Tłı̨chǫ Government v. MVEIRB and Fortune Minerals Ltd*, 2011). While the Tłı̨chǫ government filed an appeal, it was withdrawn in early 2012, and the IA continued with the all-season road as a point of contention throughout its entirety, as the NICO project was essentially interpreted "as a development site without access" (Kuntz, 2012).

6.4.5 Braided Collaboration

The legal relationship between the Crown and the Tłı̨chǫ government is governed by a negotiated land claims and self-government agreement. The agreement ensures the Tłı̨chǫ have space to make their own laws and establishes them as a partner with the federal government for any decisions that would affect the lands protected by the Tłı̨chǫ Agreement (GNWT EIA, 2020). The Tłı̨chǫ Agreement therefore established space for the Tłı̨chǫ to exercise their own worldviews, ways of knowing, and legal and cultural traditions without being 'integrated' into existing western structures (the concept of 'braiding' as opposed to 'integration' is explored in **subsection 2.3.5**).

The MVRMA, similarly, was from the outset created as an explicitly collaborative framework with clearly defined requirements for the application of differing ways of knowing and regulatory systems (D. R. Armitage, 2005). Such arrangements are at least generally suitable for facilitating braided relationships, both in IA and more broadly. However, it is important to note that there can often be unbalanced power dynamics in the Indigenous and non-Indigenous relationships established under the MVRMA, as with other Crown-led IA regimes. The relationship established by the MVRMA with the Tłı̨chǫ government and the Crown explicitly involves the right to self-government (flowing from the Tłı̨chǫ Agreement), which establishes them as a decision-making authority on equal standing with the Crown.

In the NICO Project case, the Tłı̨chǫ were central actors throughout the IA process. They consistently exercised their authority, adapted the process to fit the needs of their people, came to their own decisions regarding the outcome of the undertaking, and have obligations for compliance monitoring once the project is in operation (G. Gibson et al., 2018). Furthermore, Indigenous knowledge was "engaged substantively alongside western science" and fundamentally transformed both the IA process and the outcome of the project (G. Gibson et al., 2018; Kuntz, 2012; Wang, 2020).

6.5 Summary

The NICO Project case demonstrates an advanced IA process involving Indigenous and non-Indigenous collaborative action. Ultimately, the Tłı̨chǫ government is required to decide the suitability of any undertakings that are on or affect Tłı̨chǫ lands as defined by the Tłı̨chǫ Agreement, which ensured that the Indigenous communities were central to the IA process and final project decisions. Furthermore, the Tłı̨chǫ government had sufficient capacity throughout the IA process to directly influence its outcomes, via funding from the proponent, the Crown, and its own funding.

The MVRMA process established a holistic approach to the IA, addressing the environmental, social, cultural, and economic effects of potential undertakings, with particular regard for the safeguarding of Indigenous peoples' ways of life and wellbeing. The Tłı̨chǫ government also ensured lasting benefits throughout the mine's lifespan by requiring IBAs as a condition of project approval.

The NICO project IA was developed within the context of the Tłı̨chǫ Agreement and subsequent amendments to the MVRMA, which ensured that the process was built on a foundation of previously negotiated common goals. However, the IA experienced significant delays as a result of a lack of consensus (and subsequent legal action) regarding the scope of the project.

Finally, the relationship between the Crown and the Tłı̨chǫ government demonstrated by the NICO Project represents a special case of braided collaboration, as it is founded upon an agreement that recognizes the Tłı̨chǫ's right to self-govern. The Tłı̨chǫ consistently exercised their authority, adapted the process to fit the needs of their people, came to their own decisions regarding the outcome of the undertaking, and have obligations for compliance monitoring once the project is in operation.

The NICO Project case is notable in the extent to which Indigenous concerns were addressed in the assessment, the project decision and subsequent implementation, and offers critical insight into the preconditions for successful Indigenous and non-Indigenous collaborative IA. The findings presented within this chapter will be discussed further and in more depth in Chapter 7, which evaluates both cases as they relate to each other and considers implications for adjusting the five tentative key principles.

7 Findings from Application of the Tentative Key Principles in the Two Case Studies

This chapter utilizes the findings from **Chapters 5** and **6** to evaluate and adjust the five tentative key principles of Indigenous and non-Indigenous collaborative IA as they pertain to the two case studies. The numerous Indigenous roles demonstrated within the IA processes in both case studies will then be discussed to further refine guidance for potential applications of the principles in future impact assessments.

7.1 The Tentative Key Principles in the Two Case Studies

In the sections below, the two case studies are evaluated they relate to each other and the five tentative key principles are adjusted based on results of the evaluation.

7.1.1 Redistributed Decision-Making Power

A descriptor for redistributed decision-making power was initially synthesized from the integrative literature review presented in Chapter 2:

Redistributed Decision-Making Power	The involvement of affected Indigenous communities in which they have central roles and responsibilities in IA and project decision-making in order to ensure that decisions are made within and are responsive to the context that they affect.

The Voisey's Bay MOU between the Canadian government, the Newfoundland and Labrador government, the Innu Nation, and the Inuit of Labrador was progressive for the time. However, the Indigenous groups' right to consent was not recognized in law, and this created significant barriers to potential power sharing throughout the course of the IA. The Voisey's Bay case also presents some concerning coercive elements, particularly with regard to having land claim negotiations and the IA occur concurrently rather than waiting for negotiations to be finalized. Moreover, while it is important to recognize the benefits of the one process being a lever for better practice in the other processes and vice versa, these influences were derived more from special circumstances than through a legitimate recognition of the Indigenous groups' right to self-determination.

In the NICO case, conversely, the Tłı̨chǫ government had a strong legislative basis as decision-makers in undertakings that would affect the lands under the Tłı̨chǫ Agreement. Since the Tłı̨chǫ

government is a self-governing authority that is recognized under Canadian law, their right to FPIC is incorporated in their recognized powers and they were ultimately responsible for determining the suitability of the project. The Tłı̨chǫ Agreement will also ensure that the Tłı̨chǫ government will have a strong legislative basis for future undertakings.

The key difference between the two cases in demonstrating redistributed decision-maker power was, therefore, the recognition of the Indigenous groups' right to self-determination in the form of authority to exercise free, prior, and informed consent. Thus, the descriptor of the key principle should be adjusted as follows:

Redistributed Decision-Making Power (adjusted)	The involvement of affected Indigenous communities in which they have central roles and responsibilities in IA and project decision-making *as well as the recognized right to self-determination in the form of authority to exercise free, prior, and informed consent* in order to ensure that decisions are made within and are responsive to the context that they affect.

7.1.2 Governance and Participative Capacity

A descriptor for governance and participative capacity was initially synthesized from the integrative literature review presented in Chapter 2:

Governance and Participative Capacity	Affected Indigenous groups are provided with consistent and sufficient resources to meaningfully and collaboratively participate in an IA.

While the Indigenous groups in both cases received participation funding from government authorities and the project proponents, this funding was typically not sufficient for meaningful engagement throughout the IA process.

The Tłı̨chǫ government was able to provide its own funding to conduct in-depth IK studies, employ technical experts, and engage early and continually with the Tłı̨chǫ community throughout the course of the IA. Thus, the Tłı̨chǫ government's pre-existing capacity was fundamental to their influence throughout the IA and ensured that the Tłı̨chǫ government had the proper financial, technical, and political resources to make effective project decisions.

It is not clear whether the lack of pre-existing financial capacity hampered the Innu Nation and Inuit of Labrador's influence on the IA. Both Indigenous groups were able to express a distinctive form of governance capacity through the strategic use of different processes as levers to influence

the IA and vice-versa. It can be argued, however, that the *need* to leverage the land claims and IBA negotiations against the IA and vice-versa resulted from the absence of legally recognized Indigenous decision-making authority in those processes. Since the Tłı̨chǫ government were established legislated decision-makers in the MVRMA assessment process and were able to supply their own funding, their political influence on the IA was inherent to the process. Thus, the descriptor of the key principle should be adjusted as follows:

Governance and Participative Capacity (adjusted)	Affected Indigenous groups are provided with consistent and sufficient resources to participate meaningfully and collaboratively in an IA. *This includes authoritative capacity (i.e., an Indigenous groups' recognized influence over undertakings that affect them) as well as financial capacity.*

7.1.3 Sustainability Focus

A descriptor for sustainability focus was initially synthesized from the integrative literature review presented in Chapter 2:

Sustainability Focus	The IA's core objective is overall lasting wellbeing, with specific consideration for the complex and unique effects to Indigenous peoples, including effects on Indigenous rights and lands, language and culture, and traditional practices.

The review panel in the Voisey's Bay case gave unprecedented attention to the project's potential for positive contributions to sustainability, which would help ensure lasting benefits for the affected communities. This was demonstrated by the panel's final report, in which they recommended a longer lifespan for the project and that the land claims and IBA negotiations be finalized prior to the project's approval. While the federal government approved of some of the recommendations (namely, a longer project lifespan), they refused to commit to completing negotiations before the project's construction.

The NICO Project was assessed under the MVRMA impact assessment process. The MVRMA establishes a largely holistic approach to IA and takes into consideration the environmental, social, cultural, and economic effects of potential undertakings within the Mackenzie Valley, with specific consideration of Indigenous ways of life and wellbeing (ss. 115(1)). Furthermore, the Tłı̨chǫ government ensured that the project approval was conditional on the negotiation of an IBA to ensure that the community would obtain direct benefits from the project.

The IAs in both cases demonstrated a clear sustainability focus. The Tłı̨chǫ ensured that the project's potential positive contributions were established as conditions of the project's approval or included in negotiated IBAs. In the Voisey's Bay case, the sharp reduction of concentrator capacity to extend the project life, as well as the insistence on smelting the concentrate within the province, were far-sighted decisions that provided direct benefits to local and regional communities.

However, while the review panel took an approach centred on sustainability implications as the core concern, the panel's recommendations were provided to the provincial and federal governments, and not to the participating Indigenous authorities. This led to the subsequent rejection of terms that would be solely beneficial to local, Indigenous authorities (i.e., the recommendation to complete IBA and land claims negotiations prior to approving the project) by the provincial- and federal-level decision-making authorities. Thus, while the IA process was sustainability-driven, the final decision to reject the conditions beneficial for local Indigenous interests was driven largely by more short-term, economic factors.

The key difference between the final outcomes of both IAs with regard to sustainability was the extent to which the local, Indigenous authorities were decision makers in the development of the final project decisions and conditions of approval. Both cases had a sustainability focus, but that focus on its own ensured nothing beyond the scope and thrust of the recommendations to the decision-makers, as demonstrated by the Voisey's Bay case. The Tłı̨chǫ Agreement, on the other hand, recognized and empowered the Tłı̨chǫ government to act as key decision-makers. This, in combination with the MVRMA's holistic approach to IA, facilitated final project decisions that were entrenched in the context of those most affected by the project and ensured that the Tłı̨chǫ would benefit from development occurring on their settlement lands. In cases where Indigenous groups may be disproportionately affected by a proposed undertaking, those Indigenous groups must have influence over final project decisions, and confirming a project's positive contributions to local sustainability ought to be a condition of the project's approval and the overall goal of the IA. Thus, the descriptor of the key principle should be adjusted as follows:

Sustainability Focus (adjusted)	The IA's core objective is overall lasting wellbeing, with specific consideration for the complex and unique effects to Indigenous peoples, including effects on Indigenous rights and lands, language and culture, and traditional practices. *The involvement of local authorities and the confirmation of a project's positive contributions to local sustainability must therefore be conditions of the project's approval.*

7.1.4 Common Goals and Vision

A descriptor for common goals and vision was initially synthesized from the integrative literature review presented in Chapter 2:

Common Goals and Vision	Indigenous peoples are directly involved in setting the terms of the IA as early as necessary in the form of binding agreements based on mutual respect and open dialogue between parties.

The Voisey's Bay MOU represented an innovative strategy for consensus among the Indigenous and non-Indigenous authorities in the case. The MOU ensured that the Innu Nation and the Inuit of Labrador were consulted throughout the critical preliminary stages of the IA, including appointing the review panel members and the creation of the EIS guidelines, which delineated the considerations required in the proponent's EIS. Since the Indigenous groups had had poor experiences with review panels in the past, the MOU was of particular importance in ensuring that the relationship between the Indigenous and non-Indigenous signatories began on more equal terms, to the extent possible in a Crown-led assessment.

In the NICO case, the project IA was developed within the context of the Tłı̨chǫ Agreement and the MVRMA, which ensured that the IA was built on a foundation of previously established common goals between the Tłı̨chǫ and the Canadian and the Northwest Territories governments.

However, both cases involved conflict and litigation early in the IA process as a means for the Indigenous groups to assert their rights to the lands, and to ensure that all aspects of the project were subject to the full IA process. Early in the Voisey's Bay case, the Innu Nation and the Inuit of Labrador successfully stalled the construction of a temporary airstrip and road that would not have been subject to the IA. In later litigation in the Voisey's Bay case, the Indigenous organizations failed to prove that the federal government had not fulfilled its fiduciary duty in deciding that the land claims and IBA negotiations did not need to be finalized prior to the approval of the Voisey's Bay project. However, the project was stalled due to disagreements between the provincial government and VBNC, and ultimately the IBA negotiations were finalized before the start of construction.

Similarly, the Tłı̨chǫ initiated legal action against the MVEIRB due to its decision to exclude an all-season road through Wek'èezhìi in the project's scope. However, the lawsuit was ultimately withdrawn, and in 2016, the Tłı̨chǫ and the Northwest Territories governments initiated the

development of the all-season road as co-proponents, apparently as the result of negotiations outside the assessment process leading to an agreement to plan and build the road jointly.

The Innu Nation and Inuit of Labrador benefitted from external circumstances that stalled the construction of the Voisey's Bay project. The Tłı̨chǫ, conversely, successfully negotiated a scenario that resulted in mutually agreed-upon common goals: namely, the joint development and subsequent separate IA of the all-season road to Whatì.

These conflicts demonstrate that, while establishing common goals and vision at the outset is important for creating set terms for the IA, there is a need for specific, context-based goals that evolve throughout the course of the IA as the concerns, objectives and options available to the Indigenous and non-Indigenous actors change. As such, two-way dialogue that runs concurrently with the IA (and not necessarily as part of the IA process) is crucial to continually reinforce the relationship and to renegotiate terms as the IA progresses. Thus, the descriptor of the key principle should be adjusted as follows:

Common Goals and Vision (adjusted)	Indigenous peoples are directly involved in setting the terms of the IA as early as necessary in the form of binding agreements based on mutual respect and open dialogue between parties *that runs concurrently with the IA (and not necessarily as part of the IA process) to continually reinforce the relationship and to renegotiate terms as the IA progresses.*

7.1.5 Braided Collaboration

A descriptor for braided collaboration was initially synthesized from the integrative literature review presented in Chapter 2 (a detailed overview of braiding is presented in **subsection 2.3.5**):

Braided Collaboration	The IA follows a mutually defined process centred on the affected Indigenous community, where the distinct ways of knowing of each party are distinctly recognized and afforded legitimacy and respect equivalent to that given to non-Indigenous understandings.

The IA process in the Voisey's Bay case involved commendable advances toward braided collaboration. The review panel made considerable efforts to establish a generative relationship, including the broader definition of 'environment', the consideration of the project's contributions to sustainability, and the respectful handling of IK throughout the IA process. However, while the

Voisey's Bay review panel was reasonably successful in their efforts to establish the credibility of the assessment process and report, and to interweave Indigenous and western understandings, the IA process was wholly governed by the federal and provincial assessment processes and left little room for a truly braided approach.

Conversely, the Tłı̨chǫ government have the space to exercise their own worldviews, ways of knowing, and legal and cultural traditions within the established IA process for undertakings that would affect the lands under the Tłı̨chǫ Agreement. While the case was not without conflict, it represents a marked step toward establishing a truly generative relationship in IA. Thus, while **this principle does not need adjustment**, the differences between the cases demonstrate the importance of braiding in processes that involve marginalized worldviews.

7.2 Lessons Concerning Options for Collaborative IA

Both cases illustrate multiple elements from each of the categories of Indigenous roles in IA. The following section explores the relationship between the various Indigenous-led roles in IA and the key principles of collaborative assessment through the lens of the Voisey's Bay and NICO Project cases.

7.2.1 Indigenous-led Studies

For Indigenous-led studies (explored in detail in **subsection 3.1.1**), the most basic requirement from the five tentative key principles is governance and participative capacity. Indigenous groups have varying existing capacity to engage in collaborative assessments. In the Voisey's Bay case, the Innu Nation utilized federal and proponent funding to conduct two Indigenous-led studies: the *Between a Rock and a Hard Place* report, which detailed the concerns and opinions of the Innu people (Hipwell et al., 2002), and *Ntapueu*, a socio-economic baseline study in the form of a documentary (Cleghorn, 1999). In the NICO Project case, the Tłı̨chǫ government had sufficient existing capacity to conduct in-depth IK studies, including the *Asi Edee T'seda Dile: Tłı̨chǫ Nation Traditional Knowledge and Use Study*, which ensured that the values and concerns of the Tłı̨chǫ community were central to the IA (G. Gibson et al., 2018).

While a sufficient amount of governance and participative capacity is crucial for effective Indigenous participation in collaborative IA, providing sufficient funding also demonstrates an acknowledgement of the importance and validity of Indigenous knowledge (Moore, 2020). This acknowledgement represents a shift away from the colonial practice of imposing western assumptions of superiority and toward IA being a space for learning between distinct worldviews.

Moreover, a sustainability focus ensures that the scope of the IA, and by extension the interpretation of Indigenous-led studies, are not restricted to narrow legal definitions or mitigating negative effects. The IA processes in both cases emphasized the need for evaluating the projects' contributions to sustainability, which included the lasting wellbeing of the Indigenous groups, thereby adding more weight to the land use studies conducted by the Indigenous groups.

In the Voisey's Bay case, the Innu Nation's *Ntapueu* documentary focused explicitly on the impacts of development within their communities (Cleghorn, 1999). The review panel's high standard for sustainability expanded the IA's scope beyond the federal definition of 'environment' to include "social, economic, recreational, cultural, spiritual and aesthetic" factors, which acknowledged the validity to traditional Indigenous worldviews in the IA process (Hipwell et al., 2002). Furthermore, the review panel established the sustainability test to determine the project's positive contributions to both "ecological and community sustainability" as well as a means of bringing into consideration the project's lasting effects following closure (R. B. Gibson, 2006).

Similarly, in the NICO Project case, the MVRMA established a broader understanding of potential effects, including the environmental, social, cultural, and economic effects of potential undertakings, with particular regard for the safeguarding of Indigenous peoples' ways of life and wellbeing (ss. 115(1)). The MVRMA also provides for a cumulative effects monitoring regime for the entirety of the Mackenzie Valley, for which the Tłı̨chǫ's TUS provided crucial information pertaining to the Tłı̨chǫ lands already lost to previous developments (Olson et al., 2012).

As discussed in previous sections, Indigenous and non-Indigenous relationships (regardless of the degree of involvement) are established within the context of colonialism and Canada's unilateral assertion of sovereignty (Papillon & Rodon, 2020). As such, braided collaboration is crucial to ensuring that studies entrenched in Indigenous knowledge and worldviews are afforded equal degrees of legitimacy and respect as western studies. In the Voisey's Bay case, the review panel's insistence on the importance of context and understanding the history of conflict and poor relations between the Indigenous communities and the Crown (as demonstrated by the Innu Nation's report and video documentary) is demonstrative of a process that aims to respect the distinct sensibilities of the affected Indigenous groups. The panel also afforded equal degrees of legitimacy and respect to IK as it did to western science and allowed for a diversity of mediums through which IK could be presented (e.g., the video documentary *Ntapueu*).

In the NICO Project case, the Tłı̨chǫ Agreement acknowledged the Tłı̨chǫ's right to exercise their own worldviews, ways of knowing, and legal and governance structures from the outset of the IA. The MVRMA's assessment process utilized an explicitly collaborative framework with clearly

defined requirements for the application of differing ways of knowing and regulatory systems (D. R. Armitage, 2005). Thus, the Tłı̨chǫ's TUS was integral throughout the IA and in establishing monitoring requirements following its completion.

While the Indigenous-led studies within the two cases demonstrated the inherent need for both governance and participative capacity and a sustainability focus, the remaining two key principles were shown to complement or enhance the effectiveness of the studies rather than act as a basic requirement.

First, the different project outcomes stemming from the Indigenous-led studies in the Voisey's Bay case and the NICO Project case exemplify how redistributed decision-making power can enhance the ability of the studies to achieve the objectives of the affected Indigenous group. In the Voisey's Bay case, the Innu Nation's *Between a Rock and a Hard Place* detailed their most pressing concerns, including the need to complete land claims and IBA negotiations before the start of construction, and emphasized that the proponent would not receive the Nation's consent unless these conditions were met. While the study had demonstrable influence on the review panel, who recommended that the negotiations be completed prior to project approval, the recommendation was ultimately rejected by the Crown. The Innu Nation's consent was not considered to be a requirement for the project's approval.

In the NICO Project case, conversely, the considerable influence that the traditional use study had on the IA process was supported by the Tłı̨chǫ government's central involvement as decision-makers in the IA. The TUS was instrumental in the development of mitigation measures and follow-up programs, as well as ensuring that engagement with community members occurred early and consistently throughout the IA. Since the Tłı̨chǫ government is required to decide the suitability of any undertakings that affect Tłı̨chǫ lands, proponents and governments are required to accept their terms for approval, thereby enhancing the effectiveness and perceived legitimacy of the study.

Second, common goals and vision can enhance the effectiveness of Indigenous-led studies by ensuring that the objectives of the IA reflect those that drive the study. In the Voisey's Bay case, while the review panel's recommendations aligned with the goal of the Innu Nation's study to complete land claims and IBA negotiations prior to the project's approval, the overall goals of the IA (and, by extension, those of the Crown) differed, resulting in an unfavourable outcome for the Innu Nation.

The NICO Project case illustrated a significantly more favourable outcome for the affected Indigenous group, which was facilitated by the existing negotiated common goals within the Tłı̨chǫ Agreement and the subsequent amendments to the MVRMA. For instance, the *Asi Edee T'seda Dile: Tłı̨chǫ Nation Traditional Knowledge and Use Study* recommends monitoring of the project's cumulative effects, which is directly supported by the MVRMA's Mackenzie Valley-wide cumulative effects monitoring regime that explicitly involves the equal consideration of western and Indigenous knowledges (D. R. Armitage, 2005; Potter, 2016).

7.2.2 Indigenous and non-Indigenous Partnerships

Indigenous and non-Indigenous partnerships (explored in detail in **subsection 3.1.2**) introduce significantly more complexity than Indigenous-led studies, primarily due to the need for more collaborative efforts between Indigenous and non-Indigenous actors, increased Indigenous influence in the overall IA process, and the inclusion of multiple distinct worldviews within the same process.

Like Indigenous-led studies, governance and participative capacity, a sustainability focus, and braided collaboration are crucial to the success of Indigenous and non-Indigenous partnerships. In both cases, funding and existing capacity were instrumental in the continued involvement of the Indigenous groups throughout the IA process. The sustainability focus in both IA processes also ensured that factors of particular importance to the Indigenous groups, such as community wellbeing, positive contributions to community sustainability, the consideration of social, cultural, and economic effects, and the inclusion of IK were considered alongside the narrower requirements of 'standard' IA processes. Additionally, the assessment must be conducted through braided collaboration and a real effort to re-legitimize Indigenous legal and governance structures in order to acknowledge the legitimacy and importance of Indigenous knowledge and worldviews (R. B. Gibson et al., 2020; Korteweg & Russell, 2012).

Indigenous and non-Indigenous partnerships also require innovative strategies for conflict resolution and consensus, given the often conflicting objectives of Indigenous and non-Indigenous actors. As a result, the collaborative partnerships demonstrated in the two cases both involved common goals and vision. In the Voisey's Bay case, the Memorandum of Understanding set the terms of the IA, including the appointment of the review panel. In the NICO Project case, the IA was developed within the context of the previously negotiated common goals within the Tłı̨chǫ Agreement and the MVRMA. Both cases also involved the negotiation of IBAs which play an integral role in the development of common goals not only for the IA, but for the project as a whole.

Framing an assessment using common goals and vision is integral to a process that aims to interweave distinct contexts and worldviews. For instance, both cases engaged in deliberate and explicit involvement of Indigenous women and youth throughout the IA processes, whose roles in environmental stewardship are of particular importance to the Indigenous groups involved in both cases. Prior to the IAA (and the introduction of gender-based analysis), there was no language in IA law that required explicit consideration of distinct genders. Indeed, it was component that was drawn from distinctly Indigenous worldviews.

7.2.3 Indigenous-led IA

Indigenous-led IAs (explored in detail in **subsection 3.1.3**) involve the most independence from Crown-led processes, though they are not necessarily fully independent from the Crown (for example, funding may still be provided to conduct Indigenous-led IAs). Indigenous-led IAs require the affected Indigenous group to develop their own IA process for a given project, including "a formal decision-making and condition-setting process" (G. Gibson et al., 2018). As such, while Indigenous-led IA still requires the aforementioned four key principles, the primary distinction between Indigenous-led IA and the other two categories of Indigenous roles in IA is the absolute requirement for redistributed decision-making power.

In the Voisey's Bay case, the IA was subject to the MOU with the Innu Nation and the Inuit of Labrador, which established baseline requirements approved by the affected Indigenous nations and gave them a say on review panel appointees. The MOU also ensured that the review panel would report its findings to the presidents of the Innu Nation and the LIA as well as the Canadian responsible Minister (Cleghorn, 1999). Moreover, while the final project decisions remained with the federal and provincial governments, the review panel demonstrated a largely unprecedented regard for the Indigenous groups' right to consent. The panel explicitly cited the 1997 *Delgamuukw v. British Columbia* ruling, stating that the decisions of the case implied that "consultation and, in some cases, full Aboriginal consent" ought to be a requirement for the Voisey's Bay project (Griffiths et al., 1999).

It is not entirely clear whether, in the implementation of the project, the lack of Indigenous consent in the Voisey's Bay case was detrimental to the Indigenous groups. The Voisey's Bay project was stalled shortly after its approval due to disagreements between the provincial government and the proponent over the feasibility of smelting the mine's products within the province (R. B. Gibson, 2006). As a result, IBA negotiations were able to conclude prior to the start of construction.

However, the Tłı̨chǫ government's influence throughout the NICO project case provides demonstrable evidence that requiring Indigenous consent alongside collaboration directly benefits affected Indigenous groups, as demonstrated in the above sections. While power sharing efforts in the Voisey's Bay case were progressive for the time, the Tłı̨chǫ government's established decision-making power significantly enhanced their influence throughout the IA process up to and beyond final project decisions.

7.3 Other Considerations

The Voisey's Bay and NICO cases had individual contexts that produced unique successes and limitations. The Voisey's Bay Project involved two distinct Indigenous groups that did not have existing land claims agreements with the Crown (negotiations had been stalled for decades), had been deeply affected by previous development projects, and had poor experiences with impact assessment review panels in the past. The project was also subject to a joint federal-provincial impact assessment in which the Indigenous groups had little say in the final project decisions. The NICO case, conversely, involved one Indigenous group with self-governing authority recognized under Canadian law via an established land claims agreement. The project was assessed under an impact assessment regime in which they had final decision-making authority.

In both cases, many of the successes for the impact assessment did not stem from the IA itself, but rather were derived from factors beyond the IA process. In the Voisey's Bay case, the persistence of Innu and Inuit demands for respect for their land and rights was instrumental in moving the federal and provincial governments to include both Indigenous bodies in negotiating the assessment MOU (which established the opening for a sustainability-based approach). In the NICO case, the Tłı̨chǫ government's self-governing authority as acknowledged by the Tłı̨chǫ Agreement ensured that they had consistent and considerable influence on both the IA process and the project itself (and had a continuing structure in which they built effective collaborative capacity).

It is therefore crucial to understand and acknowledge the context in which an impact assessment was conducted when developing broadly applicable collaborative arrangements. Indeed, the specification of context should be included in designing approaches to individual case collaborations that allow for multiple Indigenous roles and the flexibility to supplement where a particular context is lacking in the key principles.

7.4 Summary

The first principle, **redistributed decision-making power**, was met throughout the IA process in the NICO Project case since the Tłı̨chǫ government were established key decision-makers from the IA's initiation. The principle was less well addressed in the Voisey's Bay case because the affected Indigenous groups' rights to self-determination in the form of authority to exercise FPIC were not recognized by the decision-making authorities. For clarification and emphasis, the principle must be adjusted to explicitly include the recognition of Indigenous groups' inherent right free, prior, and informed consent on projects that would affect their lands, rights, and livelihoods.

The second principle, strengthened **governance and participative capacity**, was also more prevalent in the NICO Project case than the Voisey's Bay case. The Tłı̨chǫ government's recognized and established right to self-govern ensured that they were key actors throughout the IA and were able to supply their own funding in areas where proponent and Crown funding was not sufficient. The Innu Nation and LIA, however, were not recognized as key decision-makers, nor did they benefit from existing land claims arrangements, and thus frequently resorted to leveraging external processes in order to establish more influence over the IA. As such, it is critical that this principle is adjusted to explicitly consider authoritative capacity (i.e., an Indigenous groups' recognized influence over undertakings that affect them) as well as financial capacity.

The third principle, **sustainability focus**, was present and a significant factor in both cases. The key difference between the cases was the representation of a local, Indigenous authority in final project decisions, which was demonstrated the case in the NICO Project IA. However, Indigenous representation in final decision-making does not necessarily guarantee a sustainability-focused decision. Thus, this principle must be adjusted to include both the involvement of local authorities and the confirmation of a project's positive contributions to local sustainability as conditions of the project's approval.

The fourth principle, **common goals and vision**, was evident in both cases, but imperfectly met, as indicated by numerous challenges where Indigenous and non-Indigenous parties could not reach consensus. In both the NICO Project and Voisey's Bay cases, the conflicts that arose demonstrated the need for specific, context-based goals that evolve throughout the course of the IA as the concerns, objectives and options available to the Indigenous and non-Indigenous actors change. As such, this principle must be adjusted to involve not only the creation of common goals and vision at the outset of the IA, but also two-way dialogue that runs concurrently with the IA

(and not necessarily as part of the IA process) to continually reinforce the relationship and to renegotiate terms as the IA progresses.

The fifth and final principle, **braided collaboration**, was substantially demonstrated in the NICO Project case as the Tłı̨chǫ government consistently exercised their own worldviews, ways of knowing, and legal and cultural traditions throughout the IA process, under governance arrangements that had been established under the Tłı̨chǫ Agreement and subsequent amendments to the MVRMA. The Voisey's Bay IA, despite considerable efforts made by the review panel to create a generative process, was materially western with some Indigenous ways of knowing (particularly in the form of IK) integrated throughout. While this principle does not need adjustment, the differences between the cases demonstrate the importance of braiding in processes that involve marginalized worldviews.

Table 5 provides an overview of the tentative key principles identified within the two cases.

Table 5: Summary of the tentative key principles presented by the Voisey's Bay and NICO Project cases.

Tentative key principles	**Voisey's Bay**	**NICO Project**
Redistributed decision-making powers	✗ Land claims negotiations occurred during the IA process, and consent was not required for project approval. Crown governments rejected the panel's recommendation to finalize land claims and IBA negotiations prior to project approval.	✓ Per the Tłı̨chǫ Agreement, the Tłı̨chǫ government was legally empowered to give or withhold consent for undertakings within their lands.
Governance and participative capacity	~ Both Indigenous groups relied on proponent and Crown funding to participate in the IA process. Land claims and IBA negotiations ran concurrently with the IA – however, the Indigenous groups were able to use the IA public hearings to express	✓ The Tłı̨chǫ Agreement had been in place since 2003; the Tłı̨chǫ government was therefore well-established and had an existing relationship with the territorial and federal governments.

Tentative key principles	Voisey's Bay	NICO Project
	outstanding concerns in the IBA negotiations with the proponent.	While project-specific funding was not enough to cover the full cost of participation, the Tłı̨chǫ government was also able to provide its own funding.
Sustainability focus	✓ Sustainability was a key consideration for the review panel. This largely unprecedented decision for the time provides a foundation for the later decision to extend the life of the mine to ensure longer-lasting gains for the affected communities.	✓ The MVRMA's holistic approach to IA ensured that environmental, social, cultural, and economic effects are considered, with particular attention to Indigenous ways of life. The negotiation of an IBA with the Tłı̨chǫ government was a condition of approval for the project to ensure that the community would receive lasting gains.
Common goals and vision	✓ The MOU between the Indigenous groups and Crown acted as the basis upon which the IA was carried out. The project proponent sought IBAs with both Indigenous groups.	✓ The IA process as set out by the MVRMA was based on the previously negotiated common goals of the Tłı̨chǫ Agreement. While the exclusion of the all-season road from the NICO project IA was an area of contention for the Tłı̨chǫ and the MVEIRB that resulted in a legal challenge, the road was later subject to a separate IA with the Tłı̨chǫ and NWT governments as co-proponents.

Tentative key principles	Voisey's Bay	NICO Project
Braided collaboration	~ The MOU involved requirements established by both Indigenous and non-Indigenous parties that went beyond the foundational IA laws (e.g., broader definition of environment, considerations for sustainability). Indigenous knowledge presented to the review panel was afforded an equal degree of legitimacy and respect as western science. The process as a whole was materially western, with some Indigenous components fitted throughout.	✓ The Tłı̨chǫ were central actors throughout the IA process. The Tłı̨chǫ Agreement established space for the Tłı̨chǫ to exercise their own worldviews, ways of knowing, and legal and cultural traditions without being 'integrated' into existing western structures. Indigenous knowledge was afforded an equal degree of legitimacy and respect as western science.

The application of the five principles to these two studies recognized a variety of Indigenous roles in IA. The roles illustrated by the cases demonstrate where the tentative key principles are most necessary to provide a foundation upon which successful Indigenous and non-Indigenous collaboration can occur as the Indigenous roles increase in independence from Crown-led processes, as summarized in **Figure 8**. Of the three approaches evident in the two cases, Indigenous-led studies are the most entrenched within Crown-led processes, as the Crown would determine the level of influence the study results would have on final project decisions. Therefore, Indigenous-led studies demonstrate less of a need for the key principles: primarily requiring governance and participative capacity, a sustainability focus, and braided collaboration. Indigenous and non-Indigenous partnerships introduce a more complex process where both Indigenous and western values are meant to be respected, perhaps interwoven, thereby requiring the aforementioned three, alongside common goals and vision. Indigenous-led IA is most independent from Crown-led processes, as it requires the creation of a separate IA regime and consent process that is distinct to the Indigenous community. Indigenous-led IA applying all five key principles is more likely to ensure a more successful assessment, with redistributed decision-

making power being the most crucial principle in order to ensure that the Indigenous-led IA is recognized by established institutional powers.

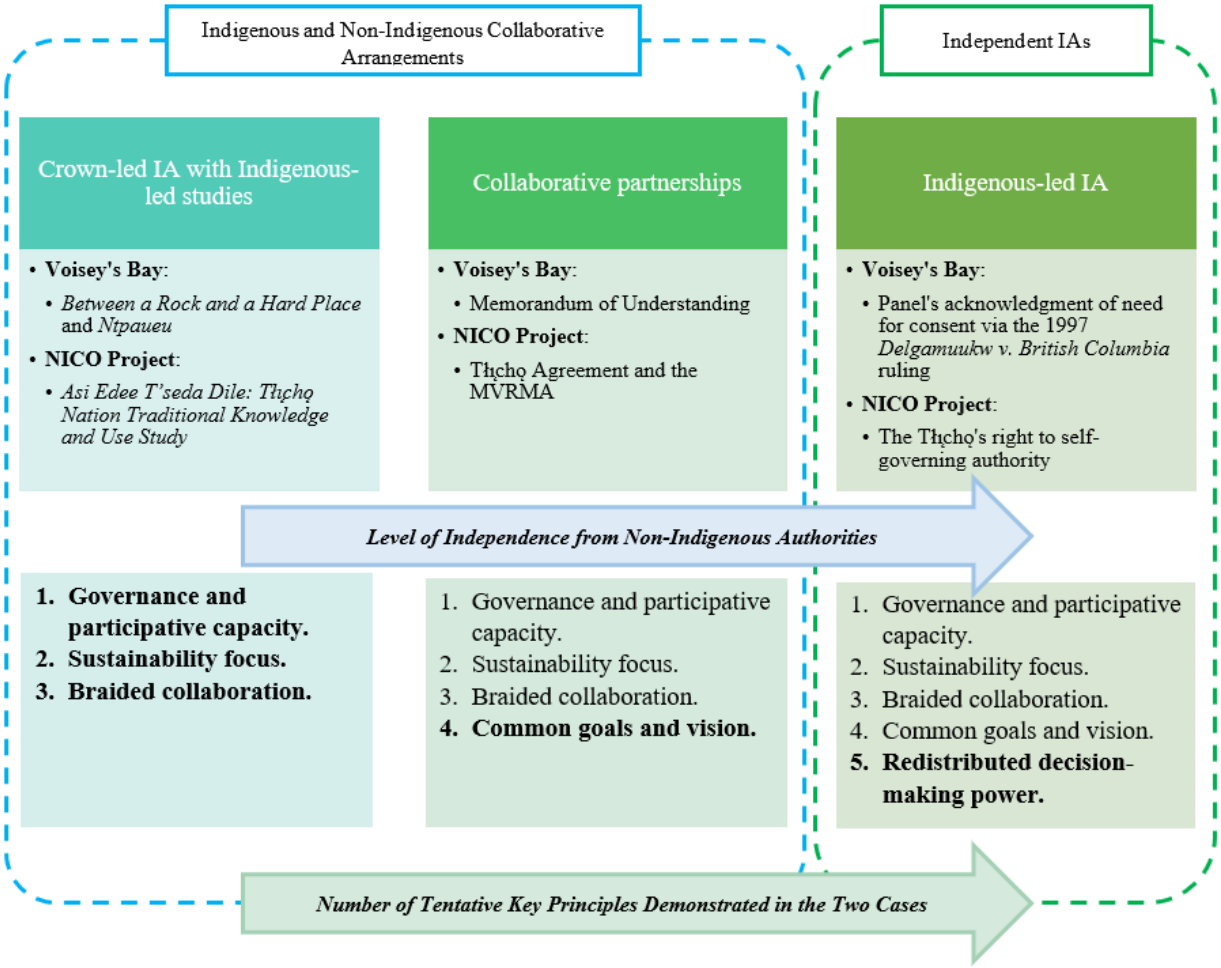

Figure 8: The number of Key Principles Demonstrated by the various Indigenous roles in the Voisey's Bay and NICO Project cases.

The following chapter provides a review of the key findings of this research, sets out the implications of the findings for theory and practice, and makes recommendations for future work involving the five key principles of Indigenous and non-Indigenous collaborative IA.

8 Conclusions

Indigenous communities, especially remote communities, are often disproportionately affected by resource development projects in Canada. While IA is utilized primarily as a tool to evaluate the potential effects, benefits, and risks of project-level resource development, Indigenous concerns have largely been unheeded or discounted in both current and historic Canadian IA systems (G. Gibson et al., 2018). Indeed, IA is largely viewed by many Indigenous peoples as a colonial tool through which governments can make tokenistic gestures toward Indigenous rights and title while expediting economically attractive resource development projects (Eckert et al., 2020).

The research objective was to synthesize a broad selection of sources pertaining to Indigenous involvement in environmental management to develop broadly applicable key principles of collaboration as a vehicle for empowering Indigenous roles in Indigenous and non-Indigenous collaborative IA, with particular focus on implications for federal-level IA in Canada. The concluding discussion to follow will summarize the major findings of the work, consider the main contributions and their implications for understandings in the field, consider implications for practice and suggest directions for further research.

8.1 The Research Process and Major Findings

This section summarizes the process through which the research objective was achieved and the resulting key findings. Publications on a broad field of Indigenous and non-Indigenous relationships in environmental management were collected via incremental searches of academic databases and through expert recommendation. The literature was then refined to Canadian experiences to bound the research within the specific context of Canadian IA laws. The selected publications were then evaluated and sorted into five overarching thematic categories: decision-making (subsection 2.3.1); funding and governance (subsection 2.3.2); overall objectives for IA (subsection 2.3.3); goals for collaboration (subsection 2.3.4); and distinct ways of knowing (subsection 2.3.5).

From these overarching themes, five tentative key principles were synthesized: (1) **redistributed decision-making power**, (2) **governance and participative capacity**, (3) **sustainability focus**, (4) **common goals and vision**, and (5) **braided collaboration**, each of which are accompanied by a descriptor setting out the key characteristics, considerations, and implications (section 2.4). The tentative key principles are summarized in **Table 1**.

To deepen understanding of the context for elaboration and application of the principles, the integrative literature review was then expanded to explore the spectrum of Indigenous roles in a variety of collaborative mechanisms to cover the distinct contexts of Indigenous communities throughout Canada. Three overarching categories of Indigenous roles in IA processes were discussed: Indigenous-led studies, collaborative partnerships (including co-managed IAs with the Crown and co-developed IAs with the project proponent), and Indigenous-led IAs. For each category, example cases were explored to illustrate the apparent strengths and challenges.

In light of the findings of the integrative literature review, and to test the initial tentative principles, two exemplary case studies of Indigenous and non-Indigenous collaborative IA were selected from the broader group of cases. The Voisey's Bay case involved a proposed fly-in, fly-out nickel and copper mine on the Northern coast of Labrador, within the traditional territories of the Innu Nation and the Inuit of Labrador. The Voisey's Bay IA was initiated by the proponent in 1996 and was completed in 1999, with surface mining operations beginning in 2005. Despite numerous complications, the Voisey's Bay case was progressive for the time and demonstrated a number of innovative collaborative efforts between the review panel and the affected Indigenous groups.

The NICO Project case involved a proposed open pit cobalt-gold-bismuth-copper mine in the Northwest Territories within lands that are collaboratively managed by the Tłı̨chǫ government and the Government of Canada. The project IA began in earnest in 2008 and was approved by both the Crown and the Tłı̨chǫ government in 2013. Following the central IA's completion, the Tłı̨chǫ government and the Northwest Territories government jointly proposed the all-season road that would connect the Tłı̨chǫ community of Whatì to the Yellowstone Highway. The NICO project case demonstrated an established collaborative relationship between the Crown and an Indigenous community in which the affected community had significant influence throughout the project IA and in final project decisions.

While both cases demonstrated unprecedented effort toward the establishment of trusting nation-to-nation relationships, it is clear that collaborative efforts have evolved considerably since the Voisey's Bay IA was conducted. Indeed, the Voisey's Bay case appears to be more of a 'special circumstances' instance of collaborative engagement, where the needs and priorities of Canadian governments significantly outweighed those of the involved Indigenous groups. The more recent NICO project IA was collaborative from the outset, having been built upon relatively strong legal structures that support effective and respectful Indigenous and non-Indigenous partnerships.

For each case, an extensive overview of the case's historical context was provided to situate the existing relationship between the Indigenous and non-Indigenous authorities prior to the

initiation of the IA. Then, an in-depth review of IA documents, public comments, and academic literature was provided to create a detailed overview of the assessment process in each case.

The application of the tentative key principles to the cases provided two distinct insights:

- Identify needs to adjust the initial descriptors of the tentative key principles provided in Chapter 2; and
- Identify strengths and limitations of the various Indigenous roles that were evident in the two case studies.

The recognition (or lack thereof) of the affected Indigenous group(s)'s right to self-determination was a critical distinction between the two cases. Similarly, the reinforcement and absence of relationships (including the recognition of past and pre-existing relationships) between Indigenous and non-Indigenous parties were often major factors in the cases' challenges and successes. These themes identified the need to adjust the key characteristics and implications of most of the key principles, as summarized below.

For **redistributed decision-making power**, the differences in the recognition of the right to self-determination in the two cases demonstrated a need for explicit emphasis on FPIC. For **governance and participative capacity**, these differences demonstrated that financial capacity (i.e., funding) was interconnected with an Indigenous groups' recognized influence over undertakings that affect them, and thus authoritative capacity had to be incorporated. For **sustainability focus**, the conditions for approval in both cases, particularly in the ways they benefitted local Indigenous groups, demonstrated the importance of the involvement of local authorities in final project decisions where local sustainability is a condition of the project's approval. For **common goals and vision**, both cases demonstrated a need for continually evolving, context-based goals that are created through consistent two-way dialogue throughout the IA process. Finally, for **braided collaboration**, while the original descriptor required no adjustment, the differences between the cases demonstrate the importance of continually reinforced, generative relationships in Indigenous and non-Indigenous collaboration.

The adjustments made to the descriptors of the tentative key principles are summarized in **Table 6**.

Table 6: Summary of the Adjustments to the Tentative Key Principles Introduced in Chapter 2.

Key Principles	Tentative Key Principles	Adjusted Key Principles

	(Before Application to Case Studies)	(After Application to Case Studies)
Redistributed Decision-Making Power	The involvement of affected Indigenous communities in which they have central roles and responsibilities in IA and project decision-making in order to ensure that decisions are made within and are responsive to the context that they affect.	The involvement of affected Indigenous communities in which they have central roles and responsibilities in IA and project decision-making *as well as the recognized right to self-determination in the form of authority to exercise free, prior, and informed consent* in order to ensure that decisions are made within and are responsive to the context that they affect.
Governance and Participative Capacity	Affected Indigenous groups are provided with consistent and sufficient resources to meaningfully and collaboratively participate in an IA.	Affected Indigenous groups are provided with consistent and sufficient resources to meaningfully and collaboratively participate in an IA. *This includes authoritative capacity (i.e., an Indigenous groups' recognized influence over undertakings that affect them) as well as financial capacity.*
Sustainability Focus	The IA's core objective is overall lasting wellbeing, with specific consideration for the complex and unique effects to Indigenous peoples, including effects on Indigenous rights and lands, language and culture, and traditional practices.	The IA's core objective is overall lasting wellbeing, with specific consideration for the complex and unique effects to Indigenous peoples, including effects on Indigenous rights and lands, language and culture, and traditional practices. *The involvement of local Indigenous authorities and their confirmation of a project's positive contributions to local sustainability must therefore be conditions of the project's approval.*
Common Goals and Vision	Indigenous peoples are directly involved in setting the terms of the IA	Indigenous peoples are directly involved in setting the terms of the IA

	as early as necessary in the form of binding agreements based on mutual respect and open dialogue between parties.	as early as necessary in the form of binding agreements based on *commitment to sustainability and reconciliation,* mutual respect and open dialogue between parties *that runs concurrently with the IA (and is not limited to the IA process) to continually reinforce the relationship and to renegotiate terms as the IA progresses*.
Braided Collaboration	The IA follows a mutually defined process centred on the affected Indigenous community, where the distinct ways of knowing of each party is distinctly recognized and afforded equal degrees of legitimacy and respect.	No adjustment.

Following the adjustment of the key principles, the relationship between the various Indigenous-led roles in IA and the key principles were evaluated through the lens of the Voisey's Bay and NICO Project cases identify strengths and limitations of the various Indigenous roles evident in the case studies. It was found that as the Indigenous roles exhibited more independence from Crown processes, the more principles were applied and led to a higher rate of success in ensuring appropriate Indigenous influence over the project and IA decisions. The Indigenous-led studies that were present in the two cases reflected the relationships most entrenched within Crown-led processes and demonstrated less attention to the key principles. They demonstrated the need for governance and participative capacity, maintaining a sustainability focus, and applying braided collaboration, but were weak in demonstrating the need for common goals and vision and redistributed decision-making power. The Indigenous and non-Indigenous partnerships introduced a more complex process where Indigenous and western values are meant to be respected and interwoven, thereby applying the governance and capacity building, sustainability and braiding principles, alongside common goals and vision. Indigenous-led IA is the most independent from Crown-led processes, as it requires the creation of a separate IA regime and consent process that is specific to the Indigenous community involved. As such, Indigenous-led IA can apply all five key principles and is most likely to ensure a relatively successful assessment,

with redistributed decision-making power being the most crucial principle because of the need to ensure that the Indigenous-led IA is recognized by established institutional powers. The findings on the applicability of Indigenous roles to the key principles is summarized in **Figure 8**.

8.2 Implications for the Literature and Associated Understandings

Comparative studies are lacking in research pertaining to Indigenous and non-Indigenous collaborative action, and thus the broad literature is largely fragmented. This research has investigated the understandings from a multitude of schools of thought, including impact assessment, land and resource management, and environmental law, to provide a comprehensive comparative review of topics including Indigenous participation, co-management, knowledge integration, and self-governance. Furthermore, in light of the provisions for collaboration under the IAA, this research synthesized a comprehensive understanding of the best practices of Indigenous and non-Indigenous collaborative action in impact assessment.

Moreover, this research has provided an in-depth analysis of two exemplary cases of Indigenous and non-Indigenous collaboration in Canada as well as how they relate to best practices. The discussion of these cases established that the five key principles derived from the literature provide a useful structure for reviewing case experience as well as for the broader revision of assessment processes and practices involving Indigenous interests and jurisdictions.

Finally, this research explored the multiple Indigenous roles in collaborative IA, as well as those that were evident in the two cases. The findings underscore the wide-ranging spectrum of collaborative relationships that exist in Canadian IA, and further emphasize the ability of the five key principles to provide useful insights for the review and revision of Indigenous and non-Indigenous collaborative relationships.

8.3 Implications for Practice and Openings for Better Practice

Canada's history begins with wide-scale, deliberate, and explicit colonization and assimilation efforts to suppress and eradicate the influence of Indigenous societies. Currently, most IA laws in Canada do not explicitly recognize Indigenous peoples has sovereign authorities with distinct powers and ability. As such, reform of impact assessment legislation and practice should be utilized as a tool for restructuring Indigenous-Crown relations in environmental management so that they move beyond basic legal requirements and toward fostering nation-to-nation relationships.

Translating distinct worldviews into a framework of collaborative action calls for complex deliberations bounded in mutual respect and a critical evaluation and transformation of the prevailing colonial regime. The *Impact Assessment Act* and other legislative changes have created numerous opportunities IA participants to create procedural transformation by way of the application of the five key principles. For example, Indigenous groups and grassroots organizations can advocate for the recognition of Indigenous self-determination, consistent and sufficient funding, or more focus on local sustainability. IA practitioners and proponents can create direct involvement opportunities for Indigenous groups in project and IA decision-making, provide necessary funding opportunities, participate in early and continuous two-way dialogue with affected Indigenous groups throughout the IA process, or work to establish continuing and mutually reinforced relationships. Crown governments can make direct changes to IA law, regulations and policy guidance to explicitly create spaces for Indigenous and non-Indigenous collaborative action.

8.4 Additional Topics and Openings for Future Research

While the research has demonstrated that the five key principles provide a useful structure for reviewing case experience as well as for the broader revision of assessment processes and practices involving Indigenous interests and jurisdictions, more testing of the principles in application to additional cases, including new initiatives, is necessary to further validate them. Specific areas for additional research could include:

- Independent, Indigenous-led assessment case studies in comparison to Indigenous and non-Indigenous collaborative cases;
- In the design and implementation of Indigenous-led initiatives; and/or
- In the planning and implementation of a wide range of other deliberations and decision-making involving Indigenous interests (beyond impact assessment).

Additionally, while the key principles provide a starting point for establishing new and progressive IA frameworks, additional work on specific models for effective collaboration that utilize the key principles is needed.

The federal *Impact Assessment Act* of 2019 may lay the groundwork for IAs across Canada approaching Indigenous roles in assessment in ways similar to what was demonstrated in the NICO Project assessment. However, due to the *Act*'s vague wording and the continuing absence of demonstrated commitment to collaborative arrangements with Indigenous jurisdictions,

meeting the *Act*'s potential will depend on further steps. Future research into the practical effectiveness of the IAA and the federal government's decisions will therefore be crucial.

Finally, this research is bounded within the Canadian context, and further study into nation-states with similar colonial regimes (such as those in New Zealand and Australia) may provide important complementary insights.

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