DECOLONIZING ENVIRONMENTAL 'MANAGEMENT': A CASE STUDY OF KITCHENUHMAYKOOSIB INNINUWUG

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ABSTRACT

Decolonizing Environmental 'Management':
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Canadian environmental management involving Indigenous communities is at a crossroads. First Nation communities in regions holding mineral and other natural resources are coping with legal, economic and political pressures to comply with government and industry demands for resource extraction and exploitation. In light of resulting conflicts, an improved environmental decision-making process is required to avert adverse environmental and cultural impacts and to recognize the rights of Indigenous peoples. My research sought to identify key principles of Indigenous environmental decision-making in Canada through the development of a conceptual framework. This framework was then applied to direct the examination of a mineral exploration conflict on the traditional lands of the Kitchenuhmaykoosib Inninuwug (KI) in northwestern Ontario. Case study findings were subsequently used to adapt the framework and provide recommendations for improved environmental decision-making involving Indigenous peoples and traditional territories. This thesis highlights the significance of Indigenous worldview, governance and participation in these circumstances. There is a need for improved environmental decision-making models that: i) respect the relationships, responsibilities and knowledges of Indigenous peoples; ii) recognize the rights, laws and autonomy of Indigenous communities; and iii) involve Indigenous people in fair, open and meaningful ways.

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CHAPTER 1: INTRODUCTION

What is wrong with environmental management today? It was a question I asked myself while working as a teacher for the Kitchenuhmaykoosib Inninuwug (KI) First Nation in Big Trout Lake, Ontario. How had a mineral exploration company from the Toronto area gained rights to KI's traditional land without community consent? Why was the Ontario government supporting the company despite federal constitutional law and the resulting public outcry? And would KI succumb to the pressure or continue to resist the invasive colonial system? I learned that Canadian environmental management involving Indigenous communities is at a crossroads. While governments may enact environmental protection and Indigenous rights legislation, neither set of laws are upheld because governments must assert their jurisdiction to encourage economic development (Ellis, 2005). In turn, First Nations that seek both economic development and the protection of their environments are often pressured to adopt resource extraction projects on their lands. To say *no* is considered anti-development and potentially criminal. According to Canada's Supreme Court (*Mikisew Cree First Nation v. Canada,* 2005), federal and provincial governments do not recognize First Nations' *right to say no* to resource extraction on their traditional lands. Period.

Ecological and Cultural Sustainability

Since time immemorial, Indigenous peoples have lived with their environments according to the natural restraints of the land and ethical norms that socially and spiritually reinforced sustainable lifestyles (Menzies, 2006). These ethical norms are rooted in a direct dependence on the land, varying slightly among Indigenous peoples

over the great expanses of North America. Tewa scholar Gregory Cajete explains, "While Native peoples all over the world are diverse in their expressions of culture, their fundamental way of relating to the natural world is remarkably similar" (2000, p. 86). Indigenous societies see their reality differently than non-indigenous societies, articulated by a common Indigenous understanding that culture and ecology (place) are inseparable. Intertwined principles of relationship, interdependence and respect formed an ecological compact between humans and all other beings in Creation. This agreement, termed "spiritual ecology" by Cajete, formed balanced relationships between Indigenous cultures and their environments for thousands of years (2000, p. 38). Without such deeply-held and culturally embedded social and ecological principles, whole societies would have perished long ago. Perhaps one of the core foundations of diversity is the concept of revered relationships. According to Leroy Little Bear, "…everything is interrelated. If everything is interrelated, then all of creation is related. If human beings are animate and have spirit, then 'all my relations' must also be animate and must also have spirit" (in Cajete, 2000, p. x). Indeed, the central element of Indigenous spiritual ecology includes honouring the responsibilities of each gift of the Creator. The diverse ways in which this respect is expressed is representative of diverse cultural belief systems.

Indigenous peoples and cultures are suited to the landscapes from which they have emerged. According to the Little Red River Cree in northwestern Alberta, cultural sustainability and ecological sustainability are inseparable. Marc Stevenson and Jim Webb (2003) write, "as a people whose culture evolved within a northern boreal ecosystem, their cultural survival is dependent upon the ecological sustainability of the boreal landscape. Conversely, the biological diversity and ecological integrity of the

boreal forest may be dependent upon their cultural survival" (p. 98). In *Cultures of Habitat*, Gary Paul Nabhan (1998) insists that the health of cultural and biological diversity is attributed to shared patterns of distribution across the Earth. He adds that environmental management efforts too often ignore the positive and reciprocal relationship that Indigenous peoples have with their environments. Nabhan writes, "It is ironic how many conservationists have presumed that biodiversity can survive where indigenous cultures have been displaced or at least disrupted from practicing their traditional land-management strategies. Ironic because most biodiversity remaining on earth today occurs where cultural diversity also persists" (1998, p. 37).

Anishinaabe scholar Winona LaDuke (1999) suggests that there is a direct relationship between the loss of cultural and biological diversity. She writes, "The last 150 years have seen a great holocaust. There have been more species lost in the past 150 years than since the Ice Age. During the same time, Indigenous peoples have been disappearing from the face of the earth" (p. 1). In this way, environmental destruction threatens the existence of Indigenous culture, and vice versa. LaDuke describes the industrial presence on Indigenous lands as the toxic invasion of North America. Compounding social injustice is a pattern of environmental racism across the continent that has led to a higher proportion of negative environmental impacts on Indigenous reservations and homelands. She writes, "While Native peoples have been massacred and fought, cheated, and robbed of their historic lands, today their lands are subject to some of the most invasive industrial interventions imaginable" (1999, p. 2). Sadly, Indigenous lands continue to be exploited for nuclear testing, toxic waste dumping, hydro-electric flooding and industrial resource extraction.

Contemporary Challenges

It is becoming ever more obvious that the dominant Euro-Canadian system of environmental management is ill-equipped to deal with the systemic problems – social, economic, ecological, etc. – created and perpetuated by the Western colonial models of progress and development. Stevenson and Webb (2003) insist that government intransigence to accommodate the rights and interests of Indigenous peoples may be one of the greatest barriers to sustainability in Canada, not only in terms of social and cultural sustainability, but because it threatens ecological sustainability as well. Across the country, Indigenous lands are increasingly sites of conflict as industry pushes further into remote areas to satisfy the consumptive desire of global capitalism. Additionally, a number of Indigenous nations in Canada are actively engaged in resource extraction activities, often to help meet the immediate economic needs of their communities. National newspapers reveal daily discord as a result of exploitation on Indigenous lands, including oil drilling and tar sands development, mineral extraction, forest clear-cutting, mercury contamination and countless other Indigenous rights and environmental abuses. "Evident by the number of conflicts that continue to arise between Aboriginal communities, government and industry there is a clear indication that the methods used thus far to address Aboriginal concerns in the land management process are inadequate" (Natcher, 2001, p. 121). Furthermore, signed treaties[1] are often considered a blessing and a curse because they are interpreted by governments as land *surrender* agreements, to the dismay of Indigenous peoples who insist their territories were never ceded in the land *sharing* agreements (Simpson, 2008; Stevenson & Webb, 2003; Usher, 2003). Despite

[1] Usher (2003) uses the term 'treaties' to describe older treaties and adherences (1860–1930), as distinguished from so-called modern treaties, which are generally referred to as comprehensive land claims agreements.

the Government of Canada's fiduciary and legal obligations to consult with Indigenous communities whose traditional lands are subject to industrial development (*Delgamuukw v. Regina*, 1997; *Haida v. British Columbia and Weyerhauser*, 2002), the ability of First Nations to make decisions about protecting, conserving and/or utilizing their traditional lands is often challenged as resource extraction continues to proceed.

According to Ilan Kapoor (2001), mainstream environmental management is premised primarily on an orthodox scientific paradigm that views 'nature as resource' – inert, passive and separate from human beings. From this perspective, humans can 'manage' or degrade their environments in order to service unfettered economic growth (Kapoor, 2001). Fortunately, environmental decision-making is slowly beginning to evolve towards improved consultation protocols and more integrated environmental assessment processes (Gibson, 2002). While Indigenous resistance is often focused upon the conventional *reactive* environmental management process, typically initiated after a proponent issues a claim for resource extraction, a *proactive* process would help determine which lands are suitable for development in the first place (Natcher, 2001). Jerry Ravetz (2004) suggests that the precautionary and extended peer community approach of post-normal science poses an alternative to the reductionist approach of conventional Western science. According to Ravetz, post-normal science lies at the contested interfaces of science and policy and it is best used to address issues when facts are uncertain, values are disputed and the stakes are high. In light of current and future pressures to pursue mineral extraction activities in Indigenous territories, the post-normal science of precaution and integration offers an alternative path forward for environmental decision-making in Canada.

The concept of environmental justice presents another key alternative to conventional environmental management. Rather than simply managing natural areas, ecological diversity is aided by the defense of Indigenous cultural diversity and the homelands that sustain them. LaDuke (1999) is persuasive that work on both fronts – ecological and cultural – should be undertaken simultaneously. Indeed, the protection of endangered environments is inextricably linked to the protection of endangered Indigenous cultures. LaDuke (1999) writes, "In the final analysis, the survival of Native America is fundamentally about the collective survival of all human beings" (p. 5).

Across Canada, numerous First Nation communities continue to cope with legal, economic and political pressures to engage with and comply with industry interests and demands. In the context of large-scale resource extraction proposals in Ontario's far north, an improved environmental decision-making process is necessary due to the risk of adverse environmental and cultural impacts, as well as the likelihood of ongoing conflict due to Indigenous rights infringement at the national and international level. "Aboriginal responses to resource development proposals in or near their traditional territory can take a wide range of forms, from formal 'business-like' negotiations to armed resistance, depending on several factors ranging from recognition of their rights to philosophical differences with regards to mining activities" (Hipwell et al., 2002, p. 14). In Ontario, the provincial government has already been met with resistance in several communities, including Kettle and Stony Point First Nation (Ipperwash), Six Nations (Caledonia), Ardoch Algonquin First Nation (Frontenac) and Kitchenuhmaykoosib Inninuwug (Big Trout Lake). Most recently, First Nations in Ontario's boreal forest region have become increasingly concerned about the so-called 'Ring of Fire' area, which has drawn the

attention of mineral exploration companies eager to discover coveted chromite riches under the surface.

Despite the onslaught of government-sanctioned industry exploitation, Indigenous communities have made great strides in recent years to protect their lands and uphold their cultural integrity. First Nations across the country are asserting rights to their territories and have declared their own environmental decision-making protocols, specific to their communities and their concerns. Like the Lutsel K'e Dene, who have long-asserted their own consultation and resource development protocols in Northwest Territories (Weitzner, 2006), the Coast Tsimshian Communities of Lax Kw'alaams and Metlakatla also signed a Pioneering Consultation Protocol Agreement to clearly set out their expectations regarding proposed activities on British Columbia's northwest coast (2008). It appears as though the tide is turning as Indigenous communities increasingly demand the *right to say no* to resource extraction, as stipulated in Article 32(2) of the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

Advancing the Discourse

To date, research focusing on environmental decision-making and Indigenous communities has often been limited to issues within single steps of the conventional environmental management system, such as the utilization of Indigenous knowledge in the environmental impact assessment process (Baker & McLelland, 2003; Kwiatkowski & Ooi, 2003; Paci et al., 2002; Stevenson, 1996; Usher, 2000; Wiles et al., 1999). While this work has been necessary to improve individual aspects of environmental management, a complete understanding of environmental decision-making in the context

of Indigenous lands and communities is required. Presented in the following five chapters, my research seeks to identify key principles of Indigenous environmental decision-making. Chapter 2 illustrates the approaches and research design used to undertake this thesis. In Chapter 3, I develop a conceptual framework to better understand environmental decision-making and Indigenous communities through a literature review of scholarly journals and key informant interviews. In Chapters 4 and 5, I apply the framework to examine a current case study – the mineral exploration dispute on the traditional lands of the Kitchenuhmaykoosib Inninuwug (KI) in northern Ontario. The case study involved the initial framework, assisted by a document review and additional interviews with people closely related to the case. In Chapter 6, I assess lessons learned from the case study in order to offer recommendations for improved environmental decision-making processes regarding Indigenous lands in Canada. The resulting framework presented by this thesis attempts to provide a basic understanding of the needs of Indigenous communities facing resource extraction pressures and helps to identify essential best practices for preventing the unsustainable exploitation of resources on Indigenous lands. Indeed, a robust and decolonized environmental decision-making process is necessary to resolve the longstanding and current conflicts facing Indigenous communities today while working to ensure ecological, cultural and economic sustainability into the future.

CHAPTER 2: RESEARCH METHODS

Introduction

This Chapter outlines the methodology and methods used to complete this research. I begin by positioning myself within the context of the overall project in order to acknowledge the inherent subjectivity of the human experience. Indeed, “Any researcher, no matter how unstructured or inductive, comes to fieldwork with *some* orienting ideas” (Miles & Huberman, 1994, p. 17). The theoretical section describes the significance of an Indigenous worldview for research involving Indigenous peoples, as well as its relationship with a Euro-Canadian (Western) worldview. Next, the research design is described in detail to explain how the research was conducted and what measures were taken to limit individual bias. Research methods primarily involved the development of a conceptual framework and a case study review to identify and investigate key principles of Indigenous environmental decision-making, both positive and negative from the perspective of different actors engaged in the process. Finally, a series of ethical considerations are described for research involving Indigenous communities.

Positioning the Research(er)

I did not complete this work in a vacuum. I came to this project with a university and college education already rooted in the integrated fields of environmental and cultural sustainability. Through research and experience, I have reflected on the interconnections between Indigenous epistemologies and the future of life on this planet. One of the most profound experiences of my life began in 2005 during a year in the

community of Kitchenuhmaykoosib Inninuwug (KI), Big Trout Lake, Ontario. I was working as a Grade 5 teacher for the Kitchenuhmaykoosib Education Authority when I learned about a mineral exploration company that had conducted exploratory drilling south of the community. During that time, I witnessed KI's defence of its mining moratorium and the unfolding dispute regarding KI's authority over the First Nation's traditional lands. What occurred over the following years has inspired me to look deeper into the issues and undertake the thesis presented here. Most importantly, I am grateful to the community of KI and countless Indigenous peoples worldwide who continue to advocate for the protection of their traditional territories for the betterment of ecological and human life.

I was also informed by the work of Indigenous scholars who identify the inherent challenges of academic research. According to Maori scholar Linda Tuhiwai Smith's *Decolonizing Methodologies* (1999), it is difficult to discuss research methodology and Indigenous peoples together without understanding the complex ways in which the academy is deeply embedded in imperial and colonial practices. Smith writes, "In other words, research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions" (p. 5). I have become keenly aware of dominant Western biases that may seek to limit the discussion around Indigenous and environmental issues.

As a non-indigenous researcher, I am aware that my own cultural biases and perceptions influence my understanding of Indigenous communities and the issues that lie before them. As a descendent of mixed European ancestry – Scottish, Hungarian, English and Irish – I form part of a settler society that inhabits Canada today. While not

entirely informed by Western societal ideals, I do acknowledge that my upbringing and education were fundamentally couched within the broader Euro-Canadian paradigm. Through further conversation, education, travel and experience, I have begun to open my consciousness to other ways of knowing, seeing and believing. I learned that as a Canadian citizen I am a partner and beneficiary of a Treaty relationship between Canada and Indigenous peoples that began long before I was born. I have also come to realize that my interest in Indigenous communities stems from a desire to understand the peoples and cultures that have lived on this land – the land I also call home – since time immemorial. Through further study and friendship with Indigenous people, I have been given a generous opportunity to understand another paradigm, with its own set of worldviews, cultures, languages and ethics. Although Indigenous ways are not part of my recent cultural history, they have provided me with a living connection to the ways of my ancestors long ago.

Theoretical Approach

When discussing environmental issues on Indigenous lands, as well as decisions that affect Indigenous communities, it is vital to acknowledge the convergence of distinct epistemologies. The very term 'environmental management' stems from a Western worldview rooted in domination and reductionist understandings of the natural world (Kapoor, 2001). An Indigenous worldview, on the other hand, is integral to understanding Indigenous relationships to the land (McGregor, 2004) and presents an alternative approach to decision-making in the context of resource extraction and environmental management.

The theoretical approach of my research is situated within the concept of 'ethical space,' first introduced by Roger Poole in 1972. Poole illustrates that an ethical space is a potentially constructive and appropriate position from which to undertake research that crosses cultural borders (as cited in Ermine, 2000). Cree scholar William Ermine (2000) further explores the concept by suggesting that ethical space is respectful of alternate knowledge systems. Ermine writes, "The confluence where the two worlds of Indigenous and Western Peoples meet and where two sets of worldviews are brought to the encounter can also theoretically represent a space of flux where nothing is yet formed or understood" (2000, p. 121). The ethical space at the convergence of two worldviews represents the location from which a meaningful dialogue can take place between different knowledge systems (Ermine, 2000). "How do we reconcile worldviews?" asks Ermine. "Shifting our perspectives to recognize that the Indigenous-West encounter is about thought worlds may also remind us that frameworks or paradigms are required to reconcile these solitudes. The theory of ethical space is one such framework" (2007, p. 201). In this thesis, I have used ethical space as the 'lens' through which to understand the issues and the subsequent research findings. In other words, ethical space has informed and influenced the approach of the thesis.

A common thread in the discourse of Indigenous scholarship is that research should not be gathered simply for the amusement or conversation among scholars. Vine Deloria Jr. (1998) calls for the use of theoretical knowledge to promote practice and action. This alignment of theory and practice to effect change is called 'praxis.' According to Paulo Freire, "human activity consists of action and reflection: it is praxis; it is transformation of the world. And as praxis, it requires theory to illuminate it. Human

activity is theory and practice; it is reflection and action" (2006, p. 125). Research must seek to be purposeful, accessible, relevant and active, and it must also have practical applications within the communities of participants.

Research Design and Methods

Qualitative research is an approach that draws upon numerous research methods to collect empirical data. John W. Creswell (1998) defines qualitative research as "…an inquiry process of understanding based on distinct methodological traditions of inquiry that explore social or human problems." Creswell notes, "The researcher builds a complex, holistic picture, analyzes words, reports detailed views of informants, and conducts the study in a natural setting" (1998, p. 15). A qualitative methodology is a suitable approach to researching Indigenous environmental decision-making processes because it is consistent with the worldview it seeks to understand. According to Fikret Berkes (2008), "Indigenous knowledge pursues holism by considering a large number of variables qualitatively, while Western science tends to concentrate on a small number of variables quantitatively" (p.197). Creswell (1998) adds that qualitative social and human science research requires participation in a form that does not have firm guidelines or procedures and is evolving constantly. Indeed, the policies and practices of Indigenous communities, government and industry are constantly in flux. Considering the current social and political conditions related to environmental decision-making and Indigenous peoples in Canada, I suggest that a qualitative approach to understanding this complexity of issues is the most suitable.

My research sought to identify key principles of Indigenous environmental decision-making. To investigate these principles, I applied aspects of a grounded theory approach to construct a theoretical model (Creswell, 1998) using a literature review of scholarly journals and key informant interviews. To further my understanding, I applied the framework to examine a current case study – the mineral exploration dispute on the traditional lands of the Kitchenuhmaykoosib Inninuwug (KI). The initial framework enabled me to design interview questions and to test the framework elements in the 'real world' (See Chapters 4 and 5). To incorporate lessons learned from the case study, I assessed the findings and adapted the framework to offer recommendations for improved environmental decision-making processes regarding Indigenous lands in Canada (See Chapter 6). Whenever possible, the use of multiple methods – known as triangulation – served to clarify results, verify the repeatability of an observation, ensure accuracy and provide space for alternative explanations and contributions (Stake, 1994; Tellis, 1997). It is important to note that qualitative research is not vague research. In order for the research to be beneficial to the participating community and effective for environmental and resource policy decision-making, the methodology and methods must be objective, transparent and useful.

Framework Development

The environmental management literature stresses the need for new and improved frameworks in the realm of consultation between Indigenous peoples and the government, as well as the utilization of Indigenous Knowledge in environmental assessment processes (Natcher, 2001; Paci et al., 2002). To better understand Indigenous

environmental decision-making, I developed a conceptual framework utilizing aspects of grounded theory. Creswell notes, “the intent of a grounded theory study is to generate or discover a theory, an abstract analytical schema of a phenomenon, that relates to a particular situation” (1998, pp. 55-56). The development of the framework relied on a literature search and critical review, as well as interviews with key experts.

Literature Review

Current environmental management literature was reviewed to identify key themes related to environmental decision-making in the context of Indigenous communities. The identification of key themes was completed using a simple bins approach (Miles & Huberman, 1994). Using an alternating keyword search (Literature Search, see Appendix A), I uncovered a large spectrum of readings under the umbrella of Indigenous environmental decision-making. However, due to the immense number and scope of the readings, I was forced to limit my searches to those that mentioned mineral resource extraction practices. While this did not produce readings that focused on these practices specifically, it helped to limit articles to those that at least mentioned mineral resource extraction. Key readings were selected through repetition in one or more of the searches. This organized search was augmented with literature listed repeatedly in authors’ bibliographies, as well as readings suggested by the key informants and the thesis committee. For the most part, the selected readings are published in peer-reviewed academic journals dating back to 1998. Some published non-government reports were also used. With some exception, books, conference papers and independent perspective

pieces were largely disregarded in the literature gathered for review and the construction of the initial conceptual framework.

Key Informant Interviews

The use of expert interviews is a vital source of information for the development of conceptual frameworks and case studies alike. After completing the initial literature review, criteria were developed to identify key experts to inform the construction of the conceptual framework. Each of the participants met the requirements outlined prior to commencing the interview research:

Academics (2)

- PhD and/or professor at a Canadian University
- At least two publications (must reference Indigenous scholars and others)
- At least 5 years experience engaged with First Nations resource issues / conflicts
- Experience working directly with First Nations communities and leadership
- Direct involvement in a joint panel review and/or decision-making process related to resource development in Indigenous territories

Independent Consultant (1)

- At least 5 years experience engaged with First Nations resource issues / conflicts
- Experience working with both First Nations and the provincial government
- Impact assessment, resource management and/or land claims research experience

Accordingly, two academics and one independent consultant were selected. Common among the participants was the requirement that each be engaged with First

Nations resource issues and conflicts for at least the past five years and have considerable experience working directly with First Nations communities. Additionally, the participants were limited to those who have referenced both Western and Indigenous scholars in their work. Interview questions were designed based on the existing themes in the literature in such a way as to provide space for existing or new critical elements to emerge within the framework. Participants were asked the same series of questions with some additional clarification questions specific to their area of expertise. As noted in the informed consent process, all interviewees were given the opportunity to revise their quotations in the interview transcripts and the thesis drafts.

Framework Analysis

For the conceptual framework, I used aspects of grounded theory data analysis. While grounded theory is commonly applied to interviews (Creswell, 1998), I applied this approach to the literature review as well. According to Miles and Huberman, "A conceptual framework explains, either graphically or in narrative form, the main things to be studied – the key factors, constructs or variables – and the presumed relationships among them" (1994, p. 18). Thematic content analysis of the literature review and the interviews initially helped to identify constructs for the development of a conceptual and analytical framework for use in the case study of this thesis. I reviewed the data using the following criteria to characterize the critical elements of Indigenous environmental decision-making: i) frequency of representation or strength of statement; ii) appearance in both the literature review and interview transcript.

Frequency of representation was used to identify common themes in the literature and interview transcripts. Frequency was most evident through the use of the Framework Literature Table (See Appendix B). Key readings were plotted on the table to determine which themes of Indigenous environmental decision-making processes were regularly discussed by the authors. Strengths and weaknesses for the thesis were identified and links to other readings were recorded. If provided by the author, the research methodology of each selected article was also noted. Key themes in the literature were those that appeared repetitively. This is evident by scrolling through the table results. The use of checkmarks signifies that an article discussed a certain theme at length. If frequency of representation was not evident in the literature or the interview transcripts, the strength of an author's or interviewee's convictions could account for inclusion. However, to be considered a critical element of the framework, an element had to meet the criteria of either frequency of representation OR strength of statement AND it must have appeared in both the literature review and the interview transcript of at least one key informant. In this way, the interview data helped to isolate the key themes of the literature data, and vice versa. If a theme appeared solely in the literature, it would not be included as a critical element of the framework. Likewise, if a theme appeared solely in the interviews, it would not be included as a critical element. As a result, all of the critical elements were cross-referenced to ensure repetition in both sources of data.

Case Study

To improve the validity of the framework, the critical elements of Indigenous environmental decision-making were triangulated with the use of a case study (Chapters

4 and 5). The initial conceptual framework was applied to the case study to inform further interview questions and the subsequent analysis of the transcripts and case documents. The framework was then used as a checklist to determine the presence or absence of critical elements and to focus data collection in the case. This process made it possible to strengthen the understanding of the critical elements. In this way, the application of the initial framework to the case study provided an opportunity to improve the framework and to identify key principles of Indigenous environmental decision-making.

The particular issue of resource extraction in Indigenous communities was chosen for the case study. A recent conflict between the Government of Ontario, a mineral exploration company and a First Nation community provided an appropriate example to understand the opportunities and challenges for improved environmental decision-making in Indigenous traditional territories. The case study was conducted in collaboration with the Oji-Cree community of Kitchenuhmaykoosib Inninuwug (KI) – known as the People of Big Trout Lake – in Ontario's remote northwest. The conflict presented by the case offered a unique opportunity to study the legal issues, as well as the contested environmental decision-making policies of KI and the Ontario government. A chronological approach to understanding the conflict was suitable because case studies are often bounded by time and cover events over time (Yin, 1989, as cited in Creswell, 1998). Case studies also involve the widest array of data collection in order to build an in-depth picture of the case. Yin (1989) recommends using six forms of data collection as part of a case study approach: documents, archival records, interviews, direct observation, participant observation and physical artifacts (as cited in Creswell, 1998). However, a case study is also a "bounded system," bound by time and place (Creswell,

1998, p. 37). This approach was suitable for my research because the thesis was bound by constraints in time and financial resources, and the issue could be effectively understood through the example of the KI community (the place).

Semi-Directive Interviews

Interview participants were carefully selected to inform the case study including KI culture and decision-making processes, as well as government and industry relationships with KI. Most participants were selected using a "snowball technique" whereby interviewees helped to identify other knowledgeable individuals (Goodman, 1961). This process was especially useful to identify knowledge holders within the KI community. To limit the potential bias of this process, participants were recommended by at least 2 previous participants. As with the initial framework development interviews, all case study interviewees met predetermined informant criteria:

KI representatives (2)

- Members of the KI Band Council actively engaged with the Ontario government during the dispute (i.e. Chief, official spokesperson)
- Directly negotiated with government, law and/or industry related to the case

KI environmental professional (1)

- Working closely on the mineral exploration issue for at least 5 years
- Direct experience dealing with government, law and/or industry
- Necessary understanding of KI's environmental management protocols (i.e. past and current Directors of KI's Land and Environment Unit)

KI Elder (1-2, *at least one female*)

- Recognized by the community as an Elder
- Acknowledged by other Elders as a respected voice on land issues
- Living in the community for at least 10 years
- Personal use of land affected by mineral exploration

KI community members (2, *at least one female*)

- Living in the community for at least 5 years
- Understanding of additional issues related to the case (i.e. spiritual concerns, perspectives on land, cultural and traditional activities affected by the proposed mining), not necessarily reflected in the court case or government negotiations

Environmental organization representative (1)

- Understanding of the land and resource management issues related to the case
- Experience working directly with KI Council (i.e. Wildlands League) and/or understanding of alternative approaches to conventional environmental management

Ontario government representative (1)

- Understanding of environmental decision-making in the context of Indigenous communities (i.e. Ministry of Natural Resources Aboriginal Relations Branch and/or First Nations portfolio)
- Understanding of the case and/or experience working with First Nations in regards to resource extraction

Indigenous organization representative (1)

- First Nations land and resource management portfolio (i.e. First Nations Land Advisory Board, Nishnawbe Aski Nation, Independent First Nations Alliance)
- Experience working directly with KI Council and/or familiar with the KI case

Platinex representative or resource industry representative (1)

- Directly involved with exploration at Big Trout Lake (i.e. Platinex CEO) or mineral resource industry advocate familiar with industry concerns in the context of First Nations and government negotiations (i.e. Prospectors and Developers Association of Canada)

A semi-structured interview approach (Creswell, 1998) was used with all key informants. Pre-established questions helped to guide the interviews, allowing freedom to adapt questions depending on the context of the interview and knowledge held by the interviewee. Interview questions were designed to learn about the key issues related to the mineral exploration conflict as well as KI decision-making and alternative perspectives of the land. With some interviews, I employed a more open-ended approach to allow for open dialogue and comfort of the participants. Interview guides were developed based on the initial conceptual framework outlined in Chapter 3, with some additional questions related to the participants' experience and livelihood. All interview participants were given the opportunity to revise their quotations in the interview transcripts and the thesis drafts, as articulated in the informed consent process.

Document Review

Primary and secondary literature, including archival records, was used to examine the current knowledge relating to Indigenous environmental decision-making processes and the case study of the mineral exploration conflict. Press releases, government and non-government documents, books, scholarly dissertations, conference minutes, KI policies, official correspondence, newspaper articles and other relevant materials were reviewed. The controversy surrounding mineral exploration at Big Trout Lake was contentious and the legal and political circumstances were constantly evolving. Some legal documents and court transcripts were also utilized throughout the project.

Participant Observation

The case study also drew upon elements of phenomenology and ethnography. During my teaching contract in 2005/2006, I spent my first year in the KI community. Since the beginning of this research I have returned to the community several times for week-long or month-long stays, in March 2008, August 2008, September 2009 and January 2011. Participant observation, while it may have only played a minor role in the research, helped inform a greater understanding of KI community concerns regarding mineral resource extraction on the south shore of Big Trout Lake, Ontario. This method involves immersion in the day-to-day lives of the people as well as one-on-one interviews (Creswell, 1998). Elements of an ethnographic approach improved my understanding of KI cultural customs and ways of life, while elements of a phenomenological study helped me to convey the lived experience and consciousness of KI community members regarding Indigenous connections to land.

Case Study Analysis

Results of the document review, semi-directive interviews and participant observations were also evaluated by employing thematic content analysis to reveal common themes tied to Indigenous environmental decision-making. The document review primarily assisted the chronological development of the case study history. Wherever possible, the information was triangulated to assist the validation of dates and details. Next, interview material was analyzed iteratively during the transcription process and later through the use of open coding. Since the initial conceptual framework was used to help gather the case study data, broad themes were revealed early. As expected, many parallels were drawn between the initial framework and the case study data.

Due to the number of interviews related to the case, open coding was conducted with the assistance of NVivo 8 qualitative analysis software (QSR International, 2007). This process helped to improve the efficiency and organization of the analysis for a larger sample group. Coding involved rereading the transcripts several times and grouping selected passages of the text under defined subheadings called nodes. Since the interview questions had been tailored according to the initial framework, coding was conducted much the same way. Using the software, nodes were created under the headings worldview, governance and participation. Additional nodes were created as new themes and details appeared during the study. To ensure the reliability and repeatability of the thematic analysis, a second qualitative analyst with no previous history or knowledge of the case coded a sample transcript and an inter-coder variability comparison was conducted with 80 to 90 percent accuracy for each node. Finally, participant observation and informal discussions with KI community members were essential to finding

information, making connections for interviews and gaining a deeper appreciation for KI's land, culture and worldview. General note-taking was used to document my impressions and to keep a record of important details.

Ethical Considerations

At all stages, this research project and its activities conformed to the principles of the Trent University Research Ethics Board (REB) and Trent's Aboriginal Education Council (See Appendix C). Additionally, the research case study was undertaken with the consent of the Kitchenuhmaykoosib Inninuwug Band Council. During my initial meeting with the KI leadership in March 2008, Chief and Council agreed to undertake a collaborative research project (KI Letter of Support, see Appendix D). According to participatory research methods, KI was given the opportunity to review the research at several stages of the process, including various project proposals and summaries, the formulation of interview questions, the selection of interviewees and the interpretation of results. I was assigned by the KI Council to work directly with the Director of the KI Lands and Environment Unit. Together with the KI Council, we made a collaborative decision that the thesis research would in part serve KI's needs for greater environmental decision-making capacity, as well as fulfill the standards and expectations of the Graduate Studies Department at Trent University. One of the KI councilors was also appointed by the KI Council to sit on the Thesis Committee as a community advisor. However, due to administration issues at Trent University's Frost Centre, the community member could not be recognized as an official committee member. This is an issue that must be resolved in the future for university projects involving Indigenous communities.

Interviews were conducted face-to-face whenever possible; otherwise interviews were conducted by telephone. All interviewee participants were over the age of 18 prior to the interviews and were not recruited from within an institution having authority over them. All expert interviewees were selected based on their experience and understanding of environmental decision-making issues in the context of Indigenous communities. At no point in time was compensation used in the process of recruitment. In all circumstances, any compensation or gifts were provided at the conclusion of the interview. Due to the potential risk of transcripts being subpoenaed as a result of ongoing legal circumstances, the Informed Consent Form (See Appendix E) illustrates that confidentiality will be protected. In all written documents (transcripts, etc.), acronyms or alphanumeric coding, and not individual names, were used to identify participants. With permission, all interviews were recorded using a small digital device and later transcribed in Peterborough, Ontario. Quotations and full names were only used with the permission of the interview participants, as determined by their responses on each informed consent form. The consent process with uni-lingual Oji-Cree speaking individuals was conducted orally via a translator selected by the community.

Working closely with the Director of the KI Lands and Environment Unit, a draft cooperative research agreement was designed to further protect the intellectual property rights of KI members involved in the case study. The director took a keen interest in university ethics protocols because of community concerns arising from past research projects involving KI community members and KI lands. We agreed that I would not profit from KI research without KI's consent. KI will retain rights to the transcripts that arise from the project; I will retain rights to the thesis, including the development of the

conceptual framework and other research external to the case study. Once approved, KI Council will utilize this document for future research projects involving the community and their traditional lands.

CHAPTER 3: DEVELOPMENT OF THE FRAMEWORK

Introduction

The purpose of this Chapter is to present and review literature and interview material, which assisted the development of a framework to better understand the critical elements of Indigenous environmental decision-making in Canada. The conceptual and analytical framework relied on two major sources of data: i) literature search and critical review; and ii) key informant interviews. First, a review of the current environmental management literature regarding Indigenous peoples was conducted to understand the various issues, challenges and opportunities for environmental decision-making in Indigenous territories. Second, interviews with key individuals furthered my understanding of the key themes by cross-referencing participants' responses with the literature. Finally, the framework was developed to identify critical elements in the literature and interview transcripts that could be later applied in the context of a case study.

Literature Review

To begin, I identified five main conceptual discourses in the academic literature available online in common searchable bibliographic databases (see Chapter 2). The five themes included: i) worldview and cosmology; ii) governance and rights; iii) land use planning; iv) environmental impact assessment; and v) Indigenous peoples' participation in environmental management. The five discourses were chosen in association with their importance or bearing on the topic of this thesis for the reasons outlined here.

First, the discourse of worldview relates to human perceptions of the environment and relationships with the natural world (Davidson-Hunt, 2003; Lewis & Sheppard, 2005). I would argue that cosmology and culture influence our interactions with the environment and understandings of our place within it. Therefore, worldview is the lens through which people make decisions that affect the environment. Second, the discourse of governance relates to various understandings of law, land ownership, jurisdiction, rights and responsibilities. Governance may include Canadian jurisprudence, traditional Indigenous law, international law and treaty-making (Ransom & Ettenger, 2001; Tollefson & Wipond, 1998). In the context of this thesis, governance is considered to be the spectrum of rights that affect decisions related to the environment. Third, the discourse of land use planning relates to land use studies and understandings of past, current and future activities that occur on the landscape (Kendrick & Manseau, 2008; Stevenson & Webb, 2003). Land use planning is the decision process relating to a broad range of activities in the environment. Fourth, the discourse of environmental impact assessment (EIA) covers a large spectrum of potential impacts as a result of a proposed activity, including bio-physical, social, economic, spiritual and cumulative effects (Kwiatkowski & Ooi, 2003; Paci et al., 2002). EIA is an analytical process through which people pre-assess the impacts of a land use decision. Finally, the discourse of Indigenous peoples' participation relates to individual or community involvement in environmental decision-making processes (Hipwell et al., 2002; O'Faircheallaigh, 2007). Participation discourse is also broad and ranges from various understandings of consultation and consensus-building to the use of negotiated agreements. Such literature deals with Indigenous communities' involvement in decisions that affect the environment. Together,

these five key themes helped me to understand the broad range of issues related to Indigenous peoples and environmental decision-making processes. Note also, as discussed in Chapter 2, that I limited my search to sources discussing mineral resource extraction in some form because of the large scope and breadth of sources available in these fields. The results of the literature review are presented here.

Worldview and Cosmology

Much of the environmental management literature related to Indigenous peoples in Canada discusses the role of worldview and cosmology through the discourse of Indigenous knowledge (IK), traditional knowledge (TK) and traditional ecological knowledge (TEK).[2] It is important to understand the unique worldviews of Indigenous peoples when making decisions that affect their traditional territories. Several authors discuss the vital role of cosmology for understanding the environment (Houde, 2007; Paci et al., 2002; Usher, 2000), as well as perceptions of land and human beings' relationships with the environment (Berkes et al., 2000; Lewis & Sheppard, 2005; Natcher et al., 2005; Stevenson & Webb, 2003; Wiles et al., 1999). These unique worldviews stem from the significant relationship that Indigenous peoples have with their environments (Sosa & Keenan, 2001). Many Indigenous peoples have a holistic view of the environment, due in part to social and cultural attitudes, which are created and supported by the close interaction among environment, health and lifestyle (Kwiatkowski

[2] For the purpose of this thesis, I use these terms interchangeably but prefer the term 'Indigenous knowledge' as more representative of the entire knowledge base. For more information about knowledge terminology, including traditional, traditional ecological, local, and Indigenous knowledge, see Houde (2007). For a definition of IK, see Stevenson (1996). For definitions of TK, see Kwiatkowski & Ooi (2003); Paci, Tobin & Robb (2002). For a summary of TEK, see Berkes et al. (2000); Joyce & MacFarlane (2001); Usher (2000).

& Ooi, 2003). Some Indigenous peoples see this intimate knowledge as a gift from the Creator and from Creation (Houde, 2007; McGregor, 2004). McGregor (2004) illustrates that people, knowledge and land are inseparable. The role of language is also significant to the discussion of Indigenous worldview because key principles are found in traditional teachings (Houde, 2007; Ransom & Ettenger, 2001). In this way, ethics[3] and cultural norms are used to maintain responsible connections with the environment (Lewis & Sheppard, 2005).

Identity is a key aspect of worldview, reflected in the belief held by many Indigenous peoples that "we belong to the land" (Paci et al., 2002). In fact, land is fundamental to Indigenous identity according to the 1996 Royal Commission on Aboriginal Peoples (as cited in Hipwell et al., 2002) and is the living embodiment of personal and ancestral history (Kendrick & Manseau, 2008). Other authors use the concept of cultural landscapes (Davidson-Hunt, 2003; Houde, 2007) to describe the complex and dynamic relationships between Indigenous societies and environments. Furthermore, Wiles et al. (1999) insist that a healthy environment is crucial for traditional activity and identity.

While beyond the scope of this thesis, the debate about correct terminology and the issues of knowledge are helpful to understanding the significance of worldview. Most importantly, it must be noted that Indigenous scholars agree that Indigenous knowledge – including IK, TK and TEK – stems from the environment and an Indigenous worldview. Indeed, the land is the foundation of IK and knowledge comes from the land (Simpson 2004). McGregor (2004) adds, in order to understand IK, one must understand

[3] Indigenous environmental ethics are discussed further by Simpson (2008) and Stevenson (1996). Custodial responsibility is described by Davidson-Hunt (2003).

Indigenous worldviews. IK is an epistemological system about how to learn, be and behave (Kendrick & Manseau, 2008) and it is both a traditional and contemporary pursuit (Stevenson, 1996). In this way, IK is a knowledge-practice-belief complex (Berkes et al., 2000). McGregor (2004) writes, Indigenous knowledge is a process, rather than just a product or commodity; IK is what you do, not just what you know.

Indigenous knowledge discourse in the environmental management literature deals with the depth of understanding required by those who attempt to access IK for environmental decision-making purposes. For example, Houde (2007) suggests that the six components of TEK should be fully appreciated, including: i) factual observations; ii) management systems; iii) past and current land uses; iv) ethics and values; v) culture and identity; and vi) cosmology. Stevenson and Webb (2003) also advocate for the implementation of TEK in its entirety. Too often, conventional environmental managers use only the convenient aspects of TEK and fail to account for the ethical, cultural and epistemological aspects of the knowledge. It is out of these discussions[4] of TEK complexity and its ethical use that I use the terms 'shallow TEK' and 'deep TEK' to describe the various ways that IK is incorporated into environmental decision-making. I would argue that where 'shallow TEK' fails to recognize the holism of the knowledge system, 'deep TEK' embraces and utilizes the knowledge fully. However, many argue that the insufficient recognition and inappropriate use of Indigenous knowledge is part of a much larger issue – the conflict between Indigenous and Western worldviews.

The environmental management literature related to Indigenous communities in Canada focuses largely on the contrast between Indigenous and Western worldviews to

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[4] For further reading regarding TEK use and complexity, see Ellis (2005); Houde (2007); Kendrick & Manseau (2008); Stevenson (1996); Wiles et al. (1999).

better understand the challenges and opportunities for environmental decision-making. Natcher et al. (2005) explain that perceptual differences concerning the environment and 'Our' place in it are some of the primary obstacles to reaching consensus. This contrast is especially apparent in the discussions around Western science and Indigenous knowledge.[5] According to Ellis (2005), "Orthodox science and traditional knowledge are established in disparate worldviews: science mostly views nature as mechanical and separate from humans, whereas traditional knowledge typically sees humans as part of a spiritual and animistic nature" (p. 72). While an Indigenous worldview relies on metaphor, analogy and myth to understand the natural world, the Western worldview is often concerned with rational, technical and scientific explanations (Ellis, 2005). A number of issues arise from this epistemological divide. First, these differences are pronounced due to the power imbalance between Western and Indigenous worldviews in the realm of environmental decision-making (McGregor, 2004). The dominant belief in Western knowledge superiority often means that Indigenous management and knowledge of the natural world 'take a back seat' to Western science (Stevenson & Webb, 2003). As a result, Indigenous knowledge is often depoliticized (Simpson, 2004), delegitimized (Natcher et al., 2005) and displaced by science (Usher, 2003). Simpson (2004) suggests that since IK is often in opposition to the dominant Western worldview, the spiritual foundations of IK are also denied by dominant society. Divergent values make it difficult to convey the symbolic and spiritual importance of the land to government and industry (Natcher, 2001; Natcher et al., 2005). Houde (2007) suggests that co-management agreements between governments and Indigenous peoples may be unsuccessful because

[5] For a more thorough discussion of the TEK/Western knowledge divide, see Stevenson (1996); Usher (2000).

they typically fail to acknowledge the cosmological context of Indigenous people themselves. There are also cultural barriers (Stevenson & Webb, 2003) and cultural misunderstandings about worldview (McGregor, 2004). Likewise, there are misunderstandings about what TK is, how it is constructed and its role in environmental management (Stevenson, 1996). TK is often considered anecdotal, nonreplicable and non-universal, rather than the cumulative, collective experience of a society (Ellis, 2005). Other challenges facing the use of Indigenous knowledge in environmental decision-making include knowledge exploitation and appropriation as well as the issue of intellectual versus collective property rights.

At the heart of the worldview conflict is a clash between individualism and collectivism. Triandis (1993) believes there is a general tendency to find more individualistic themes among Western cultures and more collectivist themes among Indigenous cultures (as cited in Natcher et al., 2005). According to Simpson (2008), while Nishnaabeg culture allows for strong individual autonomy, collective needs are paramount in Indigenous societies. Natcher et al. (2005) suggest that the differences between individualism and collectivism are reflected in the way in which groups deal with social situations, noting that collectivists value group harmony and long-term sustainability, while individualists, with an emphasis on 'self,' accept a certain degree of confrontation in their dealings with others. The authors write, "With little to no long-term social attachment, non-First Nation representatives tend to emphasize risk taking in the pursuit of short-term goals. This includes an emphasis on economic development over the cultural consequences that might result from those decisions." This behaviour is evident

in the dominant Euro-Canadian industrial complex described by Ellis (2005) and the Western development paradigm described by Joyce and MacFarlane (2001).

Nonetheless, conventional environmental managers may argue that the 4th, 5th and 6th faces of TEK as outlined by Houde (2007) are inappropriate for environmental decision-making because of the inherent subjectivity of an Indigenous worldview. Despite the "bias of the West," as Paci et al. (2002) have termed it – and the assumed superiority of Western science – other authors illustrate that science is neither as objective or value-free as may be assumed. Stevenson and Webb (2003) argue that Western science is, in fact, value-laden and is influenced by a combination of Judeo-Christian, capitalist, agrarian and male-centred notions. Conventional environmental management is driven by the dominant Western culture (Stevenson & Webb, 2003) and its dominant scientific paradigm, which continues to view nature as a 'resource' (Kapoor 2001). In this way, the natural environment becomes exclusive of the social environment (Kapoor, 2001) due to the 'enlightened' Cartesian dualism, which attempts to separate people from the rest of the natural world (Brunckhorst, 2000, p. 5, as cited in Natcher & Hickey, 2002).

As a result of the different values and beliefs held by Indigenous peoples in Canada regarding social-ecological relationships, there are many 'hidden' conflicts in the realm of worldview and environmental decision-making (Natcher et al., 2005). As a result, Indigenous communities seek environmental decision-making processes that are more reflective of their worldviews and values (Houde, 2007). In fact, Sosa and Keenan (2001) advise that Indigenous communities establish their own environmental standards and protocols. To that end, Indigenous communities are also redefining the terminology

of environmental management including 'resources'[6] and the term 'management' itself. Stevenson and Webb write, "To the extent that Aboriginal Peoples manage anything, it is human activities and their relationships with or connections to the natural world that are managed. These they can do something about." (2003, p. 86). Thus, the emphasis is placed on managing human relationships with their environments, rather than trying to manage and control specific resources or ecosystems.

Governance and Rights

The discussion of Indigenous rights[7] is also a key theme in the environmental management literature regarding Indigenous peoples. Under the broader umbrella of Indigenous governance, the literature reveals the significance of the various understandings of law, land ownership, jurisdiction, title, responsibilities and rights. Indeed, several authors discuss the issue of Indigenous rights recognition in environmental decision-making processes (Natcher, 2001; O'Faircheallaigh, 2007) as well as the general trend towards the increased recognition of Indigenous rights (Sosa & Keenan, 2001). At the international level, Indigenous peoples' rights have been ratified in international agreements such as Agenda 21 (UNCED, 1992), the Convention on Biodiversity (UNEP, 1992) and the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2007). In fact, the recognition of Indigenous knowledge parallels the recognition of rights by the international community (McGregor, 2004). Here in Canada, the federal government has a fiduciary obligation through its treaty-

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[6] For a discussion of the term 'resource,' see Berkes (2003) as cited in Davidson-Hunt (2003); Kapoor (2001).

[7] This thesis mainly refers to Indigenous rights in the context of First Nations in Canada. For a better understanding of Inuit rights in comparison to First Nations rights, see Natcher (2001).

making authority to recognize Aboriginal rights.[8] This obligation has been legislated in national agreements such as Section 25 of the Canadian Charter of Rights and Freedoms as well as Section 35(1) of the Constitution Act, which states, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” (1982). However, Stevenson and Webb (2003) note that the wording of Section 35 begs the question, what are the ‘existing rights’ of Indigenous peoples in Canada?

Tollefson and Wipond (1998) identify two sources of Aboriginal rights – treaty and title.[9] Treaty rights are discussed throughout the literature for their influence, or lack thereof, on environmental decision-making. Sosa and Keenan (2001) describe treaty rights as those that are recognized in specific agreements[10] between particular First Nations and the federal government of Canada. However, some treaties entered into by the British Crown preceded the confederation of Canada, and through its sovereignty, Canada has inherited the responsibilities therein. A key issue in the discourse around treaty rights is one of treaty interpretation. Sosa and Keenan explain, “In the making of a treaty, according to the written documents that were prepared by government representatives, the First Nation party cedes title to often large tracts of land in return for benefits such as monetary payments, and hunting and fishing rights, in the area in question. In other words, the First Nation gives up all claims of ownership over the land” (2001, p. 4). The authors add that Indigenous signatories often dispute the content and legality of these agreements, arguing that written treaty documents do not reflect the oral

[8] Canada’s governments (and many authors) use the term ‘Aboriginal rights’ in their discussion of nationally recognized Indigenous rights and title in Canada.

[9] According to Natcher (2001) there are two kinds of Aboriginal rights: i) land-based rights (title); and ii) non land-based rights.

[10] It is important to note that many regions in Canada (including large portions of the northern territories, British Columbia, Quebec and Newfoundland and Labrador) are not subject to numbered treaties. In these regions, some Indigenous groups have entered into comprehensive land claim agreements with the federal government to achieve political and representational gains.

negotiations that took place. "The result was that the government acted as if it owned the land covered in the treaties, and conflicts emerged over Indigenous Peoples' subsistence activities in areas outside their reserves" (Hipwell et al., 2002, p. 4). In many cases, Indigenous communities insist that their ancestors did not surrender the land, but rather aimed to make agreements to share the land and the benefits of its resources with settlers (Stevenson & Webb, 2003). Several authors also discuss the importance of treaties and treaty interpretation for environmental management today, and use examples of pre-colonial treaties to illustrate the achievement of distinct sovereignty over a shared jurisdiction (Ransom & Ettenger, 2001; Simpson, 2008; Usher, 2003).

The second source of Aboriginal rights – title – is also a key issue in the environmental literature. Sosa and Keenan (2001) explain, "Aboriginal title is a right that is held communally by a First Nation. It affords the nation exclusive use and occupation rights to the land, for a variety of purposes" (p. 3). They add that Aboriginal title is an evolving area of law and Supreme Court decisions are helping to reduce its ambiguity. According to Usher (2003) Aboriginal title is distinguished as a property right, rather than a race-based right. Natcher writes, "Aboriginal title… is a proprietary right held communally and can not be transferred or alienated to anyone but the federal government. Most importantly, however, it is a right to decide to what uses the land can be put, including the ability to restrict activities that would limit the opportunity to continue activities that made those lands Aboriginal title lands in the first place" (2001, p. 114-115). In their discussion of Aboriginal title in regards to land claims policy in Canada, Paci et al. quote from The Royal Commission on Aboriginal Peoples[11] (RCAP),

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[11] For more information about RCAP, see Sosa & Keenan (2001); Usher (2000). For information about Canada's response to RCAP, see Stevenson & Webb (2003).

noting that the government's goal has been to ''dispose of the claim by extinguishing Aboriginal title and perfecting the *real* Crown title in exchange for a set of contractual rights and benefits'' (as cited in Paci et al., 2002, p.113).

To better understand Aboriginal rights in Canada, one must recognize the legal history of Indigenous authority related to environmental decision-making. "In general, Aboriginal rights are set out and defined either in the Constitution Act of 1982, the Indian Act or, most prevalently, in case law" (Hipwell et al., 2002, p.6). While a thorough review of jurisprudence is clearly beyond the scope of this thesis, the environmental management literature reveals a chronological evolution of the legal rights of Indigenous peoples in Canada.[12] To begin, Canada's fiduciary relationship with Indigenous peoples predates Canada's existence, during the signing of the 1763 Royal Proclamation (Stevenson & Webb, 2003). As a legal document, the British government recognized the presence of Indigenous peoples west of the Euro-colonial settlements and committed the Crown to negotiate land treaties before any more lands could be settled. Canada's inheritance of the Proclamation continues to this day (Usher, 2003). More than 200 years later, the Supreme Court of Canada finally recognized the existence of continuing Aboriginal rights and title to the land, irrespective of whether formal treaties had been signed (Hipwell et al., 2002). Following a groundswell of public support, it was this 1973 *Calder* decision involving the Nisga'a Nation of British Columbia that would lead to the recognition and affirmation of Section 35 rights in the Constitution Act of 1982 (Hipwell et al., 2002; Houde, 2007). In the 1990 *Sparrow*[13] decision, the Supreme Court

[12] For a historical overview and understanding of Aboriginal and Treaty rights in Canada, see Hipwell et al. (2002).

[13] For more information about the *Sparrow*, *Van der Peet* and *Delgamuukw* decisions, see Natcher (2001); Stevenson & Webb (2003); Usher (2000).

acknowledged the ancestral right of Aboriginal peoples to harvest resources for personal, communal and ceremonial use – in this case subsistence fishing (Houde, 2007). Perhaps as important, the court ruled that Section 35(1) of the Constitution Act, 1982, must be read broadly and liberally in favour of Aboriginal peoples (Hipwell, 2002, p. 7). In 1996, the Supreme Court's *Van der Peet* decision ruled, "for an Aboriginal practice to be considered an Aboriginal right it must have been an integral element in an Aboriginal culture prior to European contact, whether it be a practice, custom, or tradition. This includes the right to use land for hunting, fishing, and gathering activities" (Natcher, 2001, p. 114).

The next year, the landmark *Delgamuukw* decision (1997) gave more authority to oral traditions and Indigenous narratives in decision-making processes (Houde, 2007). It also recognized that Aboriginal title confers the right to exclusive use and occupation of land for a variety of purposes. "Significantly, the Court held that these purposes need not be aspects of aboriginal practices, customs, or traditions that are integral to distinctive aboriginal cultures, as must be shown where traditional aboriginal use rights are claimed" (Tollefson & Wipond, 1998, p. 381). However, as Sosa and Keenan (2001) point out, the inclusion of mineral ownership in Aboriginal title does not necessarily mean that First Nation owners may develop those resources. "In *Delgamuukw*, the court established that Aboriginal title does not include the right to use lands in a manner that destroys the relationship between Aboriginal peoples and their lands" (Sosa & Keenan, 2001, p.3). According to Aboriginal title, Indigenous people are not allowed to destroy their lands. Yet under Crown title, the land can be destroyed 'legally.'

Although Aboriginal and treaty rights are constitutionally protected in Canada, infringement still occurs. Despite the popular conception, constitutional rights can be infringed upon under the law. In fact, "The federal government may still infringe on these rights, but not without the requisite justification" (Sosa & Keenan, 2001, p.4). This requisite justification is outlined in the 1990 *Sparrow* decision. According to Natcher (2001), the framework established by the Supreme Court for assessing whether an action or regulation can justifiably infringe upon Aboriginal rights is known as the Sparrow Test. "Specifically, the Sparrow Test sets out to establish if an Aboriginal right exists does the proposed activity interfere with that right being exercised" (Natcher, 2001, p.114). The test determines if the infringement is deemed justifiable according to conservation concerns, whether fair compensation was granted and whether a process of consultation with the affected communities was undertaken prior to infringement. In the 1999 *Marshall* decision, for example, the Supreme Court ruled that although maintaining treaty integrity was of paramount importance to ensuring Canada honours its legal obligations to First Nations, their right to fish had less priority than the conservation efforts of the federal government (Hessing et al., 2005). In short, the Crown must consult with First Nations in respect to any potential infringement of Aboriginal rights if it is to uphold its fiduciary obligations and protect the honour of the Crown (Woodward & Janes, 1999, as cited in Hipwell et al., 2002, p.7). During the 2004 *Haida* and *Taku River Tlingit* cases,[14] as well as the 2005 *Mikisew Cree First Nation v. Canada* case, the Crown's duty to consult became the focus of the Supreme Court once again. In what has become known as the 'trilogy' of cases regarding consultation, the Supreme Court

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[14] The 2002 *Haida v. British Columbia and Weyerhauser* (2002) and *Taku River Tlingit First Nation v. Ringstad et al.* cases are discussed by Stevenson & Webb (2003). The Supreme Court made its subsequent decisions in 2004.

affirmed the province's legal duty to consult First Nations with respect to the harvest of resources from disputed lands. However, the Supreme Court also ruled that the scope of the duty to consult would vary on a case-by-case basis. The degree of consultation was deemed proportionate to the strength of the case supporting Aboriginal right or title and the potentially adverse effect upon the right or title. While the B.C. appellate court ruled the Weyerhauser company had an independent duty to consult the Haida (Stevenson & Webb, 2003), the Supreme Court reversed the decision and put the onus squarely upon the Crown.[15] The Court also reinforced in the *Mikisew* and *Haida* cases that First Nations have no veto over Crown land use, although there may be a duty to accommodate unproven Aboriginal title claims. Nonetheless, the issue regarding a First Nation's right to say 'no' to resource extraction on its traditional territory has become the subject of much debate (Hipwell et al., 2002) and will continue to linger until there is a change in the management regime.

What is evident in the post-1982 study of Canadian jurisprudence regarding Indigenous peoples is that, "cases concerning Aboriginal rights increased dramatically, and, while there has been some clarification of these rights, real decisions concerning control of resources continue to be slowed down by the fact that both resource and environmental legislation is caught in a quagmire of jurisdictional wrangling" (Hessing et al., 2005, p. 79). As a result of rights infringement and other governance issues, some authors have called for law reform, including the legal recognition of Indigenous title, rights and cosmologies into Canadian environmental policy (Paci et al., 2002). Stevenson

[15] Natcher (2001) noted that government had increasingly deflected and delegated its responsibility to resource companies.

and Webb (2003) also point to legal reform by illustrating that provincial systems of tenure are impediments to federal Aboriginal and Treaty rights.

Essential to the discussion of Indigenous governance and rights is the recognition of traditional Indigenous law. For example, Stevenson and Webb (2003) insist that Indigenous law such as the *Kaswentha*, also known as the Two-Row Wampum – a 17th century treaty agreement between the Haudenosaunee Confederacy and Dutch settlers in eastern New York – is equal to the 1763 Royal Proclamation. Indeed, Indigenous nations were engaged in treaty-making for centuries prior to colonization (Ransom & Ettenger, 2001; RCAP report, as cited in Simpson, 2008). Many treaties were interpreted as agreements to share territory while retaining sovereignty (Simpson, 2008). This notion is reinforced by Athabascan Dene in Saskatchewan who commented that traditional land use is the essential component of cultural sovereignty and their natural right to the use and benefits of the land (Wiles et al., 1999). What is significant about these treaty processes is that they were grounded in an Indigenous worldview and governed by common Indigenous ethics of justice, peace, respect, reciprocity and accountability (Simpson, 2008). In this way, Simpson (2008) emphasizes that these treaty agreements were relationships, both political and sacred. Natcher et al. (2005) describe Northern Tutchone traditional law whereby First Nation members adhere to a moral system through a shared relationship with the environment. This relationship is bound in shared norms and customs. Referred to locally as Doo'Li, traditional law is a means by which social relationships – both human and non-human – are maintained and respected. Similarly, Ransom and Ettenger (2001) suggest that spirit and culture form the backbone

of traditional law. In summary, traditional Indigenous law is not simply about rights, but rather rights *and* responsibilities.

Traditional governance is another theme explored by some authors. Ransom and Ettenger (2001) illustrate that Haudenosaunee traditional governance, as explained in the Great Law of Peace, is based on matrilineal clan representation rather than the conventional election system currently used by many Indigenous communities in accordance with Canada's Indian Act. Simpson (2008) writes that the foundation of good governance is the Nishnaabe concept of *Bimaadiziwin*, also known as 'living the good life.' She notes that many Nishnaabe communities still employ the Seven Grandfathers Teachings of respect, honesty, truth, wisdom, bravery, love and humility as the foundation for achieving a 'good life.'

Contrary to the recognition of Indigenous governance in environmental decision-making is the concept of Crown-owned lands. The provincial justification for Crown ownership (Sosa & Keenan, 2001; Tollefson & Wipond, 1998) leaves many Indigenous communities isolated on reserve land, merely a fraction of their former territories (Simpson, 2004). Indeed, the provincial control of natural resources puts 94 percent of Canada's forested lands alone in the hands of the provincial Crown (Stevenson & Webb, 2003). According to Usher (2003), this dispossession of Indigenous peoples from their traditional territories is both a violation of human and Aboriginal rights. Furthermore, there is a widespread failure to recognize the rights of Indigenous peoples as the original owners and custodians of their territories (O'Faircheallaigh, 2007). Kapoor (2001) suggests that for community-based environmental management to succeed, local and collective property rights over local resources must be recognized.

There are several ways that Indigenous communities assert their rights to land and territory. One way is through land claims negotiations.[16] The process of comprehensive land claims, also called ‘modern treaties,’ began in 1975 (Usher, 2003). Although land claims can be stalled for years, resource extraction projects can create the impetus to resolve them quickly (Joyce & MacFarlane, 2001). As distinguished from previous numbered treaties, Usher (2003) demonstrates that comprehensive land claim agreements recognize a larger percentage of Indigenous land ownership and greater economic benefits, as well as increased Indigenous participation and control over land use activities through the creation of co-managed land, resource and environment boards. However, land claims are negotiated in exchange for the ‘extinguishment’ of Aboriginal rights in order to establish Canada’s title and authority once and for all (Usher, 2003). Consistent with the 1996 RCAP report mentioned earlier, this is seen by some authors as the government’s attempt to extinguish broad, all-encompassing rights for defined, specific rights (Paci et al., 2002).

Another way for Indigenous peoples to regain decision-making authority over land is through cooperative and joint-management agreements (Natcher & Hickey, 2002). While the spectrum of co-management arrangements is too large to define (Plummer & Fitzgibbon, 2004), co-management broadly refers to the sharing of power and responsibility (Houde, 2007). There are several types of agreements negotiated between industry, government and First Nations, including environmental agreements, impact and benefit agreements (IBAs) and other negotiated agreements. According to Sosa and Keenan (2001), IBAs are mechanisms for establishing formal relationships between

[16] For their reflections on Indigenous land claims in Canada, see Usher (2003); Sosa & Keenan (2001); Natcher (2001).

companies and local communities. “Their primary purposes are: i) to address the adverse effects of commercial mining activities on local communities and their environments, and ii) to ensure that First Nations receive benefits from the development of mineral resources” (Sosa & Keenan, 2001, p. 2). Tollefson and Wipond (1998) also suggest that resource agencies and Indigenous groups adopt cooperative approaches to assist legal efforts and to avoid infringing upon Indigenous rights. However, while negotiated agreements certainly have the potential to enhance Indigenous participation in environmental management, the majority of agreements fail Indigenous communities due to disadvantaged negotiating positions in their dealings with companies (O'Faircheallaigh & Corbett, 2005).

Although co-management has the potential to change Indigenous-State relations, such agreements often continue amidst high conflict (Natcher et al., 2005). Many authors suggest that such conflict exists due to a power imbalance between First Nations on the one hand, and government and corporations on the other (Hipwell et al., 2002). Some authors describe this situation as a political and corporate hegemony (Stevenson & Webb, 2003). Joyce and MacFarlane (2001) suggest that the power imbalance is also reflected by an underlying regulatory and legal presumption that projects have ‘a priori’ rights to proceed. Indigenous communities continue to have little influence over land use decisions made in their traditional territories (Simpson, 2004). Though not referring to Indigenous communities specifically, Kapoor (2001) writes that marginalized communities are not empowered to change or criticize power structures. Indeed, the conventional environmental management of today continues to promote Euro-colonialism (Simpson, 2004) and the Euro-Canadian industrial complex (Ellis, 2005).

Stevenson and Webb (2003) contend that despite the conventional assumption, Indigenous peoples in Canada are 'not just another stakeholder' and they have rights and interests at both national and international levels that must be recognized. The authors insist that Aboriginal rights are the fundamental building block for sustainable forest management in Canada (Stevenson & Webb, 2003). To reinforce this point, Houde (2007) also maintains that Indigenous peoples are not simply stakeholders. In fact, several authors discuss the unique designation of rights accredited to Indigenous peoples in Canada. Sosa and Keenan write, "Canadian jurisprudence recognizes a unique category of rights that are enjoyed exclusively by First Nations. These Aboriginal rights are based on First Nations' occupation and use of the land prior to the arrival in Canada of Europeans. These rights are legally described as *sui generis,* meaning of their own kind or class" (2001, p.3).

Land Use Planning

While some authors articulate the importance of land use studies, most of the literature discusses land use decision-making as a mere aspect of the larger Indigenous governance and Indigenous participation discourse (Lewis & Sheppard, 2005; Natcher, 2001; Usher, 2003). Interestingly, the key theme of sovereignty is often raised in land use planning articles, including the rights of Indigenous peoples to make decisions about their traditional territories (Wiles et al., 1999). A short summary of the land use planning discourse and evidence for these interpretations is presented here.

Recent literature reflects a shift away from project-specific management to landscape and ecosystem-based planning (Tollefson & Wipond, 1998). In this way, land

use planning is used to predict a multitude of impacts on the land as a result of human activities across the landscape, rather than simply making decisions on a project-by-project basis. Land use zoning is one method of planning the landscape (Stevenson & Webb, 2003; Tollefson & Wipond, 1998). Land use scenarios are also imagined to better understand the potential options for land activities as well as the potential impacts upon the landscape (Houde 2007; Lewis & Sheppard, 2005; Tollefson & Wipond, 1998). Additionally, resource use scenarios are used to make future projections specific to resource development options (Stevenson & Webb, 2003) and the use of photo elicitation to help visualize various scenario options helps to understand Indigenous community perspectives before making decisions (Lewis & Sheppard, 2005).

The importance of mapping land use is also a frequent discussion in the environmental management literature regarding land use planning. The application of Geographic Information Systems, or GIS, is a computer-based mapping tool to understand past, present and future landscape projections. Several authors illustrate GIS mapping[17] as the favoured method of many First Nations, industry and government to make land use decisions. Additionally, the map biography method complements GIS by integrating oral history, perceptions of history and geographical knowledge, as well as travel routes and habitation (Usher, 2003). In this way, mapping assisted by the narratives of community members and their observations of the landscape is critical for making sustainable land use decisions, according to Kendrick and Manseau (2008). They add that GIS cannot be used as a substitute for the narratives and cumulative experience of Indigenous knowledge holders, but rather as a tool to complement and to help

[17] For more information about mapping Indigenous land use, see Lewis & Sheppard (2005); Natcher (2001); Tollefson & Wipond (1998).

represent IK holistically. The authors insist narratives and commentaries are key to applying spatial data to management. Such methods are part of a collaborative approach to land use planning (Lewis & Sheppard, 2005; Paci et al., 2002). Usher (2003) reinforces that land use studies require Indigenous consultation and meaningful participation.

Natcher (2001) writes that there are two reasons for mapping – land claims and resource conflicts. Such conflicts may include for example, the free entry system of mineral exploration, which highlights mining as the preferred land use activity (Hipwell et al., 2002). The 'highest valued use' concept of land, which is most often driven by short-tem economic interests, is not 'value-free' and is often incompatible with Indigenous community perspectives (Paci et al., 2002). There is also a Western belief that uncertainty can be overcome with planning – as if human beings and their activities are separate from the environment (Natcher et al., 2005). Fortunately, there are opportunities for cooperative approaches between Indigenous organizations and resource agencies (Tollefson & Wipond, 1998), as well as collaborations between First Nations and industry (Stevenson & Webb, 2003). For example, Sosa and Keenan (2001) explain that impact and benefit agreements can include provisions to prohibit access to certain Indigenous lands, hunting grounds, burial grounds and other sacred sites. However, these agreements can often be limiting as they fail to address the integral ecological component of Indigenous land use.

Land use decision-making can also lead to discussions of sovereignty (Wiles et al., 1999). Indeed, the protection of the environment is a critical necessity for Indigenous peoples who are often the most impacted by land use planning decisions. Yet communities still tend to have little influence over the land use decisions made in their

traditional territories (Simpson, 2004). As a result, industrial deforestation or mining may lead to the disintegration of traditional culture by altering people's relationship with the environment (Wiles et al., 1999). Ultimately, as Natcher argues, "Aboriginal land use studies in themselves may not be enough to ensure the protection of Aboriginal land rights" (2001, p. 119).

Literature also reveals a trend towards an Indigenous planning approach, as noted by Paci et al. (2002). Indeed, there are social, cultural, economic and ecological aspects of planning the landscape (Stevenson & Webb, 2003) and there is an increasing effort to understand this complexity at a greater level by working to integrate Indigenous concerns in land use planning (Houde, 2007). According to Wolfley, cultural values and diversity should be reflected in planning (as cited in Paci et al., 2002). For example, Simpson (2008) writes that traditional Nishnaabeg decisions about land use reflected a concern for the next seven generations. In these ways, it is evident that Indigenous models of land use planning are founded upon long-term sustainability.

Environmental Impact Assessment

Although much of the environmental management literature is aimed at the environmental impact assessment (EIA) process, it does not appear to be a key component of Indigenous environmental decision-making. While some authors note that EIA is one of the few ways that Indigenous communities can participate in decision-making that affects their lands (Baker & McLelland, 2003), other authors highlight that EIA is limited to discussions about presumed resource extraction, regardless of Indigenous peoples' concerns or land use alternatives. However, in the interest of

understanding EIA better, the process and the associated issues are presented here. A review of the evidence from the literature to present this interpretation is provided below.

In Canada, environmental impact assessment, here referred to as either EA or EIA, is held at both the federal and the provincial levels.[18] Kwiatkowski and Ooi (2003) define environmental impact assessment as a planning process to predict, assess and mitigate any significant adverse effects associated with a proposed project, programme or policy. The three main types of EA in order of increasing stringency are screenings, comprehensive studies and public panel reviews.[19] Of approximately 6,000 projects per year proposed under the Canadian Environmental Assessment Act,[20] Kwiatkowski and Ooi (2003) illustrate that 95 percent of the projects are merely subject to screenings.

Although the EIA process tends to place emphasis on physical environmental impacts and economic benefits alone (Wiles et al., 1999), the potential for EIA to assess other impacts has also been widely discussed in the literature. Potential impacts to Indigenous communities may include environmental issues, culture and heritage issues and socio-economic concerns (Baker & McLelland, 2003). Likewise, Hipwell et al. (2002) discuss the need for broad ranging impact assessment that includes environmental, socio-economic, cultural and spiritual impacts. They add that economic impacts can be both positive and negative. Joyce and MacFarlane (2001) outline the emergence of social impact assessment (SIA) and illustrate that social impacts can be direct, indirect, induced

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[18] To understand the 4 phases of EA, see Usher (2000).

[19] For a study of five major EAs (Ekati, Diavik, Snap Lake, Voisey's Bay and Horizon), see O'Faircheallaigh (2007).

[20] The Canadian Environmental Assessment Act (CEAA) has been in effect since 1995 (Paci et al., 2002). For more information about CEAA and the Canadian federal EA process, see Hipwell et al. (2002).

and cumulative. Health and gender-specific impact assessment may also be required for some projects (Hipwell et al., 2002).[21]

Several authors outline the significance of socio-cultural and spiritual impacts in regards to EA and Indigenous communities (Lewis & Sheppard, 2005; Simpson, 2004; Sosa & Keenan, 2001). As a result of this recognition, Traditional Ecological Knowledge (TEK) is often required in EA to address cultural impacts (Wiles et al., 1999). Stevenson (1996) argues that environmental impacts in themselves tend to have resulting socio-economic effects. For example, there are cultural impacts of flooding, which may poison the foods and impact the livelihoods and continued existence of Indigenous communities (Usher, 2003). The issue of cumulative impacts is also being addressed in the literature to understand the accumulated and ongoing impacts of activities on the landscape. However, as Tollefson and Wipond (1998) report, there is no mechanism to protect Aboriginal rights regarding cumulative impacts to the land and to the health, culture and traditional ways of Indigenous peoples.

In an attempt to make sense of the innumerable resource-related impacts that Indigenous communities are facing, Kwiatkowski and Ooi (2003) have envisioned an integrated environmental impact assessment. They write, “An integrated EIA, which combines health, social, economic, cultural and psychological well-being as well as the physical, biological and geochemical environments, provides a holistic understanding of the complex interrelationships between the human and natural environments that are key to human health” (p. 435). In fact, the integration of health, social and environmental considerations into a holistic impact assessment is recommended in the United Nations’

[21] For more information about gender issues related to environmental decision-making, see Natcher (2001); Sosa & Keenan (2001); Stevenson (1996); Usher (2000).

Agenda 21 (as cited by Kwiatkowski & Ooi, 2003). Following the advice of international agencies including the United Nations Environment Programme (UNEP), Indigenous peoples have begun to identify for themselves the impacts that are facing their communities through initiatives such as the Haudenosaunee Environmental Task Force (Ransom & Ettenger, 2001).

Several authors illustrate that Indigenous peoples have much to offer environmental assessment processes. Simpson (2008) notes that Nishnaabeg custom required decision-makers to consider the impact of their decisions on all the plant and animal nations, in addition to the next seven generations of Nishnaabeg. McGregor (2004) also explains that ecological principles are not new to Nishnaabeg – what happens in one part of ecosystem will impact another. Indeed, Paci et al. (2002) have suggested that Indigenous knowledge (IK) is the original EIA process because impact assessment principles and processes are expressed as part of Indigenous holistic cosmology.

While federal environmental guidelines may require developers to incorporate IK in EIA in an effort to assess the environmental, social and economic impacts of large-scale developments on northern lands (Stevenson, 1996), the literature suggests the use of IK in EA is often inconsistent (Usher, 2000), undervalued (Paci et al., 2002) and compartmentalized (Nadasdy, 2003, as cited in McGregor, 2004) due to the vague criteria for its inclusion in EA review (Wiles et al., 1999). While some cite EIA as an important mechanism for Indigenous participation, many Indigenous communities are critical of the process (Hipwell et al., 2002). Paci et al. (2002) maintain that governments have difficulty integrating Indigenous communities because the CEAA is blind to difference.

Other key issues include the adequate provision of time, resources and funding for Indigenous communities to participate in the process (Baker & McLelland, 2003).

One could argue that the discussion around Indigenous peoples and EA is essentially related to issues of participation, governance and worldview. Although the EA process is often the only access Indigenous peoples have to influence resource extraction decisions (Baker & McLelland, 2003), it is often too late for the government or an EA review panel to truly consider their concerns or alternatives. Since EA is not considered the appropriate process or forum to address unresolved political debates such as Aboriginal and Treaty rights, the comments submitted by Indigenous community members participating in EA are often beyond the mandate of the review (Wiles et al., 1999). Ultimately, impact assessment remains political (Joyce and MacFarlane, 2001) and severely limited when government ministers hold the authority to overturn decisions. In the interest of Indigenous communities, Paci et al. (2002) suggest that Indigenous peoples secure land rights before engaging in EA.

Indigenous Participation

The majority of the articles gathered and reviewed in the literature search identify the role of Indigenous peoples' participation in Canadian environmental decision-making. In this review, the discussion of participation relates to individual or community involvement in environmental issues and ranges broadly from mere notification of a proposed resource project, to various definitions of consultation and consensus-building. Overall, the discourse centres on Indigenous peoples' involvement in decisions that affect

Indigenous territories. A short summary of the Indigenous participation discourse and evidence for these interpretations is presented here.

Concurrent with the historic marginalization and exclusion of Indigenous peoples in Canada (O'Faircheallaigh, 2007) is a lack of Indigenous influence over decisions that impact their traditional territories (Simpson, 2004). However, there is a general trend towards improved participation and the democratization of decision-making procedures in resource management (Natcher et al., 2005). According to Kapoor (2001) the discourse of participatory environmental management was inspired by Paulo Freire in 1970, and is described as a decentralized, localized and inclusive process. While a participatory approach does not exclude concerns about efficiency, effectiveness, or environmental impact, Kapoor suggests, "The *process* through which knowledge is acquired and decisions are taken is accentuated, so that questions of efficiency, effectiveness and impact 'for whom?' and 'as determined by whom?' are prioritized" (2001, p. 272). Plummer and Fitzgibbon (2004) characterize this devolution of government resource management towards increased participation as a shift from rational choice management to social choice management.

The spectrum of Indigenous peoples' participation in environmental decision-making is very broad and difficult to define. As noted earlier, governments in Canada have a legally recognized fiduciary obligation to consult Indigenous communities affected by resource extraction projects on their lands (Natcher, 2001) and the Constitution Act of 1982 is integral to the affirmation of Indigenous peoples' participation in decisions that affect them (Paci et al., 2002). However, the fundamental issue regarding these obligations is what is meant by *the duty to consult.* Ranging from

notification to consultation (Natcher, 2001), from ad-hoc consultation to full consideration (O'Faircheallaigh, 2007), and from temporary to permanent consensus-based[22] approaches (Kapoor, 2001), the participation process for Indigenous peoples is typically conducted on a project-by-project, case-by-case basis (Natcher, 2001). While some consultation processes may support engagement with Indigenous peoples and knowledge-sharing, others negate involvement and lead to 'business as usual' situations (Paci et al., 2002). Yet several authors have discussed the significance of proper and respectful dialogue between government, industry and Indigenous communities. Joyce and MacFarlane (2001) discuss the ethics of participation and suggest there has been an evolution of consultation. For example, the authors insist that consultation is not simply a matter of 'decide-announce-defend', but argue that industry proponents must engage with Indigenous communities and consult with the appropriate community authorities. To counter the 'top-downism' inherent in institutionalized resource management (Natcher & Hickey, 2002), participatory environmental management is also questioning what consultation is by challenging 'add on' and one-direction participation (Kapoor, 2001). To that end, Baker and McLelland (2003) suggest that Indigenous communities should be consulted about *how* to consult.

The use of Indigenous knowledge is also common to the theme of participation in the environmental decision-making literature. Several authors raise serious concerns, including the misrepresentation, dispossession and decontextualization of Indigenous knowledge.[23] Stevenson (1996) describes the exploitation and extraction of knowledge from communities as theft. He urges that Indigenous representatives – not government –

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[22] For an example of a consensus-based approach, see Ransom & Ettenger (2001).
[23] For more information about Indigenous Knowledge dispossession, see Ellis (2005); Usher (2000). For information about Indigenous Knowledge decontextualization, see Houde (2007); McGregor (2004).

should determine the extent to which traditional knowledge is considered in environmental decision-making. Simpson (2004) suggests that the documentation of IK is often generalized, depersonalized and separated from land, context and relationship. Rarely given full consideration (Stevenson, 1996), Indigenous knowledge is often dismissed or co-opted for ulterior purposes (Kendrick and Manseau, 2008). As Ellis (2005) writes, "Traditional knowledge becomes transformed into a supplementary body of information that, stripped of value, can be integrated into environmental decision making without threatening the foundations of a fundamentally Euro-Canadian system." Ellis adds, "The conventional paradigm of environmental decision making thus remains intact and unchallenged" (p. 75). Ransom and Ettenger (2001) articulate that entering into relationships can pose serious risks when cooperative structures undermine Indigenous knowledge and political goals. "Such pitfalls suggest to many Native groups that requests for *cooperation* by non-Native agencies and researchers may in fact lead to the *cooptation* of Native authority and identity" (Lacy, 1985, as cited in Ransom & Ettenger, 2001).

Despite such risks, authors continue to emphasize the need to integrate Indigenous knowledge in order to articulate a broader range of values and landscape perceptions (Lewis & Sheppard, 2005). In order to meet the three goals of collaboration between First Nations and the Canadian government, including increased equity, efficiency and robustness of ecological management decisions, Houde (2007) claims more authority must be given to Indigenous people and traditional knowledge:

> Co-management arrangements will have to be designed in such a way that First Nations communities can be involved from the initial stages of decision-making processes. This participation should not be limited to impact assessments for projects, but should also take place in the strategic planning phase when multiple futures are still possible. Involvement at a strategic level would allow for increased aboriginal control of TEK and a greater sense of aboriginal

> empowerment with regard to the events taking place on their own land while envisioning futures that are more attuned to their perception of how the land should be. (p. 44)

Indigenous participation in the context of environmental decision-making is fraught with additional challenges. Capacity issues, including the necessary time and resources can create formidable obstacles to the meaningful involvement of Indigenous peoples (Kendrick and Manseau, 2008; Natcher, 2001). There is also a danger of misrepresenting ‘community’ (Kapoor, 2001) by assuming that First Nation members have achieved consensus amongst themselves (Natcher & Hickey, 2002). Power relations are especially critical (Hipwell et al., 2002; Kapoor, 2001) as many people are coerced into a reductionist management philosophy in exchange for power and participation (Stevenson & Webb, 2003). For example, Sosa and Keenan (2001) expose the practice of companies to use impact and benefit agreements in order to lock in community support for a proposed project and to prohibit dissent. Authors highlight additional problems including short time frames, limited resources, inadequate information and the often-reactive negotiating positions of the communities involved.

One of the gravest concerns and unfortunate realities for Indigenous communities is that decisions about resource extraction may already have predetermined outcomes in light of underlying presumptions that projects have ‘a priori’ rights to proceed. Although Indigenous communities may have the opportunity to hear about proposed resource activities at information sessions, they are often excluded from both initial and final decision-making. “In theory these mechanisms are to allow companies the opportunity to explain the nature of the proposed activity as well as to provide Aboriginal communities the opportunity to inform industry of local concerns and land use needs," writes Natcher (2001). “However… Aboriginal communities argue that their concerns and opinions

remain excluded from the final decision making process while their rights to traditionally used lands continue to be subjugated to the economic interests of both government and industry" (p. 115). Threats to the continued existence of Indigenous culture are often viewed as part of economic compensation packages that promise financial accommodation or employment in order to allow development to proceed.

In the realm of co-management agreements, effectiveness and equity issues also emerge. Co-management boards are typically undemocratic because the government minister retains the final authority, regardless of the board's decision (Natcher & Hickey, 2002). According to Kendrick and Manseau (2008), co-management in the North rarely includes Indigenous understandings of the environment, while Ransom and Ettenger (2001) agree that Western models of decision-making do not reflect Indigenous models. To this end, Natcher et al., (2005) find fault with the ideological structure of co-management institutions, which they find culturally inappropriate and governmentally hegemonic.

Occasionally there are benefits and opportunities for Indigenous communities that choose to participate in environmental decision-making. In fact, some communities are engaging Indigenous-led dialogue with industry (Hipwell et al., 2002). Impact and benefit agreements necessitate consultation, which can provide the resources to fund baseline studies prior to making a decision about a project (Sosa & Keenan, 2001). In this way, the proponent may be required through negotiation to pay the community up front as a cost of doing business. A participatory approach can also be integrative and intrinsic to all stages of a project, rather than just at the beginning (Joyce and MacFarlane, 2001). According to Baker & McLelland (2003), participation must become open, fair and

objective, and First Nations must be asked what they prefer. Similarly, Stevenson (1996) insists that if conflict does exist, Indigenous people should prevail. Indeed, until Canada and Indigenous peoples together establish a clear consultation framework, conflict will continue (Natcher, 2001). There are benefits of improving Indigenous participation for industry as well. Industry seeks clear governmental guidelines to remedy inadequacies in the consultation process (Natcher, 2001) and improvements will serve to create certainty for everyone involved (Stevenson & Webb, 2003).

A key trend in the environmental management literature is the recognition of Indigenous guidelines and protocols regarding the involvement of Indigenous peoples and their knowledge. "Although protocols and guidelines do not have the force of law, companies will find it in their best interests to abide by guidelines established by the local Aboriginal communities. To ignore them would be to invite resentment, diverse forms of protest and direct action, legal action, sabotage of facilities and equipment, or in extreme cases, armed resistance" (Hipwell et al., 2002, p.14). It is wise to heed the advice of McGregor (2004) and Simpson (2008) regarding the importance of cultural protocols when working with Indigenous communities. In an effort to protect their lands and to avoid conflict, some First Nations have created explicit guidelines for engagement at the interface with government and industry. In fact, many Indigenous communities have already developed their own consultation policies. The Kitkatla First Nation in British Columbia has insisted that consultation not be held over the telephone and will not be held with any parties other than government (Woodward & Janes, 1999, as cited in Hipwell et al., 2002). As a result, decision-making that impacts Indigenous lands and lives is being conducted on Indigenous peoples' terms (McGregor, 2004). In these ways,

First Nations have the opportunity to proactively define what consultation *is* and what consultation *is not*.

Key Informant Interviews

Following the literature review, key experts were identified to further examine and explore topics related to Indigenous environmental decision-making processes in Canada. Interviewee participants were selected based on criteria discussed earlier (See Chapter 2). Experts were asked a series of questions relating to their involvement in environmental decision-making in the context of Indigenous territories (see Framework Interview Guide, Appendix F). Although I identified key themes such as 'worldview' and 'participation' in the environmental management literature, I did not use these words explicitly in the interviews. Instead, experts were asked to discuss the goals of specific issues and projects, as well as any facilitators or barriers to the processes they mentioned. By avoiding the use of environmental or political terminology, I allowed the interview participants to freely identify the issues they felt were most important, including key challenges and opportunities for achieving common ground between Indigenous communities, government and industry. In short, the experts brought a wealth of knowledge to the interviews and discussed their experiences working with and within First Nations in Canada. The results of these interviews are presented here.

Robert Lovelace was selected based on his experience, both in the academy and on the ground as the chief negotiator for the Ardoch Algonquin First Nation (AAFN) in southeastern Ontario. An adopted member and retired chief of the AAFN, a non-status

First Nation, Lovelace has spent years researching and speaking about Algonquin history, the Indian Act, Ontario's Mining Act and other issues facing Indigenous communities in Canada today. Lovelace was involved in the 1980s struggle to protect the AAFN's customary wild rice harvest as well as the current resistance to prevent uranium exploration on Indigenous territory. An accomplished academic and lecturer, Lovelace currently teaches at Queen's University in Kingston, Ontario.

Leanne Simpson is a prolific academic with a wealth of experience as a 'word warrior' and a professor at Trent University and Athabasca University in the field of Indigenous Environmental Studies. A member of the Nishnaabeg Nation, Simpson is a researcher, writer, academic and activist. Having worked extensively with Indigenous communities since 1995, Simpson has assisted the Grassy Narrows and Long Lake 58 First Nations, among others, in a number of capacities including contaminants research and land use mapping. Her writings have been published in books and academic journals and she continues to work with Indigenous communities on a variety of different issues related to land, education, governance and politics. Simpson primarily works within Indigenous intellectual traditions and privileges the perspectives of Elders and Indigenous knowledge holders.

Marc Stevenson was chosen based on his academic publications and his experience as a consultant over two decades working with Inuit, Métis and First Nations communities. Stevenson is the former Aboriginal Program Manager of the Sustainable Forest Management Network at the University of Alberta, where he served for ten years. He

currently works with Treaty 6 and Treaty 8 First Nations in Alberta, assisting with Indigenous approaches to consultation, land use studies, impact assessment and specific claims related to the dispossession of Indigenous peoples of their land base. Stevenson recently worked with the Heart Lake First Nation (HLFN) in northern Alberta to help identify title lands that were expropriated by the Cold Lake Air Weapons Range in the 1950s. Stevenson is also the Treaty 6 representative on the Lower Athabasca Regional Advisory Council.

Land Ethic

During their interviews, each of the experts pointed to the common understanding that Indigenous peoples have a responsibility to protect the land. “From a Nishnaabeg legal sense, we do not have the right to clearcut,” Simpson insisted. “We do not have the right to make decisions that are going to impact all of the other clans, and that are going to negatively impact our Mother. Almost the worse thing you can do is this large-scale resource extraction, because it's based on taking away more than we need. It breaks every single environmental, legal principle of our philosophical traditions.”

Stevenson explained, “First Nations are just starting to realize the impacts of all this development.” In northern Alberta, the Heart Lake First Nation (HLFN) – still recovering from their displacement in the 1950s – is all too aware of advancing oil and gas development that is sweeping the landscape today. “It’s a ‘death by a thousand cuts’ sort of thing,” he said. Simpson took the analogy one step further by explaining, “When you cut down a forest, you're not just cutting down a forest – you're cutting down a library, you're cutting down our knowledge, you're cutting down our healthcare system,

you're cutting down our school, you're cutting down our economy, you're cutting down our political system."

Simpson insisted that Indigenous peoples must protect their territories for two reasons: "The practical reason is because our culture comes from the territory and because our knowledge comes from our relationship to the territory and we have responsibilities to protect and maintain those relationships… The second is really related to the first, but it's an expression of our sovereignty and our self-determination." Reflecting on her experience working with Grassy Narrows First Nation, Simpson explained, "When I look at their strategy as an outsider, I see their actions as a reflection of their responsibilities to look after their land. Their goal, as I understand it, is to protect their traditional territory from resource extraction." Simpson suggested that the interconnected protection of Indigenous territory and the environment from resource extraction and encroachment is common to other First Nation communities she has worked with. "I think they're ultimately expressions of sovereignty and self-determination. The strategies were different, but I think the larger goal is the same." Similarly, Stevenson explained that the ultimate goal of the HLFN will require, "Two things: preservation of their culture and protection of their environment. Those are the two things that drive the First Nation. It's economics, yes, but ultimately the bottom line is preservation of their culture and protection of the environment."

Lovelace described Indigenous peoples' responsibility for protecting the land through a recent experience in South America. "I'll tell you a little story. When I was in Ecuador, we were standing around the front yard of one of the houses and everybody from the village was there." He explained that the villagers were discussing the conflict

surrounding the activities of a mineral exploration company in their area. Members of the community were arguing with other villagers employed by the company when the question was asked, ‘If we don't accept the mine, how else can we support ourselves?’ Looking back on the conversation, Lovelace said, “I was really challenged by that question. Who am I – an outsider – to say this or that is the right choice?” But it had occurred to him that the villagers were not actually poor people. “They could be convinced that they were poor, but they were not poor people. They had a life and they had contentment.” When the question was posed to him, Lovelace responded: “You do what you always do – as Indigenous people, we work very hard, take care of the land and the land will take care of us.” Lovelace said the reaction of the community was encouraging. “It was like, ‘Of course.’ There was an immediate recognition by every individual in that circle,” He added, “That's what it is to be a human. You have to work. You have to gather. You have to hunt. But if you take care of the land, the land will take care of us.”

In these various ways, the participants discussed the linked significance of environment and culture for Indigenous peoples. In fact, this responsibility for taking care of the environment appears to be critical to the understanding of environmental decision-making in the context of Indigenous territories. However, interviewees also revealed several challenges to the goals outlined above. Lovelace discussed the influence of the fur trade on the Algonquin people in the Ottawa valley:

> Life became fairly precarious. Algonquins had an effort of petitioning the Crown for the protection of the land, but on the ground, they were also complicit in the destruction of the land too. I don't want to create this picture that the Algonquins were all good and perfect in terms of environmental managers and the settlers were all bad. It just simply wasn't that way. The economic system that they both lived within – the colonial economic system – had such an immense effect on the environment that I don't think any individual or any one group had much hope in protecting the environment. And I think that Algonquins also, in order to survive, probably had some role in the destruction of the environment as well. However, traditional values

> kept informing Algonquins that there was something other than what they were doing that had been in place – a sustainable lifestyle – and those values continued within the oral culture.

According to Lovelace, the fundamental problem for environmental management today is that too many people perceive the environment as inanimate. “The environment is a living organism, but it does not have rights – it cannot be protected by the law, it cannot sue you, it cannot protect itself or have an advocate to protect it,” he said. Simpson further described a general disconnect within Canadian society between people and the land, whereby “there's this culture in North America that isn't local, where people aren't connected to their local environments.” Teaching classes with the assistance of Elders, Simpson noticed that students interpreted environmental issues differently when using a Western paradigm versus an Indigenous paradigm:

> We had a series of discussions about why that was and it sort of rooted back to those basic values and first philosophies that Indigenous people have about the land – that humans are part of the land, that humans are not the most important part of the land, that interconnection, the interdependence – what we now talk about as Indigenous environmental philosophies. And so when you start to look at it from an Nishnaabeg perspective for instance, then those boundaries around what is an environmental issue and what isn't becomes quite blurred… so I think we have to broaden the lens when you start to take that kind of perspective. When you've got cultures that come from the land and people who, as their foundation are part of the land, then what impacts that is much broader than just ‘environmental’ issues.

Due to differences in worldview, environmental issues from a Western perspective are more narrow than those understood through an Indigenous perspective. Simpson suggested, “It's a very Western thing to fragment decisions about environment and the land out of the larger political system. I think that we have to reclaim that whole political system because our languages, traditions, songs, dances and our whole way of being – the land is integrated into that.” Lovelace insisted it is impossible to avoid the politics of environment because its roots are all within the relationship between human beings and the environment. “Because for Indigenous people, it's the environment which

determines who people are and the shape of their culture. They're inseparable in a lot of ways," he explained. Responding to questions about thematic trends in environmental decision-making, Lovelace said, "One thing that occurs on an absolutely consistent basis is that the Elders have the best view. I think that sometimes we can underestimate that. It's not that we should respect Elders because they're old. They have the least to lose by telling the truth. And my generation has been very fortunate to have Elders present in our lives."

Language

Related to their discussion about Indigenous perspectives, each of the interviewees spoke at length about the significance of language – English and Indigenous – in environmental decision-making. A common notion expressed by the interviewees is that human beings are incapable of managing the environment. Stevenson illustrated his concern regarding the terminology of the conventional discourse. "I wouldn't use the term 'environmental management.' Basically, when you do that, you're setting up something that may or may not be applicable to most First Nations. It's a very Western concept. All of a sudden, you limit the dialogue in there and the potential contributions [First Nations] can make. That's the first step." He also explained that the words used to express decision-making about the land must be negotiated. "When you've got two cultures with different viewpoints, different perspectives – these are to be negotiated. The concepts, the terminology, the ideas – they can't be imposed or unilaterally assumed, yet they are all the time. So ultimately, these are things to be discussed and negotiated before any sort of real work begins."

Lovelace also expressed his disapproval of environmental management terminology. “First of all, people can't manage the environment. People can't govern the environment. The only thing that people can manage or govern are themselves.” He said, “If we're talking about humans' relationship with the environment, words like 'management' and 'governance' probably are not the best because they assume a position of agency that I'm not sure that humans have the capacity for.” Similarly, Stevenson suggested that using the term ‘resource management’ in conjunction with the word ‘Indigenous’ is counter-intuitive:

> To the extent that Aboriginal people manage anything, it definitely wasn't resources and it definitely wasn't the environment. It was their relationships to the land, various things on the land to which they owed some sort of obligation or a certain amount of respect. And managing those relationships lies at the heart of the Indigenous management paradigm. I get really tired – in fact I get quite angry – of so-called anthropologists continuing to use concepts like ‘Indigenous resource management,’ because when they start talking like that, whether they realize it or not, they are closing the door on a discourse to which they aspire and hope to achieve.

Simpson suggested that conventional environmental management terminology is evidence of a reductionist Western approach to Indigenous knowledge. From her perspective, Indigenous governance already encapsulates environmental decision-making because traditional Indigenous governance is entwined within responsibilities to the natural world. “The reality is that when people in Western society read the word ‘environment,’ it's not an extremely holistic view.” For Simpson, terms such as ‘environmental management’ have meanings within the English language and within the Canadian conceptual framework that differ from Indigenous understandings. She argued that Nishnaabeg decision-making about the land is almost incomprehensible from a Canadian perspective. “Our environmental management was integrated with our system of governance... the land and the health of the land was seen as our responsibility – not

our right, our responsibility – and it was integrated into every part of our being, in every part of our knowledge system, in our language, in our decision-making."

Discussions with the participants about language and environmental philosophy also turned to the topic of sustainability. "Words are interesting because if we define 'sustainability' in an Indigenous way, then we have to define what 'Indigenous' means," Lovelace insisted. For him, the term 'Indigenous,' "simply means humans are naturalized. So where Indigeneity can express itself in many different ways, the concept of sustainability really is local. It means that definition of Indigenous has adapted itself to a local environment." Simpson also touched on sustainability and she illustrated Western and Indigenous conceptions of the term through her own experience:

> An Elder, Robin Greene, from Shoal Lake really helped me figure that out fifteen years ago. I was in a class with him and we were talking about sustainable development. I was explaining to the students how you develop to the point where the environment can still sustain itself. So you take as much as you can without really negatively impacting the environment in the long-term. And someone asked Robin what a Nishnaabeg perspective would be on that. He thought for a really long time, and then he said, 'Well, it's the exact opposite. We would never think that you could take as much as you could without hurting the environment. For us, it's how much can you give up to promote the health of our mother.' I thought that was a really profound difference.

According to Lovelace, "English is probably not the best language to express these things." He suggested that the challenges for Indigenous peoples' participation in environmental decision-making stem back to the initial stages of colonialism. Lovelace explained that once the government had gained power over his community, Algonquins struggled to translate traditional values that informed a sustainable lifestyle into a language that the government could understand. Alternatively, he suggested that the Algonquin language is better for understanding the relationship that Indigenous peoples maintain with their environments. He explained, "Algonquin could not be expressed in a way to presume that a human could manage the environment. It would be a knowledge of

one's relationship with the environment. So all that a human can do is have some knowledge of that relationship and then they would respond in ways that were culturally norm." Simpson likewise insisted that human relationships to the land and to each other are encoded in Indigenous languages. "That's why the language is so important. All of those relationships and the grammatical structure of the language reflects our inner, core, deep philosophical values. That's how it was communicated, and that's how our reality was constructed."

Having worked extensively with Indigenous communities throughout Canada, Stevenson reflected, "It's not rocket science. My understandings and the thoughts that I have formed have come from working, not in English but in working in the Aboriginal language." While he admitted that he is not fluent in a particular Indigenous language, he has found it tremendously advantageous "to at least understand a part of the discussion, what the Elders were saying in Inuktitut, and really understand how foreign, how dehumanizing, how trivializing, and how culturally destroying some of this 'environmental resource management speak' is to Aboriginal peoples." In discussing the ethics of working with Indigenous people, Stevenson explained, "Researchers have been very damaging to the full discourse and moving it forward, but they don't even realize it. Well-intentioned and well-meaning, but some of the most damaging are also some of the most insidious processes as well." For Stevenson, "Language is huge. It's the most powerful tool ever invented."

The importance of knowledge transmission was also raised in connection to language. Simpson explained that in every project she undertakes with Indigenous communities, she makes sure that Indigenous knowledge takes the lead role in order to

incorporate aspects that connect Elders and youth. "I'll always try to make it in their language and not necessarily translated, and always try to bring in as many youth as possible so that you're setting up that situation that strengthens the oral tradition and strengthens the Indigenous knowledge system. She laughed when describing, "the actual report – the written report – is the least important part of the project because that's what the Elders are telling us anyway. They just use it to light their fire in the morning."

Jurisdiction

While philosophical discussions about worldview and language were integral to the interviews, jurisdiction issues dominated the responses of the experts. Simpson insisted that the leading barrier facing Indigenous peoples today is lack of recognition of the ability and capacity of Indigenous peoples to make decisions about their territories. Noting the provincial and federal governments' failure to acknowledge Indigenous jurisdiction over Indigenous lands, she said, "Generally, communities do not have any kind of decision-making control over what kinds of activities occur on their territories." Stevenson also argued that treating Indigenous peoples as 'just another stakeholder' is problematic for environmental decision-making processes in Indigenous territories. He suggested that a proper process must recognize and accommodate Aboriginal rights:

> I think there's got to be a recognition of exactly what the rights of the First Nations peoples are, how they differ from the average Canadian, and what their responsibilities are – what are the responsibilities that First Nations peoples have to the land, to each other, to their environment – then we can begin to design the appropriate institutions and policy that achieve those responsibilities. And if you achieve those responsibilities, I think the issue of rights will be addressed.

Stevenson emphasized that existing institutions must be revamped and redesigned to accommodate Indigenous responsibilities. Further, Simpson reinforced her position that

the Canadian state has no jurisdiction on Indigenous lands. “I see Turtle Island before colonization a lot like Europe. We were set up as nations, like countries, and we're being occupied like Palestine is occupied. And so I don't see that my nation has given up its authority to govern itself. I don't agree that we've done that, that we've given up our sovereignty.”

The failure to acknowledge Indigenous jurisdiction over Indigenous lands remains a key obstacle, yet the experts identified the overarching forces of colonialism as an even larger challenge to sustainability. According to Lovelace, colonialism is an ideology that reinforces the right of an imagined superior culture to override, exterminate, enslave, and dispossess Indigenous people of their relationship with the land. “Ultimately, every single environmental issue facing Indigenous communities is rooted in colonialism,” Simpson noted. “It is rooted in the dispossession of our lands, environmental destruction, the greed of capitalism, the disregard of our knowledge and the disrespect of our culture and our people.” Simpson explained that she always makes “a point of talking about the 'elephant in the room' – which is colonialism… It didn't happen a hundred years ago. It is happening every day.” She added, “Environmental issues aren’t really about the ‘environment’ for Indigenous Peoples, they are about the lack of control we have over our lands. Unless you address these fundamental issues, the problems won’t go away.” Simpson argued that colonialism is an environmental issue in and of itself because it is the force that has removed Indigenous peoples from the land. “When you've got cultures that come from the land and people who, as their foundation are part of the land, then what impacts that is much broader than just environmental issues,” she said. Indeed, the

interaction with "settler-colonizing peoples," as Stevenson described it, is key to understanding environmental-decision-making in the context of Indigenous territories.

Equally frustrated with Canada's conventional environmental management, Stevenson highlighted the government's prioritization of economic growth. According to him, "Everything is secondary to maintaining the revenue stream to the government from oil and gas development largely, but also other forms of development. So it's very hard for other interests – environmental groups, First Nations – to have a meaningful role in this discussion." Stevenson argued that land use planning in Alberta is primarily being conducted to maintain the economy. "The environment is secondary, it's not really the main focus. It's to minimize the footprint of the industry instead of promoting biodiversity and cultural diversity," he said.

Lovelace also expressed his thoughts regarding the impact of the colonial economic system on Indigenous peoples, arguing "there is no ideology of sustainability in Western culture. We're all caught up in consuming… There's no morality in that. We've seen that repeated over and over again in history. Capitalism is immoral." According to Lovelace, "Canada is sort of a pseudo-nation. It never really found or defined itself other than its colonial roots." He explained that unlike most countries, Canada has emerged as a cognitive construction that continues to suffer from a lack of initiative. "Canada is an economy, not a nation," he said, suggesting that Canada has become the Cayman Islands of the industrial world. Despite Canada's tremendous potential, Lovelace noted it is important to recognize that "the governments – the representatives of the people – are so weak that corporations manage Canada." Lovelace

suggested that Canadian law[24] should be condemned because it fails to recognize the environment as a living being. “It goes back to European ideas that separated Indigenous Europeans of their sense of ownership or sense of integrity with the land... we've inherited those ideas, not because of Adam and Eve, but because of the Romanization of Europe… And so we don't have dukes and earls and kings in Canada, we have corporations,” he explained.

“At the most basic level, Indigenous communities need to have to right to say 'no' to development,” Simpson insisted. “If I can't say no because of the impacts that I perceive that the development is going to have on my community, then it's kind of just a sham. I don't have power at all, and I'm just helping you exploit me and my people better.”[25] Simpson recommended power sharing as a solution to conventional consultation limitations so that Indigenous peoples can truly participate in decisions about their territories. “If that could just change, then I think that everything would sort of fall into place a little better,” she said.

Engagement

With regards to First Nations’ contributions to environmental decision-making, the participants invariably delved into discussions about consultation and co-

[24] According to Lovelace, “One of the problems with English law is it avoids moral guidance. Justice, in terms of English law, is based on fairness. Often, it's more or less based on control of power differentials, meaning that the lords of the land had to be controlled in their excesses of power over those who were the producers of their wealth. English law also limits the rights of the producers so that the lords are protected from their excesses. In Indigenous societies, which didn't have that type of power differential between individuals, or hierarchal structures, you didn't have those type of laws. This is why Indigenous laws often are much more adaptable in a democratic society than English laws. There's this sense of protecting the individual from the mass or from the collective, and the collective from the individual, rather than these large power differentials. Now Indigenous people, if we continue under the Indian Act for the next couple of hundred years, may evolve into that same type of legalistic protection, which is not a good thing.”

[25] Also see Joyce and MacFarlane (2001).

management. Simpson insisted, “I have never seen Indigenous communities involved in any meaningful way in environmental decision-making processes. In general, state governments are often only interested in superficial kinds of ‘consultation’ and limited decision-making capacities in co-management boards. They are not interested in addressing any of the fundamental issues that have led to the problem in the first place.” Simpson is worried by the term 'consultation' due to the paternalism of those in positions of power and authority. Simpson explained that when environmental managers come into Indigenous communities to set up co-management boards, they are unreceptive to alternative perspectives and solutions put forth by Indigenous participants.

Stevenson spoke at length about the need to create the space for Indigenous people and their decision-making processes. He explained that the Heart Lake First Nation (HLFN) is currently involved in a series of projects including a land use study, a revamped consultation protocol and a specific claim to recover dispossessed land. The HLFN has also outlined a series of requirements, including the establishment of a community-specific land categorization system, to ensure that the First Nation’s rights and interests are met in consultation. But as Stevenson explained, there are very few co-management boards that have been designed to accommodate Indigenous people’s values, understandings and worldviews. “It just doesn’t happen. Yet Canada is looked at as a leader in the co-management area.” Stevenson describes this reputation as a fallacy, “Because again, the language, terms, concepts, approaches – these have all come down from the dominant culture. The dominant culture's rules, which Aboriginal people are forced to play by.” Simpson explained her experience working in the realm of co-management agreements:

> Back in the 90s, resource managers first became interested in traditional knowledge. So, it became immediately defined and very disconnected from Indigenous people and from the land and from Indigenous intellectual contexts. And so [resource managers] were setting up these co-management boards where we would have a traditional knowledge expert to try to make things better. All the while you've got this resource extraction complex working, coming into these territories as they had been for decades – and in some places centuries – and clear cutting the forest, putting up pipelines, damming the rivers for hydroelectric development. So there's this hypocrisy, there's this irony that was never lost on the Indigenous knowledge holders.

Proposing change, interviewees discussed the importance of fully involving Indigenous worldview in environmental decision-making. “Number one,” said Stevenson, “you have to create an ethical space for Aboriginal people and their ways of looking at the world and their thought processes. You really can't have a discussion without significant attention to that ethical space that they need so we can have these discussions – these conversations.” If conventional environmental managers continue to ignore or misunderstand Indigenous worldview, it will be difficult to have meaningful conversations about other matters concerning the environment. Likewise, Simpson recommended, “If you're actually interested in doing environmental management differently, then you have to be prepared for Indigenous knowledge and Indigenous knowledge holders to impact the process and for different decisions to be made.”

Opportunities

The participants revealed that philosophical differences, jurisdiction issues and a lack of engagement can often stand in the way of meaningful solutions for Indigenous communities and environmental decision-making processes in Canada. Yet despite these challenges, there are also opportunities for Indigenous peoples to succeed in the years to come. Simpson listed a series of key principles that must be recognized for improved environmental decision-making in the context of Indigenous territories: i) Indigenous

jurisdiction over Indigenous lands must be recognized by state governments; ii) treaty responsibilities must be met by state governments; iii) nation-to-nation relationships must be respected; iv) Indigenous knowledge holders must be treated with the same respect and afforded the same authority as Western scientists; v) Indigenous knowledge must be better understood by both Western society and settler governments; and vi) the assumed superiority of Western resource management practices and Western science must be disregarded.

Lovelace insisted there is an abundant amount of living knowledge and there are still Indigenous knowledge holders who are trained to understand. He believes that “nature itself has morality” and we can still learn from natural processes. Lovelace also discussed the significance of Indigenous languages, Indigenous law and Indigenous governance for providing solutions for environmental issues today. Similarly, Simpson stressed the importance of traditional governance and language for making decisions about the environment and for strengthening relationships between nations. “We've got people out on the land who have a tremendous amount of knowledge from the oral tradition, who have a tremendous amount of experience and who are observing what is going on. Those are our experts. That is our knowledge system.” Simpson explained, “Nishnaabeg people, we have our own way of traditionally governing ourselves that's worked for generations, that's still operating in some of our communities. And it's a beautiful form of governance and it managed the environment wonderfully. That to me is the answer.”

Through his direct experience as Chief of the Ardoch Algonquin First Nation, Lovelace discussed the role of the Family Heads Council, a non-elected traditional

governance system currently employed by the AAFN to make community decisions. He explained one of the ongoing endeavors of the council is the Ardoch Resource Management Policy. “A goal of the present system has been to try to get individuals or individual families to take responsibility for what would be described as traditional tracts of land, rather than just getting a license and picking the best place to hunt or where they're permitted to hunt.” He added that the AAFN aims to “move back into a system where people acquire traditional land because they are the best suited to be responsible for it. And that's a real long-term process.” Lovelace explained that formalizing environmental decision-making processes in the community has often come as a reaction to side threats, including the commercial exploitation of wild rice and uranium exploration by interests outside the community. Another ambitious effort of the AAFN was to encode Ardoch’s traditional values in their ‘Principles of Development’ policy. Lovelace explained that rather than creating a series of ‘thou shalt not’ laws, the community went through an exercise to determine important cultural values in order to express them in a clear, legitimate way.

According to Stevenson, another key factor for Indigenous peoples and environmental decision-making in Canada is an understanding of treaties, treaty relationships and treaty rights. Stevenson insisted, “the next big step in Aboriginal law in this country is the determination of what exactly the treaties were really about. Was it a land surrender as the Crown governments believe, or was it an agreement to coexist and share the lands?” He added, “The whole issue comes down to Aboriginal title” and argued that momentum is building for First Nations to be involved at the front end through decision-making, rather than at the back end through the courts. Pointing to the

2007 *Tsilhqot'in* case, Stevenson noted the British Columbia court ruling that confirmed the Tsilhqot'in had proven Aboriginal title for approximately 50 percent of their traditional territory. "And because of that, all legislation enacted by the B.C. government is null and void, including the Forestry Act," he said. "It's a 'warning shot' across the bows of existing policy and environmental legislation." Stevenson suggested that ongoing legal cases would cast light on historical treaties and provide a new foundation for a new relationship between Canada and Indigenous peoples.

The Trinity of Indigenous Environmental Decision-Making

The structure of the conceptual framework presented here rests upon three foundational themes that emerged from the literature and the interviews regarding environmental decision-making in the context of Indigenous communities. These three themes – worldview, governance and participation – were identified by cross-referencing trends in the environmental management literature and the interview responses of the three experts. In general, the broad theme of worldview includes cosmology, spirituality, culture, ethics, identity, language, education and knowledge. The broad theme of governance includes rights, treaty, law, power, jurisdiction and governance models. Finally, the broad theme of participation includes consultation, accommodation, consideration, consensus-building and democratization.

The three themes can be illustrated by the argument that Indigenous peoples need to have *the right to say no* to resource extraction in their traditional territories. The right to say no is a matter of Indigenous worldview because it is informed by cosmology and ethics of responsibility, respect and justice. The *'right'* to say no is a matter of

governance and opens up the discussion of democratic power-sharing between governments and Indigenous peoples in Canada. Finally, the right '*to say'* no is a matter of participation and implies a context whereby someone is listening and there is engagement between different parties.

Critical Elements of the Framework

The initial framework is presented below. Under the three themes of worldview, governance and participation, critical elements of Indigenous environmental decision-making are revealed. Sub-elements characteristic of the critical elements are also presented below.

A) Worldview

i) Indigenous peoples have a special relationship with their traditional territories

- All human beings are part of nature
- Indigenous peoples have intimate knowledge of their environments
- Indigenous knowledge comes from the land, Creation and the Creator
- Indigenous people, culture, knowledge and nature are inseparable

ii) Indigenous peoples have a collective responsibility to protect their territories

- Indigenous culture and knowledge emerges from relationship with the land
- Indigenous peoples' identity and history are tied to their traditional territories
- Healthy Indigenous cultures require healthy ecosystems
- Indigenous peoples have a responsibility to maintain connections with their environments

iii) Indigenous environmental decision-making reflects Indigenous knowledge

- Indigenous ways of knowing are legitimate and necessary for sustainability
- Indigenous knowledge reflects values, beliefs and principles
- Indigenous languages illustrate and transmit teachings
- Indigenous environmental decision-making recognizes the role of spirit, culture, ethics and practice

B) Governance

iv) Indigenous peoples have inherent and legal rights

- Indigenous rights are intrinsic to Indigenous peoples
- Indigenous peoples view existing treaties as land sharing agreements, not land surrender agreements
- Canada has recognized the unique nature of Aboriginal and Treaty rights
- Indigenous environmental decision-making supports the recognition of rights as another layer of environmental protection

v) Indigenous environmental decision-making reflects Indigenous governance systems

- Indigenous law is legitimate and predates Canadian environmental law
- Indigenous peoples employ traditional and contemporary governance systems
- Existing treaties offer opportunities for a new Canadian-Indigenous relationship
- Indigenous peoples value both rights *and* responsibilities

vi) Indigenous peoples require autonomy to make decisions about their territories

- Indigenous territory is an expression of sovereignty and self-determination

- Indigenous peoples have a legitimate and unique role in environmental decisions that affect them
- Power sharing presents an opportunity for governments and Indigenous peoples
- Indigenous environmental decision-making requires community-based guidelines

C) Participation

vii) Indigenous environmental decision-making is a democratic process

- Canada has a fiduciary and legal duty to consult with Indigenous communities
- Indigenous peoples require clear consultation frameworks
- Building consensus provides certainty for everyone involved
- Decision-making must be open, transparent and fair

viii) Indigenous environmental decision-making encourages full participation

- Indigenous knowledge must be fully involved in the participation processes
- Capacity and equity issues must be corrected
- Indigenous peoples must be enabled to impact initial and final decisions
- Existing institutions must accommodate Indigenous peoples and knowledge

ix) Indigenous environmental decision-making follows culturally appropriate protocols

- Western models of decision-making do not typically reflect Indigenous models
- Indigenous peoples must be respected
- Indigenous peoples seek to participate in culturally appropriate ways
- Indigenous peoples seek to redesign and redefine the terms of decision-making

CHAPTER 4: CASE STUDY

Introduction

The mineral exploration conflict at Big Trout Lake has been highly debated over the past several years. Centred upon the traditional territory of the Kitchenuhmaykoosib Inninuwug (KI) in northwestern Ontario, a lengthy legal battle pitted the remote First Nation against a mineral exploration company, Platinex Inc., and various ministries of the Ontario government. While the issue came to a head most recently in 2008, it can be argued that the roots of the conflict date back several decades[26] to conflicting interpretations of a 1929 Treaty Adhesion Agreement[27] and subsequent government decisions affecting lands near the KI community.

The situation at Big Trout Lake presented a unique opportunity to study a current environmental decision-making conflict featuring an Indigenous community at odds with Ontario's resource management regime. The ongoing legal dispute during the research process presented certain challenges but also made the case more relevant. Building upon the initial framework at the end of Chapter 3, the case study helped to identify key elements of Indigenous environmental decision-making. This Chapter features a case history of the Big Trout Lake mineral exploration issue. The analysis of case study interviews is presented in Chapter 5.

[26] To be accurate, the conflict dates back to Confederation and the placement of KI lands under the domain of the Ontario provincial government. The British North America Act violates the Royal Proclamation of 1763, which set out that the British Crown and its colonies have a fiduciary responsibility to protect Indigenous lands from third party interests, including the mineral resource industry.

[27] Treaty 9 was signed in 1905. KI became a signatory to Treaty 9 in 1929.

Case Study Research Timeline

I have had a strong interest in this case since February 2006 when I witnessed firsthand KI's blockade against Platinex Inc. near the south shore of Big Trout Lake. In April 2006, I had the opportunity to attend a KI community meeting where Assistant Deputy Minister of Northern Development and Mines Christine Kasycki heard from KI members about their concerns. After the completion of my teaching contract in KI, I maintained regular contact with former council member John Cutfeet[28] regarding the legal dispute and other case developments.

Official communication regarding the case began on March 11, 2008 when I met with Chief Donny Morris and the KI Council to discuss a draft research proposal. Days before their incarceration on March 17th, council members passed a resolution to approve the proposal and they committed to collaborate with me over the duration of the research project (Appendix D, KI Letter of Support). In August through September 2008, I returned to the community to acquaint myself with the KI Lands and Environment staff and to locate the necessary documents for the case study. During that time, I met again with the KI Council and made arrangements with participants for future interviews. Many days were spent at the KI Band Office and I volunteered to assist with KI litigation and historical research. I also participated in community workshops sponsored by the KI Defense Project to inform KI members about treaty rights, non-violent direct action and the United Nations. By the end of the year I had conducted an extensive document review

[28] Cutfeet was later implicated during the legal dispute but his countersuit involving a constitutional challenge was dismissed before trial.

and an interview with KI Councilor Samuel Mckay[29] to provide a background history of the mineral exploration conflict.

In February 2009, I met again with Councilor Mckay and KI Lands and Environment Director Jacob Ostaman in Toronto to further discuss research terminology and ongoing legal developments of the case. Under their direction, I assisted in the drafting of a research ethics agreement to further protect the intellectual property rights of KI interviewees. I returned to KI in September 2009 to conduct interviews with five additional community members, including Chief Morris. Over several months, I completed the remaining interviews with other key informants, including government and non-government organization representatives who helped shed light on the case. Once a resolution to the lengthy legal dispute was reached in December 2009, my final interview with company president Jim Trusler of Platinex Inc. was conducted in February 2010. The case study analysis was an ongoing process and was completed shortly thereafter.

Case Study Sources

i) Document Review

The material presented in this Chapter includes the review and analysis of documents received from the KI Council office as well as government and Platinex websites. I reviewed and collected more than 200 documents related to the case study, including KI historical documents, KI reports and policies, maps, legal documents, court transcripts, journal articles, KI Council minutes and other materials (Appendix G, Case Documents). I also collected press releases issued by the Ministry of Northern Development, Mines and Forestry (MNDMF), Platinex Inc. and KI, which covered the

[29] Unlike the Scottish tradition, the Mckay families in KI often spell their name without a capital ‘K.’

dispute with an emphasis on the later years of the conflict. Although media reports were not included in the research methods, I diligently followed the Big Trout Lake mineral exploration issue since 2006 in various news media, both local and national. Overall, the document review was used to provide a clearer understanding of the case chronology. Wherever possible, the information was triangulated to assist the validation of dates and details.

ii) Semi-Directive Interviews

As previously outlined in Chapter 2, interview participants were specifically selected to inform the case study including KI culture and decision-making processes, as well as government and industry relationships with KI. I spoke with several members of KI involved in various community roles to understand KI perspectives. To ensure a balanced and proper representation of all sides involved in the case, I interviewed the CEO of Platinex Inc., as well as an Assistant Deputy Minister at the Ministry of Natural Resources, who is currently working with KI. Non-government organization (NGO) representatives were also selected to share insight from their close involvement during the dispute. All of the individuals consented to the use of their names and quotations in this thesis. Furthermore, all interviewees were given the opportunity to provide clarification of the case by reviewing their transcripts and the full case study document, including their quotations. A brief description of each participant, compiled with the assistance of the interviewees, is provided in Appendix H.

iii) Participant Observation

My experience with the community of KI dates back to August 2005, when I began a teaching contract offered by the Kitchenuhmaykoosib Education Authority. Over the course of the 2008-2011 research project, I had the opportunity to meet regularly with KI Chief and Council as well as the Lands and Environment staff. At the KI offices, employees helped me to understand the chronology of the mineral exploration dispute. I was also given generous access to computers and photocopiers to complete my work. I had the special opportunity to attend community meetings, including workshops at the community hall where I met with various First Nations organizations, government representatives, consultants, lawyers, and activists. Most importantly, informal discussions with KI community members were essential to finding information, making connections for interviews and gaining a deeper appreciation for KI's land, culture and worldview. General note-taking was used to document my impressions and to keep a record of important details.

Overview of the Big Trout Lake Mineral Exploration Issue

Kitchenuhmaykoosib Inninuwug (KI), formerly known as Big Trout Lake First Nation,[30] is a remote fly-in community approximately 580 kilometres northwest of Thunder Bay, Ontario (Appendix I, Map of KI). At the headwaters of the Fawn and Severn Rivers, which flow further north into Hudson Bay, approximately 1,400 people call KI home. KI is a bilingual community and many members speak both Anihshininiimowin (Oji-Cree) and English. KI is situated on the north shore of Big Trout

[30] Kitchenuhmaykoosib Inninuwug did not wish to be limited by foreign definitions of identity. KI have chosen to be recognized as 'A People,' rather than a First Nation under the federal Indian Act.

Lake and its adjacent Post Island, named after the historic post operated by the Hudson Bay Company. The community has an impressive traditional territory spanning more than 23,000 square kilometres and KI is a signatory to the 1929 adhesion to Treaty Number 9. Since time immemorial,[31] the Kitchenuhmaykoosib Inninuwug – People of Big Trout Lake[32] – have depended on the land and fish for survival. Today, KI rely upon a wage economy yet many community members still enjoy a traditional lifestyle supplemented by hunting, fishing and trapping. Upon discovering recent mineral exploration activity near the south shore of Big Trout Lake, KI leadership actively resisted attempts by Platinex Inc. to conduct a drilling project without the permission of the community. As a result, six community leaders were sentenced to six months in jail. Two months later, the Ontario Court of Appeal overruled the sentences and the 'KI-6' prisoners were released. The Government of Ontario later removed the Platinex claims and leases through a mediated settlement to resolve longstanding litigation between Platinex, Ontario and KI.

Platinex Inc. is based in Markham, Ontario, just north of Toronto. According to the company website, "The goal of Platinex Inc. is to enhance growth in capitalization and share value by exploration for, and discovery of Platinum Group Elements, contributing to adequate supplies for society's fight against global pollution and adverse climate changes" (Platinex Inc., 2010). Platinex Inc., hereafter referred to as Platinex, holds staked mining claims within the province of Ontario. In 1999, Platinex acquired claims and leases for its so-called Big Trout Lake property near Numeigusabins Lake,[33] a watershed area that drains northward into Big Trout Lake. Throughout the legal dispute,

[31] 5,000 and 7,000 year old bones have been discovered in and around KI. However, KI teachings illustrate that people may have lived in the Big Trout Lake area even earlier.
[32] For the remainder of this thesis, I refer to KI as 'they,' rather than 'it.'
[33] 'Nemeigusabins' according to the Geographic Names Board. KI spell it 'Numeigusabins.' The Platinex property centred on Numeigusabins Lake but stretched south of Big Trout Lake for 19 kilometres.

the company was represented by the Fasken Martineau law firm. Platinex accepted an Ontario government offer in December 2009 to relinquish its claims and leases to the disputed area in exchange for $5 million as well as a royalty agreement should the lands be explored for minerals in the future.

The Government of Ontario also played a key role in the mineral exploration dispute through its actions and inactions. During the conflict, Liberal leader Dalton McGuinty served as Ontario's Premier since his election in 2003. Represented by various ministries, the Government of Ontario has asserted its authority over Crown lands throughout the province. Crown lands and surface rights are typically administered by the Ministry of Natural Resources (MNR), however, the Ministry of Northern Development and Mines – now referred to as the Ministry of Northern Development, Mines and Forestry (MNDMF) – is charged with administering mineral rights on Crown lands, including the claims and leases acquired by Platinex. Current MNDMF Minister Michael Gravelle replaced former Minister Rick Bartolucci in October 2007. The Ministry of Aboriginal Affairs (MAA) also took a lead role over the course of the dispute, most significantly from 2006 to 2008. Former Minister of Natural Resources David Ramsay served as the Minister of Aboriginal Affairs until replaced by Michael Bryant in 2007. Bryant negotiated directly with KI on several occasions during the dispute. The Ministry of the Attorney General would later prosecute the First Nation and its leadership on behalf of the Government of Ontario.

History and Chronology of the Case

Although the mineral exploration dispute in KI is, in some respects, a recent issue, mineral exploration has a long history in the Big Trout Lake area.[34] In 1886, long before KI signed Treaty 9 with the British Crown, geologist A.P. Low was the first government agent to make contact with Indigenous peoples living near Big Trout Lake. In 1913, well-known explorer and geologist J. B. Tyrell further examined and mapped the area while working for the Ontario government for the Geological Survey of Canada. After a long hiatus, the Ontario Department of Mines carried out additional geological mapping of the area in 1960. By the end of the decade, Canadian Nickel Company (Canico), a subsidiary of Inco Ltd., had begun airborne electromagnetic surveys and exploratory drilling was initiated on several claims through the early 1970s. In 1973, Inco Ltd. staked claims over the northern portion of Numeigusabins Lake and in 1980, Canadian Occidental Petroleum Ltd. (Canoxy) staked additional claims covering large portions of the Big Trout Lake property. During the early 1980s, Canoxy completed its exploration program, which included line cutting, electromagnetic geophysical surveys, geological mapping, prospecting, geochemical studies, and diamond drilling. In 1985, Platinum Exploration Inc. (co-founded by Jim Trusler) staked the Big Trout Lake property and carried out additional surveys and drilling. Through mergers and consolidations, Platinum Exploration Inc. would later become the International Platinum Corporation, and then the International Precious Metals Corporation. Throughout the 1990s, work ceased at the property with the exception of electromagnetic surveys in 1990 and 1997. In 1998, Trusler acquired the property from International Precious Metals Corp. through a series of agreements. The next year, he sold the claims valued at $400,000 to his own company,

[34] See Appendix J for a 'Timeline of Key Events in the Big Trout Lake Mineral Exploration Issue.'

Platinex Inc. Beginning in 2000, Platinex continued airborne electromagnetic and magnetic surveys over its claims in the Big Trout Lake area.

In February 2001, KI issued a moratorium on resource extraction, including mineral exploration, in KI traditional territory. The moratorium was enacted to ensure that KI's traditional lands would be protected pending the decision of an ongoing Treaty Land Entitlement (TLE) claim. In a letter to Platinex, Chief Donny Morris wrote, "This is to advise you that the Kitchenuhmaykoosib Inninuwug are suspending all mineral activities in and around its traditional territories which they have occupied and used since time immemorial. This moratorium is effective immediately as of today's date of February 07" (KI, 2001, correspondence). Morris explained that the moratorium coincided with KI's TLE claim, which had been submitted to the provincial government for consideration the previous year in May 2000. Under the TLE claim, KI argued that they were entitled to an additional 510 square kilometres beyond the First Nation's borders. Morris wrote, "the area of land under which your company has been conducting mineral exploration activities is covered by that land claim… You are requested to abide and respect our decision and we trust that we will have your cooperation in the future." This letter was copied to the MNDM as well as the federal Department of Indian Affairs.

Despite the moratorium, KI agreed to hold meetings with Platinex and informal agreements were made by Chief Morris and KI's Lands and Environment Unit to continue a relationship with the company. One of the KI families was also invited to take part in early discussions because the mineral exploration site fell within their traditional trapline area. In early 2004, the Nanokeesic family, represented by Jacob Nanokeesic, considered the possibility of renewed exploration by Platinex. At a band meeting in

February 2004, Nanokeesic discussed his initial opposition to the project, but informed the KI Council that he would support exploration if Kitchenuhmaykoosib Inninuwug benefited from the project. Chief Morris told the Council that he would support Nanokeesic's decision but he warned those in attendance, "There is always the possibility of future community leaders being enticed and deceived by well polished and vague agreements and that is why the community must play a very important role in how and what should be contained in these agreements." The minutes also explained, "We will need to look at all angles conceivable before any development is to take place and only until the people are satisfied" (KI Council minutes, Feb. 23, 2004). A meeting with Platinex representatives was set for the following month in Big Trout Lake. In March 2004, members of the KI Council and the Nanokeesic family met with CEO Jim Trusler and Simon Baker to discuss the possibility of low impact exploration activities on KI's traditional territory. Later that month, the KI Council initiated a community survey in an effort to gauge KI's perspectives regarding 'resource development related activities.' The survey results illustrated that the majority of KI members were opposed to resource extraction within the customary lands of Kitchenuhmaykoosib (KI Tasheekawin / Aaki Survey Report, Nov. 2004). In February 2005, Platinex met again with nine members of the Nanokeesic family.

By summer 2005, the KI community had thoroughly indicated their disapproval of any exploration by Platinex. KI argued that the mineral exploration site near Numeigusabins Lake lay within an ecologically pristine area that held cultural and spiritual significance for the community, including concerns about possible water contamination, disruption of wildlife and the company's disrespect for the ongoing

moratorium against mineral development on KI's traditional lands. The community was also concerned that if mineral exploration was successful, a future mining project could potentially generate toxic acid drainage and pose a significant risk to Big Trout Lake's fish populations. In an August 30, 2005 letter, the KI Council informed Platinex that, effective immediately, "all previous Agreements and Letters of Understanding between all affected parties… related to your proposed work around the above mentioned area, both verbal and written, will be null and void" (KI, 2005, correspondence). Nonetheless, on October 28, Platinex made public its Form 2B application as part of its listing on the Toronto Stock Exchange (TSX). The purpose of the filing was to provide full disclosure of the company's affairs, yet the form claimed that KI had verbally consented to low impact exploration and it made no mention of the letter Platinex had received from KI two months earlier.[35]

Days later, the KI leadership sent another letter to Platinex indicating that KI strongly opposed any further development. In a letter dated November 2, 2005, Chief Morris informed Platinex once more that KI did not consent to any exploration. KI attached an October 27th press release in which Morris reinforced, "We have said it before and we will say it again. No exploration means no exploration. What part of NO doesn't the Ontario government understand?" (IFNA, 2005, Oct. 27). Although Platinex had admittedly held meetings with members of KI, including the Chief, Council and certain individuals, KI argued that their consultation protocol was not followed nor was any development agreement signed at any time. Chief Morris stated, "At several times in 2004 and 2005, I refused to sign a memorandum of understanding, agreement, or letter of

[35] As a result, four environmental groups led by Ecojustice Canada filed a complaint with the Ontario Securities Commission alleging that Platinex breached disclosure requirements when it assured investors that it had permission to seek, explore and drill on KI territory.

support for Platinex's exploration activities, because the community process was not complete, and because the ongoing consensus was that exploratory drilling should not be permitted" (Morris, 2006, affidavit, para. 32). During the legal proceedings to come, the judge would later comment:

> KI is not opposed to development on its traditional lands but wishes to be a full partner in any development and to be fully consulted at all times. Whether any proposal for development would be accepted depends on the merits of each proposal, and whether the development respects KI's special connection to the land and its duty, under its own law, to protect the land. (Smith, 2007, May 1 decision, para. 25)

The judge also recognized the community's six-step consultation protocol outlined in the KI Resource Development Policy (2002), which defines the process for consultation with Kitchenuhmaykoosib Inninuwug prior to and during development activities on KI's traditional lands. The protocol set out the following steps required for Platinex to reach an agreement with KI: 1) initial discussion with Chief and Council; 2) discussions with the community; 3) consultation with individuals affected by the development; 4) follow-up discussions with the community; 5) referendum; and 6) approval in writing. KI's protocol also stressed that any decision to allow development on their traditional lands must be community-based and could not be made solely by the Chief or Band Council (Smith, 2006, Jul. 28 decision, para. 20/21).

On November 18, 2005, Platinex entered an agreement to acquire an additional 81 mineral exploration leases from Inco Ltd. (Canico) for $300,000. The leases adjoined the property already claimed by Platinex and presented further prospects for chromium and associated platinum exploration (Platinex Inc., 2005, Nov. 28). The same month, Platinex became a publicly-traded company on the TSX. Ignoring KI's official decision, Platinex chose to continue its mineral exploration activities at the Big Trout Lake property. The

acquisition of the additional 81 leases was formalized on February 10, 2006 and the company mobilized a drill team in defiance of the KI Chief, Council and community, all of whom were alarmed by the prospect of large drilling equipment reaching the remote First Nation from Sioux Lookout, Ontario. Community members responded by forming a blockade to stop Platinex's exploration of KI's traditional lands. With the short winter road season underway, Platinex had a small window of opportunity to transport its equipment north before the ice began to melt. After encountering protesters from KI, Platinex flew in a private corporate security consultant to negotiate the safe withdrawal of the drilling crew. Platinex claimed the KI protest was hostile and destructive, however the Court did not find that KI acted improperly or illegally during the blockade.

Ultimately, large drilling equipment was never delivered to the exploration site. Platinex responded by suing KI for $10 billion in damages and sought a permanent injunction to prevent KI from interfering with its exploration activities. The company claimed that its rights to explore for minerals were illegally denied and potential profits were lost due to the blockade. The lawsuit specifically named the KI First Nation, as well as several KI members including 'persons unknown' so that additional community members could be named at a later date. The lawsuit was viewed by some news media as an attempt to harass, intimidate and silence the First Nation with a 'strategic lawsuit against public participation' – a SLAPP suit – since Platinex had sought to restrain KI from "interfering with, disrupting, or hindering in any way, directly or indirectly, the preparation or construction of a camp, the establishment of drill sites, and any drilling or other work" (A&S News Wire, 2006). Platinex CEO Jim Trusler later defended his rationale for the $10 billion lawsuit, explaining that "at the time there was somewhere in

excess of half a trillion dollars worth of metal in the ground. And I felt that the level of profit in mining there would be likely in the area of 100 billion dollars if it went ahead, and that there was probably about a 10 percent probability that it would go ahead." Trusler added, "there was a computation process I used to arrive at that figure, and I felt that there would be an impact from saying that."

Reflecting on the case against KI, Trusler also indicated that the Platinex claims would have expired unless the company was permitted to conduct exploratory work or receive some accommodation from the MNDM. Speaking about the Big Trout Lake property, Trusler said, "These claims were acquired in 1985 and work was done on them over the years… but the claims would have expired without either new assessment work or without some sort of exclusion of time, which the government could grant." Under pressure to gain access to the staked claims, Trusler revealed, "By February 2004 we'd had a letter from an assistant deputy minister telling us that we would get no further exclusion of time orders for First Nations matters." Without filing new work on the property, claims would have begun to expire on July 4th, 2006. "So the company, representing the shareholders' interests, had to proceed," Trusler said.

Ontario's Mining Act quickly became the subject of public attention and the media highlighted the act's so-called 'free entry' system, which had allowed countless exploration companies to stake claim to disputed Indigenous lands. According to Section 27 (a) of The Mining Act, "the holder of a prospector's licence may prospect for minerals and stake out a mining claim on any Crown lands, surveyed or unsurveyed." Complicating the situation, Section 30 (1e) of the act also stated, "No mining claim shall be staked out or recorded on any land, in an Indian reserve, except as provided by The

Indian Lands Act, 1924." Although the disputed land near Big Trout Lake was considered 'Crown land' by the provincial government, its proximity to the KI reservation may have been subject to KI's moratorium and their pending TLE claim. Yet in March 2006, former MNR Minister David Ramsay publicly commented that there was no legal basis for KI's moratorium to be upheld. In May, KI launched a counter lawsuit against Platinex as well as a lawsuit against Ontario. KI argued that the Mining Act was unconstitutional because it failed to recognize, prioritize, and respect Aboriginal and Treaty rights, and did not provide for adequate consultation with First Nations peoples.

On July 28th, 2006, Ontario Superior Court Justice G. P. Smith ruled against Platinex and found in favour of KI by awarding the First Nation an interim, interim injunction. In his judgment, Justice Smith stated that the case involved the clash of two opposing perspectives and cultures in a struggle over one of Canada's last remaining frontiers. He acknowledged the strong desire for resource extraction in Ontario's north, but he argued that KI was resisting such development to safeguard and preserve their traditional land, culture, lifestyle and core beliefs. Justice Smith explained, "It is critical to consider the nature of the potential loss from an Aboriginal perspective... The land is the very essence of their being. It is their very heart and soul." Smith added, "No amount of money can compensate for its loss. Aboriginal identity, spirituality, laws, traditions, culture, and rights are connected to and arise from this relationship to the land. This is a perspective that is foreign to and often difficult to understand from a non-Aboriginal viewpoint" (Smith, 2006, Jul. 28 decision, para. 80). Because of the company's failure to respect KI's moratorium, letters and notices, as well as its decision to terminate the

consultative process and send in its drilling crew, the judge said, “Platinex is, to a large degree, the author of its own misfortune” (Smith, 2006, Jul. 28 decision, para. 72).

Justice Smith ruled that a decision to grant an injunction to Platinex would essentially have made the duties owed by the Crown meaningless and send a message to other resource development companies that Indigenous people’s concerns could be ignored. Platinex was ordered to delay its drilling and exploration activities for five months until a further review of the case on January 5, 2007. The interim, interim injunction was granted to KI on the condition that KI develop a consultation committee to engage in negotiations with Platinex and the Government of Ontario “with the objective of developing an agreement to allow Platinex to conduct its two phase drilling project at Big Trout Lake” (Smith, 2006, Jul. 28 decision). In his ruling, Justice Smith granted the injunction to enhance the public interest by making the consultation process meaningful and to compel the Crown to act honourably. After the decision, former Minister of Northern Development and Mines, Rick Bartolucci, commented, “My ministry is very pleased to move forward and work with the company and the community to achieve a common understanding and an agreement that is acceptable to all” (MNDM, 2006, Jul. 29).

In a statement released after the ruling, Chief Morris explained, “Kitchenuhmaykoosib Inninuwug signed a Treaty and that treaty must be honoured by the Crown. In sharing our land, our views and rights must not only be heard, but be understood so that the land is available to help us, not just those who grow rich at our expense.” In the same press release, former KI spokesperson John Cutfeet asserted that KI must be involved in culturally appropriate consultation. “Children, youth, adults and

elders in our communities have much to contribute if we are given the opportunity and are respected for our ways and for what we have to offer. Any decision relating to traditional lands is a community-based decision and cannot be made solely by the Chief and Council" (KI, 2006, Jul. 31). Although the Court had acknowledged the land as the 'heart and soul' of Kitchenuhmaykoosib Inninuwug, the KI leadership remained cautious about future negotiations with the government and Platinex. KI's $10 million lawsuit against 'Her Majesty The Queen In Right Of Ontario' continued to challenge the constitutionality of Ontario's Mining Act, which had allowed the government to grant licenses to companies without having first met the government's constitutional duty to consult First Nations. However, KI's funds were already limited and a constitutional challenge would prove costly.

Consultation proceedings were plagued by Justice Smith's predetermined conclusion that negotiations should ultimately reach an agreement to allow Platinex to continue its exploration drilling. Furthermore, the Ontario government's representatives[36] consistently refused to discuss Ontario's legal responsibility to consult with First Nations communities before allowing mineral exploration. With time running out, the Government of Ontario conceded that its duty to consult should be met and agreed that a broader range of possible outcomes should be considered. However, KI was later advised that there had never been an intention to halt exploration. KI would either have to agree to the consultation framework proposed jointly by the MNDM and Platinex or face the Court and charges of contempt. By February 2007, the Government of Ontario was granted intervenor status to participate in the injunction proceedings against KI.

[36] According to David Peerla and Samuel Mckay, the three key negotiators for the Province of Ontario were Cam Clarke, Laurie Churchill and Christine Kaszycki.

Interestingly, after almost seven years of delay, the Ontario Secretariat for Aboriginal Affairs (OSAA) formally denied KI's Treaty Land Entitlement[37] claim a month later on March 15, 2007.

In April, KI sought an interlocutory injunction preventing Platinex from conducting its exploratory drill program pending an expedited trial. On May 1, 2007, KI's motion was dismissed and the Court ruled it would take an on-going supervisory role regarding potential further stages of exploration or development on the property. That same day in Big Trout Lake, the results of a KI community referendum were tabulated. The question put to the community was: "Based on the Court's decision, what direction should the community pursue?" The overwhelming majority advised the KI leadership not to accept the decision (KI, 2007, Community Referendum). Further, most participants directed the Council to protest the decision rather than appeal it.

Having failed to reach an agreement between the three parties prior to the Court's deadline of May 15, the Ontario Superior Court gave Platinex permission to undertake Phase 1 of its exploration program. In his May 22nd ruling, Justice Smith ordered that the company be permitted to commence drilling 24 holes on June 1, 2007. Continuing its interventions with respect to the negotiations, the Court ordered Platinex to retain the services of an archaeologist to identify, in consultation with KI, burial and other archaeologically significant sites within the proposed drilling area. To the disadvantage of KI, who had argued that inequity between the parties led to unbalanced consultation, the Court imposed a consultation protocol, timetable and memorandum of understanding

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[37] According to Samuel Mckay, "we filed our TLE through the Aboriginal Ministry and then within a matter of six weeks, they came back and said that it didn't hold water… That was their official decision. The TLE claim was on the shelf for about seven or eight years, and then when this whole thing blew up, all of a sudden they pushed it through in six weeks… And I honestly believe that they did that just to get it out of the way so they could get Platinex on the ground."

(MoU), which had been proposed by Platinex without KI's approval. Under the terms of the MoU, Platinex would contribute 2 percent of all monies spent by Platinex in connection with Phase 1 of the exploratory drilling program to KI. According to its May 24th press release, "Platinex welcomes this opportunity to work with KI on the further definition of the chromium and platinum group element mineralization on its Big Trout Lake property" (Platinex Inc., 2007). Despite KI's repeated notices and letters informing Platinex that the company was not welcome in KI, Trusler decided to fly to the KI airport in Big Trout Lake on September 24, 2007. Platinex representatives were met at the airport by dozens of community members. After a lengthy dialogue, CEO Jim Trusler and his associates were compelled to leave KI.

In October 2007, KI was forced to abandon their 18-month litigation with Platinex and the Government of Ontario. KI argued the community was the victim of a legal strategy adopted by the company and the government to effectively bankrupt the already impoverished community. In an October 22nd letter addressed to Ontario Premier McGuinty, ministers of the MNDM, MNR/MAA, as well as legal representatives of Platinex and the Attorney General, KI wrote, "…we cannot further afford your justice system. We have repeatedly asked for Ontario to address KI's financial demise and we have been unsuccessful" (KI, 2007, correspondence). KI informed the parties that without financial assistance, they would be forced to release Olthuis Kleer Townshend (OKT) and Kate Kempton as their legal counsel. The letter, signed by the Chief and 7 Council members, added, "…KI will proceed as unrepresented litigants, and will address the Platinex situation ourselves, on the ground, within our traditional homelands (KI, 2007, October 22 letter). On October 25, 2007, KI officially announced in court that they could

no longer afford to participate in the legal proceedings. Reinforcing the position that KI would not negotiate with Platinex nor support any exploratory drilling, KI argued their priority was the protection of their land, rather than monetary gain. Justice Smith responded by issuing an order to prohibit KI members and supporters from interfering with or obstructing Platinex. When KI made a public announcement that Platinex would not be welcome in KI's traditional territory, Platinex brought a motion against KI for civil contempt of court.

Once KI had lost confidence in OKT's legal counsel,[38] lawyer Chris Reid was retained as KI's legal representative on November 12, 2007. In a statement released in the following months, the KI leadership wrote, "We have given Chris very clear instructions not to appeal any orders or defend against contempt of court proceedings. Our dispute with Ontario will not be resolved through the courts – it must be resolved through government-to-government negotiations between KI and Ontario" (KI, 2008, Apr. 9). Indeed, KI repeatedly argued that the mineral exploration issue at Big Trout Lake required a political solution rather than a legal one.

Platinex's legal counsel proceeded with a contempt of court hearing against KI on December 7, 2007. KI offered no defence to the motion and reasserted that the First Nation could not obey Justice Smith's order, nor engage in any further negotiations with Platinex. The Court found KI, and named KI members, to be in contempt of the October injunction. As a result of the Court's decision, all of KI's evidence – including sworn

[38] According to David Peerla, "The critical event that happened, where the community leadership lost some confidence in their legal counsel, was the hearing where Ontario was seeking standing. There was an attempt by Ontario to make a deal at the courthouse steps. The community can't make deals at the courthouse steps – that's not respectful of their process. You have to go back and seek direction from the community. So even participating in any kind of talks which would throw into question the community process of decision-making – which by some extent, even having those talks on the courthouse steps with Ontario – there was a loss of confidence in the legal counsel."

affidavits, defense testimony, historical research and KI's constitutional challenge to the Mining Act – was dismissed.

On January 25, 2008, Justice Smith heard submissions from Platinex, Ontario and KI on sentencing. Owen Young, the lawyer for the Ontario Attorney General's office called for fines against KI. Platinex lawyer Neal Smitheman[39] argued in the Thunder Bay courtroom, "By their actions the contemnors deserve no quarter, no sympathy from this court… It is now time, in my respectful submission, for this court to send another message, a message from this court to KI and to other First Nations that failure to respect the rule of law is not negotiable." He added, "We need a remedy. The easy remedy in this situation is an order for incarceration, and indeed an order for incarceration until the contemnors undertake to comply with this court order." While Smitheman stated that Platinex was not in fact seeking incarceration, he suggested that sentences of six to nine months would be appropriate for the KI defendants. In a statement later released by the company, "Platinex wishes to publicly confirm that Platinex, through its legal counsel's oral submissions, did not seek incarceration of the KI contemnors" (Platinex, 2008, Feb. 26).

[39] In a remarkably similar case coinciding with the KI legal battle, Robert Lovelace was found guilty in a Kingston courtroom on February 15, 2008. He was sentenced to six months in jail plus $25,000 in fines. Lovelace, a former chief and lead negotiator for the Ardoch Algonquin First Nation (AAFN), had also refused to obey an injunction to allow exploratory drilling by the Frontenac Ventures Corporation (FVC) in Eastern Ontario. Interestingly, Smitheman also served as FVC's legal representative against Lovelace. Paralleling the KI case, the Government of Ontario had approved mining claims prior to consulting with the local AAFN. Lovelace argued that while he respected Ontario law, Algonquin law forbade him from allowing further destruction of the land for uranium exploration. Prior to Lovelace's incarceration, KI and the AAFN had already been involved in negotiations regarding their analogous legal issues and Ontario's Mining Act. In January 2008, the two First Nations submitted a request for a Joint Panel to investigate the conditions leading to the conflicts and to recommend new approaches for mineral exploration on First Nations' lands. Premier McGuinty did not reply.

Pending the sentencing[40] of the six KI defendants, Platinex reduced its claims for damages against KI from $10 billion to $10 million (Platinex, 2008, Feb. 26). On March 4th, 2008, Ontario's Minister of Aboriginal Affairs, Michael Bryant, met with KI at Big Trout Lake. Following media reports that Bryant had made a proposal to settle the issue, KI stated, “No new proposals were made by Minister Bryant concerning the Platinex dispute and no agreement was reached. While the Minister did provide KI with a draft ‘Proclamation’, the Proclamation is a general statement of principles concerning future resource development in our territory” (KI, 2008, Mar. 5). KI argued that Bryant’s offer contained no specific commitments by Ontario and made no reference to the Platinex dispute. “Indeed, in his comments to us during our meeting yesterday Mr. Bryant made it clear that Ontario remains committed to the Platinex project going ahead with Ontario's blessing. KI remains equally committed to our position that we cannot permit mining or mineral exploration within our watershed and that the Platinex project must not proceed” (KI, 2008, Mar. 5). In a press release, KI reinforced the call for a mineral exploration moratorium on their disputed lands, highlighting concerns about improper consultation and the 2004 *Haida* decision:

> Despite the Supreme Court of Canada's rulings requiring consultation with First Nations prior to making decisions that affect their lands, the Ontario Government allowed Platinex to stake claims and begin exploratory drilling on KI's traditional lands without any consultation. In response, KI decided to peacefully oppose Platinex's mineral exploration activities on their traditional lands.

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[40] Samuel Mckay explained, “When we went to court in January, Smitheman asked the judge to incarcerate us indefinitely until we conformed to the court order… And Justice Smith asked him if there was case law that he could use to do that, but he didn't have anything. We were supposed to be sentenced that day, but they ran out of time… So Smitheman rushed back to Kingston and fast-tracked the Ardoch case to set precedents. When he came back to our sentencing, he said there are precedents over here, this is what you can give them.”

It was stated that, "Platinex seeks to jail our leaders and supporters and bankrupt our community," and Chief Morris was quoted as saying, "I'm prepared to go to jail for my belief in my land" (KI, 2008, Mar. 5).

On March 17, 2008, Chief Donny Morris, Deputy Chief Jack McKay, Head Councilor Cecelia Begg, Councilors Samuel McKay and Darryl Sainnawap, and KI Lands and Environment employee Bruce Sakakeep were each sentenced to six months in jail. Upon consideration of the First Nation's financial situation, however, Justice Smith decided not to levy any fines against KI. The KI men were incarcerated at the Thunder Bay Correctional Centre, and Cecelia Begg, the lone KI woman and grandmother, was transferred to a facility in Kenora. From behind bars, they released a public statement entitled, *Why We are in Jail*. "Although we say that Ontario failed in its duty to consult with us before giving Platinex permission to explore for minerals on our land, we do not expect to achieve our goal of protecting our lands through the courts. We learned the hard way that the courts are not always the way for First Nations to get justice" (KI, 2008, Apr. 9). Further, the incarcerated KI leaders wrote:

> It is also important to know that in the 2004 Haida case, the Supreme Court made it clear that First Nations which have asserted rights claims or land claims, but have not yet proven their claims, must be consulted and accommodated, but they cannot "veto" development on disputed land. Consultations and accommodation can include measures to mitigate the impacts of the project and provide some compensation for the affected communities, but they must lead towards implementation of the project. KI spent more than 18 months and $700,000 trying to break out of this legal box only to find ourselves faced with an injunction which permits drilling by Platinex and forbids us from obstructing Platinex… The only way to achieve what KI and Ardoch believe is a fair and just solution is through negotiations between Ontario and the First Nations. Negotiations could lead to land use plans which withdraw sensitive lands from mineral staking and mining. That's why we ask that our supporters focus on the need for political action to resolve these disputes, not the courts… We want to get out of jail and go back to our families, but please remember why we are here. We need Ontario to agree that Platinex will not be allowed to drill on our territory, and to work with us to ensure that disputes like this one do not happen again. If we have to remain in jail for five more months, or even five years, so be it.

Following the ruling, Nishnawbe Aski Nation (NAN) Grand Chief Stan Beardy released a statement to notify the Government of Ontario that bilateral discussions and the newly established Northern Table partnership would be suspended. Beardy also described the sentencing of the KI leadership as a criminalization of Aboriginal law and custom. "The extreme position of the Government of Ontario to support jailing First Nation leaders is an insult to the so-called 'new relationship' with our people." Highlighting the Court's emphasis of the rule of law and KI's defiance of the court order to allow exploration, Beardy argued, "…we see that the Government of Ontario is, indeed, above the law as the Province continues to neglect Supreme Court rulings to consult and accommodate First Nations prior to resource development" (NAN, 2008, Mar. 17).

The incarceration of the KI-6 and Lovelace led to an outpouring of public support for their two communities, including calls from environmental organizations, unions, churches, universities and other First Nations to reform the outdated Mining Act and to allow First Nation communities to say 'no' to mining. Interestingly, Platinex also commenced its lawsuit against the Government of Ontario for $70 million in damages resulting from Ontario's failure to adequately consult with KI (Platinex, 2008, May 22). In a highly anticipated judgment on May 28, 2008, the Ontario Court of Appeal heard motions concerning Lovelace and the KI defendants. While the Court did not vindicate the accused, all seven prisoners were immediately released and their jail sentences reduced to time served. On July 7, the Court finally released the reasons for its May ruling. The three-member panel argued that Ontario's Mining Act, "a remarkably sweeping law" that allows prospectors to stake claims on any Crown land without

community involvement, "lies at the heart of this case". The Court noted that both KI and the AAFN had consistently asked the Premier and the Government of Ontario to engage them in direct negotiations to resolve their disputes rather than supporting mineral exploration companies' efforts to obtain injunctions and convictions. "Where a requested injunction is intended to create 'a protest-free zone' for contentious private activity that affects asserted aboriginal or treaty rights, the court must be very careful to ensure that, in the context of the dispute before it, the Crown has fully and faithfully discharged its duty to consult with the affected First Nations." The Court also reinforced the importance of good faith negotiations and argued that every effort must be expended to obtain a negotiated or legislated solution. KI spokesperson Samuel McKay responded, "The decision of the Court of Appeal proves that we went to jail because of the stubborn refusal of the provincial government to respect our laws and our perspective on development within our territories. The Premier of Ontario owes an apology… to those of us who were jailed for opposing an outdated and immoral law" (KI, 2008, Jul. 7).

As an outcome of the legal dispute, the Ontario government made a commitment to revise the outdated Mining Act by introducing Bill 173. However, despite promises to consult with First Nations, the MNDM did not consult directly with KI. Not to be ignored, KI sent an independent submission to the government regarding the Mining Act in which KI outlined their national and international rights as Indigenous people. KI also responded in writing to Premier McGuinty's July 2008 announcement to protect one half of Ontario's boreal forest region, otherwise known as Bill 191 – the Far North Act. KI continued to highlight Canada's refusal to sign the United Nations Declaration on the Rights of Indigenous Peoples and in September 2008, KI submitted an Early Warning

and Urgent Action to the United Nations Committee on the Elimination of Racial Discrimination.

Over the course of the following year, the dispute with Platinex remained unresolved. Although Ontario's MNR had begun discussions with KI related to land use planning, Platinex continued to lease rights to the Big Trout Lake property under the authority of the MNDM. In August 2009, Platinex notified KI that it would continue its exploration activities at Numeigusabins Lake. In an August 25th press release, Samuel Mckay wrote, "We do not want to meet with Platinex. We want to meet with the Premier. It is Ontario that gave Platinex the lease. It is Ontario that must cancel those leases because Ontario did not get our free, prior and informed consent to issue those leases." Mckay referenced the Court of Appeal decision urging the province to resolve underlying issues such as Aboriginal and Treaty rights, as well as the free entry system encouraged by the Mining Act. The next day, several KI members risked further legal action by prohibiting Platinex access to the Big Trout Lake property once again at Numeigusabins Lake. After circling the lake in his boat to prevent the company's floatplane from landing, Chief Morris said, "I am deeply disappointed that the province has not intervened in this critical matter." Mckay also described the pressure that was being exerted by Platinex and the Government of Ontario to uphold licenses granted by the Mining Act, and he argued that KI had no money to fight procedural cases that did not address their rights. The KI press release also stated, "The Ontario government has left it up to Kitchenuhmaykoosib Inninuwug and Platinex to resolve our ongoing dispute." Morris added, "My council and I were sentenced to six months in jail last year. We served about 68 days in jail before the Ontario Court of Appeal let us out. Ontario

government and KI need to find a mutually agreeable and peaceful means to resolve our competing land use plans" (2009, Aug. 26).

On September 21, Platinex announced that it was entering into mediation with the Government of Ontario to discuss possible options to resolve ongoing litigation between the two parties (Platinex Inc., 2009, Sept. 21). On December 14th, 2009, Platinex was paid $5 million by the Ministry of Northern Development, Mines and Forestry. A government press release confirmed:

> The Province of Ontario and Platinex Inc. have entered into an agreement to resolve the company's litigation against Ontario and the Kitchenuhmaykoosib Inninuwug (KI) First Nation over the company's Big Trout Lake Property. As part of the settlement, Platinex will drop its lawsuits against the Crown and KI, and surrender all its mining claims and leases at Big Trout Lake. In return Platinex will receive $5 million and a potential future royalty interest. The government will withdraw those lands from staking and mineral exploration. (MNDMF, 2009, Dec. 14)

Platinex CEO Jim Trusler stated, "Platinex is pleased to be able to recover value for the Big Trout Lake property. It became apparent that the Company was not going to be able to access the property. We can now focus on our other PGE and Gold properties and the money will enable Platinex to execute its business plan" (Platinex, 2009, Dec. 14). Having not been involved in negotiations between Platinex and the Ontario government, Chief Morris was hesitant about the decision. "I consider the decision of Platinex to not proceed with mining exploration in our territory as a major victory," he said. "But what is more important to the people of Ontario is what kind of arrangement the Ontario government will ultimately make with the indigenous peoples of Kitchenuhmaykoosib" (KI, 2009, Dec. 14). According to MNDMF Minister Michael Gravelle, "This is a unique situation, and I am pleased that we were able to reach a fair and reasonable negotiated settlement that will provide greater certainty to Platinex while allowing our government to continue working with KI to strengthen our relationship and to pursue future

opportunities" (MNDMF, 2009, Dec. 14). However, Chief Morris warned, "The province needs to know that mining is a very serious issue for us. We went to jail to protect our land and we were prepared to go back to jail if necessary. I think the province needs to recognize that our free, prior and informed consent is necessary or mining development in the north could become a very expensive failure" (KI, 2009, Dec. 14).

Ultimately, the Mining Act was revised and modernized as a result of the conflicts. Bill 173, An Act to Amend the Mining Act, passed Third Reading in the Legislative Assembly after an extensive review and the resulting Mining Amendment Act, 2009, received Royal Assent on October 28, 2009. The KI community is still recovering from the debt incurred by the legal struggle. Following the resolution between the MNDM and Platinex, Kenora-Rainy River MPP Howard Hampton made comments in the Ontario legislature regarding the payout and he asked Ontario Attorney General Christopher Bentley if the government planned to compensate KI. "Since the McGuinty government is paying Platinex $5 million to settle litigation, will the government also pay the $700,000 legal costs incurred by KI First Nation in defending First Nation treaty and aboriginal rights against Platinex Inc.," he asked. Bentley refused to answer the question and replied, "We see stronger economic opportunities for our First Nations, and we're going to work as hard as we can, not on the past but on the brighter futures for all people, First Nations and aboriginals in the province of Ontario" (Murray, 2010, Mar. 25).

To date, KI continue to assert their sovereignty and jurisdiction at Big Trout Lake and throughout their traditional territory. On November 25, 2009, Donny Morris was reelected Chief of KI, along with Deputy Chief Cecelia Begg and Head Councilor Jack Mckay. KI continue to question the constitutionality of provincial law and policy,

including the concept of Crown land, which place limitations on KI's inherent Indigenous rights as well as legally recognized Aboriginal and Treaty rights. Most recently, Chief and Council requested direction from the community once again to decide whether to proceed with government negotiations about the Far North Act. The Ontario legislature passed Bill 191 (the Far North Act) on September 23, 2010. The KI community is still waiting for a response from the MNR regarding their decision to implement the protection of Majeewin Aaki throughout KI's traditional territory. A formal meeting has not yet taken place between KI and the Ontario government concerning KI's land protection policy.

CHAPTER 5: CASE STUDY ANALYSIS

Introduction

To identify and understand the critical aspects of the mineral exploration issue at Big Trout Lake, case study interviews were conducted and transcripts were analysed for thematic content in accordance with the initial conceptual framework (See Chapter 3). Consistent with the broad themes of worldview, governance and participation, interview questions were designed to reveal key elements of the mineral exploration issue, including various perceptions of the land, environmental decision-making models and political relationships (Appendix K, Case Study Interview Guide). In this way, the theoretical aspects of the research were tested against the real case issue involving KI, the Ontario government and Platinex.

The results of the case study analysis are presented below. Under the broad headings of worldview, governance and participation, the analysis highlighted underlying themes, which were illustrated by the responses of the interview participants. Often it was difficult to isolate the themes because of the inherent linkages between them. Further reinforcing the association between the elements of the initial conceptual framework in Chapter 3, many passages in the interview transcripts were coded at several different themes (Appendix L, Case Study Interview Coding). The analysis also revealed lessons learned through the participants' experience of the mineral exploration issue as well as broader-ranging issues that lay outside of the initial framework.

Worldview

During the case study, participants were asked a series of questions regarding their perceptions of the land, including various understandings of KI's knowledge and their relationships to the environment. Together the interviews revealed a wide array of ideas, which were organized under the following themes: cosmology, paradigm, language and terminology, land ethic and perceived impacts. Often stemming from discussions of protecting the land, interview participants broadly described culture and ways of knowing, as well as the divide regarding the legitimacy of knowledge.

Cosmology

Central to the theme of worldview in the case study transcripts, the discussion of a great spiritual power was illustrated by traditional Indigenous beliefs, as well as the role of Christianity in KI. Most[41] KI members interviewed told me that the Creator had built the land around Big Trout Lake for the people of Kitchenuhmaykoosib long, long ago. KI Elder and knowledge holder Sarah Jane Mckay insisted, "The Creator gave us this land. He created us to live in this part of the land." Using Anihshininiimowin (Oji-Cree) to articulate the teaching, Evelyn Mckay explained, "Manido miiniiwehwin means given by God, Our Creator. This gift includes the land, the animals, the plants, the language, and everything else that has life or what we use to sustain our lives." She noted that the gift of the land came with a great responsibility. "Our Creator put us here. He gave us all these things and in return we have to protect it, we have a responsibility to look after it. That's my belief. We don't go out there and destroy trees just because we feel like it or because

[41] To be consistent, the following rules apply to the use of the following words: 'most' or 'many' signifies more than 80 percent of the respondents; 'majority' signifies more than 50 percent; 'few' or 'some' signifies less than 50 percent.

we want to make money off it. We have to leave some for the young ones. That's how it is supposed to be." This fundamental responsibility for protecting the land is further outlined by Jacob Ostaman:

> We have a connection to our lands. The spiritual aspect of our lands is very important and I think that's where the custodianship comes in. There is a trust once you're born; there's a trust between yourself and your Creator that you have to look after your lands. You're not supposed to destroy it and if that trust remains, then the people that will be born will have the same lands as you see it today. And it's fair to do that, it's fair for others in the future to see it the way it is because that trust is there, the trust between yourself and the Creator… It's very important that we continue to have that responsibility to protect the land because we are the land as well – we're part of the land.

Christianity was introduced to the people of Big Trout Lake during the late 1700s through the influence of European traders. However, the first missionary did not arrive until 1872 (Hiebert & Heinrichs, 2007). Sarah Jane Mckay described the shift towards Christianity, explaining that traditionally, "There were clans and people were known by animal names, given animal names. But that changed once the minister came. He traveled by boat from Fort Severn and traveled through these lands. He's the one that gave people names and married people for the first time… That's when the animal names stopped." Today, many KI members regularly attend one of five churches in the community. Despite early missionaries' attempts, Christianity did not replace Indigenous spirituality in KI, but rather it served to provide a written text to core teachings that were historically communicated through oral tradition.

KI's complex spirituality is often a layered collaboration of Christian and underlying traditional beliefs. Chief Donny Morris told me, "religion was forced on us, it was brought over for us." Yet he said he grew up in a religious home and continues to follow biblical scripture. Quoting Acts 17, Morris revealed the convergence between the Bible and the traditional KI teaching. "We were put here on Earth in this corner, made not to rule each other." Indicating that KI's land should be left in its natural state, Samuel

Mckay affirmed, “from the First Nations perspective, the Creator created the Earth and He put us in this part of the world and He gave us everything that we need to survive. And it's not up to us to go and change anything. Even the Bible itself shows that Man cannot replace God.” Further reinforcing the message with the traditional KI teaching, Mckay said, “the Elders believe that the Creator created this Earth for us, a certain way for a certain people at a certain point, which is us, and that's the way it was meant to be.”

During the mineral exploration dispute, many KI community members were concerned that mineral extraction near Numeigusabins Lake would upset the burial grounds of KI’s ancestors. Sarah Jane Mckay shared her experiences protecting the land at the exploration site in 2009. “I went over there to Numeigusabins Lake last month. I feel like I don’t want them [Platinex] on the land. And I also thought about my two younger siblings – they are buried there across the lake. I felt sad.” Today, KI members still feel a connection to those laid to rest. Evelyn Mckay spoke about the land where her family trapline is located, and she said, “There’s graves there that cannot be disturbed. Numeigusabins, there’s a place where there are 5 children, all laid to rest in one spot.” She also told me about the spirit’s voice she heard while moose hunting near an old grave. “So I sat down on this log and closed my eyes and somebody talked to me… he said it was our duty to protect the land and our Creator had given it to us to use and protect.” She added, “you can hear their voices echoing through time… you can feel their knowledge and wisdom coming from the land through you… As they say, we are one with the land. When you go out there, you can feel it.”

While Christianity may be the dominant religion in KI, many community members are beginning to speak more openly about their traditional beliefs. As a child

raised in the bush during the early 1900s, Sarah Jane Mckay's grandmother told her stories about a shaman named Big Bear. "He was known to do magic. So those kind of people were known to have great powers. There were people like that – shamen – they would get together to do drumming and it was believed that they got these powers through that." Ostaman explained that as a child, he was given both a Christian name and an Indigenous one. "My Grandparents were faithful Anglicans and at the same time they did their traditional ceremonies." Furthermore, Ostaman suggested that KI are currently experiencing a resurgence of Indigenous knowledge as the community is beginning to revitalize their traditional teachings, ceremonies, clans and other beliefs rooted in their past. According to him, the mineral exploration dispute had an unexpectedly positive effect on the KI community. He said, "We were able to show the teachings of KI, we were able to show slowly the Indigenous knowledge… The Christians are beginning to open up to discuss the traditional teachings. I mean it's good in a way that this happened, because we're able to go back to our traditions and our customs."

Paradigm

KI culture is rooted in the land, explained Evelyn Mckay. Sitting under the shade of her backyard wigwam, she said, "to know who we are is to live with us, to be on the land. And that way, you have a better understanding of what's happening, what's in our hearts and who we are." She added, "we still live off the land. A whole bunch of us still do that, we still go out. Even though we have jobs – I teach – I still go out there. And it's not just to survive, it's not our main survival, but it is part of our survival as native people. And there's a connection to the land that only if you go there you know."

Speaking about her experience hunting and fishing, Sarah Jane Mckay said, “That’s just the way we were brought up – just a way of life for us.” Jacob Ostaman further explained, “We're different, we think differently, and that’s where the Indigenous knowledge comes from.”

According to Evelyn, KI’s knowledge comes from the land and is communicated through the power of thought. Back in the early 1970s, she overheard a man tell her grandfather that knowledge came from the trees and the animals. “He was talking about that knowing – knowing about others.” Evelyn explained that she learned to find animals the same way and today she knows where they will be. “I just go where I think the animals are… It happens all the time.” Sarah Jane Mckay also spoke about the prophetic understanding of Kitchenuhmaykoosib in the past:

> A long time ago, nobody lived here [in the community]. Everyone was out on the land; they lived everywhere. But sometimes they would come here to Big Trout Lake and I would hear the old people talking about the land. The old men of the community would sit around in a big circle. The women would sit in a different circle. They would tell us what was going to happen to the land. And a lot of what they told us has already happened – land disturbances. I don’t know how they knew, there were no phones or radios at that time. They just knew.

According to Anna Baggio, the Ontario government is “…a distinctly non-aboriginal culture, they have different ways of making decisions, they have different ways of knowing. Trying to navigate that is very hard.” She added, “I think [government] needs to start catching up with other worldviews. I mean there's isn't the only one.” Ostaman explained, “they have a lack of understanding about our spiritual relationship with the waters, the land, the animals and the fish. They have to understand this.” He added, “Unless there's changes in law and policy to accommodate our First Nations perspective of lands… we have to continue to fight, continue to say no.”

Aware of the divide between Indigenous and Western knowledge systems, David

de Launay explained, "There's a lot of discussion with First Nations about Aboriginal traditional knowledge… Aboriginal people are often talking about a more holistic approach, a more integrated approach and those sorts of things. So absolutely, there's a lot to learn about different approaches, different worldviews, different experiences." David Peerla noted there is a limited incorporation of Indigenous worldview in environmental decision-making today. He argued that while government and industry may be pushed to fund archaeology, avoid burial grounds or schedule exploration to avoid hunting times, Indigenous knowledge and community decisions are often misunderstood or ignored. In fact, Platinex CEO Jim Trusler admitted that it is often the case with exploration companies, "you go in not knowing much about the communities anyway."

Dismayed by the treatment of KI's knowledge and beliefs during the mineral exploration dispute, Ostaman said, "The government and Platinex went along together as per the rules of the law, the rules of the policy. That's what happened. They went hand-in-hand together just to follow the rules of law. From that perspective, they completely ignored our knowledge, our perspective and our beliefs – completely ignored it." While KI have a responsibility to protect the land, the resource industry often cannot comprehend how valuable the land is to the people. Speaking to KI's protection of the land during the mineral exploration dispute, Baggio said, "Any industry that's spent time in a community in a way that would be meaningful, to actually take the time to hear them say that, would hear it. Would they understand it? Maybe. Would it change the way they behaved? I don't know. It would depend on the company… not all of them even care, as in the case we have here." In his company's defence, Trusler argued, "When we raise

money, we're not supposed to stand still. We're supposed to go out and spend it the way the shareholders wanted it spent." He insisted that the critical role of industry is to evaluate a project's viability within the constraints of the market, technology and the environment, and to bring the project to the marketplace.

"I guess it's just the difference between the Western way of thinking and the Aboriginal perception of land," explained Samuel Mckay. "[Government and industry] forget to take into consideration the Aboriginal perception of stewardship." According to Chief Donny Morris, "The difference is Ontario has been operating under a regime which operates on money – bonds, taxes – while we as people just make do with what we can off our land." David de Launay agreed that First Nations and government do not always see eye to eye. "We have our view. And where they are different, that is the basis then for a discussion and a conversation and sometimes the basis for negotiation. And sometimes, in rare instances where negotiations aren't successful, we end up disagreeing, recognizing that that's their view and our view is different." But he suggested, "reasonable people come to reasonable conclusions, even when they have cultural differences or different experiences of the world the way we have them."

In regards to the Court's treatment of KI's knowledge and beliefs, Jacob Ostaman said, "Our knowledge is not being well respected…Yes there was a mention of it [in the court] but the judge overruled those knowledges that we have. I mean if they were serious about our lands, if they were really working with us in terms of protecting our lands, they would go against Platinex. But it didn't happen that way." Anna Baggio explained, "It's mixed, because on the one hand Justice Smith spoke of the knowledge system and the belief system and actually confirmed that it had value, but on the other hand, he said the

mining must go on. So from a legal perspective, the lower courts were conflicted, but then in the end they sided with the company." She added that the Court of Appeal was receptive to KI's unique worldview because the senior appellate judges were more appropriately aware of Indigenous knowledge and context.

Language and Terminology

To know the People of Big Trout Lake also requires an understanding of their words and their language. Linguistic retention in the community is high and most KI members are bilingual speakers who use English and Anihshininiimowin (Oji Cree) interchangeably. Yet even in English, the meaning behind the words can be different depending on how they are used. For example, Jacob Ostaman said he "was born from the present community." Therefore, he was not merely born in KI, but rather he was grown from the people and the land. In fact, he explained that Kitchenuhmaykoosib people *are* the land. "We are the land. We're not only part of it, but we *are*." He added, "In our language, we say Niinawiit akeh. It's so descriptive, because the people and the land are all in one. When you talk about the land, you also hit environmental issues, customary laws, and how people follow the land's responsibilities. In our language it speaks of that."

According to Evelyn Mckay, "If you know the language, you know who the people are. There's some words in our language that cannot be translated." She explained that there are no swear words in Oji Cree, "only body parts – you can call people body parts, that's pretty much it." She also discussed that the language comes from what the people do and that it is hard for outsiders to understand unless they visit the community.

She said, "the Elders want to speak to these people who are highly trained, university-trained and political. They have their own language too, which they don't really understand, how one word can make a difference." Mckay explained that although the Elders may have translators, it is difficult to convey the feeling and meaning of the original language through the limitations of English.

During my own research with KI, I had the opportunity to attend an Elders' meeting. These meetings are held regularly in Anihshininiimowin to inform the Chief and Council about current issues and concerns relevant to the Elders. At the meeting, the Elders discussed their intimacy with the environment, including traditional foods, medicinal plant collection, education, important calving grounds, fish weirs, respect for animals and land use issues. After listening to everyone speak, I had a better understanding of the necessity of language to convey knowledge from the Elders to the KI Council. Without fluency in Oji-Cree, KI employees would not be able to access their traditional knowledge or accurately address the concerns of the Elders.

Evelyn Mckay further illustrated the importance of language to describe KI's intellectual concepts, including the relationship between people and the land. "It's all like one big huge web all tied together and the only way you can try and explain it is to use the language. You can explain it freely and easy in my language, but once I try and translate it, it doesn't come out the same." She said, "it's like somebody coming here talking to me in Chinese and trying to explain how to cook rice the way they cook it… I won't get it until I see him or her do it."

Terminology is another confusing issue for many KI members and government representatives alike. Terms such as consultation, negotiation and land use planning were

all subject to debate during the mineral exploration dispute and the discussion about appropriate definitions continues to this day. Speaking to the contentious use of the term ‘sustainable development,’ David de Launay said, “I think this is an issue where reasonable people can disagree.” He explained, “there's disagreement and also agreement. And I think with a lot of these things it's just working through what you mean. Even within MNR, at any given time, there could be disagreements… in our own organization, because of their training, you see reasonable people having reasonable disagreements.” de Launay affirmed that terminology must be negotiated between First Nations and government because, “all of these words tend to take on meanings beyond a dictionary meaning and they become the catchwords for industry… they become charged by who says them and the context that they're used in.”

Samuel Mckay explained, “When people say 'natural resources' – government people, industry people – they talk about what's in the ground. For us, when we say 'natural resources' we talk about what we see – the land, the water, the animals, the trees, the air. Those are *natural* resources – they naturally renew themselves.” Mckay added that while non-renewable mineral resources might generate more money for industry and the government, renewable natural resources are more valuable to KI.

Donny Morris indicated that KI’s language is often more culturally appropriate for identifying the landscape. When KI established a protected area to encompass 11 lakes near the community, it was named Majeewin Aaki to set it apart from other so-called government ‘parks.’ Highlighting the difference in terminology and meaning, Morris believed the Oji Cree term more accurately described the historical purpose and use of the land. Mckay also explained, “Just for lack of a better term, we call it parks in

the English language. But in our native language, we're calling it Majeewin Aaki, which means the land where you go to hunt, trap and fish.” KI are currently in the process of identifying sensitive lands and river systems surrounding Big Trout Lake so that they may be protected indefinitely, for the use of all Ontarians. The MNR has also outlined its own land use planning mechanism to facilitate the establishment of Ontario’s Far North Act. According to Ostaman, the Ontario government must address language differences if KI’s worldview is to be recognized. “It's pretty hard to say protection in an English language. It's hard because at the same time, you would be trying to conform to the laws and policies of the governments. It doesn't work for us that way.” He added, “It's very important that we expose the Indigenous knowledge about our lands because we can express it more freely and we can use it more freely while we're out on the land… based on our perspective, based on our language, and based on what we're doing – how we do everyday.”

Land Ethic

The most frequent theme under worldview was the discussion of ethics, or moral principles, upon which the interview participants view the land. Although specific questions were asked to investigate their values, most participants made repeated references to KI’s relationship with the land throughout the interviews. Discussions about this relationship, including the responsibility for protecting the land, cultural values and identity, contributed to a greater understanding of KI’s connection to their traditional territory. Common among all the participants was the belief that human beings are part of the environment. Despite their acknowledgement of KI’s special relationship with the

land, the Ontario government and Platinex nonetheless failed to respect the community's wishes.

KI member Bill Albany knows the land of his ancestors well. "I've seen the whole lake and miles up from the lake. I've seen almost every tree and every stump; every trail I've walked, portaged; every creek, every rock I've seen." A traditional land user, Albany has traveled throughout the territory from Bearskin Lake to Kasabonika and Kingfisher lakes. Having grown up on the north shore of Kitchenuhmaykoosib, the land is central to Albany's identity. He said, "every tree that stands up, still growing today, is vital to our survival in the long run. Not just us here, but everybody around the world." Describing the relationship between the people of Kitchenuhmaykoosib and the land, Albany added, "It's generally all the same. It's one. The land is life." Similarly, Evelyn Mckay feels a strong attachment to her traditional territory. She said, "the land is my life. I've lived there, I've survived from there. That's where I play, that's where I work, it's where I survive." Emphasizing KI's responsibility for protecting the land, Mckay said that her father instilled principles in her family. "He's always told us that it was our duty to keep the land. And that we should learn as much as we can and survive from it, and teach our kids and our young ones who we are… that's where our life is. It contains who we are, and when we go there, we find ourselves."[42]

Sarah Jane Mckay further explained the special relationship KI have with the land. "They love the land and have a lot of respect for the land. They enjoy going out to get food from the land that was given to them." As a respected Elder, Mckay teaches youth about the ethical use of animals. "I talk to the young people when they come back

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[42] Morris explained that the ultimate goal for KI is to preserve and protect the water. "Water gives life, water flows… Everything needs water." Highlighting the importance of water, Morris laughed, "I tried drinking my piss one time, it didn't taste good. I wouldn't recommend it."

from hunting. I tell them to treat the animal that they kill with respect. That way, if they treat the animal with respect, there will be a greater abundance of the animal later on. And I know people enjoy going out on the land because there is always something to eat." Evelyn Mckay added, "we use every part as we can from each animal. We don't throw away anything, we just use all of the animal." Today, many KI members still practice ceremonies to honour the animals that they hunt. Jacob Ostaman described the spiritual cycle of thankfulness when a fish is killed. "The Creator created the fish including the trout," he said. "And we take that trout for our sustenance, and we don't take it for granted. We take it in a most thankful way because lake trout is providing sacrifice for us to live. And it goes around – the Creator, the fish and the people, back to the Creator." Ostaman explained that many families continue to fish in their traditional territories and they often hang the fins of the fish on a tree to give thanks. "They're thankful that they're able to catch lake trout. And out there, the hanging of the skin and the fins, we're thankful to the Creator." Reinforcing KI's gratitude for the gifts of the land, Evelyn also explained, "It is in the law of the land and our people to respect everything and everyone, to only take what is needed, to take not for greed nor for one's personal glory, to share, and to leave behind for future use." Referencing Genesis 1 in the Bible, Chief Donny Morris said, "we're supposed to govern the fish in the seas, the waterfowl and every creeping thing… if you kill something, there's certain ways you've got to deal with it. It comes with giving thanks."

Identity is intrinsic to KI's relationship with the land. Samuel Mckay and Ostaman each emphasized the special significance of lake trout for the people, arguing that KI would not be who they are without the fish. Indeed, the Oji Cree word for lake trout,

nuhmaykoos, is central to the KI name. “Trout is our identity, that's where our identity comes from. When you say Kitchenuhmaykoosib Inninuwug, it refers to the trout as well, the lake trout people. The trout sustains us and we have a special connection – a spiritual connection – with the trout,” said Ostaman. In fact, lake trout have provided KI a connection with the Creator since time immemorial. Ostaman explained, “All these years we've been using trout, we've been eating trout, we've been doing ceremonies regarding the trout… That's the heart of the significance of who we are as people. The lake trout is our identity. That's how we know who we are and that's how we were able to communicate with our Creator.” Mckay asked, “Who would we be if there was no trout? Where have you ever come across a community where they had to change the name?” Faced with the threat of the trout’s demise, he said, “We could adapt and we would eventually survive, but I'm just saying that would be a very traumatic experience that would have a really deep and lasting impact on the community... There's no way that we're going to risk that.” Echoing Mckay’s thoughts, Ostaman explained, “The trout provide us the meeting with the Creator… And if that fish is destroyed, if that lake is destroyed, then our people will be destroyed. Physically, we would still be walking around, but that spiritual connection, without trout, will be lost forever.” Concerned that Platinex would initiate its drilling program in the vicinity of the spawning areas, Elder Sarah Jane Mckay worried, “What will happen to the lake, the waters and the land if they get destroyed? If the mining company does get there and they do have their mining, what will happen to our food, what will happen to the fish, what will happen to the lakes, the waterways? I am thinking about the future generations.” Ostaman added, “If we lose the trout, we would lose our identity forever and that's painful to think about… If we lose

trout, the circle is broken."

While KI members are concerned about the fate of their traditional territory, many are apprehensive about land ownership. Ostaman said, "I think we're more or less custodians for our lands. We don't actually say we own the land because our teachings say the Creator owns the land and there's no way that a man can own the land… You have to protect it, that's your responsibility." Bill Albany added, "I don't know if I should say 'ours' – it's not ours, it's not mine. I'm just here to try and protect it for the next generation, because I'm not going to live forever and ever. My time is going to come for me to pass on. And whatever I do today to protect it – and whatever I don't do – will affect the next generation." Reinforcing the difference between ownership and stewardship, Samuel Mckay emphasized, "We're all in this together, take care of the land; it's not just one person owning the land." Likewise, Evelyn Mckay insisted, "The land doesn't belong to one person in particular, it belongs to everybody. And everybody was put there to look after it, to be responsible for it." Ostaman agreed. "I think the teaching is way higher. The responsibilities that we're supposed to have with the land, to protect the land, to keep the land clean – from that perspective is much higher," he said.

According to David de Launay, the Ministry of Natural Resources and its employees are guided by institutional land ethics. He insisted that the MNR views human beings as part of the environment and as participants in the environment. "And so anything that we would do, human beings would have an impact on the environment. And we would see that our job is to ensure that that impact is mitigated." As a result, the MNR structures policies upon the concept of 'sustainable development.' He said, "Our main vision and mission is that natural resources are there to provide benefits for society,

but that must be done in such a way that the resources are sustained over the long term." While de Launay suggested that most First Nations have a strong, direct and spiritual connection to the land, he also explained that the MNR must balance the interests First Nations with the interests of the public, the environment and industry. "When it comes to the environment, we would say our first job is to ensure the sustainability of the resource… When it comes to First Nations, we would see that as part of general society getting the economic benefits of resource use." He acknowledged that, "it's very clear that First Nations have a very deep connection to the land and a very – in their words – different connection to the land than many non-native people."

When asked whether the Ontario government understood KI's connection to the land, KI participants were unanimous. "I don't think they do, they don't understand it. That's one of the many problems that have arisen in the past several years because of that lack of understanding of the government on our part, on what we are trying to tell them," said Bill Albany. According to Donny Morris, "They have to acknowledge as Aboriginals or Indigenous people, there's a strong connection, especially to the water." But he argued, "I don't think it's recognized." Evelyn Mckay determined that, "If they did… if they knew or if they want to acknowledge it, they should help us live our lives as peaceful as possible and as easy as it can be." She added, "I don't think they even consider what KI knows about the land, what they do about the land. They don't know how we live. They don't even respect us as Native people that lived there. That is our land and it's our place."

Ongoing litigation and failed negotiations clearly illustrated that KI's responsibility for protecting the land was ignored, explained David Peerla. He suggested

that if government (or industry) truly acknowledged KI's responsibility for the land, local jurisdiction and decision-making would have been granted. Morris asked, "If you get thrown in jail, and there's a lawsuit for $10 billion, are you treated well?" Anna Baggio recalled the government's failure to recognize KI's connection with the land, suggesting, "They have a better idea now, but not then [in 2006]." She illustrated that although certain civil servants might have understood KI's spiritual connection to the land, it was not apparent in their decisions. She explained, "their job is to do their job as they see it and implement the law as it is, and only to get involved in how laws are going to be changed when their so-called political masters tell them to… even if they did have an understanding, it didn't translate into changed decisions or policies." On that note, Ostaman offered his perspective regarding the government's understanding of KI:

> What I notice is that the government employees, yeah they understand us, they understand how we view our lands, but the problem with those employees is that they have to follow their policies, their laws. And that's where the conflict comes in. Our responsibility to protect our lands and their laws and policies collide. And the people, the workers, the employees of the government, can't help it. There's something more than that. No matter who. The Minister of MNDMF [Michael Gravelle] appreciates how we look at the land. I know he's trying to do something to help out in order for them to understand about our perspectives on the land, but it's the policies and the law that's driving the government officials, including the ministers, to go ahead and destroy the land.

According to Jim Trusler, the MNR's overarching philosophy of sustainable development is not unlike the approach of mineral exploration companies. He explained that Platinex also has an environmental policy "which has words such as minimizing our footprint on the land" and he too agreed that human beings are part of the environment. "You don't get away from it by any sort of quick turn of the mind. There is no way. You are absolutely part of it." Trusler said his education in geology taught him, "how the whole earth has developed through changing conditions and species have come and flourished and died. You learn a lot about environment in that way, and some of the

tenuous aspects of species on the planet too." Trusler also noted that Platinex adheres to the Prospectors and Developers Association of Canada e3Plus initiative,[43] which outlines a set of principles including ethical business practices, protection of the environment and human rights.

Bill Albany argued that Platinex was unable to recognize the relationship that KI have with the land, "because their needs are different. They're trying to gain access to minerals to fulfill their own needs. But KI, on the other hand, is trying to protect it, to protect the land for everybody else." Evelyn Mckay claimed that Platinex failed to understand KI's connection with the land because the company could not see beyond greed. Trusler acknowledged, "if you look at Platinex, you'd see that we're an organization looking for platinum. We think that platinum is a miracle metal… We thought that we could find it relatively easily in Big Trout Lake from an exploration standpoint. I think that's right. But from a social standpoint, it wasn't." According to Peerla, "The issue is not one of conflicting understandings but conflicting interests." He explained that even if government and industry had a perfect understanding of KI's relationship to the land, economic self-interest would have obscured recognition of KI's jurisdiction.

Perceived Impacts

Branching from discussions about land ethics, many of the participants made comments regarding the risk of impacts caused by mining. Indeed, as Baggio insisted, KI's "2.1 million hectares are not an island, they have impacts on areas beside them and around them. Areas beside them and around them are going to impact them." Albany

[43] e3 Plus, A Framework for Responsible Exploration. See http://www.pdac.ca/e3plus/index.aspx

linked his concern about mining with the health and future of the planet as a whole. In fact, many of the participants I spoke with mentioned climate change, global resource extraction, and deforestation. Reinforcing KI's need to protect the land, Albany explained:

> Everywhere else we see and hear, every tree, every mineral or whatever, they're tearing the whole lands apart. In South America, Alberta's oil sands, Africa… they're just tearing it apart. And I guess the mentality before was whatever happens on the other side of the world cannot affect the other side. They thought that before. But they were wrong. Whatever happens on the other side of the world is going to affect the other side, because it's a small world right? As we hear Antarctica is melting, the snow is melting, the Arctic is melting. Whatever's happening at the top is going to affect the bottom, and vice versa… The world itself is getting smaller and smaller everyday, there's only a few trees to go around, only few mouths of good water to go around. Why do we need to continue on destroying what little we have? Isn't there an option, isn't there a box where we can sign to save what little we have today for tomorrow, for our next generation?

Echoing Samuel Mckay's and David de Launay's beliefs that all human beings impact their environment, Trusler agreed. "Everyone has an impact on the environment whether you're doing anything or not." He added, "you have to look at a collective ethic and realize that maybe you should take care in what you do because it is going to impact what other people do too." Trusler claimed that exploration companies such as Platinex avoid causing adverse environmental effects. "Platinex is on a mission to solve global warming. Platinum is the key component of fuel cells, which could replace gasoline and diesel engines with non-polluting devices," he said. Although Trusler noted it was never the intent of Platinex to develop an open pit mine, Mckay took exception to the claim that Platinex is a 'green' company. "He wants to extract all this mineral – platinum – and destroy *our* environment that we depend on," Mckay argued. Exploratory degradation aside, Mckay explained that KI was not entirely concerned about a few drill holes, but rather the community feared that successful exploration discoveries would eventually lead to large scale mining. He added, "It is our understanding that in order for them to

have an open pit mine, they would have to drain two major lakes… and those two major lakes are directly connected by the river system to Big Trout. So whatever happens over there is going to have a direct impact on us. And right there, those two river systems are one of the best spawning sites for trout." Ostaman agreed. "I like to go out hunting, I like to go fishing. I want to continue these things and when I knew that there's going to be an open pit mine, that's when I decided to say no. I can't allow this," he said.

From talking with KI members, it became evident that previous mining throughout the territory had fueled community concerns about another resource extraction project. Samuel Mckay explained that some of KI's Elders were once employed as miners in the 1960s. "We've seen the mines in Pickle Lake. We had whole families moving from here to Pickle Lake to go work… they made good money but a lot of them are dying or have died as a result of the illnesses they contracted through working in the mine." He also told me about an abandoned mine north of KI that had been closed after World War II. "They just abandoned everything, they never cleaned it up. That has been our experience. And that's the only experience we had when it came to mining." He remembered as a boy watching mining company planes flying overhead. "I was aware that there has been exploration activity going on over the years, even when I was a child. I remember we used to have planes flying around here," he said. Evelyn Mckay also witnessed helicopters and planes over Numeigusabins Lake and throughout KI territory, and she explained that the noise of the surveying aircraft disturbed the wildlife. "We'd hear a plane coming, then land… after that, the moose didn't come for 5 years."

PCB contamination is another longstanding community concern that has plagued KI. When the former weather station was decommissioned by Environment Canada, government employees allegedly dumped chemical barrels and old transistors into Big Trout Lake. Years later, the effects of the contamination on the fish and KI is still inconclusive. As a result, the community remains skeptical about government and industry promises regarding mining safety. Samuel Mckay said, “Regardless of what they tell us that it's safe and that it's not going to get into the land, not going to get into the water, something's going to go in there no matter how good you are. There's no guarantee. With the potential of an open pit mine, there's always going to be tailings.” He explained that the PCB issue and the community’s knowledge of the abandoned mines strengthened KI’s perception of the risks. “Because it has been this community's experience that when a mine is made, there's always damage to the environment.” Ostaman also voiced concerns about water contamination and insisted that streams and rivers that flow into Big Trout Lake are environmentally fragile. “We don't want the development to come here and pollute our water… That's why we're against it right now because where the claims are located, there's a potential that certain chemicals would be in the river system and eventually flow to our lake.” He added, “It's important that we oppose mining because we know what mining is going to do to our lake and to the people eventually.” Mckay said, “yes, we might get money if they have a mine here, and there's the risk of destroying the environment, but then when the mine comes to an end, what do we have? That's our experience. And that's a big factor with this community saying no to resource development. We're not ready for it.” For Chief Donny Morris, mining would be a “frontal assault” on KI. “It just doesn't fit in with our way of life,” he said.

Yet as KI have often stated in press releases, the community is not against development. Samuel Mckay explained, “We're not saying 'no' forever, but we're just saying 'no' for now because we still have the natural resources.” Describing KI’s dilemma, he said:

> We still have an option, and we don't want to risk rushing into that type of resource development and risk losing all of this, destroying it in the process. We want to preserve what we have right now, as long as possible, and then who knows, two or three generations down the road they might be ready for it because they don't have a choice. Because at the rate this world is being polluted, we're going to be affected one way or another, regardless. Even if nothing happens here, we're still going to be affected because it's affecting worldwide, and there's going to come a time, there's going to be no fish and no wildlife because even the migratory birds are already affected because of where they go to migrate. And there's going to be a time when generations to come are going to have to make that decision, make a choice to look into mineral extraction, for sustenance. It's not for us to decide for them at this point, because we still have a choice.

Evelyn Mckay stressed that KI needs time to consider all of the impacts that could result from a potential mining project. “And when we’re ready for development, once my grandkids have gone to university and taken these courses and decide what’s best for the land, maybe perhaps it will happen. But at this time, it’s not going to happen. That’s the community’s wishes.”

Governance

Under the umbrella of governance, participants were asked a series of questions about the role of First Nations, government and industry in making decisions about the land, with an emphasis on the mineral exploration issue at Big Trout Lake. By analyzing the responses, their collective ideas were organized under rights, government, jurisdiction, law, local decisions/protocols and power sharing.

Rights

Central to the discussion of the Big Trout Lake mineral exploration issue is the notion of rights, including citizen rights, constitutional Aboriginal and Treaty rights, mining rights, and inherent Indigenous rights. According to David de Launay, “the role of government is to ensure the protection of rights and the role of a modern government in a progressive society is to ensure the rights of minorities in particular. That's often the real test of a modern government.” He also said that Indigenous people in Canada have unique rights, “so as well as being citizens of a society, they have rights protected in the Constitution,” and he insisted that Aboriginal and Treaty rights are further defined through case law. “Subsistence harvest by First Nations is protected under the Constitution. We can't deny that right. Particularly since the Supreme Court decision, referred to as the *Sparrow* decision of 1990, it's very clear that Aboriginal people can trap, fish, hunt,” he said. Trusler also recognized that, “First Nations have rights of governance on reserves and treaty rights off reserve.” However, he said that the mining industry must have the right to select its projects on treaty lands and Crown lands, otherwise exploration in Ontario would come to a standstill. Trusler said, “In our model of Western society, we have individuals who are able to have their own individual rights. So if I sign an agreement, there is no one who can really say I can’t do that. But the individual rights in some of these [First Nation] communities are subject to community rights.” He added, “there should be more assimilation or movement towards the mainstream and away from treaty rights, in line with Pierre Trudeau’s vision of a ‘just society.’”

For KI members, the concept of rights was much more broadly defined and highlighted the spiritual foundation of KI knowledge. To explain his understanding of rights, Chief Donny Morris quoted verses from Genesis. He elaborated that while he may advocate for constitutional rights in his political work in Canada and abroad, he does not promote those rights in KI. Referring to Section 35 of the Constitution, he said, “I don't believe in that, because I think I'm a free man. God made me here to be free in my own land.” Jacob Ostaman declared, “I don’t believe in the righteousness of the courts. Rights come from the Creator, not the courts.” Evelyn Mckay also described her rights as *Manido miiniiwehwin* – a gift from the Creator – that includes the land and culture of KI. Fellow KI member Bill Albany described rights through the story of his ancestors. Like other KI participants, he insisted that Kitchenuhmaykoosib Inninuwug rights preclude Treaty or constitutional law. Albany said that he has always questioned the word ‘rights’, preferring to highlight the historical presence of KI. “We’ve been here so many thousands of years. Our grandfathers were here so many thousands of years. They’ve walked, they’ve lived off the land, they’ve done everything. They even helped the first settlers when they came and they helped them. They were dying and our peoples helped them out, brought them up,” he explained.

KI participants also discussed the importance of responsibilities that accompany rights. For Mckay, *Manido miiniiwehwin*, “can also mean a ‘right’ or ‘privilege’ depending on how you use it.” Ostaman insisted that KI’s rights come with a responsibility to protect the land. “That's our inherent right. We have that responsibility to protect the land. So we have rights over land as well; the resources, animals, lakes and

so on. We have rights to those, but then again, it's not about rights – it's about keeping responsibility," he said.

Although KI recently resisted mineral exploration on their traditional lands, Ostaman explained that the community has had mining rights since time immemorial. Noting the discovery of 5,000-year-old human remains on the shore of Big Trout Lake, Ostaman was curious about the presence of carved stone implements in the vicinity. Upon reflection with a KI Elder, Ostaman realized that his ancestors had conducted small-scale mining long ago. "They mined. You know in all these past many years, they carved up the rocks for spearheads. That's part of mining, but not in the full-scale mining as we know it today." He said that KI have inherent mining rights dating into the distant past. "Our ancestors did that over 5000 years ago. We have rights to mining as well. But if our future generations want to do that, they have to keep in mind that we have responsibility too."

Despite the perception that the Ontario government's mandate and responsibility is to protect Aboriginal and Treaty rights, infringement still occurs under the law. According to David de Launay, the MNR aims to recognize rights, but it has the 'authority to overrule' them in the interest of public safety or conservation. "So there are clearly friction points in our role in the hierarchy of conservation when it comes to subsistence rights," he said. However, in the case of the Big Trout Lake dispute, mining rights issued by the MNDM infringed upon KI's rights in the interest of mineral exploration alone. Anna Baggio argued, "Legally, [First Nations] have constitutionally protected rights but the province is slow to really update their understanding of what constitutional laws mean and the province resists doing anything where they would give

up their authority, even if the community has an inherent right or even if the community has constitutional rights.” She added, “You’re dealing with a regressive perspective… it's slow and it's reticent to change.” de Launay indicated that government bureaucracy is a challenge to recognizing rights for First Nations. Citing the *Sparrow* decision, he explained that there is an “inevitable delay in creating the appropriate policy and the appropriate implementation.” He also noted, “it's not a question of do you agree with the rights or not, but how do we actually protect and implement those rights as government and can we do more? And I think we always can and I think that we will continue to work with First Nations.” Yet Ostaman argued that the government would continually fail to respect KI’s rights until it addresses KI’s responsibilities.

Samuel Mckay also voiced concerns about the elimination of Indigenous rights through impact and benefit agreements between First Nations and exploration companies. “Once you sign an IBA – impact benefit agreement – you're extinguishing your right, your Treaty right, to your land. And I don't think First Nations realize what they're doing when they do that.” He explained that all of KI’s negotiations must be treaty-based in order to retain Treaty rights as an international party. Treaty-making relationships signed nation-to-nation should preclude First Nations from signing or partnering with non-governmental agencies, organizations, industries or institutions. “As long as we deal with the governments and the industry based on the provincial legislation policies, we've abandoned the Treaty rights that we have. Because all of those things – the policies, the legislations – lean to the court,” he argued.

On an international level, Evelyn Mckay explained that KI also have universal human and Indigenous rights guaranteed by the United Nations. She said, “everybody

should be respected, treated fairly, no matter who they are or where they come from." Mckay also pointed to Canada's refusal to sign onto the United Nations Declaration on the Rights of Indigenous Peoples. As a result of Canada's inaction, the community invited Indigenous rights experts, including Arthur Manuel, Sharon Venne and the International Indian Treaty Council to work with KI. According to Samuel Mckay, Treaty 9 is based upon the Royal Proclamation of 1763. He explained that KI signed the Treaty with the British Crown in 1929, even though Canada was confederated years earlier in 1867. "Canada was given the successor state and they're still obligated to fulfill the spirit and intent of the treaty that was signed on behalf of the British Crown. But they're doing everything they can to abolish it," he said. "At the international level, Canada can be pressured, so that's the only option we have at this point and that's what we're taking. They're not happy about it, but we're not here to please them."

The *right to say no* to resource extraction was another predominant rights issue among the participants. Baggio insisted that KI members have many rights, both legal and inherent. In addition to KI's constitutional rights, and their rights as Ontario residents to due process, Baggio asserted that KI have an inherent right to protect their territory. "I don't know if they would call it a right, but they certainly feel that they have a sacred connection with their area known as their traditional lands," she said. Peerla claimed that KI have the right to say *no* as well as the right to free, prior and informed consent (FPIC) before any resource extraction takes place. But he explained that courts rarely recognize the right of First Nations to say no. "Section 35 Aboriginal and Treaty rights would have to be interpreted in a different way," he said.

A complex issue in and of itself, de Launay explained that the Ontario government considers the *right to say no* an issue of consent. “As a legal question, the courts are basically saying this has to be determined case by case.” He said that the MNR, MNDM and MAA have taken the same position on the matter. “So then it gets into a legal issue and a rights issue, and our lawyers' legal view would be that this fits into the consultation and accommodation continuum. And there may be some instances where consent is required at the high end of that continuum, but it is a continuum. It is not always a requirement.”

First Nations will continue to seek the recognition of Aboriginal and Treaty rights as the *right to say no* until courts reevaluate the constitutional and international rights of Indigenous peoples. Indeed, Peerla suggested that the *right to say no* could be achieved through legal precedent. “So you would probably start with a horrendous circumstance where something very valuable and core to your identity was at risk – like a sacred lake. And then once you have one decision that gives you the right to say no, you'd try to expand it to cover other kinds of situations.” In the case of KI, Peerla argued that it would be difficult to imagine a “circumstance where consultation would include the right to a veto, save and except a project that was directly going to destroy a sacred site. But even in that instance, they might just move the sacred site, if it was bones or a burial or something else.”

Trusler also highlighted the role of the Supreme Court concerning the right of First Nations to say *no* to resource extraction. “There is no veto right and that’s been enforced by the courts on a lot of occasions,” he said. Contrary to Peerla, Trusler worried about the ramifications of a veto right being granted by the courts. “It would probably

force us back to a revision of the Constitution again because it would tie the country up if you had to have one race – a minority – that has the right to say no to just about anything that happens in the country," he said. Having failed to distinguish between Indigenous 'minorities' and other ethnic groups in Canada, Trusler apparently did not consider the significance of First Nations' constitutionally protected Aboriginal and Treaty rights.

Provincial and Federal Government

Various government ministries played a key role in the Big Trout Lake mineral exploration dispute. While the KI reserve is considered federal land under the jurisdiction of the Canadian government, the mining claims in question at Numeigusabins Lake were provincially regulated because they lay outside the reserve boundary. As a result, the Province of Ontario has long considered these lands to be Crown resources. Ostaman explained, "off reserve, we have to meet with the province and we have to meet the laws and policies in that province, which of course goes against our rights and responsibilities." Once mineral staking was renewed in the vicinity of KI, the Ministry of Natural Resources (MNR) transferred its responsibility for the lands in question to the Ministry of Northern Development and Mines (MNDM), which would later become the Ministry of Northern Development, Mines and Forestry (MNDMF). According to Baggio, this transfer of responsibility is called the "disposing of Crown resources." Trusler clarified that the MNR is responsible for administering surface rights on Crown land, while the MNDM is responsible for administering mining rights under the Mining Act. de Launay explained, "the Mining Act gives property rights to exploration claim staking... So you can stake a claim, for instance, on Crown land and have those rights that

go with that claim to pursue your development and everything that's written into the Mining Act."

Issues continually arose throughout the mineral exploration dispute as a result of the Mining Act and the Ontario government's division of authority. According to de Launay, each ministry has a distinct mandate and the challenge lies in coordinating these separate responsibilities. "Whatever differences might exist among the ministries is a function of our different mandates. We all work for a provincial government and we all work for one premier and one political direction. But we all have different mandates within that." He explained that the Ministry of Aboriginal Affairs (MAA) is rights-based, while the MNDM is concerned with resource extraction and the MNR is concerned with resource management. Samuel Mckay explained, "at some point we made contact with Aboriginal Affairs because we realized that MNDM has no mandate to resolve Aboriginal land issues. Their mandate is to get industry in the ground and produce - that's their mandate." de Launay added, "Northern Development, Mines and Forestry has a clear mandate around mining development, making the province open for business on the mining front and the forestry front now." Upon consideration of the MNDM's priorities, KI decided to contact the MAA. Mckay explained, "We came to that realization, and also we came to the realization that we wouldn't be able to resolve this in the courts. And that's when we made contact with the Aboriginal Affairs Ministry, and told them, 'Look, this is about our land and our Treaty rights, so it's your responsibility.'" Revealing the provincial government's conflict of interest, the Ministry of Aboriginal Affairs encouraged KI to continue discussions with MNDM nonetheless. Mckay suggested, "[MAA Minister Michael] Bryant was eager to come on board to try to broker a deal

between MNDM and KI, which is not what we were looking for." Considering the MNDM's priority for resource extraction, the Government of Ontario acted questionably when it urged KI to negotiate with the ministry.

Confounding the issue further, the federal government also failed to resolve the mineral exploration dispute in KI despite its fiduciary responsibility for First Nations lands and rights. Ostaman argued, "They can't really work together – the Canadian government and the provincial government – to resolve issues because the province has its own agenda and the federal Department of Indian Affairs has its own agenda." The ongoing constitutional issue was subsequently ignored. "In the Constitution they spell out their [government] rights and responsibilities. Like Section 91, the federal government looks after Indians and lands reserved for Indians. And the province looks after the lands and resources. There's no compatibility there. They go against each other. So the Constitution needs to be worked out somehow," said Ostaman. Chief Morris also pointed to the federal government's refusal to honour its fiduciary obligations to KI. "With Canada, I haven't heard anything from them. I think they just don't want anything to do with us, between KI and Ontario. And to me that's fine. I don't want to drag Canada into our fight cause that's always been the scenario, they throw us back and forth – Ontario and Canada," Morris said.

Concerning First Nations' reserves, Trusler was surprisingly critical of the federal Indian Act. "Personally I think that the reserves should be turned over to the First Nations. Maybe a lot of people don't understand this, but this is the situation – First Nations don't own their reserves; they're owned by the federal government. Even the squatters in Mexico City have more rights than the First Nations do in terms of land

ownership." Samuel Mckay also noted that KI was never given any decision-making authority over the size of the reserve or its location. "They just unilaterally said, 'Okay, this is going to be a reserve.'" Since then, the reserve has been carved up and sold by the government to public and private corporations without KI consultation or consent. Calling it a 'checkerboard' reserve, Mckay said that, "although the Treaty was signed in 1929, we didn't get reserve status until 1976. And prior to that, the Anglican Church was given a parcel of land from the province." Additionally, the Hudson's Bay Company, Environment Canada, Bell Canada, Ontario Hydro, as well as private companies such as Bearskin Airlines, hold deeds to land on KI's reserve. "We can't use and access it because they're still holding the lease to it," said Mckay. Despite these unresolved federal issues, the mineral exploration dispute would focus attention on provincial matters, including the debate regarding Ontario and KI jurisdiction.

Jurisdiction

Discussion about veto rights underscored the significance of jurisdiction at Big Trout Lake. In fact, jurisdiction was the predominant governance theme among the participants. David de Launay indicated that the MNR has a broad responsibility for land use planning, Crown land management and resource management. "The most important distinction to make is there's private land and there's public or Crown land. Private land is held by private landowners, and most land in municipalities is private land," he said. "But when it comes to Crown land – what is known as provincially-owned Crown land – we are the landlords. We are the equivalent of the private landowner." Despite the fact that constitutionally recognized Aboriginal and Treaty rights supercede federal and provincial

law, de Launay explained that the MNR considers 87 percent of the Province of Ontario 'Crown land.' "People don't think of it this way because the vast majority of the population lives in southern Ontario, where Crown land is two to three percent of the total landmass. But for the rest of the province, we are the owners of the land with all the property rights that go with that," said de Launay. "So we can dispose of that land, we can rent out that land, we make decisions about what kind of activity can take place on that land." He also explained that the bottoms of rivers and lakes – including the Great Lakes – are considered Crown land, also under the control of the MNR.

This peculiar concept of Crown-owned land, rooted in Imperial British common law, is reinforced by the MNR's interpretation of the treaty-making process. "Almost all of the land in Ontario, when it comes to First Nations, has treaties covering it. And the treaty in the far north is the last... The treaty was signed first in 1905 and then an addendum in 1929, that's been the most recent," de Launay explained. "Fundamentally, governments treat all these treaties as a surrender of land to the provincial government." However, many First Nations, including KI, disagree with this interpretation and have contested the MNR's claim to the land for years. Elder Sarah Jane Mckay insisted that historically, "People co-existed together regardless of where they were from. I never heard of people making treaties, they just lived together. The first treaty I've ever heard about was the one that was signed in 1929." The European notion of land surrender was unknown to KI, who viewed the Treaty document as a land sharing agreement of mutual aid and benefit, regardless of what was written in the foreign language and text. Chief Morris explained, "Our parents and grandparents told us the treaty was signed here based on sharing. I have never had anybody from the other side telling us 'You guys were

almost wiped out, you guys were beaten, you guys surrendered' – nobody ever said those things to us. So that's why I have a hard time believing we don't own anything." He added, "The plan here is try and isolate Ontario, try and force Ontario out – the ones that are saying they own Ontario, they own our lands. And they have to back those words up. And I think that's what we're doing. We believe this is our land, that's why we're backing up our words."

Samuel Mckay said the Ontario government has "no business sticking their nose in any so-called Crown land." Since KI signed a treaty with the British Crown, he argued that Canada is merely a successor state and he questioned why the provincial government had any jurisdiction at all over KI lands. "They say that we surrendered the land based on the Treaty," but he added, "documents have recently been found in the archives where [Duncan Campbell Scott, 1921] told his government officials that he had to lie to the people of Big Trout to get them to sign the treaty." Baggio also noted that treaties might have been signed in bad faith. "In these treaties, what they were promised orally was not that same thing as what was written down." Morris explained, "you have to understand too, when foreigners come to your area and they give you a few hours to sign… Whatever was told to them, they believed and signed." Bill Albany also voiced his frustration regarding the current government's interpretation of the 1929 treaty:

> I hear that when we signed the treaty, that we submitted the land too plus everything else. But at that time, our signing officers were not too familiar with the English language. But still, the king's signing officers pushed it. And today's government says that's still valid. How is it possible when one can't speak and the other one speaks a different language, then you try to sign something? How can it be valid?

As Peerla explained, "Either treaty was a treaty of co-existence, peace and friendship or a fraud from the outset." He insisted that KI have jurisdiction over their traditional

territory, based on KI’s understanding of the treaty. Samuel Mckay helped to explain this understanding and further dispelled the notion of land surrender:

> It says right on the Treaty that was signed, that we surrendered the land. But the argument has always been... Nobody spoke and understood the English language. And they brought in, they called him 'half-breed' in those days, from Manitoba who spoke Cree to begin with. And we're not hundred percent Cree. He spoke very limited English, but he was used as an interpreter. And what the Treaty party got our people to understand, as we understand, is that the government will take care of us as long as the sun shines, as long as the rivers flow and the grass is green – and that they would take care of us. That was the understanding of our people that it was basically a treaty of sharing, friendship, cohabitation. And the treaty party led them to believe that's what it said. But what it actually said on the document, when you look at the letter, the writing, is that we surrendered everything. If that's not a fraud, what is?

Despite these arguments, the Government of Ontario sees itself as maintaining ultimate authority over KI’s traditional territory. According to de Launay, “at the end of the day it's a legal question… Basically, the land ends up as Crown land that the province administers.” Noting the divide between the MNR and First Nations regarding the treaty issue, de Launay explained, “as I am often told in my negotiations with Nishnawbe Aski Nation, their view would be that they are sharing the land with the outsiders who came. And this leads of course to a fundamental difference in what the approach should be.” Peerla suggested that the government and the courts view the treaty as a surrender of land in order to justify Ontario’s jurisdiction over KI lands. However, de Launay reinforced the MNR’s position nonetheless. “So our view would be, if it's Crown land, then we're managing the Crown land. And we're looking at the rights of course for harvesting and we're looking at the duty to consult, but it's all within a context of the management of provincial lands. So who should control the lands? Well, based on that, it's the province that controls the land.” According to Samuel Mckay, “It's always a non-issue,” insisting that all of the Ontario government ministries have ignored KI’s treaty to date. “MNDM, MNR, Aboriginal Affairs, they're all of the same position.” Baggio agreed, suggesting

that the power dynamic was relatively unchanged by the mineral exploration issue. “Legally, they [MNR] say that Ontario manages the resources, Ontario has jurisdiction, and no other group or First Nation has jurisdiction to make decisions,” she said.

Mckay argued that the company was also disinterested in the Treaty. He alleged that Platinex CEO Trusler said, ‘The Treaty is none of my business. It's between you and the government,' when he was refused entry to the community at the KI airport. Trusler later explained, “Platinex is not a signatory and has no authority to change the Treaty.” He added, “I don’t think we should be tied down tremendously to thinking that this is something absolutely under the control of First Nations, because it’s not.” He said, “traditional territory is being used as an excuse for saying that the First Nation has a significant attachment to it, when in fact traditional territory has a requirement that there be some sort of continuing or repetitive use of that area by the First Nation within our system of looking at things. Otherwise it’s basically Crown land.” Mckay argued that the struggle for the protection of traditional territory is more than a political power play, but rather a respect for the land that has sustained KI since time immemorial. “Our people never surrendered our land. And that's why we claim our traditional territory. And why the traditional territory is important is that that's the land they used to survive. That's the land they used for us to be alive today. Because if they didn't have that vast tract of land to survive on, we wouldn't be around today.” He shared a story of his own family, and the importance of customary traplines on his father’s and mother’s sides, over sixty miles north and thirty miles south of the present KI community. “When my dad married my mom, he was given the right to trap over there. So he had that hundred-mile distance to hunt and trap in order to support his family. If he didn't have that, none of us would be

alive today. That's why the traditional territory is very important to us. It has meaning for us." To Mckay, "It's very valuable – more valuable than any mineral, more valuable than any money. Clear and simple."

Highlighting the Ontario government's position regarding control of provincial lands, which gave the MNDM ultimate authority to grant Platinex rights to mineral exploration, Peerla insisted the government also had the ability to remove claims under the Mining Act. "They could expropriate. They've got enough authority, they've got ways, they could just use expropriation powers, all kinds of ways. They could buy Platinex out." As Trusler noted "Ontario did clear several companies from area and attempted to repulse Platinex in 2004." Yet he argued that government and industry were unwilling to recognize KI's *right to say no* or the right to determine the terms of access to the land. According to Peerla, if government or industry acknowledged KI's responsibility to protect the land, it would imply recognition of KI jurisdiction and authority, not to mention the principle of free, prior and informed consent. Baggio explained that KI was ultimately "excluded from decision-making by the government, when the government handed out permits to Platinex, or authorized Platinex to do more work on the land," adding that KI's decision-making was ignored. "They were excluded by those who did have the power to make decisions," she said. As will be shown later, the Ontario government shirked its constitutionally recognized legal responsibility to consult KI.

Accurately predicting that the government would eventually reach a settlement with Platinex, Peerla argued that the jurisdiction question would remain. "In terms of power, clearly Ontario has more power," said Peerla. "They have more money, guns

(Ontario Provincial Police) and lawyers. KI holds only moral high ground." Yet according to KI members, Kitchenuhmaykoosib Inninuwug will outlast the government. "I think we have the power," said Chief Morris. "I mean, they say they have the power – the attorney general, the police, the marshal, the judge, the court system – they had it all and they threw that on us. And we're still here." Bill Albany also weighed the balance between the Ontario government and KI. "I would say KI would have to be and is in power right now. It sort of sounds like a military style sort of power struggle, but that's just the way it is. To show the governments that they just can't be deciding to go anywhere they choose at this day in age." He added, "right now it's at a stalemate, nobody wants to move. The government doesn't want to move and we're not going to move for sure. It's up to the government to actually move on in this issue. The ball is in their court; they know what they're supposed to do but they're not moving on it." Evelyn Mckay also questioned the issue of power:

> Power? Nobody really has power, we all have privileges. And it's up to us to decide how we use those privileges. The government may say they have the power to do this, they have the power to do that… They threaten us – the community. They have the power to put our people in jail, our leaders, but they got out because a lot of people supported us. That's what I mean, nobody really has the power to do what they want to do. It's just like an ongoing wrestling match… Sometimes we end up at the bottom, sometimes they end up at the bottom. Nobody wins.

Albany suggested that KI must take the lead in decisions about KI's traditional territory. He said, "the government has an obligation to the people – to its people, the whole big picture – it has to access funds or money from the extraction of minerals." But while he conceded that the Ontario government might be entitled to a share of the taxes generated by mining, KI should ultimately decide whether mining occurs in the first place. Albany insisted the government "has no business" in Numeigusabins Lake.

Law

Legal arguments on all sides of the mineral exploration debate were employed to both prosecute and defend KI members in their struggle to defend their lands. At the heart of the matter was the 'rule of law' notion, specifically the provincial Mining Act, which some parties chose to uphold to the detriment of Supreme Court law and Aboriginal and Treaty rights. Yet as KI would argue during the case, the community also had their own Indigenous laws and protocols to follow.

According to de Launay, "the rule of law is one of the most profound ways that we try to ensure in the modern world the protection of rights and the protection of society." And, as Trusler noted, "To my way of thinking, if we're not going to have the laws of the land, then you have to have a set of laws which can be followed." Many of the interview participants questioned what the appropriate response should be when a law is considered outdated or unjust. Ontario's Mining Act was scrutinized by the courts as Platinex and provincial prosecutors attempted to silence KI in order to exert provincial law and jurisdiction. Conversely, First Nations and environmental groups criticized the archaic law for its lack of relevance. Originally passed in 1869,[44] the Act preceded KI's 1929 Treaty and was inconsistent with current constitutionally recognized Aboriginal and Treaty rights and provincial environmental regulation. "The Act itself is so old and it's out of date, and it basically says that minerals trump everything else," said Baggio, highlighting the act's problematic free entry system of procuring mineral tenure without prior consultation or permit acquisition. "Basically they could do whatever they wanted without a permit," she said. Albany argued the act, "was created so many years ago, and

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[44] The first legislative act regarding mining was the 1864 Gold Mining Act, prior to Confederation. The General Mining Act was passed in 1869.

it’s still trying to be implemented and carried on as if everything was the same. But as we know, things are different today.”

Despite previous Supreme Court rulings that Indigenous peoples in Canada must be consulted prior to resource extraction activities, KI was still found guilty of disobeying provincial law and subsequent court orders stemming from the law when the community refused Platinex permission to enter the exploration site. “You had people in government who were sympathetic to this issue. But in terms of the machinery of government and how it was interacting officially on this file, they were fighting it,” Baggio said. “They had a very narrow understanding of the rule of law. Cabinet bought into that and said, ‘The rule of law must prevail – these guys have to go to jail and that's the way it is.’ On principle.” She added, “The civil servants basically do what their bosses tell them. So if the bosses say the rule of law is the Mining Act, they can't really diverge from that. That's their marching orders and that's what they do.”

According to Peerla, the Ontario government took note of KI’s decision-making, but sought the court’s direction on the legality of the decisions. He highlighted that the government was additionally constrained by its material interest in KI’s traditional territory. “The threat of a moratorium in the far north was real, especially during the commodity boom when everybody wanted to get on the landscape and get access to the landscape.” A mining moratorium in Ontario’s north presented a formidable obstacle to the MNDM’s resource extraction regime. “If government can ‘win’ at KI, the far north will be open for business,” Peerla explained.

Platinex was also hoping for a victory of its own during the court proceedings. Armed with a court order to allow exploration on KI’s traditional territory, Trusler was

eager to deliver on his promises to shareholders. “Basically that whole process of getting access to Big Trout Lake and the lawsuit took the last eleven years out of the company’s life,” he said. Despite the company’s concern for the project, Baggio argued that Platinex used rule of law to justify its litigation, regardless of the social and environmental consequences:

> Some of them just look at it as ‘This is business, this is legal, this is what my policies tell me I can do, this is what the government says I can do and that's the law’… it didn't matter that the First Nation lived there, it didn't matter that the land had been there in their families for generations. It was that they [Platinex] had rights given to them under the Mining Act, and I'm not sure if it was because they were angling for compensation – they wanted to be bought out by the province – or if they just thought the community would fold. Did they really think that the community was going to stand up to a 10 billion dollar lawsuit?

Although an appeal court ultimately decided to release the KI-6 from jail, many of the participants interviewed were skeptical of the court’s role in deciding Indigenous land conflicts. Peerla explained that the government preferred to seek court direction on the legality of decisions, but argued that it is lawmakers – rather than the law interpreters – who should be responsible for averting conflict. “I don't look to the courts to solve this problem… this is not a legal problem, this is a political problem. So you politicians sit down. And in fact, the court doesn't want to solve this problem, they want the legislature to solve the problem.” He added, “it's a problem of laws. That's why jurisdiction is a law problem.” Baggio also noted the limitation of the legal process, suggesting, “We all need to convince our decision makers to do the right thing and sometimes we can't convince them in the court. Sometimes we can, sometimes we can't.” Samuel Mckay condemned the courts as the institution of government that oppressed him in the first place. “We've already recognized that the courts here are upholding so-called Canadian law, because that's their bread and butter. So how can they contradict the Canadian government?” he asked.

According to Baggio, "[KI] exhausted the legal challenges, but in the end, the courts didn't really help them." She suggested that it was public pressure that ultimately forced the appeal court to remedy government injustice in KI. "The appeal courts helped but it was really more of a public campaign that helped the community, not the laws. The laws didn't help them. And it was the fact that we had decision makers who eventually realized that we need to fix this," Baggio said. "In those 68 days when KI was in jail, or in the 3 months for Robert Lovelace, we were able to talk about the other sides of the story and how the Mining Act was unjust, and how the First Nations have constitutional rights and why do they have to be jailed for trying to protect their lands?" Adding fuel to the fire, the harsh sentences placed upon the six KI community members outraged First Nations and the public alike. "Basically, it was an injustice and you had two judges that behaved heavy-handedly in terms of sentencing both Robert Lovelace and the KI-6 to six months in jail, when previous decisions for first time offences was two weeks," Baggio said. By the time the cases were jointly heard by the appellate court, Lovelace had served more than 100 days and the KI-6 had served 68 days of their sentences. Noting the severity of their punishment, Peerla highlighted the Court of Appeal's recognition of the Gladue principles (R. v. Gladue, 1999, 1 S.C.R. 688) regarding the Aboriginality (Indigeneity) of the defendants. The appellate judges affirmed that Justice Smith's ruling had failed to account for KI's demographic when he sentenced the KI-6 to six months behind bars. As a result, the Gladue principles on Aboriginal sentencing, which were initially limited to the criminal court, have now been extended to civil matters. "So that's a hidden victory of the KI appeal," Peerla said.

Despite the Court of Appeal's criticism of the sentences, appellate judges failed to vindicate the KI-6. Ultimately, all of KI's filed litigation, including the constitutional challenge to the Mining Act, was quashed. "As soon as [Smith] found them in contempt, when they said basically they weren't going to listen to his court orders no matter what, then all their litigation went out the window. That's gone; all of that's gone," Peerla said. He added that KI or another party could still revive a constitutional challenge, "but again, to run a Constitutional challenge, you need a million bucks." Money aside, Ostaman insisted that Canada's constitutional crisis remains. "And that's not right, because of how they operate in their own laws. It's wrong. It's wrong to put people in jail because of their political beliefs. That's what's happening in Central and South American countries, they're being put in jail or even killed. That's sad to see and I don't think we should allow that to happen in Canada." Reflecting on KI's experience with the legal process, Chief Morris explained KI's decision to retain independent pro-bono lawyer Chris Reid midway through the case. "The lawyers you get here [in Ontario] are supposed to uphold domestic laws of the government. And I think it ties their hands." Working on behalf of KI, Reid was willing to follow the community's wishes, even if it meant additional jail time for the KI-6.

Ontario's Mining Act

A positive outcome of the mineral exploration cases involving KI and the Ardoch Algonquin First Nation was the provincial government's commitment to modernize Ontario's Mining Act. According to de Launay, the Mining Act amendments will clearly oblige companies to consult with First Nations and involve them much earlier in the

claim staking process. "I can't speak for individuals, but generally [the amendments] are seen as a very good step towards a better regime," he said. Trusler explained, "there will be a requirement that companies put forward exploration plans and that they be accepted by the local First Nations. But the First Nation is also going to have to have an approved land use plan submitted in the next few years so that there's not going to be the room for ad hoc policy decisions in the consultation process." Baggio also said that under the new act, the MNDM would be responsible for administering permits to companies prior to exploration and in consultation with First Nations.

Most importantly, Baggio explained, a legacy of the KI case is the introduction of a dispute resolution mechanism in the new act. "If Platinex goes away, that will be the second victory," she said. "But the other victory that's not widely known yet is this dispute resolution piece in the Mining Act. In the future, the government has said that when something goes into dispute resolution, they now have the ability to confirm, vary or reject an exploration permit… this has never been done before." In the new process, companies would need an exploration permit in addition to the usual mining claims and leases. If a First Nation opposes exploration near their community, the file will go into dispute resolution and the Minister of the MNDM will have the option to reject the permit. Baggio insisted, "This is an elegant solution." She explained that while existing mining claims would be protected, First Nations now have more leverage to prevent new projects. "In that case the company could either let the claims and leases lapse, or hope that there's a [First Nation] leadership change. So this dispute resolution piece is vital now that the government has finally given itself the tools to confirm, vary, or reject the permits." She summarized the situation as "tricky, because the leases and claims are

being grandfathered in. If they didn't grandfather them in? Then all hell would have broken loose; there would have been lawsuits. It would have been chaos for Ontario," she said.

Now that the new act is complete, not everyone is satisfied with its amendments. According to Platinex CEO Trusler, "The new Mining Act will impose some new ways of formal facilitation, but without regulations the mechanisms are not clear." Baggio added, "There's a fair bit that's lacking." She argued that while requiring permits for exploration is a step forward, the act fails to consider environmental review at other stages of the mining cycle. "For example, permitting for prospecting, permitting for exploration, permitting for advanced exploration and permitting for full mine development. What we got was permitting at exploration," she said. Baggio insisted that "the devil's in the details," because, despite the amendments, mining is still exempt from environmental assessment in Ontario.

Baggio also criticized the government for failing to include First Nations consent in the permitting process. "We fought for that, and we asked the government not to hand out a permit unless you have the consent of the local First Nation. They were not willing to go there." Despite amendments, the revised Mining Act fails to guarantee First Nations the right to say no to resource extraction on their traditional lands. "What they have is consultation, which may not be consent; it may just mean that we talked to you," she said. Ever optimistic, Peerla noted the Ontario government has the opportunity to further revise the Mining Act to recognize Indigenous peoples' right to free, prior and informed consent. "They could make a mining act that gave you the right to say no. The legislature could pass a mining act that says First Nation communities have the right to say no to

these projects." He added, "It's very hard of course, because then it challenges institutional things like free entry and corporate interest, and you run up against all these things that benefit the existing interests that are on the landscape. So I don't see the courts helping us here – I see it's a legislative solution that we need."

Local Decisions and Protocols (KI Law)

While both the Ontario government and Platinex emphasized the importance of the provincial legal system during the mineral exploration dispute, KI focused attention on their own laws and policies to reestablish sovereignty, self-determination and self-government. Chief Morris explained that, "governments in the 1920s recognized who was the governing body at that time." He said that KI Council has an obligation, as a government in their own right, to put KI laws in place to safeguard the environment for, and with, community members. "But so far, Ontario doesn't want to acknowledge those laws, or even acknowledge who we are or why we're here," he said. Morris explained that, all too often, government expects KI to adapt and fit into provincial and federal policies. "It's got to be reversed. They have to fit into our way of thinking." Ostaman also suggested that the current relationship between KI law and Ontario law is strained because they often collide with one another. "The laws and policies of the Ontario government are foreign, they're alien, and they go against our ways of doing things… And that's why it's important that we have to have it in a government-to-government agreement. That's very important." Nonetheless, he said that provincial and federal governments continually pressure KI to conform to pre-existing Canadian laws, seemingly without regard for the community's interests. "I asked them one time, 'Are

you ready to conform to our laws? We have laws here too.’ But they're not, they're not ready to entertain our customary laws.”

By the time the Treaty was signed in 1929, the federal government had imposed the Band Council election system in KI. During those days, Big Trout Lake people would travel from all corners of the territory to vote in the community, recalled Elder Sarah Jane Mckay. “The election system came during the time when the Indian agent was there,” she explained. “People would gather around in circles and they would decide who was going to be chief. After they talked, an old man would get up and stand behind the man he wanted to be chief. The man with the longest line behind him would be chosen.” She said that the elected chief was given a large responsibility, “because he would be working for the community, for the people.” Samson Beardy was the first elected chief in KI, but Mckay did not recall any elections being held prior to the Treaty.

Prior to the election system, significant decisions about the territory were made through a process of consensus. Under KI’s traditional form of governance, the majority could not overpower or ignore the minority voices of the community. Ostaman noted the risk presented by the election system, considering the current temptation for mining and its promise of material wealth. “It's very important we select a person that understands what's going on with the issues.” But he expressed concern that some individuals might pursue mining for their own gains. “And because of the Elders, we're able to prevent that from happening. The thing is, if we lose all those Elders, I think that's when this thing will open up. A can of worms will be opened. So doing white man's elections is another force that could open up full-scale mining,” he said.

Despite the imposition of the election system, KI have retained elements of their traditional governance system. Ostaman explained, “There are some Indigenous teachings about who needs to be a chief… We began to use the modern style of leadership, or modern style of governance. But in those days, they looked at the clans. There are remnants of the clan system here.” Ostaman described the five roles of various clans, including leadership, protection, teaching, healing and sustenance roles. Traditionally, all chiefs were members of the leadership role such as the crane, loon and goose clans. “But now it's different, anybody can run regardless of clan. The clan system is suppressed. It has been suppressed since the treaty times, I would say. But there's remnants of it, a few families know about their clan system.” Ostaman explained that as a member of the frog clan, his responsibility lies within the healing role. “I don't work in the health field whatsoever. But while working with the leadership and working in the leadership area, there are things that I provide for the council. There's the health of the council, the health of the community – how we can start healing ourselves at the political level.”

The trapline permit system, designated by the government to assign trapping territories to specific individuals, is another contentious issue for KI community members. When the Ontario government imposed the system, it failed to recognize traditional governance and relationships that KI families maintained with the land. According to Chief Morris, each family is responsible for a certain area of land. “The Mckays have their own pocket of land to the northeast. Morrises, it's northwest. South are the Cutfeets and Sainnawaps. And the Albanys to the east. It's those pockets I'm talking about, traditional areas.” Evelyn Mckay explained that although the Numeigusabins Lake

trapline is registered under her father's name, he does not consider himself an individual owner. "There is his family, his immediate brothers and sisters, his late aunts uncles and cousins, just about anybody can go there," she said. Samuel Mckay further explained that, "Under the system of issuing trapline permits, Jacob Nanokeesic is the one that's identified, but traditionally it was the whole Nanokeesic family, not just him and his family." He said that two other families also historically used the area but the government severed those traditional relationships when it divided up the land. "The MNR trapline designation essentially gave that segment of land to Jacob to watch over because it suited the government system. It wasn't a traditional system at all." Mckay said that while the MNR failed to recognize the importance and value of KI's perception of stewardship, "We're all in this together – take care of the land, it's not just one person owning the land."

As an alternative to the conventional resource management approach used by the Ontario government, KI repeatedly referred to their own environmental decision-making process and the long established KI Lands and Environment Unit. "Our ways of deciding issues have always been there," Ostaman explained. "We have customs in terms of decision-making with all the issues, including the environmental issues." He described the Lands and Environment Unit as a formal office, which develops and implements protocols, but he noted that KI knowledge lies at the heart of the decisions. "We look at four areas – there's air, fire, earth and water – and those four elements are what we go by." Chief Morris added that the KI Council is not directly involved in the decision-making of the Lands and Environment Unit, leaving that responsibility to an informed staff with the assistance of KI Elders. "We wanted this to be community-driven,

community-based. So these rules and policies that will come out of it, once it's endorsed by the community, these will be the Council's directives and policies. From there, self-government." KI community members believe strongly in the initiative. "They're there to protect the land as their logo says – air, land, water, fire," explained Evelyn Mckay. "That's their job, they're there to make sure nobody comes in and blasts the heck out of our trapping area (laughs). They are there to help." As the Director of the Lands and Environment Unit, Ostaman said that KI must continue to assert their rights to make decisions about the land based on KI values, experience and custom. "What else can we say? We are the land. That's basically our model over the past years."

KI supporters agree that KI should have the power to make their own decisions about traditional territory. According to Peerla, "KI should decide when, where and who should explore and mine on their lands. They have a community decision-making process, responsible elected officials and community workers." Baggio said of KI's authority in the region, "They feel that's an inherent right on their part to take care of those lands, to make decisions for their people in consultation with their people. They feel that they have the right to be treated as an equal partner with the government. They feel that they have the right to be consulted prior to things happening there."

A significant policy put in place by KI prior to the mineral exploration dispute was the 2001 moratorium on mineral extraction, which was later reinforced with the cooperation of nearby communities. In October 2005, Peerla coordinated a meeting at Nishnawbe Aski Nation (NAN) to discuss whether the De Beers mining company would be granted access to the northern territories. The five First Nations in attendance – Muskrat Dam, Bearskin Lake, Sachigo Lake, Wapekeka and KI – agreed to declare a

moratorium against all resource extraction, including mineral exploration and forestry, near their communities. As a representative of Wildlands League, Baggio also met with First Nations leaders and supported their efforts to limit resource extraction in their traditional territories. “They had all independently decided they wanted a moratorium but for their own reasons regarding their own communities. A lot of it has to do with control. They wanted to have a say on what was happening on their land and they weren't being given that opportunity,” Baggio said.

Illustrating KI’s rationale, Samuel Mckay said, “There's going to be a time when generations-to-come are going to have to make that decision, make a choice about mineral extraction,” but he argued, “It's not for us to decide for them at this point.” Baggio insisted that KI’s decision to prevent mineral exploration was legitimate, considering the overwhelming voice of the community to put the moratorium in place. “It wasn't just one or two leaders and that the rest of the community didn't care. The whole community was behind them with a strong mandate.” She explained that once KI’s community petition was released publicly and submitted to the court as evidence, the government and Platinex could not ignore KI’s decision-making processes any longer. “The free entry system, this ‘holy grail’ that the mining associations and the mining industry depend on, was being challenged. So they had to pay attention,” Baggio said.

Throughout the dispute, KI also stood behind their community decision-making process. “The beautiful thing about a crisis is that it makes social relationships more transparent,” said Peerla. “So you have a conflict between Platinex and KI, the conflict leads us to the court, and a crisis kind of manifests – the $10 billion lawsuit against the community. In that crisis, the evidence starts to come out – the evidence of the six-step

process gets incorporated into a judicial decision. Then everybody has to take notice of it." Peerla explained that KI's six-step process became much more central to the case once Justice Smith acknowledged that the community process had not been fulfilled by Platinex or the MNDM. "So it's a crisis that makes everybody aware. And, it gets invoked. All the players keep referring to it, so they reinforce its centrality," he said.

Peerla also noted the significance of the KI's six-step consultation protocol as a written document. "Once you're in the Eurocentric world of documents, there's nothing better that the court likes than to see a prestigious document that looks just like 'ours.' So they love to see that." He said that too many First Nations become marginalized because of their traditional or so-called informal decision-making processes. According to Peerla, if a community arrived at a decision solely in the oral tradition, "it probably wouldn't have the same weight unfortunately as that written down approach." Ostaman acknowledged this issue and described KI's approach:

> We have our customs in terms of making decisions. It's always been there. It's our inherent right to decide whatever comes forth, that we have to make a decision on that. Our ways of doing it are still here, but it's more of an informal basis from the non-aboriginal perspective. But I have to distinguish my answer to this: when I say 'informal,' I say it in a non-aboriginal perspective. Because in non-aboriginal perspective, they want to see a structure, they want to see a structure how we arrive at decisions. But I have to be clear, we don't need that as native people. We don't need to actually see the structure in order to make decisions, because already, since time immemorial, we have our own ways of deciding things. It would be a good idea if we can write this up – how we do it, how we arrive at our decisions in a customary way. I would like to do that, I would like to see that, but the Elders are saying 'No, our ways of doing things are oral, shouldn't be written up.' But for the sake of non-aboriginal governments, okay, we have no problem writing it up. We have no problem structuring it. That's what we're doing.

The government ignored KI's six-step consultation protocol nonetheless. Although Justice Smith had emphasized the legitimacy of KI's policy in his initial decision, he failed to accept the community protocol in later rulings. Frustrated by the imposition of court-ordered policy negotiated solely between Platinex and the MNDM,

Ostaman described the refusal of the parties to adhere to KI law: “They haven't talked about it. Even in the court, maybe the judge mentioned it here and there, but the judge imposed his own consultation program.” Reinforcing his argument that the Ontario government expects KI to conform to provincial law, Ostaman said, “That's the ultimate position that they have. They want to do away with the customary ways. And they feel that we will compromise.”

Despite the court’s ultimate rejection of KI law and the subsequent incarceration of the KI-6, the community remained steadfast in their efforts and the imprisoned leaders developed a strategy of political revitalization, called the KI Restructuring Process. Samuel Mckay explained, “Once we were behind bars, we had a lot of time to think. We were prepared to stay there... regardless of how long we were there, the big question we had was what's next? We weren't necessarily concerned about Platinex or the province or anybody else – we were concerned about what's next for KI.” He added, “during the 68 days we were incarcerated, all the things we talked about told us that we need to get proactive rather than reactive. And we need to start establishing on how we're going to conduct ourselves as a nation.” Chief Morris said, “The Restructuring Process will look at the land, the economics, and governance – we're trying to change that [governance] structure too.” KI Council currently reaches decisions based on the quorum system, whereby the majority of councilors can pass a decision with or without the support of the chief. However, Mckay indicated that KI’s Restructuring Process would reinstate elements of the traditional governance system at the council level. “And consensus was part of it. That's what we would like to go back to because the quorum is based on the Indian Act election process and that's not our system. We want to go back to the

traditional form of governance," said Mckay. "If we're claiming to be sovereign, we don't ask questions, we don't ask permission. We say this is our law, this is the way it is, and we uphold it. They don't have to agree with it, but that's our sovereignty. And that's part of our protocol. They may not recognize it, but that's what we will hold them to."

Power Sharing

The Ontario government continues to assert that it has full jurisdiction over KI's traditional lands, with the exception of so-called federal reserve lands. Despite its claims of a new relationship with First Nations, MNR representative David de Launay insisted that the provincial government remains the sole regulator of environmental matters and conservation. "So we would still see ourselves as having a fundamental role in not just the management, but the regulation of environment. And that environment affects First Nations as well." Baggio argued that this situation must change. "I think that if you're managing lands on behalf of all of us, it has to be done in the public interest and it has to be respectful of local communities." She said the province must move away from the old model where the government was in complete control towards a new model that is more open and respectful. "If it's [First Nation] lands, like in the case of KI, then they need to be partners or they need to be the ones in control."

A potential governance solution expressed by eight of the interview participants was the vision of a communal region where KI and the Ontario government would share jurisdiction of KI's traditional territory. Rather than the present situation, where MNR claims full jurisdiction as part of its mandate to manage Crown resources, the First

Nation and the government have the opportunity to discuss an agreement that would recognize both parties veto rights regarding future management of the land.

de Launay suggested the relationship between KI and the Ontario Government is "evolving." He expressed that government has learned to reach its environmental goals through a mix of regulation, incentives and partnerships. "I think we have moved from where government tended to regulate and dictate – to all sectors of society, including to First Nations – to one where we look now more at incentives, and that also leads more to partnerships." Evelyn Mckay agreed that there is an opportunity for the government and KI to cooperate, but she cautioned that the partnership must be equal and fair. "They can't just come here and say 'jump' and we jump. If you jump with me, I will."

The challenges of power sharing are evident in jurisdiction discussions. Baggio said, "Ontario is not going to give up its jurisdiction, so there needs to be shared authority. They need to find a way to co-exist and to find a way to work together and essentially be co-decision makers as opposed to saying that KI doesn't have a right to make decisions." She said a partnership between First Nation peoples and the province is urgently needed in the far north. "They [government] don't want to touch the jurisdiction question, but they want to be seen as working in partnership with First Nations… so when you have people drafting legislation, for example on the Far North Act, they start saying things like, 'The minister will make ultimate decisions,' which is not going to sit well with communities."

"Up to this time, let's just say that there hasn't been a huge appetite on the part of the Ontario government or the Canadian government to share jurisdiction," Peerla said. "It's hard for a government's judiciary to give away its jurisdiction. Very few courts will

give away the jurisdiction of the institutions that create them in a fundamental way. That would be pretty radical." Yet that is exactly what KI have recommended in order to improve environmental protection and the recognition of Aboriginal and Treaty rights. "Ultimately the First Nations up here want to have control themselves, but I think what is a good interim step is to have shared authority and shared decision-making," Baggio said. As a matter of policy in the Far North legislation, the MNR is, for the time being, committed to a land use planning process that effectively recognizes First Nations' right to say no. "One of our approaches in the far north is to develop this approach where we look at land use planning as a mutual process – not just a government-dictated process – but a mutual process where we both bring our views to the table," de Launay explained.

> And in particular in the far north, the policy position that the government has taken – not a rights position, but a policy position – is because this area is populated basically only by Aboriginal people, or 99 percent, that we should take an approach to land use planning that is one of partnership. So even though in our view it is Crown land, we are taking an approach where we would work on a plan together, the First Nation would have to approve it and we would have to approve it in the provincial government – which effectively gives the First Nation the ability to say no. It also of course gives the province the ability to say no. Either one of us can say no to a plan.

While it is true that the far north land use planning process is innovative, KI continue to assert that their jurisdiction is not limited to land use planning alone. "We're trying to work towards achieving a co-governance structure of some sort for our region," explained Chief Morris. Using the term 'co-governance' rather than simply 'co-management,' Morris said KI must be involved as a partner at the government level of decision-making instead of simply participating in discussions as a stakeholder. He even suggested that KI might be willing to overlook the Treaty in order to negotiate with the government regarding co-governance. "If the government doesn't want to talk Treaty to us, we may as well use a different terminology. Bring them to our circle." He explained

that a co-governance process would serve the initial purpose of the Treaty nonetheless. "This is what we've been trying to tell the Ontario government. They have a role to play in what we're trying to achieve, but they just don't want to, or have the time, or even take that into consideration in their policy-making. It leaves us out of the picture. How do you reach a government that ignores you?" he asked. Baggio suggested that the government is, "trying to move towards a shared authority model, but at the same time they don't want to go too far because they want to retain ultimate control."

Chief Morris insisted, "There's changes coming. We have to be a partner, a player – and not sit on the sidelines. And that's why I'll be pushing the co-management/co-governance structure. How it's going to look, I don't know, but I know it will prevent Ontario from further thinking they own everything." Ostaman said that KI and the Ontario government will continue to collide until KI's customary ways of making decisions are recognized. "I think that's why it's important that we have to meet in the middle to discuss who's going to have this power… We have the power to decide over our lands and resources. That's what we've been saying all this time… Yes, we have power too, but how can we meet together? That's the question."

Participation

Under the broad theme of Indigenous communities' participation in environmental decision-making, interview participants were asked a series of questions about KI's involvement in the mineral exploration dispute. Analyzing their responses, decision-making processes, consultation and communication, levels of community involvement, as well as participation barriers and opportunities were illustrated.

Processes of Decision-Making

a) Consensus and Consent

An important step towards improving relations between the Ontario government and KI could be to incorporate consensus building in the decision-making process. “Nobody in their right mind should even think about going up to KI to do anything without that community consenting first,” warned Baggio. After much government deliberation, de Launay explained that the MNR would implement a consensus approach for First Nations land use planning in Ontario’s far north:

> The model that's in the Far North Act is a pure consensus model… Of course, the parties can decide to have mediation, facilitation – all the processes you use as parties trying to come to mutual solutions and consensus solutions. But there's no legal authority anywhere to make a final decision. So it's a fascinating model… And it really forces the two parties then to solve the problem. All you can do is keep talking to each other and with each other, and come to a consensus… as a matter of policy in the Far North legislation, the government is willing on land use planning to essentially go to what many would see as a consent type of approach… my lawyers would shoot me for using the word 'consent.' So consensus is a much more comfortable word.

Although the government has been unwilling to discuss governance and rights issues, Chief Morris remains optimistic about KI’s opportunity to participate as a full player in land use negotiations. However, he stressed that the provincial government should also address the jurisdiction question through consensus. “Co-governance would mean if we need to make a decision on anything like resources, Ontario and KI would have to both agree it's a safe environmental practice,” Morris said. Peerla said that communities should have the right to free, prior and informed consent (FPIC), which includes the right to say no to resource extraction as well as the right to determine under what conditions they might say yes. He has termed this consent process, “The 3 Nots: Not Now, Not Here, Not without Conditions.” Baggio agreed that, “we need to find a way to have a new model where we can work together, where the government can work

together with First Nations in a true partnership that respects their free, prior and informed consent and that also reflects the public interest." She said some companies are beginning to reach out to First Nations, and even gain the consent of communities, prior to operating in their traditional lands. "But those are companies that have a high standard of corporate social responsibility and that actually want to adhere to ethical standards and the greater good," she said. "We didn't have that in this case."

b) Co-Management

Another decision-making process considered by KI and the Ontario government is a co-management approach. "As far as the farthest thinkers can think, most people talk about co-management, joint decision-making and sharing… co-management discourse comes out of that sharing stream and you're likely to find courts wanting to share the jurisdiction, rather than to give somebody jurisdiction," explained David Peerla. He acknowledged that co-management can be defined in various ways and can involve various arrangements, but was doubtful that KI would accept the current limitations of a typical co-management model. "Co-management is probably doable there. Whether it's wanted is another question." He explained, "most 'reasonable advocates' – lawyers, First Nation advocates, environmental organizations – they all talk this co-management line. But in Treaty Number 9, for a large set of historical reasons, people are not taken with it." Chief Morris preferred to discuss co-governance rather than co-management. "It's included in there. Under co-governance, co-management could follow. Co-manage our resources, our waters, the revenue part of it." Anticipating that Platinex could have its leases expropriated by the Ontario government, Peerla questioned the utility of a co-

management agreement without proper consideration of the jurisdiction question. He argued, “I'm sure that the Crown would be able to go to some form of co-management of the lands, but in my view, that's not what's wanted by KI.” As the former Resolutions Co-Chair for Nishnawbe Aski Nation (NAN), Peerla pointed out, “every time someone tried to draft the chiefs’ resolution, including any kind of endorsement of co-management, it was rejected resoundingly by the chiefs. In simple form, what the chiefs said is, ‘Why should we baby-sit our own lands for the MNR?’” Morris said that under a co-governance structure, KI would hire their own members to monitor the lands and waterways surrounding the community. “Here we live the daily life, we grind it out. We see it, we live it, we practice it, and who better to run these programs? ...Like I said, we know our area.” Morris suggested that he would like to see KI involved as full partners in the decision-making and management process involving KI’s traditional territory.

c) Land Use Planning

Since the summer 2008 announcement of the Far North Initiative, which could protect about half of northern Ontario’s boreal forest region, the Ontario government has been eager to move forward on community land use planning with local First Nations to address development objectives and environmental protection, de Launay said. Now passed, the Initiative’s resulting Far North Act will ensure that northern communities such as KI have the ability to draft land use plans for their territories. Furthermore, the government and KI will each have the opportunity to accept or reject a plan before it is approved. Questions remain about the cost of all these plans, not to mention the appropriate inclusion of Indigenous communities and Indigenous knowledge. While

optimistic about the proposed land use planning process, Baggio questioned why it had not been initiated prior to the mineral exploration dispute in Big Trout Lake. "We had a Premier [McGuinty] who had promised that he was going to do land use planning up there prior to any development and that was going to protect ecological systems and that was going to make sure that it had the meaningful involvement of communities. And had that promise been kept, the whole KI issue might have been avoided." She insisted that First Nation communities should be driving the process, but feared existing leases held by mineral exploration companies would make the process more difficult. Nevertheless, Baggio said communities would have the opportunity to reject mining in specific locations thanks to the new dispute resolution mechanism introduced in the revised Mining Act. "And the fact that the community will have control over that process of determining those lands will be hugely significant to those communities," added de Launay. While NAN has been involved in discussions about the Far North Act, it remains to be seen whether KI will be invited to the table. Meanwhile, KI continue to build upon their own unique land use planning process. "We have 11 Majeewin Aaki areas. We submitted those to both levels of government and they haven't responded since January [2009]. So I assume they accepted it. We'll see," Chief Morris said.

d) Memorandums of Understanding

Part of the land use planning work that KI Council has begun with the province of Ontario is a Memorandum of Understanding (MoU) signed between KI and the MNR in 2009. de Launay said that he and his colleagues from the MNR, MAA and the MNDMF traveled north to meet with Chief Morris and the KI Council to discuss an ongoing

relationship between the government and the community. The MoU sets out, “certain common objectives, a certain common work plan, and we work together to accomplish those things… we have mutual discussions. They're bringing their views to the table. We're bringing our views to the table,” de Launay explained. Additionally, the MNR is “providing funding to do initial assessment and some review of what's needed... And that will definitely continue,” he said. Baggio described the MoU between the two parties as an ‘olive branch’ to open the dialogue. “I think it's important for them [MNR] to go and to meet people in the community and to be very open and honest about what their mandate is,” she said.

KI have found it difficult to have conversations with government nonetheless. “From what I hear, they don't know how to deal with us,” said Chief Morris. “I'm trying to reach out to reconcile my differences with government, by trying to contact and opening the doors for companies to approach us. And De Beers, they came over and it's the same thing, they're waiting for their opportunity. But we have to finish what we're trying to prove.” Ostaman explained his apprehension about the MoU process has remained since KI was ordered to obey a court-imposed MoU drafted by Platinex. Company CEO Trusler, on the other hand, applauded the MoU process and now considers community support after his experience in Big Trout Lake. “We’re about to embark on exploration again on a gold property and we have been involved with the Mattagami First Nation in connection with that one,” he said. “The company will discuss what it intends to do and when, how, etc. and asks if there are any concerns of an immediate nature that the Band might have. This should lead to an informal agreement to proceed or an MoU… the MoU provides operating guidelines and the First Nation

provides input." Samuel Mckay was hesitant about this type of MoU approach, especially agreements between the resource industry and KI. He explained that First Nations risk extinguishing their Treaty rights when they sign impact and benefit agreements with exploration companies. To ensure that KI does not lose their Treaty rights through future agreements, Ostaman said all MoUs must be initially signed government-to-government. As a baseline, the MoU process must be standardized to recognize, protect and strengthen Aboriginal and Treaty rights.

e) Environmental Assessment

The environmental assessment (EA) process was not considered a significant decision-making approach during the Big Trout Lake conflict. First, mineral exploration companies do not require an EA under the Ontario government's environmental management regime, Baggio said. Even after amendments were made to the Mining Act, "mining is exempt from environmental assessment in Ontario… It's incredibly weak and it's still not there. For full mine development, there's no provincial EA," she said. Identifying ineffectiveness in the EA process, she said that an open pit mine would only require a (federal) EA if explosives were used or if a water body would be affected. Yet EA remains one of the only processes for First Nations (or any other community in Ontario) to influence governmental decisions about the land.

According to de Launay, "it's fairly important to involve First Nations in resource management and we have different ways of doing that… legal requirements under forest management, environmental assessment, to provide benefits to First Nations." Trusler focused on the economic benefits of mining projects. "We're generally supportive of the

First Nations and their outlook and we're certainly supportive of giving them employment and deriving the benefits of local employment. For industry as a whole, I think that's going to be a very positive relationship in the future. We're sure short of labour in the country in some of these areas." But without the right to say no to resource extraction in their traditional territory, KI community members could also be rendered powerless to prevent negative social, cultural and environmental impacts caused by mining projects. "And environmental assessments don't usually lead to no, they usually lead to conditions. Very few EAs lead to no," said Peerla. Baggio explained that, at best, mining companies in Ontario are only subject to "superficial and cursory" assessments in order to receive permission to use a Crown resource. "So basically what happens is that you have this ad hoc process that's done in a piecemeal way where they start giving approvals for all these bits and pieces but nobody is doing an environmental assessment of the entire cumulative impacts of the project," she said. Trusler noted that although Platinex had committed to KI that it would conduct an EA if the project were to proceed to a feasibility stage, the Ontario government did not compel Platinex to conduct such an assessment. "There is no environmental decision-making at this stage on any of our properties," he explained. As a result, EAs are often offered on a strictly voluntary basis.

Consultation and Communication

Since the 2004 *Haida* case,[45] consultation has become a widely used process for First Nations to affect decisions about their traditional territories. Baggio was pleased that Ontario's amended Mining Act was brought in line with the Supreme Court's ruling. "The duty to consult has been recognized." But she noted, "they didn't include the duty to

[45] For more information about the 2004 *Haida* decision, please refer to Chapter 3.

accommodate. That was a bit of a sticking point for several First Nations. And they didn't include consent, which was a sticking point for all of them." A key issue in revising the Mining Act was the process by which First Nations were consulted about the act. After the provincial government gave notice that consultation sessions would take place in cities such as Thunder Bay, Samuel Mckay told the MNDM, "You'll have to come to First Nations to involve First Nations." Trusler even suggested that consultation over the Mining Act should have been held at the Treaty 9 level so that it could have progressed expeditiously. Bill Albany said, "The Mining Act has to be re-written… but they're trying to do it with really minimal negotiation or information sharing with the First Nations people. If they want to be successful in the long run, they have to recognize what rights we have. They have to recognize and work with us in that scope, on that table, on those grounds." Mckay explained, "just because certain groups of First Nations go to these sessions, [governments] assume they're consulting First Nations, but we're not going to be in support of that. And just like this whole struggle, it's not over by any means, and even if they say they've consulted First Nations, they're going to have opposition from us based on that alone."

Consultation related to the Far North Act is another problematic issue for KI. Mckay was angered when he learned about Premier McGuinty's unilateral decision to protect half of Ontario's northern boreal forest region. He explained that First Nations were ignored before the announcement and would be further marginalized throughout the consultation process. While consultations with Nishnawbe Aski Nation (NAN) had begun, de Launay said the province had not consulted with individual communities such as KI. Despite government promises, Albany stressed that government ministers have

routinely failed to communicate with KI. "I think what the government's thinking is we're going to back off, we're going to forget about it, we're going to get lazy and we're going to drop the whole thing. They're trying to wait us out in a way," he suggested. "But it will be ongoing, it will be forever, until they actually acknowledge that we – the people of KI – do want to communicate, but on our terms in order to protect the land." While optimistic about future negotiations between KI and the Ontario government, Albany remained apprehensive. "'Negotiate' is a big word when it comes to government officials. We don't want to be negotiating away our lands," he said. Peerla explained, "The problem is the linkage between consultation and accommodation. In an ideal consultation structure, you would decide whether or not you want a mine at all." But he argued that, "eventually you have to reach an accommodation. It's a funnel… The problem with [the current process of] consultation, in short, is that it can only lead to accommodation, not the right to say no."

Indeed, consultation was perceived differently by all of the parties involved in the Big Trout Lake mineral exploration conflict. "Certainly we have a fundamental obligation under the Constitution to consult where Treaty and Aboriginal rights might be infringed," de Launay said. "The case law to date basically is a continuum of the greater the potential infringement, the greater the requirement to consult and potentially accommodate." When asked whether the MNR had an official policy definition regarding consultation with First Nations, de Launay said, "No single definition, no. Because as the courts have been clear, it's case by case and depends on the degree of infringement of Treaty and Aboriginal rights." He explained that the government's consultation continuum extends from relatively minimal contact, such as letter or telephone

communication, to more extensive consultation, such as agreements to work collaboratively with First Nations as part of a joint approach. “To simply summarize it, it's input, which can be a little bit or a lot, to negotiation and partnership,” he said. Trusler was hesitant when asked about the official Platinex definition of consultation. “I don’t know, that’s always a funny thing,” he said. “But in the context of facilitation, it is a process of contact, engagement and an exchange of information in a meaningful way so that each party can understand what the other party intends. Each party should consider the other’s position and the company should address any inequities by negotiation, accommodation and compensation.” Trusler suggested the mineral exploration conflict could have been resolved through consultation, yet he argued that KI refused on many occasions to consult with Platinex.

Reflecting on KI’s experience, Ostaman explained, “During the time of negotiations with Ontario and Platinex, and during the time of court, there were no consultations. Even now, when we talk with the province and the provincial ministries, we don't see it as consultation.” He added, “As a matter of fact, Ontario doesn’t know what consultation means, they don't know how to approach us.” Alternatively, KI continue to affirm their unique consultation protocol.[46] “It's not recognized by anybody outside, especially the Province and the industry. But that is the process and we're still sticking to it,” Samuel Mckay explained. He remained frustrated by the government’s “so-called consultation” and its refusal to recognize KI’s existing protocol. “We talked for a period over a year… We couldn't even come to an agreement on the protocol. We had our own protocol prior to that, and we gave it to the province (MNDM) and they

[46] For more information about KI’s six-step consultation protocol, please refer to p. 94 in Chapter 4.

basically blacked out everything… they looked through it, and they said that they wanted to rewrite the whole thing themselves."

Noting the importance of consultation during the mineral exploration conflict, Peerla said there were distinct interpretations of the concept and the word 'consultation' between the government and KI. "Many times the First Nation was saying, 'We haven't been properly consulted,' which is one thing. So for someone sitting on the other side in government… their construction of the word 'consultation' is totally informed by this case law," he explained. "But on the other side, you have your own cultural construction of what consultation would be and that would include consent, because you have a construction of the treaty that you didn't surrender your lands." Ostaman said government appears ready to "create their consultation program and try to apply it on us. But we don't agree with that." Most importantly, he said there must be an agreement between KI and government about what consultation means. "Right now there's nothing in place. We don't have an agreement whatsoever with Ontario how the consultation process should proceed." Ostaman explained that while the MAA provided funding to KI to develop a consultation protocol, the Ministry does not recognize its legal standing because it continues to claim that Treaty First Nations have already surrendered their lands. Nonetheless, KI assert that only after a consultation protocol is established and approved by both parties will industry be invited to the table.

Community Involvement

A factor of KI participation was the level of community involvement during the mineral exploration conflict. Although KI members were excluded from the

government's resource management processes, Baggio explained that, "they did not let that stop them. They decided what they wanted for their lands and then they chose to find all of the ways that they could to make sure those decisions were going to be respected by everybody – the government, the courts, the people of Ontario, industry." Baggio added that KI's campaign was creative, strategic and unified. "And that was probably the foundation of approaching the mining issue, by coming together as one… it's people driven," Ostaman said. "There's a lot that's happening at the community level. There's talk at the radio station, there's messages in our cable system, our internet system. We flow out information to the communities, the province, Canada and international." He explained that the unity of the KI community made it possible "to go out to other communities, to go out to other meetings, to meet the Ministers and so on, because I'm able to carry this one voice with me." Additionally, KI interviewees discussed the importance of meetings at the KI Community Hall, which helped to keep KI members informed about the issue and encouraged input. "There's a number of community meetings happening to discuss the Platinex issue, to discuss the Ontario government issues," Ostaman explained. Community participation increased as a result of the mineral exploration issue, Peerla said. "Crisis arising from litigation, jailing – of necessity – compelled community involvement."

KI's initial discussions with Platinex reinforced that the six-step consultation protocol compelled the leadership to follow the direction of the KI community, Peerla said. "So you have an instance where the elected leadership, the Chief and maybe some Councilors can come to informal arrangements with resource developers, governments, etc., but because of the way their process works in the community, the community can

give its leadership direction," he explained. "A Band Council, especially in KI, can't impose its will on the people." He added, "It's much like a union leadership… you can find cases where a union leadership recommends a settlement agreement of a union contract, but the membership votes it down." Chief Morris said, "We can't speak for the community and I don't think I ever did. I just take what I'm directed." He noted that if the KI community ever decided to allow mining in the future, he would be bound by the mandate of the people. "So if the time comes… Even with all our differences with Trusler, I would have to force myself to shake his hand and say 'Okay, where do we start?'" Evelyn Mckay noted that community members are a strong political force within KI. "Whatever the community decides, that's what goes. And they decided 'No,' no new development whatsoever because we still live off that land."

KI members further voiced concerns through a community petition and referendum process. Ostaman said the petition process was originally a door-to-door initiative. "It was just an open, free process to decide where do we want to go," he said, referring to community options regarding resource extraction in KI's traditional territory. "It clearly showed that the community opposed the mining idea," he said. Peerla said the largely grassroots petition affirmed that KI did not support the mineral exploration project. "When that petition occurred, then the Chief was bound by the direction in the petition." As head councilor at the time, Samuel Mckay also raised a motion to hold an official referendum prior to KI Council's disobedience of the court order. "I wanted to make sure that whatever steps I take is what the community wanted," he recalled. "And then it came back with a loud, resounding 'No. We don't want resource development.' And that's what I ran with." More than 85 percent of voting KI members continued to

oppose the mineral exploration project, Ostaman noted. Albany said, “The reason why the Chief and Council are doing what they’re doing came from the people. The people wanted this to be stopped, to stop the exploration company from coming in and doing whatever they wanted to do. They decided, they stood up and said we don’t want it. And that was it.”

Contributions of the Elders Advisory Council and establishment of a Community Working Group also assisted KI decision-making during the mineral exploration dispute. “With the Lands and Environment [Unit], they have twelve Elders advising them,” Chief Morris said. He explained that Elders are recognized in an advisory role due to their active political, social and spiritual roles in the community. “They've always been very clear,” Samuel Mckay said. “They want the land to be left alone in its natural state… And that's their position.” He explained that KI Elders have always provided guidance for the leadership and have consistently opposed mining in KI’s traditional territory. “And the many community meetings that we have, they come and say the same thing. There's no question in the direction they're giving us.” The Community Working Group also served the leadership, especially during the height of the conflict. Mckay said that, initially, the group, “didn't really have anything to do with Platinex, but it came in handy… people started coming forward and they wanted transparency, they wanted involvement and they wanted input.” He established the group as, “an avenue for community people to be involved in how band business is conducted and how the Chief and Council perform. This is their opportunity.” As a member of the group, Albany said, “it’s been good for the people. They come together, they talk, they do things together, they just work together even more.” Although the Community Working Group does not have decision-making

authority at Council level, Mckay said KI leadership heeds the advice of group members, “because a lot of them are very knowledgeable in their own areas, and they work together to come up with the best possible solutions.” He added, “They're ready to mobilize again if they need to. And as far as I'm concerned, the door's still open. They can call a meeting anytime and hold us accountable.” Albany was optimistic about his experience during the incarceration of the KI-6. “We came together and we stood beside the council members that were left here and we carried on. And that was a positive thing; it showed the people that it can be done. I’m not saying it should happen again for the Chief and Council to get locked up, but if it does, we’re ready to take a leadership role, to carry on.”

Participation Barriers

Despite high levels of community involvement, KI's ability to impact decision-making about their traditional territory was limited throughout the conflict by a series of challenges. The remote location of KI, a lack of financial resources and capacity, government and corporate pressures, as well as inherent cultural differences, made it difficult for community members to participate in the decision-making process.

A key participation issue during the mineral exploration dispute was the sheer physical distance between Ontario’s legislature and Big Trout Lake. Baggio noted that KI are “really far away from where the decision makers are.” Considering that the vast majority of the provincial population resides in urban areas, she said, “there was no awareness, knowledge, education about the ecological value of this area, the importance from a climate change perspective, or that it is even populated by Indigenous peoples and that they had lived there for many, many generations.” Chief Morris was concerned about

the proximity of Queens Park and Bay Street in Toronto, too far removed from the reality of KI to make informed decisions about the land. "Why should everything be decided from down there?... You don't see this far." KI's remote location, almost 600 kilometres north of Thunder Bay, inflated expenses for all parties in the mineral exploration issue. "As with other far northern communities, often the barrier is just the cost of transportation and communication," de Launay said. "Just to get together and hold meetings, for instance, requires either we fly up to KI from Sioux Lookout, our closest point, or they fly down to Sioux Lookout, Thunder Bay or Toronto… pretty pricey, you can go around the world cheaper, I think."

Legal costs faced by the KI-6 also posed a serious challenge for the community. Evelyn Mckay said that, in addition to taking legal action against KI's leaders, the government and Platinex put the community in a difficult financial position. "We're already in deficit because of what is happening," she said. Samuel Mckay explained that KI Council was forced to cancel all new housing projects during the crisis. Noting overcrowded and condemned residences, he said, "we have about two hundred people on the waiting list for housing. And we had to cancel it for one year… There's people living in this community in houses that wouldn't be allowed in the cities and towns." Mckay explained that even though drilling was prevented at Numeigusabins Lake, there were untold financial and non-monetary impacts on the community as a result of the ongoing conflict:

> We expended in the neighborhood of $700,000 dollars… We've had to go to court, we had to travel, we had accommodations, we had meals and gas and we had plane fares, we had to be at meetings, we had meetings here that cost us money, everything that directly related to the court case… not only that, there's the non-monetary costs that we encountered and the social aspect of the community because of what was going on. Services were cut, and it affected people negatively... But we're the ones taking the brunt of those impacts because we're the leaders in this community. We're the ones who have to deal with people being pissed off at us for not giving them a new house.

Chief Morris explained that without sufficient financial resources, the community was eventually forced to abandon the legal battle with Platinex and Ontario. KI quickly learned that saying ‘no’ to government and industry was a very expensive. “If we had money, we would have lawyers. We would go all the way. Even though there are pro-bono lawyers out there, I don't want to take advantage of their generosity. I would rather save it when the time comes for something more important,” Morris said. Peerla commented that the incarceration of the KI-6 made other First Nations community members wary of opposing exploration. “Once people went to jail, that was a two-edged sword. Some people said, ‘I don't want to go to jail,’ so that tempers your resistance when you realize that resistance can lead to jail or huge legal bills,” Peerla said, noting such penalties wore down KI members and quieted the dissent of some other First Nations.

KI’s capacity to manage the mineral exploration issue was strained during the conflict. de Launay said, “First Nations manage their own finances and that – but there has to be environmental and resource management capacity as well… And it all costs money. The federal government has a role to play in that. That is absolutely a big challenge.” But Trusler said, “The government is slow in every respect and is certainly slow when it comes to providing appropriate help to companies and First Nations groups by ensuring that the First Nation has sufficient capacity.” He explained the situation in the so-called ‘Ring of Fire’ area south of KI, where as many as 50 mineral exploration companies are seeking to consult with First Nations:

> How are these First Nations going to be able to come to grips with talking to that many parties and dealing with them? It must be overwhelming being confronted all of a sudden with this huge interest in exploring and developing your area. And these companies would also like to come into the reserve in some cases and use facilities like motels and restaurants, storage facilities and other services that can be provided by the reserve. So you get into a relationship where the company on the one hand wants something and the First Nation on the other hand wants something, but the individual company doesn’t have the wherewithal to provide or pay for all the services in that community... How do you get that? Well the obvious way is when there’s an interest like that,

> there's supposed to be a government filling in… But since it's First Nation, the government shies away from it and they really avoid it like a sore point. And they avoid the companies and they seem to keep the companies and the First Nations separated.

Government and corporate pressures handcuffed KI throughout the mineral exploration issue. Peerla argued that during negotiations with KI, the government remained constrained by its legal positions on KI jurisdiction and by its own self-interest in economic development and mineral exploration. "The issue is not participation but control of decision making," he said. Furthermore, the government and Platinex were fixated on extracting resources from KI's traditional territory despite constitutional, legal and ethical implications. "The company definitely behaved like a rogue actor," Baggio said. "We're still trying to figure out why they were willing to push the boundaries so hard on this one, why they just didn't walk away… Clearly it was very strange that they chose to provoke such conflict and to treat people so disrespectfully as well… flagrantly, sensationally." Albany felt that Platinex acted inappropriately in KI. "The disrespect that Mr. Trusler showed to the people, even to our Chief… Chief and Council and the people got fed up with that attitude. It can't be done anymore," he said.

"Probably one of the biggest barriers is that we are dealing with two cultures – the typically white culture represented by the government of Ontario, with a whole history of laws behind them saying that they have jurisdiction over the land," Baggio explained. KI's indigenous culture, including a unique worldview and existing processes of decision-making, was overlooked. Concerned that KI's traditional land users were ignored, Evelyn Mckay suggested that community views should have been taken into consideration during decision-making about the land. "I see these people, nobody is voicing anything for them, and yet they're the ones out there, practicing their lives, what

they have been taught what they do," she explained. "And then of course there's the language – knowing who we are, that's another barrier. They don't know." Upset with the way KI was treated, Albany said, "governments, they're always pushing… this 'my way is the only way' sort of attitude."

Reflecting on the cultural divide, de Launay suggested that conflicting interpretations of the Treaty and Crown land were barriers to discussions between KI and the MNR. "One of the core tensions in work with Aboriginal people and the provincial government is that fundamentally, the government is what it is. It has its positions." Ostaman argued that, "the government – the laws and policies – it will never understand our perspectives on land." Yet de Launay remained optimistic that the tide was turning for government-First Nation relations. "The fact that a lot of these relationships are developing over the last twenty years or so, the developing relationship is a good thing. But the barrier is just that we're building relationships that didn't exist in the past, or where the relationship may, particularly from a community's point of view, may only have been negative in the past," he said. "And even when we're trying to build the relationship, clearly there are differences in culture, and as in any relationship, those can be barriers. But they can also be great opportunities for mutual understanding and expanding your understandings and learning."

Opportunities for Participation

KI's ability to impact decision-making over their traditional territory was facilitated by many opportunities, chief among them the value of education for improving community participation in the political process. "People are getting more educated on

what their rights are and people just didn't feel that they weren't ready for that type of resource development so close to home," Samuel Mckay said. In summer 2008, Chief and Council held community workshops and invited experts from across Canada to educate KI members about Aboriginal and treaty rights, as well as the United Nations Declaration on the Rights of Indigenous Peoples. Albany believes KI are now better equipped to make decisions about the KI territory due to increased community knowledge about KI's rights and the potential impacts caused by mining. "Because history shows it, we always had open arms, we always said 'Okay, go ahead, do whatever you want to do.' And it ended up that we got the worst of it all, of anything and everything. But today with our knowledge and more awareness of the history… we have the foundation to actually take a lead role if a mine showed up here."

KI members also noted the need for government and industry to learn about First Nations they work with. Trusler and de Launay agreed. "I think this was something that we learned part way through is that you have to – if you can – have a presence right in the community. Creating that presence with someone or some people who are going to be accepted by the community is one big step that should be taken and most things will flow from there," Trusler said. Reflecting on work with First Nations in the 1980s, de Launay recalled powerful advice he received while working on a health research project with the Mushkegowuk Tribal Council. "Their basic message to me was that if I really wanted to understand health in their communities, I should travel to their communities."

Many interviewees noted the significance of alliances between KI, the Ardoch Algonquin First Nation, environmental organizations, social justice groups, religious groups and pro-bono lawyers. As a representative of Wildlands League, Baggio issued

many joint press releases with KI and talked to reporters and other influential people to draw attention to the crisis unfolding in Big Trout Lake. “We offered our advice, we offered our strategic advice, our political advice.” But, she noted, “It's not our job to represent KI, it’s not our job to negotiate on their behalf. Our job is to act in the public interest and where that overlaps with supporting a community, we will do that no problem, whole heartedly.” Baggio said the KI leadership “knew that they had to reach out to people beyond their neighbors in the far north to influence the regular people of Ontario and to trust that regular people would care, and they did.” Elder Sarah Jane Mckay was delighted to see allies in KI. “I am thankful that we get supporters from outside when there is struggle here. And I’m thankful that other people give us support. I’m happy that I see people from other communities coming to help. I am thankful for that.”

Finally, improvements in communicative technology assisted KI during the mineral exploration dispute. “Now you can go to a community like KI and with satellite linkage, you can get Internet and email connection, Internet Skype and all the modern technologies,” de Launay said. “There's a cost to video conferencing but it's significantly less than the cost of travel. So you can have ten people on one side having a conversation and a videoconference instead of paying the $10,000 to $20,000 that it costs for transportation.” Ostaman also pointed to the use of the Internet to disseminate information nationally and internationally. “We're telling people that this is what's happening to us, we're meeting government officials trying to resolve this issue. We're meeting UN officials to get pressures against the government of Canada, how they treat the Indigenous peoples,” he explained. Baggio noted the significance of a widespread

education campaign, explaining that KI took advantage of the opportunity to alert the general public about the community's predicament. "The public – when they learn about an issue, they see the injustice and they sympathize. They actually want their government to act better." Chief Morris said he was happily surprised to receive so much support from other organizations and communities across Canada and worldwide. He said KI were previously unaware of their potential alliances, but now with technology, the community is making connections with Indigenous peoples in other countries. "This is not an isolated issue in the South, this is not an isolated issue in the North," Samuel Mckay said. "This is happening everywhere. And I think that's a contributing factor to us getting a larger, widespread support for our struggle… We're all facing the same issue regardless of who or where you are."

Broader Themes

The case study revealed other important themes that were drawn out in interview transcripts and documents reviewed in association with the mineral exploration case, which were not explicitly highlighted in the initial conceptual framework. The analysis underscored the significance of colonialism and decolonization, blockades and resistance, as well as First Nations unity and disunity. While such broad-ranging issues lay outside the three key themes in the initial framework, they are considered to inform the adaptation of the final framework presented in Chapter 6. Results related to these themes are presented and discussed here.

Colonialism and Decolonization

The colonization of KI worldview, governance and participation regarding decision-making about KI's traditional territory all contributed to the escalation of the conflict at Big Trout Lake. Colonial ideology was pervasive throughout the mineral exploration dispute and was featured prominently in Ontario government rhetoric and paternalistic decisions and actions. As de Launay acknowledged, the MNR is the 'landlord' of all Crown land in Ontario. KI members, on the other hand, insisted that their rights stem from their ancestral relationship with the land, as well as their responsibility to protect it. For them, land ownership lies solely with the Creator. Yet Ontario laws and policies override KI rights and responsibilities, Ostaman said. "Hopefully in the future they will understand what we mean by protecting the land. I'd like to see that happen one day."

Federal and provincial laws were condemned by many interview participants for not doing enough to recognize KI's rights. "The whole Indian Act is a huge difficulty. Unfortunately it's a method of subjugating a people," Platinex CEO Trusler said. "The Indian Act should be abolished, not in one action but in a series of moves to settle each band into the setting that they would choose in negotiation with the government." Yet Peerla argued that the provincial government's material interest in resources in KI's traditional territory prevents honest and honourable negotiation. He described the conflicted relationship between the state and KI as a legacy of government betrayal and litigation. "And it showed when they put our leaders in jail. It showed right there that they don't really care for us people that live here," said Evelyn Mckay. "They haven't sent missiles per se, but they've sent police to push whatever they wanted to be pushed,

for the industry to do whatever they want to do," Albany said. "That has to be changed."

Ostaman said KI's experience with governments could be likened to that of a mouse and an elephant. "That's how I feel so many times, 'cause you can't really move the elephant." Ultimately, KI realized the limits of provincial and federal laws and turned to the Ontario public and the United Nations for support. "We're not just sitting back doing nothing – we are doing something, and we're educating the community in the process," said Samuel Mckay. "Because we've come to realize that the extinguishment policy from the government is still pretty much active today as it was back in the early days. It may not be as obvious. And all the policies and legislations that the governments have related to First Nations contributes to that extinguishment policy," he added. Referencing Department of Indian Affairs Deputy Minister D.C. Scott's statements in 1921, Mckay suggested Canada's objective is the continued assimilation of all Indigenous peoples within its borders. "And that's still prevalent today, regardless of what Canada and the province tells you," Mckay said. "That's why we're not going to be dealing with these things with the courts in Canada. We're taking it to the international level."

First Nations Unity and Disunity

Community unity was integral to KI's success, yet it was not always easy to achieve. "Even at the council level, there were conflicts," Ostaman said. "There were council members for the mining. There were council members against the mining. It happens." Ostaman explained that once the community was made aware of Platinex and its plans, KI members were quick to oppose the exploration project. "It's the community

membership that strongly opposed the mining exploration activities. What they didn't like about it was there were behind-the-scenes discussions with certain families along with Platinex." Within KI, Evelyn Mckay and her family were targeted once the community received word that her father, Jacob Nanokeesic, had agreed to the exploration. "There was a lot of animosity towards him because of what was going on," Samuel Mckay said. Evelyn Mckay remembered feeling threatened by community members. "There was a time when people called me, came to my house – they were really angry, saying that we let go of the land," she said. "But we didn't let go of the land. It was tense there for a while. There were rumors flying around that we're the greedy ones, we're the ones that wanted money and we're going to be the ones benefiting from it." But Mckay argued that it was never her intention to sell the land because the land is her identity, more valuable than money. "Some people still put my dad down, saying that all this is his fault, he's the one that caused it for whatever reason they have in their minds. They blame him. But he's not to blame, he's still active on the land."

According to Samuel Mckay, Platinex should never have attempted to isolate one specific family. "When this became a community issue, [Nanokeesic] said that he supported what the community was doing – saying no to development." KI's six-step consultation protocol specifically stipulated that exploration activity could not proceed without full community approval. The company's attempts to negotiate solely with Nanokeesic and KI Council illustrated the failure of Platinex to respect the community's established decision-making process. Ostaman reinforced that KI must stay unified if they hope to continue to protect the land. "People need to stand together. If there's a

division, that's going to be a force that would prevent us from doing what we want to achieve. So looking at our people, by staying in unity is very important."

KI's alliance with the Ardoch Algonquin First Nations brought issues of disunity among First Nations and Aboriginal organizations to the forefront. According to Samuel Mckay, KI became aware of the AAFN's struggle against uranium exploration in 2007. "We came to the conclusion that they were facing exactly the same issues as we were. We eventually made contact with them, and then we decided to go visit them to show our support… on site at their blockade." Mckay explained that KI was repeatedly advised to not get involved with former chief Robert Lovelace or the Ardoch Algonquins because the AAFN is non-status in the eyes of government. "Just because they're not a recognized First Nation under the Indian Act, the Chiefs of Ontario and the AFN [Assembly of First Nations] won't recognize them and won't lift a finger to provide assistance for them. And I've challenged both Angus Toulous and Phil Fontaine in person – I said there's an opportunity for you to break new ground, to bring them into the fold. And that's what we did," Mckay said. "And even the province did everything in their power to separate us in the court case. And we kept saying, 'No, we're in this together. We're going to stick it out.' And that's the point we were trying to make when we joined an alliance with Ardoch… Let the world know that KI supports Ardoch regardless. That's still our position."

KI faced a lack of support by larger regional Aboriginal organizations during the height of the mineral exploration dispute. Although some First Nations supported KI, Provincial-Territorial Organizations (PTOs) such as the Chiefs of Ontario and Nishnawbe Aski Nation (NAN), as well as the AFN, were inconsistent in lending their voices to KI's

struggle. “A lot of people didn't agree with what KI did,” Peerla said. “I mean they were outraged by the jailing, but at the same time, there wasn't unanimous support. Even NAN flip-flopped at crucial times in its support and non-support of KI, because at the same time, NAN was engaged in bilateral negotiation with Ontario.” Prior to his involvement in KI politics in 2005, Samuel Mckay believed that provincial and national Aboriginal leaders did everything in their power to protect Aboriginal and Treaty rights. “And sadly I realized that that's not the case,” he said. “They're more like federal bureaucrats – that's all they are. They don't fight the fight that we fight.” Peerla explained that as a condition of government funding, NAN was compelled to incorporate years ago. “So there was a political dispute about the question of a board of chiefs as a corporation versus a political body… So that's a tension right there. You have to be closer to government to get the funding. In other words, it's almost like you're in a contained form of resistance,” he said. “And that's the mistake they're making at AFN, NAN, Chiefs of Ontario, because they're so focused on trying to fit in the government box. What we've done is we've broken out of it,” Mckay said.

In 1997, KI withdrew from NAN during Jacob Ostaman’s time as chief. Instead, KI helped to establish the Independent First Nation Alliance (1989), a group of five northern Ontario First Nation communities that make decisions unhindered by the mandates of the provincial territory organizations. “We're considered oddballs because we're right in the middle of NAN territory, but we're not part of NAN. And we're not playing their rules, we're making our own rules,” Mckay said. But other communities in NAN territory were unwilling to support KI’s struggle for fear of upsetting industry or government. “And that's another one of the tensions you see,” Peerla explained. “The

southern communities in NAN – highway communities – they were already in the 'Let's make a deal with mining companies' mode, because that's the best that they could hope for in their calculation. Meanwhile, KI was leveraging for everybody." Chief Morris said, "I think we have the power right now to make change. The problem is my other colleagues [regional chiefs] don't recognize that. If we were to unite, I think we would really make big changes. That's not happening." Noting disunity among First Nations in Ontario, Baggio said, "what happened here is not uncommon to what happens when you're trying to fight injustice." Peerla said, "That's the great tragedy for the Treaty 9 communities and the KI struggle is people could have used it politically to leverage incredible things." He suggested that a united public resistance across the entire NAN landscape would be the next level for First Nations sovereignty. "But because they weren't united, they weren't able to get as much leverage as they could have."

Blockades and Resistance

In February 2006, while working as a heavy equipment driver on the winter road that connects KI to southern communities during the coldest months of the year, Albany heard that a mining drill was on its way up to Big Trout Lake. "I believe there was a radio announcement," he said, noting a volunteer initiative to help establish a blockade near the site of the Platinex mining claims. Albany plowed roads and helped move a trailer to the Platinex mining site to accommodate those taking part in the blockade, including KI Elders. "I went over there to Numeigusabins Lake," said Sarah Jane Mckay. "If the mining company gets to the land, they will destroy the land," she worried. "If it does happen," said Albany, "they might as well shut down the whole community for that

matter. Might as well wipe the reservation off the face of the earth. That's how important this issue is."

Upset by the blockade, Trusler argued that the government should have sent police to uphold Platinex's claim to explore the land. "In Ontario's far north, the geographic location does not change the law," he said. "We were talking to the MNR at that time about whether or not a blockade would be removed by the government. At that time they had said yes." Frustrated that the provincial government and police failed to defend the company's interests, Trusler said Platinex and its shareholders were simply pawns of the political process. "To my way of thinking, if we're not going to have the laws of the land – in the current situation, Platinex could not get the enforcement of the laws by the provincial government or the OPP – then you have to have a set of laws which can be followed." Pointing to other blockades in southern Ontario, Trusler said, "One could argue that that's all traditional land of First Nations. It doesn't give them the right to take something that belongs to someone else."

Despite threats from all sides, KI stood their ground and were prepared to do whatever it took to protect their land, Baggio explained. After exhausting all legal options, KI realized that they had hit a "brick wall," she said, suggesting that KI's decision to meet opponents on their traditional territory was a wise one. "We are not going to go back to court. We're going to meet you on the land," Baggio said. "That is what moves this government, not nice and polite letters… You cannot rely on them to make the right decision. They might be good people, but they don't make the right decision all of the time." MNR representative David de Launay said, "whether it's First Nations or others, 'a squeaky wheel gets the grease'… there's no question when there are

issues, that government does try to resolve them and put some effort into them." To that end, Peerla insisted that community resistance was the critical element in KI's success. "The only thing that has led to the recognition that has been achieved so far has been resistance." He said government would never peacefully negotiate KI's jurisdiction over their traditional territory. "That's not going to be some sort of dialogue, that's going to be resistance and a recognition by the other party that the resistance is not going to stop until the change in authority takes place. It's a struggle – you only get your jurisdiction through struggle."

Another key element of KI's resistance was their continued use of the land during the mineral exploration dispute. "As a KI member I do my part – I go out, I hunt, fish, trap and camp," said Evelyn Mckay. "I feel that's my part and I don't need to go out there and speak until I turn blue just to get my point across." Samuel Mckay noted that KI families continued to utilize the land despite the mineral exploration issue, establishing structures for shelter and carrying on traditional activities. Baggio noted KI's resolve to protect their rights to the land. "When Platinex tried to go back to the site… the community reassembled and got mobilized again and said, 'This is our land and we're going to be here. We're going to exercise our Aboriginal and Treaty rights, and we're going to camp and hunt and fish.'"

Throughout the dispute, KI was insistent that neither violence nor intimidation would force a solution in the region. "You can't come in with guns blazing and think that you will get whatever you want nowadays. It's all different now," Albany said. "KI was also very clear about non-violence – no camouflage, no masks," Baggio explained, "They're peaceful people and they kept to those principles. Those were easy things for us

to get behind and support and for others to support." Chief Morris also stressed the importance of a peaceful approach. "I try and encourage that's there's no violence or outbursts, and try and show that there's another side to being Native," he said. "Right now, the notion out there is we're [blockading] just to be rebellious, but I think in the long run, they will realize what it means, what we did and what we accomplished today. It will reflect that in the future." Baggio noted the difference between KI's approach and the more sensational blockades in southern Ontario. "While we may all sympathize with them, they're getting ill-communicated because they're blocking the highway, they're inconveniencing people. The public doesn't understand what they're upset about, so they're losing public support. Whereas KI was very careful never to lose public support and they always fought to keep it." Mckay suggested that KI's passive resistance strategy was a contributing factor in reaching a widespread audience and garnering support from the larger Canadian public.

On civil disobedience, "This is David and Goliath right here," Baggio explained. "When the law doesn't work for you – because people are interpreting the laws in a very narrow way – you have to go outside the laws and you have to get the public on your side." Recalling the MNR's attempts to station conservation officers in KI's traditional territory, Ostaman opposed the notion that KI members could be charged according to the government's conservation rules. "We don't care about their laws. We just want to continue our responsibilities," he said. Albany explained, "Not to disrespect the federal or provincial government, not to disrespect them in any way, they have a responsibility to Canada and to Ontario. But we would have to be upfront to protect this land here in KI."

Peerla described KI’s civil disobedience as a series of resistances. “First of all, just showing up and stopping the drilling. Whatever happened on that day – was it a blockade, was it some ladies having tea, whatever – the fact that they showed up and said 'no' in such a way that Platinex went to court to try and force them to say yes, that's the first level of resistance,” he said. “The second level of resistance would be when they decided they would go to jail.” He noted that KI’s commitment to non-violence, along with their successful coalitions, were important resistance strategies. KI’s continued refusal to comply with the court order was perhaps the strongest level of resistance, Peerla suggested. “Jail did not tame them, jail did not make them consent. They're still persisting in their ‘no.’ So you have various moments of resistance, from the very first meeting on the land, to the court, to the jail, to the next meeting on the land.” Peerla said the government likely could not foresee KI’s level of determination when it decided to prosecute the KI-6. “It wasn't working out having all these people in jail, Peerla said. “Owen Young, the legal counsel for Ontario, said we don't want to make martyrs out of these people. Well they certainly did. In civil disobedience, it's called putting your opponent in a dilemma – they can't let you go free but if they do follow through and put you in jail, then you created a dilemma.”

Elder Sarah Jane Mckay further illustrated KI’s commitment to defending the land. “I’m thankful that our chief stands strong against the mining company,” she said. KI members, young and old alike, were willing to protect their traditional territory. Evelyn Mckay recalled being asked by a young boy if he could join her at the Platinex exploration site. “I’ll stand behind you and when they put you in jail, I’ll hang on to your jacket,” he told her. “I’ll go with you because I am not giving it up. I want to go hunting

when I get big." Albany noted the importance of KI youth in protecting the land. "I've seen it where they come together and stand together in the struggle that we're in – even the young ones, the ones that barely can walk. Even my daughter, she is eight years old now… even she wants to go to jail too, if it comes down to that." Chief Morris added, "You've got to give credit to Platinex and Trusler. I mean they had a role to play in us preserving and standing up for what we believe in… Platinex has a role in molding us. And stronger too, to realize that Ontario doesn't have that kind of power up here to scare us. Change is coming. Ontario's got to move with the change because we're moving in!"

CHAPTER 6: DISCUSSION AND CONCLUSIONS

Introduction

Using literature and document reviews, key informant interviews, a case study and participant observations, I have investigated key factors influencing environmental decision-making in Indigenous communities in Canada. This Chapter evaluates the initial framework outlined at the conclusion of Chapter 3 and considers the significance of each framework element in relation to the case study. The resulting framework is used to present paths forward for First Nation communities, government and industry to decolonize and democratize environmental decision-making. Finally, the framework is used to reinforce recommendations for environmental decision-making that: i) respect the relationships, responsibilities and knowledges of Indigenous peoples; ii) recognize the rights, laws and autonomy of Indigenous communities; and iii) involve Indigenous people in fair, open and meaningful ways.

Framework Findings

The initial framework constructed at the conclusion of Chapter 3 was applied to investigate the mineral exploration conflict in Big Trout Lake, Ontario. In this way, it guided the construction of interview questions, document review and observation note-taking. The initial framework was used as a lens through which to view the experiences and reports of those who were involved in the dispute to determine whether the initial critical elements were evident in the case study as well. Since the case study was designed using the initial framework, my key findings were biased accordingly. To counter this bias, case study participants were encouraged to identify other important

factors related to environmental decision-making in KI's traditional territory. As expected, the case study reinforced the findings of the literature review and initial interviews, but also revealed significant new variables.

Worldview

An important factor during the dispute was the understanding that Kitchenuhmaykoosib Inninuwug – the People of Big Trout Lake – have a special relationship with their traditional territory. Although all of the interview participants agreed that human beings are part of the natural world, the Government of Ontario and Platinex were less understanding and accepting of the unique connection that KI continue to have with their lands. According to KI participants, knowledge of their territory comes from the Creator and the land itself. However, KI did not feel that their unique Indigenous knowledge was sufficiently respected, recognized or involved during government negotiations and legal processes.

My research shows that, throughout the conflict, KI's perspective and knowledge played a secondary role to Euro-Canadian systems of knowledge, including Western scientific explanations of potential environmental impacts and the legal vocabulary of court proceedings. Additionally, all negotiations between the community, government and company took place in the English language. KI's language, as well as their cultural protocols and values, were ignored and/or rejected in favour of the dominant legal discourse. Despite the fact that KI's deep understanding of their territory can be traced back millennia, the Euro-Canadian knowledge system assumed supremacy and denied any authority of KI's worldview in decision-making about activities in their traditional

territory. KI's attempts to redefine the terminology of the negotiations were also ignored, including KI's understanding of the land and their perspective of the original treaty partnership.

While interview participants from the KI community – and from organizations that supported KI – acknowledged KI's responsibility to protect their traditional territory, the Ontario government and Platinex were unwilling to recognize KI's decision to safeguard their lands. Moreover, the rule of law was interpreted narrowly to prosecute KI in court. The provincial government and the company failed to understand that KI's identity is tied to their territory, especially the lake trout for which the people are named. Putting the lake and interconnected watershed at risk threatened the health of the people, their culture and the environment. This was a risk that the government and Platinex were willing to take for economic gain. But KI could not accept a mineral exploration project so close to their community. KI were compelled to challenge the project based on collective ethics informed by their long-standing relationship with the land, as well as previous negative experiences with mining and PCB contamination. KI continue to maintain strong connections with their environment and accept it as a sacred responsibility.

Governance

KI's Aboriginal and Treaty rights under Section 35 of the Constitution were ignored throughout the conflict. For decades, the federal and provincial governments failed to consult KI about mineral exploration companies probing in their traditional territory. The province, further infringing on KI's constitutional rights, disregarded the

community's ongoing Treaty Land Entitlement (TLE) claim by privileging the aspirations of Platinex. Mineral exploration was not only of concern to the community because of its proximity to the lake, which threatened the ecological integrity of the environment, but also because it infringed upon KI's rights to hunt, trap and fish in their traditional territory as recognized by Treaty 9 and Canada's Constitution. Furthermore, KI's understanding of Treaty 9 as a contract to share the land with Euro-Canadian settlers was continually denied by the Ministry of Natural Resources (MNR), which claimed that the treaty was a land surrender agreement. Although the revised Mining Act and the Far North Act now support the recognition of Aboriginal and Treaty rights, as outlined in the Constitution, conflicting interpretations of the Treaty continue to favour the MNR's perspective that KI's traditional territory is Crown land, solely under the jurisdiction of the Ontario government. For the MNR, legal statutes justify the government's relationship to the land. For KI, their unique and sustained relationship with the land is the sole basis of their rights. The sad reality is that the only way for KI to gain government recognition is through land documentation and jurisprudence, yet KI may one day prove Aboriginal title to the lands they call home. Until then, KI will uphold their inherent rights to their traditional territory, as well as those recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

According to interview participants, the Ontario government and Platinex failed to acknowledge KI customary law and governance. Since the imposition of the electoral system, federal and provincial governments have discouraged KI's traditional governance processes, including the clan system and Indigenous models of decision-making. KI's autonomy, jurisdiction and decision-making in the Big Trout Lake area prior to European

contact, as well as KI accounts of treaty negotiations, have been ignored by the present Ontario government and have resulted in misunderstandings of the Treaty 9 agreement. Reconsideration of KI's oral history, as well as recently discovered written evidence, may either help to forge or force a new relationship between KI and the Ontario government. Until then, KI remain willing to negotiate new agreements that respect the original intent of the Treaty – a shared territory with shared decision-making, shared benefits and shared responsibilities – where KI's rights and responsibilities to the land are recognized, respected and supported.

KI's autonomy on their territory was undermined at every turn. Platinex and the Ontario government wantonly ignored and disputed KI's moratorium against resource extraction despite its endorsement by neighbouring First Nations. KI community decisions to protect the land were continually disregarded and six leaders were criminalized when they followed a community resolution to refuse and physically stop mineral exploration drilling in their territory. According to KI, Platinex should never have been allowed at the negotiating table until the two Treaty partners – KI and the Crown – came to a consensus about the land. The case study also demonstrated the significance of Indigenous jurisdiction, which is still highly contested by KI in the absence of a land claim agreement or government recognition of KI's Aboriginal title. Of the initial foundational themes that compose the Trinity of Indigenous Environmental Decision-Making (Chapter 3), governance was central to the KI case study. While some participants believed KI should have full control over their lands, other participants were willing to consider a power sharing agreement in which the Ontario government and KI would achieve consensus before approving land use decisions. In cooperation with the

government, KI would have the right to say no – and also the right to say yes – to resource extraction within their traditional territory.

Participation

Environmental decision-making in Big Trout Lake failed to uphold the principles of democracy during the mining conflict. The Ontario government did not follow the wishes of the KI community (the local population) when it chose to support Platinex (a privately-owned company from southern Ontario) and its leasehold claims to the land. The pretense of government consultation with KI already determined that mineral exploration would occur regardless of any community decision to the contrary. KI argued that real, meaningful consultation would have included the possibility that exploration drilling leases could be denied by the community – the right to free, prior and informed consent. Without this option, such consultation was severely limited before it even began. As Samuel Mckay of KI explained, true consultation would have helped avoid a lengthy legal battle and the jailing of the KI-6. A clear consultation framework would have helped to create a sense of certainty for all parties. While the new Far North Act will institute a consensus approach to the land use planning process, the Minister of Natural Resources will retain the final decision-making authority. Sadly, the democratization of environmental decision-making from a top-down, totalitarian approach to a horizontal, democratic model, in which KI's decisions about their traditional territory are recognized on an even playing field with government, has not yet been realized.

KI were critically disadvantaged by not being able to participate fully in decisions that affected their community and their lands. Legal and travel costs were major obstacles

for KI to assert their authority and jurisdiction in the region. As a small community, KI were forced to sacrifice other community projects such as the construction of housing in order to defend their lands in court. Ultimately, financial depletion forced KI to withdraw from the provincial legal process, which raises questions about the nature of a legal system that favours those who can afford to pay for justice. Aside from these capacity issues, KI's Indigenous knowledge and language were repeatedly marginalized during the court case and associated negotiations. KI participants were also unsatisfied that the Ontario government failed to consider KI community-approved resolutions to the issue. Although the court eventually recognized KI's six-step consultation protocol, Platinex and the Ontario government largely ignored long-established policies such as KI's moratorium against resource extraction and KI's decision to protect significant harvesting areas (Majeewin Aaki).

Throughout the conflict, KI were not entitled to rely on their unique cultural protocols for participation. KI participants expressed frustration that the Ontario government and Platinex continually failed to respect the community and their culture. Using legal discourse based on provincial law, the government and the company framed the terminology of participation by purposefully disregarding KI language and customary law. As a result, consultation by the government and later by the courts was designed without KI's approval, consent or participation. Culturally appropriate protocols for decision-making were of little significance to the negotiating parties, unless discussions were held in the KI community. Distance was another difficulty as KI were often forced to attend negotiations and court hearings in Thunder Bay and Toronto, where KI leadership was put at a disadvantage because their traditional decision-making process

required prolonged community discussion and approval in order to be respectful, participatory and meaningful. Key decisions about KI's traditional territory should have taken place in KI's traditional territory.

Decolonization, Unity and Resistance

Analysis of the Big Trout Lake conflict revealed additional key themes that can be understood individually and through the use of the framework. An overarching theme applied to all framework elements is the need to establish a balanced relationship between KI and the Ontario government, referenced by several of the interview participants. The presence and legacy of colonialism upon KI must be acknowledged and the ideology of colonialism, which has sought to override, exterminate and dispossess KI from their lands, must be changed. Thereafter, the KI community must be protected from corporations and other third party interests, as promised in the Treaty 9 negotiations. The people of Kitchenuhmaykoosib are not merely *another stakeholder* to be consulted and accommodated, but are Treaty 'partners' to a legally binding agreement that, in the oral negotiations, promised shared jurisdiction and shared decision-making. Only through decolonization of the relationship, including environmental decision-making, can the Ontario and Canadian governments affirm and recognize the benefits of a respectful nation-to-nation partnership with KI and other Indigenous peoples.

The case study analysis also revealed the significance of KI unity and resistance. Community unity throughout the conflict required frequent communication and education among its membership. Meetings and workshops at the community hall helped to inform KI members about the issue and referendums were held to gauge the will of the people.

Unity also involved strengthened alliances with other communities, including the Ardoch Algonquin First Nation and non-governmental organizations such as Wildlands League, which supported KI in the face of industry and government opposition. KI's peaceful resistance to mineral exploration in their territory was another crucial element of the case study. Direct action strategies such as the blockade of the exploration site and the KI protest at the Big Trout Lake airport allowed community members who were not involved in the legal action or government negotiations to participate firsthand. While some community members were willing to participate in these demonstrations, others chose to resist government authority simply by maintaining traditional activities on the land as they had always done. These KI members were able to assert their legal public rights to the land as human beings, in addition to their political rights as Indigenous people. In the final stages of the conflict, KI leadership passively resisted the legal system by withdrawing from the process altogether and by deciding not to oppose its contempt charges. They did so knowing they would likely be sentenced to lengthy jail terms, but also understood that the resulting public outcry would focus attention on KI's right to say no to mineral exploration and the right to protect their environment.

The KI community is already undergoing their own process of decolonization. They have acknowledged that Canada's oppression has impacted the community for nearly a century, including the denial of KI governance, the dispossession of KI lands, the wanton destruction of their language and culture, the placement of KI children in residential schools and the recent criminalization of the KI leadership. Despite historical and ongoing injustice, KI assert their sovereignty in the Big Trout Lake area with faith and optimism. The community continues to take guidance from their Elders and their

traditional teachings reinforce KI's responsibility to maintain balanced relationships with the land, as they have always done. While KI assumed an unfair burden in the case, demonstrated through jail sentences and other attacks on their sovereignty, one could argue that their efforts led to the revision of Ontario's Mining Act and the recognition of Aboriginal and Treaty rights in provincial law. KI continue to reject the Ministry of Natural Resources' claim that their traditional territory is Crown land under the full jurisdiction of the Ontario government and the community continues to establish their own policies of environmental decision-making, based in KI's cultural understandings of the Treaty and their ancient relationship with the land.

The case study illustrated KI's successful resistance to colonialism, including the colonial policies and laws of the Ontario government as well as the persistent pressure of mineral exploration companies such as Platinex. One of the main differences between a colonial model and an Indigenous model is evident in human relationships with the natural world. In a colonial model, human decisions about the land are separate from nature, as evidenced by government and industry prioritization of economic gain at the expense of the environment. But for intact Indigenous communities such as KI, human beings are embedded within their environments. As Jacob Ostaman showed, KI are not just 'a part of' the land, they 'are' the land. The case study also uncovered different understandings of land ownership and stewardship. In a colonial model, provincial governments declare themselves to be the sole landlords, or owners, of land. In this system, First Nations are forced to pursue land ownership through negotiated land claim agreements (at the risk of losing Indigenous rights) in an attempt to maintain their responsibilities. In an Indigenous model, communities such as KI do not prioritize land

ownership, but rather maintain the right to protect the lands from which they have emerged and have held since time immemorial. While KI believe they have inherent rights and responsibilities to their traditional territory, any sense of land ownership is solely within the realm of the spirit and the Creator.

The case study also revealed that KI's unity, ongoing resistance and decolonization were necessary to uphold the key framework principles of worldview, governance and participation in Indigenous environmental decision-making. Without unity, KI could have easily been misunderstood and marginalized by government, industry and the wider Ontario public. Without resistance, the KI community would have been undermined and their lands drilled and destroyed. Perhaps most importantly, the decolonization of worldview, governance and participation is necessary to resolve longstanding and current land use conflicts in Ontario's far north. In summary, i) government and industry worldviews must be decolonized to allow KI ethics and knowledge to broaden the values of Ontario's environmental decision-making process; ii) governance of KI's territory must be decolonized in order to recognize KI jurisdiction and revitalize KI law; and iii) participatory processes and paradigms must be decolonized to fully involve KI in decision-making that affects their lands.

Framework Evaluation

Research Process

Over the course of the research process, the design and intent of the framework changed dramatically. I quickly realized the challenge of trying to develop an overarching Indigenous environmental framework with any certainty or capacity on my

part. Any attempt to identify specific elements of Indigenous environmental decision-making would have risked creating a pan-Indigenous model, a problem echoed by Leanne Simpson and Robert Lovelace in their interviews (See Chapter 3). Considering the dominating presence of the Canadian state, I also found it difficult to imagine the creation of a distinctly Indigenous environmental framework. While intriguing, research into Indigenous decision-making about the land prior to colonization would require considerable expertise in Indigenous knowledge (understanding and practice) and language fluency, far exceeding the scope of this thesis and my abilities.

Leanne Simpson also highlighted the significance of Indigenous methodologies for research involving Indigenous communities. Reflecting on her work on the land with Elders at Long Lake 58 First Nation, she explained a realization that changed her life: "I learned there that if you don't take a methodology into the community, those Nishnaabeg intellectual traditions emerge." She explained that culturally inherent intellectual traditions and political traditions are essential to Indigenous academic research. These thoughts parallel the work of renowned Maori scholar, Linda Tuhiwai Smith, who writes that decolonization "does not mean and has not meant a total rejection of all theory or research or Western knowledge. Rather, it is about centring our concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes" (1999, p. 39).

Ultimately, I decided to design a framework to enable me – and hopefully others – to understand Indigenous environmental decision-making processes, rather than trying to create an Indigenous environmental framework. This decision recognized three important factors: i) as a non-indigenous person, I could not *create* an Indigenous

environmental framework; ii) a single, overarching Indigenous environmental framework could not account for all Indigenous communities' decision-making processes about the land; and iii) Indigenous environmental frameworks come from the land and knowledge systems of place, not through Western (qualitative or quantitative) approaches.

Ethical Space

Although the primary purpose of my work was to develop my understanding of Indigenous environmental decision-making principles, it was necessary to imagine a theoretical place where such processes could co-exist with Canada's conventional environmental management regime. Cree scholar William Ermine's concept of ethical space (2000; 2007) suggests a foundation for imagining this place. Indeed, the ethical space is not merely an overlap, but a bridge between sovereign worldviews. Although Indigenous and Euro-Canadian worldviews are separate and distinct, there is a critical need and opportunity for a deeper understanding where they intersect. Since ethical space is created by the junction of different ways of knowing, it also presents a foundation for improving the environmental relationship between diverse epistemologies. Ermine writes, "The idea of an ethical space, produced by contrasting perspectives of the world, entertains the notion of 'engagement.'… It is a way of observing, collectively, how hidden values and intentions can control our behaviour, and how unnoticed cultural differences can clash without our realizing what is occurring" (2007, p. 202-203).

Reflecting on Ermine's concepts, I realized the potential of an ethical space to empower Indigenous knowledge and to help create a level playing field for the union of Indigenous and Canadian environmental decision-making. Ethical space presents the

groundwork for building positive partnerships and an opportunity for equitable, nation-to-nation agreements between Canada and Indigenous peoples. While Indigenous and Euro-Canadian worldviews are distinct, their engagement automatically creates an opportunity for meaningful dialogue, understanding and knowledge-sharing. This is the ethical space. Rather than an 'add and stir' approach as cautioned by Mohawk scholar Dan Longboat, ethical space enables knowledge interaction and co-production and requires the willingness of both worldviews to respect each other prior to making decisions.

"The trick then, within a colonial context," said Leanne Simpson, "how do you make the 'ethical space' ethical when you've got one nation that's completely dominant in terms of authority and political power?" First of all, the ethical space must be free from the constraints of colonialism. Otherwise, environmental decision-making will continue to take place inside the colonial structures that hamper the efforts of those who seek to change it. Lovelace noted, "I have quite a bit of sympathy for Europeans who were colonized by the Romans and suffered 1,500 years of repression. I look at that and try to understand analytically what that means for Indigenous people anywhere in the world. It's an experience that teaches us what 1,500 years of colonialism can do to a population." According to Ermine, "The rules of Western dominance we have experienced in this country are archaic and have impeded the fullest development of our humanity" (2007, p. 199). Ermine writes, "the plight of Indigenous peoples, should act as a mirror to mainstream Canada. The conditions that Indigenous peoples find themselves in are a reflection of the governance and legal structures imposed by the dominant society" (2007, p. 200). Stevenson adds that a critical step towards ethical space is the

improvement of capacity within First Nations. He explained that, "before we have these conversations we have to step back... they're going to need significant resources to develop the capacity to become engaged and involved." The effective decolonization of Indigenous worldview, governance and participation will require the context and support of the ethical space.

Decolonizing Environmental Decision-Making

The case study helped reveal the relative absence of a discussion of colonialism in the environmental management literature. While many articles discuss the power imbalance created by the dominant, Euro-Canadian, paternalistic, scientific and capitalist model of conventional environmental management over Indigenous peoples and the environment, only a few authors appear willing to identify the overarching systemic colonial processes that perpetuate division and conflict between Indigenous communities and the Canadian nation state. Authors like Hipwell et al (2002), discuss the colonial imposition of the federal Indian Act, while Tollefson and Wipond (1998), highlight that Canada is indeed a colonial jurisdiction in which Indigenous peoples have suffered a legacy of displacement and disadvantage. Yet Simpson (2004) writes that colonialism is frequently considered off-topic and is conspicuously absent from environmental management literature. While some authors briefly mention the term, most references to colonialism, and specifically decolonization, remain buried in footnotes or bibliographies of their articles.

Nadasdy (2003) does not explicitly use the term 'colonial,' but he does recognize that co-management institutions only serve to maintain an unequal relationship between

Indigenous peoples and bureaucratic management processes. “Because of this, the process of knowledge-integration and co-management ends up taking for granted existing aboriginal-state relations and perpetuating (rather than transforming) unequal power relations” (p. 369). Ellis (2005) falls just short of identifying the colonial model of environmental management by exposing the unwillingness of the ‘Euro-Canadian industrial complex’ to acknowledge conflicting Indigenous knowledge messages that do not support the agendas of government or industry. He writes, “To empower traditional knowledge and its aboriginal holders on their own terms necessarily means to give voice to a system of understanding that may oppose the objectives and practices of Euro-Canadian institutions” (Ellis, 2005, p. 75).

A necessary factor for improving relationships between Indigenous communities and various governments of Canada is to move towards the decolonization of environmental decision-making. In order to address fundamental causes of land use conflicts in Indigenous territories, environmental management authors, practitioners and decision-makers must be aware of the colonial processes inherent in Canadian environmental management regimes. “I think you have to have some sort of reconciliation about these larger problems,” Simpson explained. “Otherwise, you've got a huge power imbalance – a political context that no one's acknowledging and a power imbalance that no one's acknowledging.” She added that the dominant Western knowledge currently bolsters a situation whereby Indigenous knowledge is exploited, marginalized and colonized. Without an awareness of the ongoing nature of colonialism in federal and provincial decision-making about Indigenous peoples’ territories, even the

most well-intentioned environmental professionals are doomed to reinforce and perpetuate colonial attitudes of conventional environmental management. Ermine writes:

> In its finest form, the notion of an agreement to interact must always be preceded by the affirmation of human diversity created by philosophical and cultural differences. Since there is no God's eye view to be claimed by any society of people, the idea of the ethical space, produced by contrasting perspectives of the world, entertains the notion of a meeting place, or initial thinking about a neutral zone between entities or cultures. The space offers a venue to step out of our allegiances, to detach from the cages of our mental worlds and assume a position where human-to-human dialogue can occur. (2007, p. 202)

Decolonization of environmental 'management' is necessary for many reasons, chief among them that Canada is a nation rooted in colonialism. Colonialism is the policy or practice of acquiring full or partial political control over another territory, occupying it with settlers, and exploiting it economically at the expense of culture and the environment. As a former colony of the British Empire, Canada has inherited a legacy of colonial and neo-feudal ideologies under which it continues to operate. As a result, Indigenous territories are still viewed as colonies of the Crown. In order for Indigenous nations within Canada to be sustained and enabled to prosper, decolonization is needed within Indigenous territories. The assimilation of First Nations into dominant models of colonialism and capitalism only serves to weaken Indigenous culture and degrade Indigenous lands. For Canadians to prosper and achieve sustainable environmental decision-making, the Canadian state – including institutions and the larger population – must also begin a process of national decolonization. Canada must no longer deny its foundational Indigenous history and legacy and we must honour our moral and legal obligations. Only then will Canada survive and truly thrive as a nation.

Decolonizing and Revitalizing Indigenous Communities

"One of the impacts of colonialism has been that our knowledge systems and our political systems haven't been able to evolve – they've been frozen in the past because they've been replaced by all of these colonial structures,' explained Leanne Simpson. "So one of the jobs now is to go back and relearn that knowledge and to figure it out, and to vision our way out of colonialism." Deborah McGregor (2004) suggests that a key step towards decolonization is a process of *remembering*. She writes, "We often find ourselves in the position of reacting to the colonizers" (p. 403), suggesting that Indigenous communities must also be proactive and creative, rather than merely reacting to political crises, a statement echoed by KI spokesperson Samuel Mckay about his experience battling Ontario's legal system. McGregor notes, "It is important to understand and dismantle the process of colonization and how it has impacted our communities. But this is not essentially what we are about. It is what we have to do to stay sane and better understand the intentions of the colonizer and therefore resist them" (p. 403). However, resistance as a means of survival is not prosperity. There remains a need to transform Canadian society to become truly responsible and thus sustainable.

Simpson suggests that until the Canadian state is ready to acknowledge the importance of treaties and the sovereignty of Indigenous communities, Indigenous peoples must continue a process of self-decolonization. "So in the meantime, I think we've got to build internally." Referencing the work of Mohawk scholar Taiaiake Alfred, she said, "We've got to turn inside and build within our communities the things that promote healthy communities according to our own cultures." Smith (1999) suggests that, "The reach of imperialism into 'our heads' challenges those who belong to

colonized communities to understand how this occurred, partly because we perceive a need to decolonize our minds, to recover ourselves, to claim a space in which to develop a sense of authentic humanity" (p. 23). For Lovelace, hope lies within Indigenous communities. "The wonderful thing is that there is still lots of living knowledge that we can access. We're at a period of time where the knowledge is there, and there are people who can understand," he said. Lovelace explained that the resurgence of Indigenous identity is supported by the revitalization of Indigenous language and education, which aids in the understanding and interpretation of traditional thinking. "So those are good facilitators, there's a very strong desire in our community to find the traditional roots," he said.

The role of Indigenous education is key to the decolonization of peoples and their communities. Simpson (2004) recommends the work of 'Indigenist' scholars who stress the importance of decolonizing Indigenous nations as well as their relationships with settler governments. Too often, explained Simpson, "we're not educating our own kids within our own knowledge systems." Inspired by communities that carry on their traditions, Simpson is hopeful that Indigenous nations will rebuild again. "When we're talking about decolonizing and we're talking about building a resurgence and building our nations again, there's some work that has to be done within our communities," she said. "We've got to relearn what it means to be a leader within an Nishnaabeg context, we have to relearn our political traditions, we have to relearn how to govern – and not just relearn, but we have to vision it and figure out how it can operate in a contemporary context."

Pointing to the power imbalance experienced by Indigenous communities in negotiations with government and industry, Simpson suggested that First Nations often

feel backed into a corner. “So many First Nations end up signing agreements because they believe that they have no other choice or this is the best option in a series of really bad options.” Lovelace agreed. “We have this sense that if we don't cooperate with government, then it's futile.” But he stressed that Indigenous people need to ‘stand up’ rather than accept a ‘hand up.’ “It's far easier to acquiesce to government, to let the government do it for us.” He argued that, “Canada is not going to change on its own; corporations are not going to change on their own. It's not in their interest. These are completely self-interested entities.” Referring to Rudyard Kipling’s ‘The Ballad of East and West,’ Lovelace said:

> Aboriginal communities have to recognize something about themselves… Kipling said in his famous poem, ‘East is East, and West is West, and never the twain shall meet.' A lot of people think that what it means is that there is no middle ground, there is no common ground, we'll never get together. But the thing is, most people know the first stanza of that poem, but they've never heard the second: ‘When two strong men stand face to face.’ That part of it is always left out. And that to me is the critical part. Indigenous nations have to stand up with every bit of their moral strength and stop taking the crap. I'm not suggesting that Indigenous people have to take up arms, but they have to be able to stand strong and they have to accept no nonsense. And they have to stop accepting the lies that they're being told simply because they think that it's polite to do so… It takes the ability of communities to stand up and be strong. We've seen that happen and how powerful that can be for a small community to stand up and bite back. It often works.

KI Chief Donny Morris discussed the role of the mineral exploration conflict in helping the community to assert their rights and responsibilities to protect the land. “I think you’ve got to understand Platinex itself has made this community stronger, more active,” he said. “It woke KI up.” Decolonization is, in fact, a process of ‘waking up,’ a statement echoed by Lovelace to describe his community’s decision to protect and restore wild rice within their traditional territory. “We stood up, and within a couple of years we had established that there was disputed jurisdiction of the homeland and that the government had far fewer rights than they had previously, and we protected the rice from being [over]harvested.” Lovelace explained that the Ardoch Algonquin First Nation was

blessed to have such strong leadership, exemplified by former chief, Harold Perry. “He made every effort and sacrifice a person can to protect the rice. And I think many people took from his example and said, ‘That's a real human being. I've been asleep a long time and I've got to wake up.’”

Simpson stressed that land protection is necessary for decolonization. “It's resistance, it's resurgence, it's about protecting the territory that's been our Ancestors' and that we want to be our children’s despite the imposition of settler governments in our lands.” She added that while the protection of Indigenous culture is imperative, the real challenge is to preserve the sovereignty of Indigenous nations. Simpson explained that the other critical part of decolonization is the responsibility of Canada. “One person can't just change the relationship… I think there's also a responsibility on the part of Canadians to decolonize.”

Decolonizing Canada

Ermine suggests that, “The new partnership model of the ethical space, in a cooperative spirit between Indigenous peoples and Western institutions, will create new currents of thought that flow in different directions and overrun the old ways of thinking” (2007, p. 203). Simpson explained that while Canadian politicians, scholars and the general public lack understanding of Indigenous traditions and cultures, she noted the importance of the public school system “to change public opinion and to give Canada a way out of the colonial relationship it has with Indigenous nations.” She explained that educating Canadians about Indigenous peoples is integral to envisioning an ethical space. “This decolonizing work is not easy. This is messy work and I don't have all the answers,

and no one does, but I think these are the kinds of conversations that we need to be having." Pointing to what she called a false assumption that Indigenous communities seek the deportation of non-indigenous Canadians back to their respective homelands, Simpson argued that there is an opportunity for the imagining of a new relationship between Canada and Indigenous nations. "So often to the Canadian public, it's either the situation we have now, or everybody go home. And I don't think that's what Indigenous people are talking about… But when you're bombarded with that kind of dipolar, dichotomous framework, it shuts down a lot of that visioning."

"The problem," said Lovelace, is that the general public is totally unaware of the fact that "ordinary Canadians do not have the right to protect their environment. They do not have the right to clean water. They do not have the right to clean air." He argued that Canadians must continue to strengthen their own rights and that the protection of the environment is still a political decision as opposed to a legal decision because environmental laws typically grant final decision-making authority to government ministers. As Canadians, "You've got to start fighting for your own rights," he said. "Because frankly, the expectations of non-aboriginal Canadians are so low that it makes it difficult for everybody." Rather than bringing Indigenous rights down to the level of Canadian rights, Lovelace said that Canadians should advocate for the improvement of rights for all. "We need to change the paradigms. We're all here to stay. How can we develop a culture that's sustainable, where people actually have power to influence outcomes? …And frankly, the huge problem is that non-indigenous people – and a lot of Indigenous people – have very low expectations of what it is to be a human being."

Decolonized environmental decision-making will require substantial institutional reform. “If you're actually interested in doing environmental management differently, then you have to be prepared for Indigenous knowledge and Indigenous knowledge holders to impact the process and for different decisions to be made,” insisted Simpson. Yet, like Stephen Ellis (2005), who suggests that Indigenous Knowledge inherently challenges the dominant Euro-Canadian industrial complex, it is difficult to consider why government would ever intentionally reform its environmental management regime to reflect Indigenous values, if those very values challenge both Canada's existence and assumed authority in Indigenous territories? Perhaps Indigenous communities and Canadians alike should demand such reform more assertively and exercise their rights to accountability within a democracy.

Lovelace painted a bleak picture of the planet today. “We now have a world order – a global human order – where a significant part of the population is dependent upon the world producing more than it can.” He explained that this is catastrophic considering that the natural world already produces more than is required to sustain the environment. “But what's happening is that the capitalist system is drawing all of that, as well as the excess, out of many environments in the world. It's sustaining larger and larger populations. Those populations have now exceeded the capability of the Earth to provide for them.”

Another growing concern is the epistemological separation between Canadians and the land. “And so there's this culture in North America that isn't local, where people aren't connected to their local environments,” said Simpson. “We're creating this generation who doesn't know where their drinking water comes from, who doesn't know where their waste goes, who can't name 50 trees that grow in our forests.” She added,

"Canada needs to really re-look its whole way that it interacts with the environment... because there's a disconnect between the management of natural resources and how the Canadian population is behaving." Echoing statements throughout the case study, Lovelace said, "Whenever you put your foot down upon the land, you're going to leave a footprint – so whether you're an Indigenous person or a non-indigenous person, you have to take into consideration the impacts." Simpson also suggested that decolonization requires thinking collectively about all decisions made about the environment. "I think that's decolonizing environmental thinking, because when we're both on the same page about taking care of [the land], then a lot of the conflict falls out."

Common Ground

Environmental professionals have the opportunity to raise their consciousness of Indigenous history, jurisprudence and politics, as well as their understanding of Indigenous communities with which they work, in order to assist in decolonizing decision-making in First Nations and throughout Canada. Rather than try to position an Indigenous process inside the confines of the governmental process, interview participants envisioned an opportunity for Indigenous communities and Canadian governments to come to together to create a new process based upon the principles of the original relationship. Jacob Ostaman explained that trying to place the informal and customary decision-making processes of KI into a conventional management system is problematic. "We have to keep our culture, we have to keep our tradition, we have to keep our ways of deciding things – for us, not for white people, but for us – that's very important, and we cannot compromise those. That's why it's important that we have to

meet somewhere in the middle so these things can be addressed by that non-aboriginal framework," Ostaman said. "They have to work together, they have to come in hand-in-hand." This approach will help to forge a new framework that respects the integrity of Indigenous knowledge.

Assistant Deputy Minister of Natural Resources David de Launay was optimistic that First Nations and government would be able to resolve their differences. "I think it's a coming together and a dialogue about our mutual interests and what we have in common. And I think when it comes to environmental management, there is far more in common than there are differences," he said. Simpson also stressed the importance of finding common ground about the environment. "Connecting people to the local environment, connecting people to the local foods systems, thinking long-term, seven generations ahead, seven generations behind about decision-making… that kind of thinking is going to make the nation-to-nation negotiation much better."

In addition to decolonizing First Nations' relations with the Canadian state, Simpson (2008) urges that the treaty-making concept must be decolonized and understood. Ermine suggests, "The treaties between the First Nation and the Crown are historical models of how negotiation can happen between nations as the representations of diverse human communities. These treaties are nation-to-nation dialogues… and agreements to interact on a nation-to-nation basis were concluded. The treaties still stand as agreements to co-exist..." (2007, p. 200). Simpson said, "Those treaties were international diplomatic agreements between two nations. And those treaties, from our perspective, set forth the terms for how we were going to interact… It was a relationship. It was a political relationship; it was spiritual relationship." Indeed, many authors

(Ransom & Ettenger, 2001; Simpson, 2008; Stevenson & Webb, 2003) recommend using Indigenous models and Indigenous treaty understandings as a basis for mutual co-existence and lasting peace. Simpson explained, “Our Ancestors were willing to share. If they hadn't been willing to share, then they wouldn't have allowed people to settle here in the first place and they wouldn't have signed those really early treaties. And I think it's those really early treaties that give us a lot of information about how our Ancestors planned to work that out.” Simpson noted that although there was a willingness to share, her ancestors never surrendered their sovereignty or their territory. “My Ancestors envisioned a very different relationship than we have with settler governments. We have to take those ideas and figure out something from there – that we have some separate sovereign nations over a shared jurisdiction.”

“In our future, there is common ground, but there is no middle ground,” cautioned Lovelace. “I think what we need to do is look past the present.” He voiced concerns about Canada’s increased militarization and the void of social and environmental regulations for Canadian industry, both in Canada and internationally. “I'm looking at the bigger picture because I don't think that equity is going to happen between Indigenous people and the Canadian state, or non-indigenous people, until there's room to become Indigenous again.” According to Lovelace, “it's within our best interests to develop some morality about our relationships,” suggesting that all healthy relationships between organisms in the natural world are egalitarian. “Either they cooperate and survive, or they're antagonistic and one perishes. And when one perishes, then the other becomes impoverished. That's the way ecosystems work.” He suggested that it would be a gradual process for people to relearn an Indigenous relationship with the Earth. “Just like it's

extremely hard for an Indigenous person to be uprooted and change their lifestyle and culture to make way for a mine, it's just as hard for someone in a cognitively constructed culture to move toward a sustainable society or sustainable culture as well." All Canadians can learn from the example of KI and their protection of their homeland. As Lovelace noted, Indigenous peoples and Canadians alike are "beneficiaries of a system that worked," for thousands of generations.

Conclusions

Indigenous peoples and cultures are rooted in the land. In Canada, the federal Crown has come to accept that "Indigenous peoples have inherent rights to take part in framing dialogues about sustainability. This change reflects a growing recognition of the relationship between ecological sustainability and cultural sustainability" (Stevenson and Webb, 2003, p. 93). Indigenous peoples such as Kitchenuhmaykoosib Inninuwug (KI) are suited to the landscapes from which they have emerged. KI culture has grown within the northern boreal ecosystem, and their cultural survival is dependent upon the ecological integrity and sustainability of the boreal landscape. In fact, the integrity of the boreal forest may even be dependent upon the cultural survival of communities like KI to continue to protect this unique ecosystem.

Yet it is not enough for Indigenous peoples to maintain connections with the Earth. All Canadians – indeed, all human beings – must reconnect and rebuild relationships with their environments if we are to survive. While it is important to recognize the importance of Indigenous jurisdiction and Indigenous rights, we must also remember that land use conflicts are part of a larger context in which human beings

continue to push ever further into remote areas to satisfy the consumptive desires of multinational corporations and global capitalism. Until we relearn how to live in balance, we will witness greater conflicts as Indigenous communities assert their rights and responsibilities to protect their lands from exploitation and ecological degradation. Indeed, this is not merely an Indigenous issue, but also an environmental and social justice issue.

Indigenous communities must establish the right to free, prior and informed consent as stipulated in the United Nations Declaration on the Rights of Indigenous Peoples. In the present case, provincial governments must recognize First Nations' *right to say no* to resource extraction in their traditional territories. For the Ontario Ministry of Natural Resources, these traditional territories are considered Crown property, subject to provincial control. Yet for Indigenous communities such as KI, who insist that their traditional territories were never surrendered, their homelands are the source of their identity, strength and survival. To this end, the province must relinquish its claim to full jurisdiction of Indigenous lands. Only through a process of shared jurisdiction and shared decision-making will longstanding and current conflicts be resolved for the mutual benefit of the collective. The Ontario government can no longer proceed with the false assumption that it is the sole authority in traditional territories, particularly those inhabited by Indigenous peoples since time immemorial.

It is possible to decolonize the nation. Canada has the opportunity to embrace its Indigenous foundations for the betterment of everyone within its borders. While decolonizing environmental decision-making is not a perfect solution for all issues involving Indigenous peoples, it is arguably the most important step to address

underlying conflicts between the Canadian state and Indigenous communities. As communities become better informed about their rights, they can avoid the divide-and-conquer challenges from within and from outside their communities. In fact, a unified network of First Nations across Canada could influence the direction of the country, not just their share of it. William Ermine writes, “Indigenous peoples are not the enemies of Canadian civilization, but are, and always have been, essential to its very possibility” (2007, p. 201). Decolonization creates the possibility for a paradigm shift away from the supremacy of Euro-Canadian thinking towards an ethical space for Indigenous peoples’ ways of knowing. Rather than simply a crisis of conscience, decolonization is an opportunity – an opportunity to reconnect people with their environments; an opportunity for governments to resolve longstanding disputes with Indigenous nations; and an opportunity for true democracy in Canada. Rather than a conventional top-down approach, decolonization represents a way to achieve egalitarian, nation-to-nation environmental decision-making. Rather than ‘managing’ the environment, decolonization will help us all to manage balanced relationships in our home on Native land.

In summary, this thesis developed a conceptual framework to help understand Indigenous environmental decision-making in Canada. Critical elements were identified and the initial framework was applied to direct the case study review of a mineral exploration conflict in an Indigenous traditional territory. Through the analysis of this case and the resulting evaluation of the framework, broader themes were also identified. Although these additional themes were not found to be critical elements of Indigenous environmental decision-making, they were integral to support the three foundational

elements of the framework. Finally, the framework was adapted to identify key principles that underlie the Trinity of Indigenous Environmental Decision-Making.

While several sources in the literature have investigated environmental decision-making and Indigenous communities, authors typically discuss individual aspects of the process, such as one or two elements of the framework put forward by this thesis. The resulting framework presented here highlights the importance of the larger Indigenous environmental decision-making process and the relationships between its elements. While the KI case highlighted the central importance of governance among the foundational elements due to overarching jurisdictional issues in the conflict, this may not be the circumstance in all cases. However, it is argued that Indigenous worldview, governance and participation (the Trinity) are essential in similar cases in Canada today. This research represents a valuable contribution to the literature by bringing together this information in the form of an evaluative and analytical framework.

Recommendations

The framework presented here may be used to guide current and future environmental decision-making in Indigenous traditional territories. The framework, and the key principles outlined below, can serve as a checklist for Kitchenuhmaykoosib Inninuwug and other First Nations across Canada to ensure their needs are addressed in negotiations, agreements, law and policy. This framework can also serve government and industry partners who wish to avoid conflicts and seek to understand Indigenous environmental decision-making prior to engaging in resource extraction. Finally, the framework may be applied to additional cases depending on the interest and consent of

other Indigenous communities. While the case study confirmed the importance of KI's worldview, governance and participation in environmental decision-making, future research may be repeated in different regions and communities to enhance the general applicability of the framework in the Canadian-Indigenous context.

Key Principles

Following is a list of key principles that support the decolonization of environmental decision-making and which uphold the worldview, governance and participation of Indigenous communities in Canada. These principles have been distilled from the initial framework presented at the end of Chapter 3 and tested through a case study of the mineral exploration conflict at Big Trout Lake. For context, the key principles of the framework are positioned within Ermine's description of ethical space.

A) Worldview

i) Understand the relationship that Indigenous peoples have with their respective territories

- Recognize that all human beings are part of a natural living world
- Respect that Indigenous peoples have intimate knowledge of their environments
- Realize that Indigenous knowledge comes from their relationship with land, Creation and the Creator
- Understand that Indigenous people, culture, knowledge and nature are inseparable

ii) Acknowledge Indigenous peoples' responsibility for protecting their territories

- Recognize that Indigenous culture is maintained through a relationship with land

- Appreciate that Indigenous identity and history are tied to the land
- Be aware that values, ethics and cultural norms are informed by this relationship
- Remember the responsibility of Indigenous peoples to maintain connections with their environments

iii) Balance the divide between Euro-Canadian and Indigenous ways of knowing

- Recognize the legitimacy, value and integrity of Indigenous knowledge systems
- Remember that Indigenous languages illustrate values, beliefs and principles and that Indigenous languages transmit those teachings
- Facilitate environmental decision-making that reflects Indigenous worldviews
- Utilize processes that recognize and respect the role of spirit, culture, ethics and practice
- Enable communities to redefine terminology of environmental decision-making (i.e. 'natural relations,' rather than 'resources,' 'management,' etc.)

B) Governance

iv) Recognize and protect Indigenous rights in Canada

- Understand the unique nature of Aboriginal and Treaty rights, including Aboriginal title cases and in land claim agreements
- Honour and protect the existing Treaties
- Ensure that government recognizes and honours its fiduciary obligations and responsibilities to Indigenous peoples
- Make decisions that support the recognition of national and international Indigenous rights as another layer of environmental protection and democracy

v) Acknowledge and learn from Indigenous law and Indigenous governance systems

- Understand customary Indigenous law through precolonial Treaties and Indigenous models of coexistence, as well as natural processes and natural law
- Recognize traditional and contemporary Indigenous governance systems and support Indigenous sovereignty and inherent rights
- Use existing Treaties as the basis of Canadian-Indigenous relationship building
- Appreciate that Indigenous peoples value both rights *and* responsibilities

vi) Respect the autonomy of Indigenous peoples to make decisions about their territories

- Improve Indigenous community control of land use activities in their territories
- Respect the legitimate and unique role of Indigenous peoples in environmental decisions that affect them
- Initiate power-sharing between government and Indigenous peoples
- Recognize Indigenous jurisdiction over Indigenous lands, including the right to free, prior and informed consent (the right to say 'no')
- Understand that Indigenous territory is an expression of sovereignty and self-determination

C) Participation

vii) Move towards increased democratization of environmental decision-making

- Reject predetermined outcomes of decision-making (i.e. *a priori* mining rights)
- Honour the fiduciary and legal duty to meaningfully consult with Indigenous communities

- Together establish a clear consultation framework for the engagement of Indigenous people, government and industry
- Recognize the benefits of clear guidelines and the certainty it creates for all partners
- Build consensus and enable democratization of decision-making

viii) Create space for Indigenous communities to participate fully in decision-making

- Recognize the experience and authority of Indigenous communities
- Correct equity and capacity issues (i.e. time, resources, proficiency, etc.)
- Fully involve Indigenous knowledge and work with it correctly and respectfully
- Enable Indigenous communities to impact decision-making and create alternatives
- Redesign existing institutions to accommodate Indigenous peoples, knowledges and languages

ix) Support Indigenous communities to uphold unique cultural protocols for participation

- Accommodate Indigenous peoples through culturally appropriate participation
- Encourage Indigenous communities to redefine the terminology of participation (i.e. 'consultation,' 'negotiation,' etc.)
- Follow culturally appropriate protocols when making decisions about the land
- Encourage and support communities to enact and uphold their own guidelines for participation

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APPENDIX A: LITERATURE SEARCH

Bodies of Knowledge	Literature	Keywords
1) Spiritual / cultural rights and responsibilities	Spiritual ecology IK / TEK Naturalized knowledge Customary practice	spiritual, knowledge Indigenous*, Canada, environment, mining, management.
2) Legal and treaty rights	Canadian and international law Customary rights Treaties Accords MOUs	treaty, case, rights Indigenous*, Canada, environment, mining, management.
3) Consultation and participation	Consultation Public participation Resource management Governance	consultation, participation, process Indigenous*, Canada, environment, mining, management.
4) Land use planning	Land use planning Resource management Governance	land use, planning, development, decision-making Indigenous*, Canada, environment, mining, management.
5) Environmental impact assessment	Environmental assessment Integrated assessment Socio-economic assessment Impact assessment Health assessment	assessment, environmental, cumulative, socio-economic, integrated, impact Indigenous*, Canada, mining, management.

(*plus 'Aboriginal,' 'First Nations' & 'Inuit' for each search)

- Mining related references preferred
- Articles spanning 1998-2008

APPENDIX B: FRAMEWORK LITERATURE TABLE

Source	Research Methods Used	Worldview Spirit/Culture	Governance Legal/Treaty Rights	Planning Land Use	Participation Consultation Consensus	EA / Impacts Pre-assessment	Other Points	Strengths & Weaknesses for Thesis
Peter J. Usher (2000)* Traditional Ecological Knowledge in Environmental Assessment and Management	*Discussion Paper* regarding TEK implementation; observations based on years experience, EA panel, wildlife co-mgmt, research, etc; approx 45 sources	√ cosmology, values, ethics, cultural norms - Categories 3 & 4 TEK; science / TEK dichotomy	√ TEK policy requirement; IFA (1984); Jurisprudence RCAP; Van der Peet; Delgamuukw; Sparrow	√ past and current land use TEK; holistic geographical & temporal scope; co-management	√ TEK requires community support; risks of misrep/ decontext/ dispossession	√ Fed EA panel; NWT BHP diamond & Voisey's Bay; Four EA phases; unclear defns & inconsistent TEK use	TEK defined; 4 categories of TEK; mixed-subsist-based economy; gender; TEK equivalency/ integration; public arena rights to TEK; Voisey's Bay	Usher's 'inside the box' assumption that TEK must conform to Western scientific standards & validation category 1 TEK (factual/rational knowledge)
Stephen C. Ellis (2005)* Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision-Making	*Literature Review* (NWT focus) approx 75 sources; government & industry strategies for incorporating TK into envtal decision-making processes; *critique* of successes and deficiencies	√ worldview; metaphor-analogy-myth vs. rational-technical-scientific; humans as part of spiritual/ animist nature vs. nature as mechanic and separate	√ top-down strategies for TK in envtal governance; Govt NWT; INAC; MVRMA; scientific supremacy in law/ envtal decision-making; governance, power	governance, power (not specifically land use planning)	√ bottom-up strategies for TK in envtal governance; participation doesn't = TK; limited participation b/c Euro-Cdn assumptions; risk "expert" dispossession of TK	√ TK considered anecdotal, nonreplicable, non-universal; rather than cumulative, collective experience of a society; Diavik, Snap Lake; BHP	TK challenges Euro-Cdn industrial complex TK to inform sustainability & empower Aboriginal; scientization / legitimization	Excellent variety of sources, i.e. Leanne Simpson, Vine Deloria Jr, Julie Cruickshank, Lutsel K'e Dene First Nation, Usher, Paci, Tobin, Stevenson, etc. *shallow TK vs. deep TK
O'Faircheallaigh (2007)* Environmental Agreements, EIA follow-up and aboriginal participation in environmental management: The Canadian experience	*Framework Development* identified barriers to EIA follow-up & Indig participation *based on review* (approx 80) of Cdn literature/envtal agreements	worldview conflict (brief)	√ environmental agreements negotiated btw industry, govt & FNs; failure to recognize Indigenous rights as original owners		√ historic marginalization / exclusion of Aboriginal peoples; Indig involvement may solve EIA follow-up problems; TEK challenges; ad-hoc consultation vs. full consideration	√ widespread EIA follow-up problems; adaptive management potential; 5 major EAs (Ekati, Diavik, Snap Lake, Voisey's Bay, Horizon-best); project-specific EA vs. regulation	6 issue framework-profit growth priority; yes-no projects / lack of Indigenous representation; funding / business cost; TK use; rights recognition & capacity	Key argument: envtal agreements have the potential to facilitate Indig involvement and to promote effective EIA follow-up and adaptive mgmt; Table 1 - 6 key issues in promoting Indig participation & EIA follow-up

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Berkes, Colding & Folke (2000)^ Rediscovery of Traditional Ecological Knowledge as Adaptive Management	*Literature Review* (international); approx 80 sources; focus on the role of TEK in monitoring, responding to, and managing ecosystems; international case studies	√ TK as a knowledge-practice-belief complex; relationships btw humans & envt; social mechanisms of mgmt; cultural internalization; watershed identities; taboo; socio-religious norms		√ monitor, interpret & respond to ecosystem changes; secure flow of resources; multiple-species mgmt; agroforestry; rotation; fire; watershed mgmt; cultural frameworks resource mgmt.	(consultation & participation not specifically discussed, but intrinsic to TEK transmission)		TK holistic in outlook & adaptive by nature; qualitative management of resources / ecosystems; adaptive mgmt as framework for TEK; 4 levels of TEK; conventional vs traditional mgmt; cross-scale institutions	Table 1- Social-ecological practices and mechanisms in traditional knowledge and practice; Figure 1- Levels of analysis in TK (local knowledge > land & resource mgmt systems > social institutions > worldview)
Sosa & Keenan (2001)* Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada	*Literature Review / Report* (NWT/Yukon) supplemented w interviews; overview of IBAs; collaborative - Envtal Mining Council BC, CELA, CIDA, MiningWatch Canada, etc.); approx 25 sources	√ socio-cultural impacts; unique relationship of FNs with envt (advisable that FNs establish their own envtal standards)	√ recognition of rights trend; *sui generis* (unique rights); jurisprudence – Aboriginal title, Delgamuukw (minerals & infringement issues), land claims, RCAP, treaty rights; IBA a "law of contract"	√ IBAs may include provisions to prohibit access to other Aboriginal lands, hunting grounds, burial & sacred sites; hunters compensation; land claims negotiations; finite resources & economic instability	√ IBAs = consult; issues – short time frames, inadequate information, negotiating position, MOUs "rules of the game", avoid divide&conquer; monetary/social cost; consensus-based IBA; compensation not preferential treatment	√ mining impacts; fed/prov EA; provincial control of natural resources; Indian Act - Mining Regulations; triggers should reflect Indig concerns; IBA sometimes the only envtal protection; IBAs undermine regulation	Constitutional rights can be infringed upon (p.4); gender; free entry; Crown owned lands (90%); IBAs often used by companies to lock in FN support & prohibit dissent; be specific / avoid vague terms; mine closure/reclaim; capacity	Authors suggest literature is recent / lacks analysis; recommendation list for FN IBAs (p.22); community mandate; IBAs can fund baseline studies & monitoring (cost of doing business); IBAs = govt downloading of responsibility
Lewis & Sheppard (2005)^ Ancient Values, New Challenges: Indigenous Spiritual Perceptions of Landscapes and Forest Management	*BC Case Study* research w Cheam FN, BC; *literature review* (approx 40), *meetings, one-on-one interviews*	√ spiritual values; perceptions of land; sacred sites; spiritual impacts; themes; maintain connections / responsibility		√ collaborative planning; photo elicitation; landscape scenarios; GIS mapping; special-use designations	√ consultation to articulate a broader range of values and landscape perceptions; GIS	spiritual impacts	Relationship w Creator, traditional notions of respect for land, spiritual land activities; TEK; impact on spirituality	Excellent description of interview criteria, case study & data collection no authorship by Cheam FN?

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Paci, Tobin & Robb (2002)* Reconsidering the Canadian Environmental Impact Assessment Act: A Place for Traditional Environmental Knowledge	Literature review? joint research btw U of Northern BC, Carrier Sekani Tribal Council & Aboriginal Relations Branch, BC Ministry of Energy & Mines approx 50 sources	√ "we belong to the land"; stewardship; can legislation reform account for cultural knowledge; West bias; IK for personal/communal identity; cognitive-spiritual awareness; TEK; cosmology & worldview; 1992 Clarkson - Indig envtal mechanisms not adopted by West	√ legal recognition of Indig title, rights & cosmologies into Cdn envtal policy = law reform; RCAP; self-govt; Sparrow & Delgamuukw; BC Treaty Process land & governance; Cdn attempt to extinguish broad rights for defined specific rights; land rights before EA	√ Aboriginal resource planning approach; cultural values & diversity should be reflected in planning (Wolfley); TEK in land use planning (GNWT)	√ consultation options - support or negate Indig involvement / knowledge sharing or business-as-usual ; how TEK enters assessment process parallel to this larger discourse; Cdn Constitution 1982 integral to Indig participation; barriers to TEK	√ CEAA since 1995; govt difficulty to integrate Aborig communities; EIA both fed & prov; CEAA both liberal & homogeneous - blind to difference; EIA principles & process expressed as part of FN holistic cosmology; TEK undervalued; ecosystem approach	Traditional knowledge policy Govt NWT; definitions – Berkes & Stevenson TEK, RCAP IK; continuity btw biophysical, human and supernatural worlds; plurality of FN voices – TEK is not homogeneous; highest valued use concept of land; not "value-free"	Christensen's Indig resource mgmt (1994 unpublished); Wolfley 1998 - cultural diversity important as biodiversity; TEK participatory & interdisciplinary bridge *(ethical space); Aboriginal mgmt i) embedded & ii) holistic; IK original EA (p.122); *framework needed
Tollefson & Wipond (1998)# Cumulative Environmental Impacts and Aboriginal Rights	*Literature Review & BC Case Study* cumulative envtal impacts on current / future Aboriginal rights; case study: Derickson vs. The Queen/Weyerhauser ; Westbank treaty claim vs. logging permitting in BC)		√ 1997 landmark Delgamuukw case: Aboriginal title = exclusive land use/occupation; harvesting rights; fiduciary obligation; 2 sources of Aboriginal rights – treaties & title; infringement	√ Recent literature reflects shift away from project-specific mgmt to landscape/ ecosystem planning; zoning; scenarios; baseline info; strategic-level land use planning; use of GIS	(briefly discussed - cooperative approaches btw Aborig orgs and resource agencies; strategic-level land use planning, etc)	√ Cumulative envtal effects requirements for Cdn EA – little use within provs; typical EA is inadequate/reactive & case-by-case; scoping and baseline info; principles for assessing CEIs	No mechanism to protect Aboriginal rights re cumulative impacts; BC govt justification of 95% Crown ownership; reasons for infringement of rights & title; precautionary court decision; courts as last resort	Strong support for larger spatial scales / planning horizons, interdisciplinarity, monitoring & adaptive mgmt; poor legacy of Cdn colonialism – "displacement & disadvantage"; *challenges to Cdn resource regime
Plummer & Fitzgibbon (2004)^ Co-Management of Natural Resources: A Proposed Framework	*Literature Review & Conceptual Framework* approx 80 sources	√ integration of alternative, non-scientific knowledge systems	√ co-mgmt different than other property rights regimes; shared power & responsibility	common pool resources	√ 3 components of collaboration; risks of co-mgmt for Indig communities		Devolution of govt resource mgmt; spectrum of co-mgmt arrangements too large to define; social process	Not specifically Aboriginal focus; shift from rational choice to social choice; framework development

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United Nations Declaration on the Rights of Indigenous Peoples (2007)	*UN General Assembly Resolution* September 13, 2007 (recommended by Paula Sherman & Dan Longboat)	√ Respect for IK, culture & traditional practices; ***Articles 12 to15*** rights to practice cultures, histories, languages, names, education; ***Article 25*** right to maintain/strengthen distinctive spiritual relationship with traditionally owned-occupied-used lands & waters; uphold responsibilities for future generations; ***Article 31*** TK & intellectual property rights; ***Article 32(3)*** spiritual impacts	√ Urgent need to respect & promote inherent rights; political/economic/ social structures/ spirituality; especially land rights; treaties & international law; human rights; self-determination/govt; ***Article 26*** right to own-use-control traditional lands, territories/resources; ***Article 27*** recognition of Indig laws/traditions, land tenure systems, etc.; ***Article 37*** recognize & enforce treaties	√ ***Article 32(1)*** Indig peoples have the right to determine & develop priorities for development/use of their lands, territories and resources; ***Article 26(2)*** right to own-use-control traditional lands, territories & resources	√ **Article 18** rights to participate in decision-making which affects Indig rights (reps chosen by themselves) & maintain/develop Indig decision-making institutions; ***Article 19*** consult & cooperate in good faith re legislation (free, prior and informed consent); ***Article 27*** fair, independent, open transparent process; ***Article 32(2)*** consult & cooperate in good faith re approval of projects	√ ***Article 32(2)*** VETO free, prior and informed consent prior to approval of any project affecting lands, territories or resources, esp. in connection with devt of mineral, water, resources; ***Article 32(3)*** mitigate impacts (env-econ-soc-spir); ***Article 29*** right to conserve/protect envt & productive capacity of lands; no storage/disposal of hazardous materials	Historic injustices – colonization & land dispossession ***Article 10*** Indig peoples shall not be forcibly removed from their lands/territories; ***Article 20(2)*** Indig peoples deprived of subsistence are entitled to redress; ***Article 28*** restitution or compensation (lands) for stolen & polluted lands	Not legally binding (Canada refused) ***Article 43*** "The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." ***Article 26*** right to own-use-control-develop traditional lands, territories & resources; Respect for IK; *Veto power
Canadian Institutes for Health Research (2007) CIHR Guidelines for Health Research Involving Aboriginal People	*Research Ethics Protocol* (recommended by Chris Furgal)	√ Sacred Space & TK; ***Article 1*** Researcher must respect Aboriginal worldviews & sacred knowledge; (p.12) Western scientific paradigm since the Enlightenment; (p.19) relationships btw the individual and spiritual entity, the Land, kinship networks (incl. plant & animal) & the Ancestors	√ Community Control & Approval; ***Article 2*** respect community jurisdiction over conduct of research; ***Articles 6&7*** Inclusion/protection of rights to sacred & cultural knowledge; ***Article 8*** Intellectual Property Rights & IK; ***Article 11*** duty to apply Aboriginal protocols and translation		√ ***Article 2*** participation, community consent process, develop ethics review principles; ***Article 3*** Participatory Research Approach - community option; Community & Individual Consent ***Article 4*** (consent of community leaders; researcher still needs free, prior and informed consent before speaking w individuals)		***Article 5*** Confidentiality, privacy/anonymity; Benefit Sharing ***Article 9*** - research to benefit both community & researcher); Empowerment & Capacity ***Article 10*** provide research methods / ethics training; Results Interpretation & Dissemination ***Articles 14 & 15*** (community review; acknowledged in publications)	p.17 'Ethical principles of Aboriginal Health Research' could additionally serve as ethical principles for *Indig Envtal research/framework "Reconciliation of Ethical spaces" (p.19) OCAP principles (ownership, control, access, possession); Co-authorship & Copyright set out in research agreement

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Interagency Advisory Panel of Research Ethics (2008) Draft 2nd Ed. Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (Ch 9: Aboriginal Peoples, 91)	*Research Ethics Protocol* (recommended by Chris Furgal)	**Article 9.10** Protection of Indigenous and cultural knowledge; ethics to consider individuals in relationships; IK holistic, etc.	√ **Article 9.3** Research on Indig Territory requires consultation with formal leaders; **Article 9.5** Community Ethics Codes and Protocols	**Article 9.12** Communities should have access to data important to their own planning and development processes	√ **Article 9.4** Researchers must obtain FPIC of participants; mutual benefit relationship btw researchers & participants		Historic racist & ethnocentric interp; approp of cultural property; devaluing of IK as primitive; violation of community protocol / norms; **Article 9.9** Privacy / Confid	(CIHR is better) remote communities have limited ability to collaborate in research (p.97); give community opportunity to react to research findings **(Article 9.10)**
Stevenson, M. G. & Webb, J. (2003)# Just another stakeholder? First Nations and sustainable forest management in Canada's boreal forest. Chapter 3 in Towards Sustainable Management of the Boreal Forest, published by the NRC Research Press, 2003	*Book chapter* *Literature Review & Alberta Case Study* of the Little Red River Cree and Tallcree FNs. Joint research btw Marc Stevenson of the Sustainable Forest Management Network & Jim Webb of the Little Red River Cree Nation. approx 50 sources including several Indigenous scholars Overview of First Nations and sustainable forest management in Canada	√ Relationship with forest; values & worldview; Aboriginal rights flow from Creator; direct eco-culture sustainability link Aboriginal mgmt and knowledge "take a back seat" to western science; cultural barriers; TEK personal and cumulative; mgmt determined by dominant culture; opposite types of "management"; value laden science (Judeo Christian / capitalist / agrarian / male bias p.83); resource specifics vs resource relationships; human ecology; cultural sust.	√ Aboriginal peoples "not just another stakeholder" – rights & interests at nation/international levels; rights the "fundamental building block" for sustainable forest management; benefits to Canada of recognizing rights; RCAP & Canada's response; Cdn commitments; fed/prov division; fiduciary relatnship dates back to 1763; Aboriginal law & two row wampum – equal to Royal Proc; treaty interpretation; jurisprudence - Mikisew, Haida, Delgamuukw, Van der Peet / Sparrow tests; infringement; no need to prove title (Haida/Taku)	√ Case study – LRRC/TC First Nations joint planning and shared decision-making; 35000 square km Special Mgmt Area; landscape assessment; social, cultural, economic and ecological aspects of planning the landscape; memorandum of understanding; resource use scenarios; traditional use definitions; documentation to illustrate eco-culture link; land use zoning; forest certification	√ legal and scientific rationales for greater Aboriginal participation; nation-to-nation relationship; duty to consult; Haida case – companies must consult; Box 3.8 Consultation Principles from Cdn courts; forest tenure allocation shielded from public view excludes Aboriginal participation; coercion into reductionist mgmt philosophy in exchange for power & participation; cooperative mgmt as interim solution; rejection of 'public' participation; creating certainty for everyone; *Fig 3.8 Indigenous involvement model		Role of researcher and cautions; interviews – knowledge simply becomes information 94% of Canada's forest is Crown land; sustainability of what, for what and for whom; equity necessary for true sustainability; sustained yield industrial forestry model undermines rights and economies of FNs; business and political hegemony undermines science; alliance of 2 FNs in Alberta; 4 step research/planning model; allies and adversaries approach; framing; industry-FN collaborations	Indigenous scholars referenced and the two-row wampum used as a model; *rights critical to framework; bio-cultural relationship pgs.68,77,93,98 **Fig 3.8 Indig mgmt paradigm (ethical space) / govt intransigence barrier to true sustainability; Constitution Sec 35 wording begs the question, what are the existing rights & burdens of proof; prov systems of tenure are impediments to Aboriginal & treaty rights – reform needed; *deep TEK – implement TEK in its entirety; Box 3.14 recommendations

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Baker & McLelland (2003)* Evaluating the effectiveness of British Columbia's environmental assessment process for first nations' participation in mining development	*Framework* and *BC Case Studies* *Review* of EA literature, notably 'effectiveness' which was used as a criterion to measure FN participation in BC's EA process. 3 case studies approx 30 sources		Cheslatta Carrier FN claimed EA process was fast-tracked due to govt & industry pressure (Supreme Court ruled in favour of Huckleberry mine)		√ *consultation guidelines* - guiding principles notification, access to info, consultation techniques & reporting; *substantive objectives* - participation beyond voting, representation, learning, resource provision & participant influence ; *transactive criteria* – time & cost mgmt	√ EA process often the only access FNs have to influence mining decisions; seven principles of effective EA (p.583); impacts to Aboriginal interests, envtal issues, culture and heritage issues, and socio-economic concerns; Key issues incl. adequate provision of time and funding; redefinition of cost (monetary and non)	Effectiveness triangle (framework diagram p.585) 3 mining cases: Mt Milligan, Kemess South & Huckleberry mines; case studies highlight impacts including construction & transportation, fisheries & wildlife, acid rock drainage, archaeological, sacred sites, hunting, berries, etc.	Case studies = EA report card; 3 clear research questions - what determines an effective EA to integrate FNs; what criteria are important; and how are FNs included / what are the barriers? / "consult about how to consult" participation must become open, fair and objective; ask FN preference
Hipwell, Mamen, Weitzner & Whiteman (2002)* Aboriginal Peoples and Mining in Canada: Consultation, Participation and Prospects for Change *Prepared for The North-South Institute w/ support from corporations, government and NGOs.*	*Working Discussion Paper* *Literature Review* with Aboriginal perspectives focus. Section 1 – historical & current context of mining incl. impacts and Aboriginal rights, Section 2 – govt / corporate policies, & Section 3 – consultation case studies approx 150 sources !	RCAP quote (p.10) land fundamental to Aboriginal identity; cultural erosion / colonization; mining companies' difficulties understanding, accepting & incorporating Aboriginal perspectives; concluding points (pgs.43-44) legal, moral & spiritual interests; equal inclusion of lo/TEK;	√ historical overview and current status of Aboriginal and treaty rights in Canada; 1973 significant decision led to Constitution 1982; unique *sui generis* rights; consultation jurisprudence – Sparrow, Delgamuukw, Gladstone, Guerin; resistance spectrum; international forum; UN Human Rights; federal legislation; IGWG; free entry;	Free entry system highlights mining as the preferred land use activity, particularly in Canada's North, and subordinates the interests & values of Aboriginal communities to those of industry	√ RCAP quote (p.1); Aboriginal guidelines / protocols (p.14); what consultation is and is not; resource devt committees; Aboriginal-led dialogue w industry; co-mgmt; IBAs; EIA as participation mechanism; corp/govt vs. FN power imbalance; govt consultation guidelines (look up Envt Canada); multi-stakeholder process; Whitehorse Mining Initiative; 4 consultn obstacles	√ Envtal / socio-economic / cultural / spiritual impacts; positive & negative economic impacts; Indig economics; access to land; sacred sites; health (not just physical); gender impacts; cumulative impacts; EIA important Indig voice mechanism; CEAA; no EIA for mineral exploration; 3 main EA types (screenings, comp. studies & panel reviews); EA decline since Berger	envtal racism – 36% of FNs within 50 km of mining; 4 categories of Aboriginal land – reserve, Crown, settlement, unceded; Aboriginal response to resource devt: range from discursive to legal to strong resistance; significance of Berger; Ontario Aboriginal policy; Ontario's Living Legacy / Lands for Life; Mining Assoc Canada; PDAC; role of NGOs; tensions btw envtal & Aborig groups	Extensive overview of all mining lit related to consultation (p.14) 4 common Aboriginal priorities re resource devt; 4 obstacles & 4 successes of consultation (p.33); INAC supposed to support Indig peoples - opposite in reality; *envtal racism *Indigenous critique of EA; pgs.43-44 Indig univocal concluding points re consultation etc. *right to say "No"

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Natcher, Davis & Hickey (2005)^ Co-Management: Managing Relationships, Not Resources *David C. Natcher (U of Nwfld) Susan Davis (Carmacks FN Lands & Resources) and Clifford G. Hickey (U of Alberta). Funding provided by Sust. Forest Mgmt Network (Stevenson)*	*Literature Review* and *Yukon Case Study* Review of co-mgmt methodology + case study of Carmacks Renewable Resources Council – *surveys, informal interviews & participant observation (5 yrs)* approx 40 sources (recommended by Chris Furgal)	√ Different value systems & colonial histories; values & beliefs re social-ecological relationships = 'hidden' conflicts; individual perceptions & relationship to envt; worldviews – utilitarian/centralizd vs. traditional law; individualist vs. collectivist; de-legitimizing IK; 7th generation	√ Co-mgmt regimes not only changing resource mgmt, but also Indigenous-State relations; 1993 Yukon Umbrella Final Agreement - basis for settling land claims; traditional law briefly outlined; Foucault (1972) on power; co-mgmt continues among high conflict; *need for post-normal science	Designating catch-and-release lakes an issue of ethics	√ Cultural differences can help/hinder co-mgmt effectiveness; systems of joint authority; belated recognition of IK vs. emergent intellect tradition; general trend towards improved participation/democ ; effectiveness & equity issues; culturally inappropriate & hegemonic; consensus obstacles		Co-mgmt endorsed by RCAP & WCED ; cultural biases - Western belief that uncertainty can be overcome with planning (distinctly removed from envt). In contrast, Indig shared norms / customs mediated through traditional law (social relations, human & non, maintained); 4 social domains & worldviews; tendencies	Good description of research methods and immersion in community; post-normal science ; *quote: foremost obstacles to reaching consensus are the perceptual differences concerning envt & 'Our' place in it; worldviews explained (p.8&9), cultural constructs; divergent values and potential for group identity / trust
Stevenson, M. (1996)* Indigenous Knowledge in Environmental Assessment	*Framework & NWT Case Study* Personal experience gained from EIA consulting related to the BHP diamond mine proposal & Aboriginal community at Lac de Gras, NWT Indigenous knowledge frameworks + interviews w Elders & professionals approx 30 sources	√ intimate knowledge; misunderstanding of what TK is, how it's constructed & role in EIA; not just "traditional" but contemporary – relevant to present, not shackled to past; IK sources both traditional & non; different realities; Aborig philosophy & code of ethics; understanding of both worldviews will assist EIA; compromised; TK & science	√ recognition of TK stems from pursuit of political and property rights; rights of aboriginal people to fully participate in decisions that affect their lands/cultures **Agenda 21** (UNCED 1992); federal envtal guidelines require developers to incorporate TK in EIA; nation-state relationship a challenge to IK; 'haves & have-nots'		√ documenting Indig concerns must be 1st step before TK baselines; risks / benefits of documenting TEK; Aboriginal orgs explicit guidelines; exploit/misrep/etc. extraction = theft; Level 1 shallow TEK > Level 4 full equal consideration (IK); Indig reps, not govt, should determine extent; if conflict exists, Aborig people should prevail;	√ TK incorporated into EIA in an effort to assess the envtal, social & economic impacts of large-scale developments on northern lands; mines have potential benefit for cultural activity; understanding of both worldviews to better identify valued ecosystem components –VECs identified by Indig; values help EA; envt impacts = socio-economic also	TK as important as science (BHP Panel, Review 1995); industrial world has to learn Indig sust. (WCED, 1987); Aboriginal concerns about devt due to: i) TEK/relationships ii) past experience iii) lack of info re impacts; Dene defn of TEK (p.281); location, timing, quota disagreements ; age & gender issues – muted; Participatory Action Research (PAR)	IK conceptual frameworks – (p.280/3) structural components & interrelationships; TEK traditional & contemporary; IK more appropriate; 3 TEK interrelations –specific knowledge (shallow TEK), eco relationship & code of ethics (deep); Aboriginal control of research (but not exclusive); Indig experience is knowledge; *p.288 worldviews table; qualitative mgmt

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Wiles, McEwan & Sadar (1999)* Use of traditional ecological knowledge in environmental assessment of uranium mining in the Athabasca Saskatchewan	*Perspective piece* Examines the use of TEK in the EA of the McArthur River Uranium Mine Project in northern Saskatchewan; research question – to what degree did the inclusion of TEK in the joint panel review capture the concerns of the participants	√ TEK required in EA to address cultural impacts; caribou hunting; subsistence harvesting replaced by cash economy; traditional relationship btw people & landscape (p.110, 112+); naming waterways; clean envt crucial for traditional activity & identity; rewards cultural not commercial; social structures maintain	Natural and legal rights of the people to the land	√ 1944 imposed fur conservation blocks – restricted or ended traditional hunting and seasonal movements; * traditional land use described as the essential component of cultural sovereignty – natural right to the use/benefits of the land; land use leads to discussions of sovereignty	√ *Limited discussion in review -the joint panel was not to examine treaty rights, questions regarding the need of the project or alternatives to the project; Athabasca residents not satisfied that their concerns were addressed; comments received beyond the mandate of the review & EA	√ Joint 1991 fed-prov EA panel; EIS guidelines; throughout report, emphasis on physical envtal impacts & economic benefits; essential to recognize when a proposal's planning needs and social issues exceed the scope of an EA; socio-economic study report	TEK relates to EA on three levels (shallow & deep) – 1) detailed info on the envt/wildlife, 2) insight into socio-cultural effects of a project, and 3) changes to landscape / people's relationship with it; mines are part of the disintegration of traditional culture (even if envt is ok) by altering people's relationship w/ envt	scoping challenges; vague criteria for inclusion of TEK in EA review; mismatch of interests – broad cultural & identity concerns vs. narrow technical details; need for a new subsistence model of TEK in EA; *quote: EA is not appropriate process / forum to address unresolved political debates (i.e. treaty)
Joyce & MacFarlane (2001)* Social Impact Assessment in the Mining Industry: Current Situation and Future Directions *Report commissioned by the MMSD of the International Institute for Environment and Development*	*Report* *Literature Review + personal experience* not comprehensive review of all lit on SIA, but examines SIA as a tool for sustainability	√ SIA asked to give voice to other values; good summary of TEK; exploitation of TEK may undermine culture by accelerating project approval; oral history; political decisions based on devt paradigm	√ Berger recommended project be put on hold for 10+years to allow time for land claims and native support; mining can create impetus to resolve land use claims		√ Consultation issues; participatory approach to SIA; evolution of consultation; NOT decide, announce, defend; more integrative, intrinsic to all stages of a mine cycle; *who* to consult? ; ethics / consent	√ SIA spectrum - dynamic vs. static, technocratic vs. participatory; social impacts incl. direct, indirect, induced & cumulative; Berger - first time social impacts formally considered; shift to sustainability assessment	Expansion of democracy & global communications; significance of Berger Inquiry - "the case" where SIA justified project delay (pgs.5,9); bias towards economic well-being; Tulsequah Chief mine overturned	thorough social impact review; *quote: underlying regulatory / legal presumption that projects have '*a priori*' rights to proceed – industry need to succeed; *conflicts of interest re: State/companies; impact assessment is political

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Kwiatkowski & Ooi (2003)^ Integrated environmental impact assessment: a Canadian example	*Case Study* example of Public Panel Review: BHP's NWT Diamonds Project	√ holistic Indig view of envt; social and cultural attitudes created & supported by close interaction btw envt, health & lifestyle; integrated EIA; TK defined; Panel instruction for TK info gathering	(brief) 29 Panel recommendations included land claims, aboriginal rights, traditional knowledge, envtal monitoring, etc.		(briefly discussed) cooperative efforts btw govt, industry & community; Panel held public consultations, company consulted with community "stakeholders"	√ EIA and integrated EIA defined; Cdn federal process; 3 types (screening, comp study & Public Panel Review); Panel case study; integrated EIA cost-effective in the long run	Integration of health, social & envtal into holistic impact assessment considerations recommended in Agenda 21; mitigation measures incl. education, employment, services, etc.	solely a case study (no discussion of community) & only 7 references 6000 projects per yr under CEAA - 95% are screenings; advantages of integrated EIA; description of TK
Deborah McGregor (2004) Coming Full Circle: Indigenous Knowledge, Environment, and Our Future	*Perspective Piece* "reflection paper" explores the relationship btw IK & TEK; examines the current conception and practice of the field of TEK	√ Aboriginal vs. Eurocentric TEK; social construct; to understand (deep) TEK, one must understand Indig peoples/worldviews ; always start w Indig teachings - original instructions (spiritual ecology); "knowledge comes from the Creator & from Creation"; relationship = IK; challenges > IP rights, precedence of science, cultural misunderstanding, TEK exploitation; dominant culture/ language/mgmt; IK as a circle, not linear; knowledge both lost & created; *Minobimaatisiiwin*; Seven Grandfathers	√ 1987 Brundtland Report; UNCED Convention on Biodiversity 1992; recognition of IK parallels recognition of rights by the international community two major forces in the field of TEK – i) recognition of TEK importance in policy & legislative frameworks + rising movements in Indig rights & self-determination ii) increasing Aboriginal control over decision-making that impacts their lives/lands; "Ultimately, TEK is related to Indig rights" (p.399)		√ TEK "experts" too often non-aboriginal who 'tap', 'capture' & 'harvest' TEK; non-Indig origin of the term TEK itself; intellectual property rights; knowledge separated from people & context; AFN: integration = assimilation; *power imbalance the fundamental problem with TEK; Aboriginal protocols for IK; decision-making that impacts their lands/lives – on their terms; principles of IK - coexistence, respect, balance, honour, etc (p. 389)	√ Ecological principles not new to Anishinaabe – what happens in one part of ecosystem will impact another (the original instructions teach how to relate appropriately with beings of Creation); TEK compartmentalized in EA (Nadasdy) – documentation = "distillation"	Marlene Brant-Castellano 3 sources of knowledge: i) traditional, ii) empirical & iii) revealed (p.388) "sustainability" the continuation of Creation; IK by nature is also envtal knowledge; IK a process, not just a product/commodity; IK what you *do*, not just what you *know*; Battiste & Henderson question desire to define IK; Cajete, Deloria Jr., Basil Johnson, Berkes, LaDuke, Linda Smith non-aboriginal research not necessarily wrong, but incomplete & fragmented	well-sourced critique of TEK field / research conceptualize rather than define IK – not appropriate to limit/confine IK; Aboriginal (action) & non-aboriginal (noun) defns of TEK – no consensus; *people-knowledge-land inseparable; dangerous ideology of "disappearing" knowledge & "vanishing race"; "discovery" of IK *research ethics (conventional research as method of colonization); decolonization = remembering Indig processes - creative (stop reacting); **Minobimaatisiiwin*

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Leanne Simpson (2008) Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships *Gdoo-naaganinaa* = *"Our Dish"*	*Perspective piece* this paper is grounded in Indigenist theory & methodology, using story-telling, or narration, language, personal understandings of Traditional Nishnaabeg knowledge, & relying on relevant academic literature interpreted through a Nishnaabeg perspective (purposefully not a comprehensive academic literature review)	√ Oral traditions, ceremonies, protocols, customs and laws used to enter & maintain Indigenous treaties (RCAP report); stark contrast of Indig & Euro-Canadian views of treaties; Nishnaabeg culture allows for strong individual autonomy but collective needs are paramount; clans = animal nations; Nishnaabeg envtal ethics & Haudenosaunee land ethics; original instructions; *Gdoo-naaganinaa* is a living treaty; prophecies	√ Indig treaties prior to colonization; treaty processes grounded in worldviews, language, etc; governed by common Indig ethics of justice, peace, respect, reciprocity & accountability; agreements = relationships; rights *and* responsibilities; agreements both political and sacred; Robinson-Huron Treaty 1850 meant to be 'added to'; Indig treaty not archaic or obsolete; treaty = shared territory & retained sovereignty	Decisions about resource use were made long-term (7 generations); shared responsibility to take care of the territory	√ Nish ancestors knew maintaining good relationships was the basis for lasting peace; Bimaadiziwin = "living the good life" - foundation of good governance (set of ethics, values & practices); Seven Grandfather teachings embedded in social & political structures; rarely permanent agreements but rather ongoing, reciprocal, dynamic; diplomacy; original relationship of peace, mutual respect & benefit still expected today	Nishnaabeg custom required decision makers to consider the impact of their decisions on all the plant and animal nations, in addition to the next seven generations of Nishnaabeg	RCAP report discusses pre-colonial Indig diplomatic processes; Cree conceptualizations - treaty as a settler adoption ceremony; Cdn politicians, scholars & public have a poor understanding of Indig traditions & cultures; treaty making with animal nations (Mnjikaning fish & Grassy Narrows deer); international treaty btw Indig nations (Nishnaabeg/Dakota / Haudenosuanee) *Indigenist thinkers – return to IK for answers (ancient template)	Decolonize the concept of treaty / relationship w Cdn state; (*decolonize envtal mgmt!) Bimaadiziwin - the foundation of good governance; 7 *Grandfathers* = respect, honesty, truth, wisdom, bravery, love & humility Our dish = peaceful coexistence, envt sharing, ethics; *share, yet remain separate, sovereign. self-determining, independent nations (no colonization, assimilation, or negotiation for rights to self govt.)
Nicolas Houde (2007)^ The Six Faces of Traditional Ecological Knowledge: Challenges and Opportunities for Canadian Co-Management Arrangements	*Literature Review* synthesis paper on emergence of ideas about TEK in the Cdn context of co-mgmt; challenges & opportunities; approx 110 sources	√ FNs seek mgmt more reflective of worldviews and values; belief system; alternative land ethic; role of language; land = culture; land change = culture change; cosmology as the foundation of TEK; religion/philosophy	√ jurisprudence – Cdn state govt co-mgmt agreements, 1973 . Calder decision, JBNQA James Bay, 1990 Sparrow, 1997 Delgamuukw (oral history), 2004 Haida vs. BC, 2004 Taku River FN vs. BC	√ cultural landscape concept; integrate Aboriginal concerns in land use planning; future projections / scenarios	√ co-mgmt defined; TEK challenges – IP rights; failure to acknowledge cosmological context; not just another stakeholder; 3 goals of collaboration - increased equity, mgmt efficiency & decision robustness		Risk of lost uniqueness; Terminology – traditional, local, Indigenous knowledge, TEK, etc; marginality (bell hooks 1991); 4th, 5th and 6th faces TEK fundamentally different than mainstream Cdn institutions / mgmt	Six faces of TEK: i) factual observations, ii) mgmt systems, iii) past & current land uses, iv) ethics & values, v) culture & identity, and vi) cosmology *shallow TEK vs. deep TEK

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James W. Ransom and Kreg T. Ettenger (2001) 'Polishing the Kaswentha': a Haudenosaunee view of environmental cooperation (Indigenous author – Ransom, HETF Director, Wolf Clan, Mohawk Nation)	*Case Study* of the Haudenosaunee Environmental Task Force (HETF) HETF is a regional organization w representatives from NY, ON & Quebec. Authors' purpose to offer an alternative perspective based on traditional Haudenosaunee beliefs & values regarding proper relationships btw Native & non-Native envtal protection parties approx 25 sources	√ Two vessels traveling the river of life side-by-side; the ship (Dutch) & the birch bark canoe (Haudenosaunee); 3 white rows (peace, good mind, & strength); modern culturally based envtal processes based on Indig laws/values/IK; key principles found in traditional teachings ; process must respect sovereignty & unique socio-cultural values; canoe & ship views; cultural barriers; map (fact) vs oral; science as nav. tool	√ Recognition of Indig rights & IK in inter/national agreements i.e. CBD UNEP 1992 & Agenda 21, Chap26; Haudenosaunee traditional govts (non-elected) based on matrilineal clan representation; Great Law informed USA's Constitution; Great Law recorded on wampum; Kaswentha treaty belt (17th C); envtal process must assert Indig/Treaty rights & sovereignty; – spirit & culture backbone of traditional law		√ risk & benefits of coop. relationships; Western models do not reflect Indig models (i.e. consensus forums); cooperation or cooptation?; "success in forming partnerships lies in focusing on the river that we travel, not on the vessels their differences" – powerful notion for envtal protection; HETF consensus-based approach; cooperative arrangements w outside agencies, researchers, etc.	UNEP 1992 encouraged the Haudenosaunee to identify critical issues for themselves – the product of this effort was the **Haudenosaunee Environmental Restoration Plan: An Indigenous Strategy for Human Sustainability* (Annunziata et al, 1995)	Brundtland report (WCED, 1987) warns against loss of TK and Indig sustainability; benefits of partnership – govt funds, university facilities/personnel + Indig knowledge & histories; Haudenosaunee backgrounder; Kaswentha -mutual recognition of distinct societies *ATFE research ethics protocol "the canoe understands the ship, but not the other way around"	*Indig partnerships p. 221 (must be created according to Indig standards; recognition of IK; equity; empowermt; special status; FNs are unique entities); *partnerships which respect and support (Haudenosaunee) sovereignty & cultural identity while addressing critical envtal problems *5 key partnership/ mgmt/restoration principles (p. 223); * ethical space btw Haudenosaunee & federal law (canoe & ship):
A. Kendrick & M. Manseau (2008)# Representing Traditional Knowledge: Resource Management and Inuit Knowledge of Barren-Ground Caribou	*Case Study* in collaboration with 2 Inuit communities Interviews and workshops with active hunters & elders in Arviat & Baker Lake; mapping observations using GIS and a qualitative database approx 30 sources	√ (IQ) Inuit Qaujimajituganqit, like IK, bigger than TEK; epistemological system about how to learn, be & behave; IK is weakened into data sets; worldviews diverse in caribou mgmt; narratives key; land living embodiment of personal & ancestral history		√ Narratives and commentaries key to applying spatial data to mgmt; mapping + discussion of community observations key for sustainable land use; maps just tip of the IK iceberg – need narratives and cumulative experience	√ Co-mgmt in the North rarely includes Indig envt understandings; hybrid knowledge; few exchanges btw science & TK holders; TK often dismissed /co-opted; time and resources necessary; opportunities for resource managers to understand IK & decision-making		GIS used to represent IK holistically – a tool to complement IK; reliance on hunters' knowledge; elders are better able to recognize changes than younger hunters – Elders and youth still share knowledge; participatory methodologies needed	maps just tip of IK iceberg - cannot replace TK deliberations; factual "data" + opportunities for social learning; opportunities for IK understanding; resource management institutions still inherently colonial in structure (Nadasdy 2003 / Caine et al 2007)

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David Natcher and Cliff Hickey (2002) Putting the Community Back Into Community-Based Resource Management: A Criteria and Indicators Approach to Sustainability	*Framework* and *Case Study of* Little Red River Cree Nation, Alberta (recommended by Marc Stevenson) LRRCN approach to criteria and indicators for sustainability (local participatory framework) PAR research activities incl. oral histories, map biographies, semi-directed & open-ended interviews (238) & 345 surveys 30 sources	√ Reductionist research methodologies conflict with Cree worldview - segmenting biophysical, social, cultural, spiritual and economics aspects of envtal interaction; fragmenting aboriginal understandings of envt limits eco-mgmt (Brunckhorst, 2000:5); Cartesian dualism attempts to separate people from envt	√ Involvement of Indig peoples in land mgmt process an unrelinquished right (RCAP) necessary for sustainability (Brundtland 1987); Treaty 8 rights (harvesting) infringement due to forestry, agr. Indig peoples (such as LRRCN) are regaining direct control of their homelands and are now implementing new and innovative approaches to mgmt	*Canada's Criterion Six addresses need to recognize rights of aboriginal peoples in the planning process	√ "top-downism" inherent in institutionalized resource mgmt; concept of "community" = assumption of consensus; not homogeneous but rather pluralist; co-mgmt agreement (board members - 7 FN, 3govt, 2ind); research biases and cultural norms may limit community participation i.e. male-female; necessity of pluralist representation inclusion, voice		Indig peoples worldwide regaining mgmt responsibility through comprehensive land claims & coop / joint-mgmt agreements; traditional land and resources critical to economic, social & cultural sust of LRRCN p.352; International sustainability criteria & indicators UNCED; 6 National criteria incl. Aboriginal Rights; LRRCN adapted international strategy to meet local needs	Excellent methodology section incl methodological biases of interviews idealized concept of "community"; alternative & sust. approaches to envtal mgmt; Cartesian dualism *however, co-management board is not democratic – Minister retains final authority p.353; Indig lands often managed by people with different values p. 360
Leanne Simpson (2004) Anticolonial Strategies for the Recovery and Maintenance of Indigenous Knowledge	*Perspective Piece* Research rooted in anti-colonialism approx 25 sources (good critique of previous TEK lit which has focused on TEK definitions, usefulness & integration into Western scientific frameworks)	√ IK often opposition to dominant worldview; spiritual foundations of IK denied by society; depoliticized – as if separate from colonial past; foundation of IK is the land; virtually every aspect of Indig knowledge systems attacked (children, language, envt.); knowledge comes from the land	√ "Indigenous self-determination and the recovery of Indigenous national territories are crucial elements for the renewal of IK" (p. 375); Indian Act criminalization; govt hypocrisy at national & international forums – "colonialism in action"	Communities have little influence over the land use decisions made in their traditional territories; industrial deforestation; reserve land a mere fraction of territories	Documentation of IK – generalized, depersonalized, separated from land/ context/relationship; colonial exploitation & assimilation; Lack of Indigenous influence over decisions made in traditional territories	Spiritual / cultural impacts - food, medicines, places, animals (clans), reliance on Western economic systems	**Indigenist** thinkers decolonizing Indig nations / relations w settler governments; cultural genocide; promotion of Euro colonialism = denial of IK; colonial role of academics & Western scientists; lost opportunity to decolonize settler society; little motivation of govt to decolonize; IK *how* more important than IK *what*	*colonialism conspicuously absent from the lit; considered off-topic; "Practicality" of (shallow) TEK; 'loss' of TK - Eurocentric analysis / academic literature fails to question *why* IK is threatened; depoliticizing of IK - sanitized; protect land / knowledge process; *** Indig envtal principles** (p. 381)

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Ilan Kapoor (2001)# Towards participatory environmental management?	*Literature Review* approx 80 sources	√ Mainstream (Western) envtal mgmt - narrow view of envt (nature as resource) / orthodox scientific paradigm / 'rational', 'manage' vs. Participatory (i.e. Indig) envtal mgmt - holistic view of envt, decentralized; Dominant scientific paradigm - nature as 'resource' (natural envt exclusive of social envt); so-called "new" sustainability paradigm	√ Agenda 21 – involve & accommodate IK (UNCED, 1992); *Kapoor: for community-based envtal mgmt - 1) local / collective property rights over local resources must be recognized by states (ie self-govt); 2) communities must partner w NGOs to resist globalization (p.276)	Community-based conservation (ie. shifting cultivation, traditional community forestry, etc.) more successful than state or private-run	√ Participatory EM = decentralized, localized, inclusive; significance of "process" of knowledge acquisitn ; 'for whom?' & 'by whom?'; learning & empowerment; not just mainstream concerns but socio-ecological ones; 4 main benefits of participation (p.272) ; challenges - "add on" & one-direction participation (who informs who); power relations; "community"; 2 types of consensus		2 major socio-economic / political consequences of mainstream envtal management – i) lives at risk due to exploitation of developing world (nature & land central to socio-economic survival + crucial for religious/ cultural worldviews ii) people seen as obstructing 'rational'/scientific mgmt of resources (population blamed to justify state control) women & Indig peoples hardest hit	Not specific to Indig issues –centres upon developing world & marginalized groups incl. women, etc. colonialism & privatization; participatory envtal mgmt inspired by Paulo Freire (1970); Kapoor refers to aboriginal people as "stakeholders"; *communities not empowered to change or criticize power structures; *danger of misrep "community"; permanent vs temp. consensus
Iain J. Davidson-Hunt (2003) Indigenous Lands Management, Cultural Landscapes and Anishinaabe People of Shoal Lake, Northwestern Ontario, Canada	*Literature Review* and *Case Study* of Shaol Lake First Nation, Ontario Paper based upon ethno-botany / ethno-ecology project Review of historical record, unscheduled and informal interviews with Elders Approx 40 sources + manuscripts	√ Indigenous cultural landscapes – physical expression of complex/dynamic relationships btw societies and envts; p. 22 different for different people; strong metaphor for 2-way relationship btw people & place; environmental values; custodial responsibility; redefine 'resources' and 'management'	√ Indigenous agency; Indigenous land management requires institutions and organizations; history shows perceptions, values, institutions, tech, politics of Anishnaabe became excluded from resource planning and mgmt; need for reemergence of indigenous cultural landscapes; natural & sacred law		√ Alternative resource management - place specific, cross-scale, social-ecological, community-based, natural/sacred law Once US Forest service understood special Indigenous responsibilities, as well as Indig land mgmt institutions and organizations, easier to work together p.36		False assumption that Indig peoples lived off nature's bounty without agency; crafting the landscape – use of fire as an intentional human disturbance; the fur trade was fire generated; clash btw fur traders and settlers; fire suppression; settlement and protection of timber industry; use of fire by Anishnaabe = fines and jail time	Indigenous agency in relation to shaping envt (Sauer 1956, Cronon 1983); redefinition of 'resources' and management (Berkes, p. 24) Indigenous resource mgmt systems an alternative system…p.24,35-36 *renaissance too much focus on saving IK – not enough focus on restoring Indig land mgmt institutions and organizations

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David C. Natcher (2001)# Land use research and the duty to consult: a misrepresentation of the aboriginal landscape	*Perspective Piece* Post-doc fellowship no interviews; approx 50 sources; paper addresses govt and industry's obligatory duty to consult / suggestions for rights recognition	√ cultural misrepresentation; assumption that land relations are site specific & have little contemporary value; difficult to convey symbolic / spiritual importance to govt & industry; cultural significance	√ Canada's fiduciary obligation; jurisprudence – 1990 Sparrow ("Sparrow test"), 1996 Van der Peet, 1997 Delgamuukw, 2 kinds of rights (land-based / non), 1982 Constitution; Aboriginal title	√ land use studies as consultation is problematic; mapping land use favoured by FNs, industry & govt; 2 goals – land claims / resource conflicts; harvesting study; map biography, GIS	√ fiduciary obligation to consult; respect / equity; notification vs. consultation; govt responsibility delegated to companies (CEAA); industry also seeks clear guidelines; consultn currently case-by-case basis		American Aboriginal rights; Huckleberry mine failure to consult Cheslatta FN, BC; Boas 1888 place names / homelands; gender (male emphasis); capacity issues; PAR pros/cons; Inuit vs. FN rights	"Aboriginal land use studies in themselves may not be enough to ensure the protection of Aboriginal land rights"; *quote: conflict will continue until Canada establishes a clear consultation framework
Peter J. Usher (2003)* Environment, race and nation considered: reflections on Aboriginal land claims in Canada	*Lecture* published in the Cdn Geographer; approx 35 sources; Observations and personal reflections - Saskatchewan Denesuline land use (Usher 1990); Grassy Narrows deaths (Usher 1979); caribou mgmt (Usher 2003)	√ Water as sacred; collective land title; change from traditional Indig economy to mixed, subsistence-based economy; cultural impacts of flooding; displacement of TK by science	√ 1973 beginnings of comprehensive land claims process – "modern treaties"; rise & evolution of Aboriginal rights; original treaties; dispossession = violation of human, Aboriginal rights; reclamation; Aboriginal title = property right	√ map biography method; Inuit Land Use and Occupancy Study 1970s; mapping oral history, perceptions of history and geographical knowledge; mapping travel and habitation	(consultation & participation not specifically discussed, but ultimately necessary for land claims, land use studies & oral history) co-mgmt - antithesis of parallel canoes		"ceding the land"; reserves only 1% of original land base; settlers needs & encroachment - alteration of river systems & flooding/ contamination (Grassy Narrows); Berger's <u>Northern Homeland</u> 1977; Cdn inheritance of 1763 Royal Proc; Delgamuukw	Another opinion piece by Usher (though well referenced); land claims in exchange for extinguishment; settlements have altered the land and resource regimes in Northern Canada; 3 trends – Aboriginal political activism, awareness & legal rulings
Literature Review Legend 5 or more hits = * (11 readings) 4 hits = # (6 readings) less than 4 hits = ^ (6 readings) + additional 9 readings								

TRENT UNIVERSITY

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James Wilkes
Indigenous Studies Dept
GCS

August 14 2008

File # -20843
Title: Indigenous Environmental Management: A case study of the Kitchenuhmaykoosib Inninuwug First Nation

Dear Mr.Wilkes,

The Research Ethics Board (REB) has given approval to your proposal entitled "Indigenous Environmental Management: A case study of the Kitchenuhmaykoosib Inninuwug First Nation ".

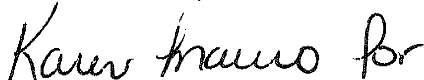
Please add a running footer to your consent form, with the date of Trent REB approval and consent revision number (e.g., 01-JAN-08, Version 2), so that the consent form used can be easily identified in future.

In accordance with the Tri-Council Guidelines (article D.1.6) your project has been approved for one year. If this research is ongoing past that time, please submit a **Research Ethics Annual Update** form (2 copies), available online under the Research Office website. If the project is **completed** by that time please contact the Research Office so they can record the completion.

Please note that you are reminded of your obligation to advise the REB before implementing any amendments or changes to the procedures of your study that might affect the human participants. You are also advised that any adverse events must be reported to the REB.

On behalf of the Trent Research Ethics Board, I wish you success with your research.

With best wishes,



Gillian Balfour, PhD.
Associate Professor, Department of Sociology
Chair, Research Ethics Board
Phone: (705) 748-1011 ext. 7607, Fax: (705) 748-1213
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c.c.: Karen Mauro, Office of Research

OFFICE OF THE
CHIEF AND COUNCIL

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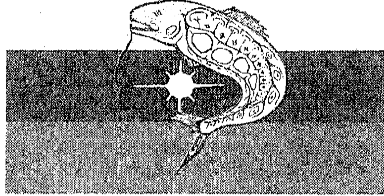

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Kitchenuhmaykoosib Inninuwug

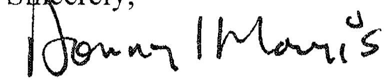
March 11, 2008

This letter is to confirm support for a university research project with James Wilkes. The project will be a collaborative one between Mr. Wilkes at Trent University and the Kitchenuhmaykoosib Inninuwug (KI). The Director of the KI Lands and Environment Unit, Jacob Ostaman, has been appointed to work directly with Mr. Wilkes.

The KI Council has agreed to disclose KI's environmental assessment and consultation official policies, as well as any other necessary documents. Individuals from KI have been identified for potential interviews and the Council has agreed that KI community members may be contacted.

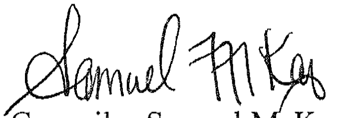
The research is intended to serve the needs and interests of KI, while fulfilling the requirements of defensible academic research.

Sincerely,



Chief Donny Morris

Head Councilor Cecilia Begg



Councilor Samuel McKay

Councilor Kenny Martin

Councilor Susan Nanokeesic

P.O. Box 329
BIG TROUT LAKE, ON

APPENDIX E: INFORMED CONSENT FORM

DEPARTMENT OF
INDIGENOUS STUDIES

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Peterborough, ON Canada K9J 7B8

Telephone (705) 748-1011 ext. 7466
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Primary Contact / Student Investigator: James Wilkes
Fax number: (905) 642-1722
E-mail address: visualvoices@hotmail.com

Student Faculty Supervisor: Chris Furgal
Telephone number: (705) 748-1011 ext. 7953
Fax number: (705) 748-1416
E-mail address: chrisfurgal@trentu.ca

INFORMED CONSENT FORM

Purpose Of The Study: Trent University graduate student James Wilkes is seeking to understand the elements of Indigenous Environmental Decision-Making through a case study of the Kitchenuhmaykoosib Inninuwug First Nation. The purpose of the interview will be to incorporate the interviewee's perspectives, opinions and observations into an M.A. thesis to understand the roles and relationships of environmental decision-making processes in Canadian Aboriginal communities.

I understand that the Research Ethics Board at Trent University has approved this project. I am aware that I have the right to withdraw from this project at any time. If I wish to withdraw, I can contact the Student Investigator (J Wilkes) or the Student Faculty Supervisor (C Furgal) by phone or email.

My participation will consist essentially of attending a guided interview with the researcher. The session has been scheduled for ____________________ at ___________.

This information will be collected and recorded on a digital tape recorder (if I provide consent) or by personal note-taking. I should feel comfortable with the nature of this project at all times.

I understand that the contents will be used in a Masters thesis report and potentially in other publications, which stem from this research. This may include potential contributions to a larger audience regarding environmental management in Indigenous and other communities. It is possible that media releases relating to the report may occur, but the information is not intended for commercial use.

The transcripts of the interviews will be the shared property of the researcher and the participant. If there are requests to access the interview transcripts of this thesis, it will be permitted only upon written authorization of researcher and participant. In all written documents (transcripts, etc.), acronyms or alphanumeric coding, and not individual names, will be used to identify participants.

I understand that my confidentiality will be respected. However, if there are circumstances where the researcher wishes to use a direct quote from my interview in any publication, I give them permission: ☐ **Yes** ☐ **No**

If yes, I want the opportunity to review and revise my quotes prior to any release of this information: ☐ **Yes** ☐ **No**

I wish to be known by my real name in this research project: ☐ **Yes** ☐ **No**

Or, I wish to remain anonymous in this research project: ☐ **Yes** ☐ **No**

Under the responsibility of Masters student James Wilkes and Supervisor Dr. Chris Furgal, all information will be stored under lock and key for a maximum of five years at Trent University in Peterborough, Ontario. After such time, all materials will be destroyed.

My participation in this project is voluntary and I am free to withdraw from the project at any time, before or during an interview, refuse to participate and refuse to answer questions. If I decide to withdraw from the project, any information I have given will be promptly destroyed and will not be included in the project in any way. I understand that my withdrawal will bear no consequences and no judgements or prejudice will be held against me.

There are two copies of the consent form, one of which I may keep for my records.

If I have any questions about the conduct of the research project, I may contact any of the research team members. I may also contact the Trent Research Ethics Board directly (Karen Mauro at (705) 748 1011 ext. 7050, or by e-mail: kmauro@trentu.ca).

Declaration: By signing below, I (*printed name*: ______________________________) agree that I have been fully informed and understand the nature of the project, and agree to participate. Furthermore, I understand that this research project conforms to the principles of the Trent University Research Ethics Board and Aboriginal Education Council.

______________________________ ______________

Signature of Participant Date

______________________________ ______________

Signature of Researcher - Witness Date

By signing below, I authorize the inclusion of my name in the acknowledgements section of the final report.

____

Participant's Authorization

I request a copy of the transcript: ☐ **Yes** ☐ **No**

I request a copy of final written materials: ☐ **Yes** ☐ **No**

Contact Address: ____

____

Email: ____________________

Telephone: ____________________

APPENDIX F: FRAMEWORK INTERVIEW GUIDE

Informant identifiers

What is your current profession(s)?
How long have you held this position(s)?

Environmental management

What is your current focus or involvement in environmental issues?
...do you deal specifically with environmental management issues?

"environmental management"- broad spectrum encompassing various issues, including anything from resource development and pollution to conservation and/or other land issues.

Indigenous communities

Are you currently involved in any way with Indigenous communities in Canada? please explain
What is your experience / history working with Indigenous communities?
How did you come to work on these issues?
(environmental 'management' with/for/within/by Indigenous communities)

Example

Can you tell me about any one of your experiences related to environmental decision-making processes involving an Indigenous community?

Goal?

Based on your example mentioned earlier, what is/was the ultimate goal of the process?
...ideal vs. practical?

Elements

Could you please describe some of the factors that influenced the process?
...facilitators or barriers (strengths or weaknesses)?

From your experience in this area, as well as the factors you mentioned before specific to the example you provided, which do you think are the most important factors, or those that appear time and time again in various 'cases' or circumstances?
...which factors seem to be the most common / critical to these issues?

Steps

Are there a series of necessary or common steps / stages in the decision-making process around environmental management with Indigenous communities to help achieve the goal(s) you mentioned before?

...do certain steps need to be in place first?
...how do these steps or stages relate to one another?
...are there any issues that must be recognized before the process can begin?

Do you see any environmental management processes as distractions to a more productive solution? ... are any current steps counterproductive?

Challenges

What key forces or challenges do you see facing Canada's current system of resource management?
...obstacles?
...support?

Trends

From your perspective, is anything changing in Canada in regards to environmental management processes that have some connection to Indigenous communities? ... please explain.

(i.e. Indigenous decision-making around environmental issues)
... success stories?
...barriers?

Common ground?

What foundational elements do you think are necessary to exist for Indigenous nations and the Canadian government to cooperate more effectively in terms of environmental management?

Indigenous process

Do you think something such as an 'Indigenous environmental process' is possible?

(i.e. environmental decision-making for Indigenous territories, by Indigenous peoples)

In thinking about this research, I've been finding it difficult to imagine an environmental management process that serves Indigenous peoples & communities, which is unhindered by the dominant Canadian system. What do you think?

... and if you think it were possible, does it have to be a purely Indigenous process to be considered 'Indigenous'?

Management or governance?

Were a process to be called 'Indigenous environmental management,' what would that mean to you? What would you expect it to include or be like?

Alternatively...

Were a process to be called 'Indigenous environmental governance,' what would that mean to you?

Final thoughts

In order to learn more about the management or decision-making processes around Indigenous environmental issues, is there anything else that you think I should be aware of that you could share or direct me towards?

APPENDIX G: CASE DOCUMENTS

KI documents

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Christopher M. Reid. (2008). Court of Appeal For Ontario: Notice of Appeal.

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APPENDIX H: CASE STUDY INTERVIEW PARTICIPANTS

Donny Morris is the elected Chief of the Kitchenuhmaykoosib Inninuwug, a role in which he has served continuously since 1995. Morris was raised on the north shore of Big Trout Lake near the present community of KI. For more than 20 years, Morris has taken part in an annual community canoe trip to Fort Severn First Nation on the shore of Hudson Bay. Morris also serves as co-chair of the North-South Partnership for Children. As Chief, Morris was actively engaged with the Ontario government and Platinex Inc. during the 2001-2009 mineral exploration dispute. In March 2008, Morris was sentenced to six months at the Thunder Bay Correctional Centre for refusing to allow Platinex access to KI traditional land near the community. After 68 days, an Ontario Court of Appeal shortened his sentence to time served and Morris returned to the community, where he continues his responsibilities as Chief.

Samuel Mckay is a former KI councilor who served as the community spokesperson during the most critical years of the mineral exploration dispute. Prior to his appointment, Mckay worked as the Health Director in KI. Mckay was elected in 2005 and quickly assumed his responsibility as KI's representative, highlighting the concerns of community members to the Ontario government, Platinex Inc. and the media. In March 2008, Mckay was sentenced to six months, along with Chief Morris and four other KI members, for his refusal to comply with a court order to allow drilling near Big Trout Lake. Upon their release following an Ontario appellate court decision, Mckay returned to KI to finish his term as councilor. Mckay is also involved with the Defenders of Land, a network of communities united in defense of Indigenous lands and Indigenous rights.

Jacob Ostaman is the current Director of the KI Lands and Environment Unit, a community initiative that employs six staff with the support of the KI Council. Ostaman was born within KI territory and spent part of his childhood living on Big Trout Lake's Post Island, a central location of the present community. A residential school survivor, Ostaman began his journalism career in the south but soon returned to his community with a university education and a desire to work for the KI Band. Ostaman has assisted five chiefs in various capacities, including policy creation, media releases and environmental decision-making. As a former KI chief (1995-1998), he served as community spokesperson during the incarceration of the KI leadership in 2008. Ostaman was directly involved during the mineral exploration dispute and he continues to negotiate with representatives of the Ontario government regarding land use near the KI community.

Sarah Jane Mckay is a recognized KI Elder and traditional knowledge holder. She was born in 1936 on the east shore of Post Island. At that time, the community was largely situated on the north shore of Big Trout Lake at the mouth of the Fawn River. Prior to 1959, Mckay and her family lived a traditional lifestyle by the south shore of the lake, near the disputed area of land. During the summer, her family fished and traveled along the river. In winter, they often stayed in one location east of Numeigusabins Lake. In 1959, Mckay and her family moved back to Post Island, the site of the present community. Sarah Jane Mckay is an active member in the community and has participated in several blockades and meetings to prevent mineral exploration at Numeigusabins Lake.

Evelyn Mckay is a KI member and a certified teacher at the community's Aglace Chapman Education Centre, where she has worked since 1989. Mckay was born in KI and raised on Post Island, as well as the south shore of Big Trout Lake. The daughter of Jacob Nanokeesic, Mckay's family trapline was the subject of much debate during the mineral exploration dispute regarding Platinex Inc.'s claims. Due to early negotiations between Nanokeesic and Platinex Inc. in 2000, community hostility was directed at Nanokeesic's family, including Mckay. During community meetings with government representatives, Mckay was an active participant, explaining the importance of the land for her and her family. Mckay continues to use the land of her ancestors and she regularly goes fishing and hunting on the south shore of Big Trout Lake.

Bill Albany is a KI community member, a traditional land user and a self-employed mechanic. He was raised on the north shore of Big Trout Lake, just east of the present community. An avid hunter, trapper and fisherman, Albany has traveled throughout KI territory and beyond. During the mineral exploration dispute, Albany attended several community meetings with government and Platinex officials. He was also involved with the KI Council as a member of the Community Working Group, which was established prior to the incarceration of the KI leadership. With the help of his wife, Albany continues to educate KI youth by practicing traditional activities on the land.

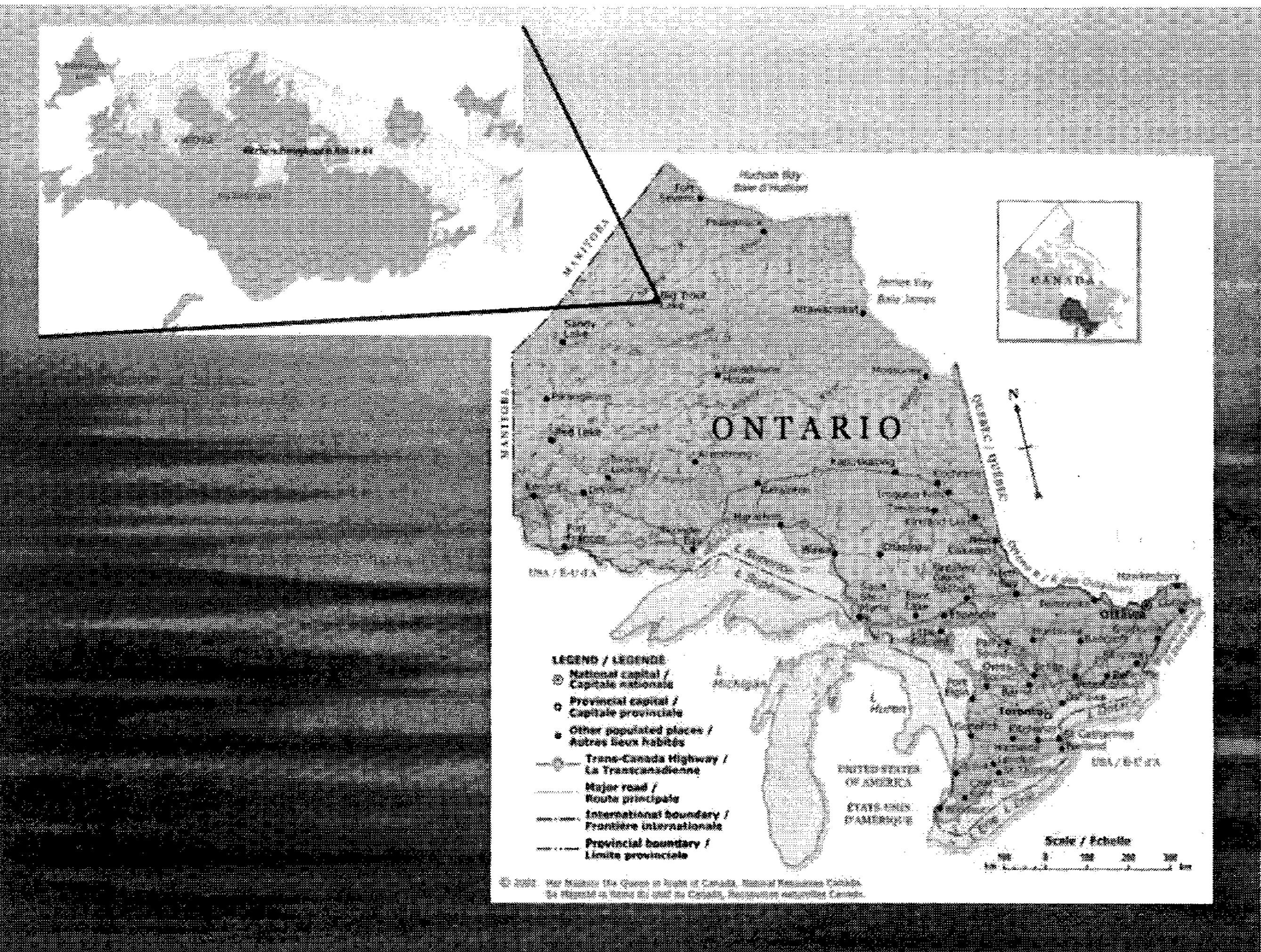
Anna Baggio is the Conservation Land Use Planning Director for CPAWS Wildlands League, an environmental non-governmental organization (NGO) based in Toronto, which advocates for wilderness in the public interest. Baggio has a wealth of experience working with communities regarding protected areas and biological conservation. In her current role, Baggio works closely with First Nations on campaigns regarding land uses in Ontario's globally significant Far North. She currently sits on the Minister's Mining Act Advisory Committee and formerly served as a member of the Far North Advisory Council. Baggio has worked directly with the KI leadership since 2005, providing strategic advice on matters consistent with the mandate of Wildlands League. During the mineral exploration dispute, Baggio supported KI as an advisor and campaigner, issuing press releases on behalf of her organization, attending all court proceedings related to the case, building public support and conducting media outreach.

David Peerla served as the former Mining Coordinator (2003-2006) for the Nishnawbe Aski Nation (NAN), an Aboriginal organization that represents 49 First Nation communities within the territory of Treaty 9 and the Ontario portions of Treaty 5. Peerla is well versed in First Nations' legal and policy matters, mining issues and other land use decisions. During the mineral exploration dispute in KI, Peerla also served as a political advisor (2006-2009) to former NAN Deputy Grand Chief Alvin Fiddler. Peerla continues to work closely with First Nations as a consultant and he serves as an adjunct professor in the Department of Sociology at Lakehead University in Thunder Bay, Ontario. In his own words, Peerla considers himself a "professional campaigner and sometime academic."

David de Launay is an Assistant Deputy Minister with the Ministry of Natural Resources (MNR) in Ontario. With over 15 years of experience in environmental decision-making and First Nations, de Launay has served as the MNR's Director of Aboriginal Policy and Operations, as well as the Director of Lands and Waters. He has worked directly with the KI leadership since 2009, after taking on the Field Services Division and Far North portfolio. As Assistant Deputy Minister, de Launay is responsible for negotiations with the Nishnawbe Aski Nation (NAN) and First Nation tribal councils, as well as the implementation of community land use planning. In September 2010, Minister of Natural Resources Linda Jeffrey acknowledged de Launay and the members of his team for their contributions to Far North legislation and the Far North Land Use Planning Initiative.

Jim Trusler is the President and CEO of Platinex Inc., a junior exploration company specializing in mineral exploration. As a practicing geological engineer, Trusler has been involved with exploratory activities near Big Trout Lake since 1985 while working as the vice president of International Platinum Corp. Trusler has been involved in mineral exploration, including exploration of platinum group elements (PGEs), for more than four decades. In the 1970s, Trusler was a special advisor to the Minister of Natural Resources. As the owner and founder of Platinex Inc. since its inception in 1998, Trusler was directly involved with former and current company vice presidents, Simon Baker and Joanna Perrin, in negotiations with KI and the Ontario government during the dispute. Platinex Inc. currently has eight property holdings, including two properties in Ontario's 'Ring of Fire' region. The company is no longer seeking to explore its former claims and leases near the KI community at Numeigusabins Lake.

APPENDIX I: MAP OF KITCHENUHMAYKOOSIB (BIG TROUT LAKE)



APPENDIX J: CASE STUDY TIMELINE

Key Events in the Big Trout Lake Mineral Exploration Issue[1]

1869: Ontario enacts the *Mining Act* and the 'free entry' system of mineral exploration.

1905: Treaty 9 is signed by First Nations south of Big Trout Lake.

1929: Big Trout Lake First Nation adheres to Treaty 9.

1965–1967: The Ontario Department of Mines and the Geological Survey of Canada conduct regional airborne magnetic surveys of the Big Trout Lake area.

1969: Canadian Nickel Company (Canico) establishes mining claims in the area in 1969.

1997: KI disembarks from the provincially incorporated Nishnawbe Aski Nation (NAN).

1998–2006: Platinex purchases mining claims over the Big Trout Lake Property; the Ministry of Northern Development and Mines (MNDM) fails to consult KI.

May 2000: KI formally files their Treaty Land Entitlement (TLE) claim for additional reserve land pursuant to Treaty 9.

February 7, 2001: KI declares a moratorium on resource extraction.

2004–2005: KI Chief Donny Morris refuses to sign a Memorandum of Understanding (MoU) with Platinex due to the company's failure to honour KI's Development Protocol.

August 30, 2005: KI declares all previous agreements with Platinex to be null and void.

November 2, 2005: KI letter reminds Platinex that KI oppose all exploration activity.

February 10, 2006: MNDM approves the transfer of 81 mining leases from Canadian Nickel Company (Canico) to Platinex on the Property without consulting KI.

February 19, 2006: KI blockade begins.

May 1, 2006: Platinex files a claim against KI for $10 billion in general damages, $1 million in special damages and $500,000 in punitive damages. Platinex also files for an interim injunction against KI's further interference with activities on the Property.

May 31, 2006: KI counter-claims for an interim injunction against Platinex.

July 28, 2006: *KI Decision 1*. Justice Smith grants interim, interim injunction in favour of KI.

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[1] Adapted from the Kitchenuhmaykoosib Inninuwug Litigation Chronology (KI, 2008) and The Canadian Constitutional Duty to Consult Aboriginal Peoples: Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation (University of British Columbia Faculty of Law, n.d.)

March 15, 2007: Ontario Secretariat for Aboriginal Affairs denies KI's TLE claim.

May 1, 2007: *KI Decision 2.* Justice Smith denies KI's request for a further interim injunction. Parties shall implement consultation protocol (CP), timetable, and MoU.

May 9, 2007: KI community members begin walking from Pickle Lake, Ontario to Toronto's Queen`s Park to raise public awareness of KI's struggle.

May 22, 2007: *KI Decision 3.* Justice Smith imposes the Platinex/Ontario CP, timetable and MoU upon all parties and gives Platinex explicit permission to continue its activities.

September 24, 2007: KI community protests at the local Big Trout Lake airport, blocking Platinex access to the exploration Property.

October 25, 2007: KI abandons legal fight with Platinex and Ontario, citing effective bankruptcy. Justice Smith orders KI not to interfere with Platinex's permission to drill.

December 14, 2007: The K-6 are found guilty of contempt.

March 17, 2008: Justice Smith sentences the KI-6 to six months in jail.

May 28, 2008: Ontario Court of Appeal releases the KI-6 and Robert Lovelace.

July 2008: Ontario Premier Dalton McGuinty announces the Far North Initiative.

August 26, 2009: Platinex attempts to land a plane at Numeigusabins Lake. KI community members prevent access to the Big Trout Lake Property once again.

September 21, 2009: Platinex announces its decision to negotiate with Ontario.

October 28, 2009: The Mining Amendment Act is passed.

December 14, 2009: Platinex negotiates a $5 million payout from the MNDMF, in exchange for surrendering its claims and withdrawing its litigation regarding the Big Trout Lake Property.

August 2010: Representatives of the MNR, MAA and MNDMF meet with KI in Big Trout Lake to discuss the Ontario government's proposed land use planning process.

September 23, 2010: The Ontario government passes Bill 191 – the Far North Act.

To date: KI's Majeewin Aaki has not yet been recognized by the Ontario government.

APPENDIX K: CASE STUDY INTERVIEW GUIDE

INTERVIEW GUIDE FOR KI COMMUNITY MEMBERS

Informant identifiers

1) When and where were you born?
...how many years in the community?
2) How many years have you spent fishing and hunting in the area?
3) What is your experience / connection to the mining issue in KI?
...when did you first hear about it? ...affected personally?
...involved in what role / profession?

Worldview

4) What does the land mean to you?
5) Do you think that there is an understanding by the government of the relationship that Kitchenuhmaykoosib people have with the land? What about the understanding of industry? Please explain.
6) Do you believe KI have a responsibility for protecting the traditional territory? If so, does the government or industry acknowledge this responsibility? Please explain.
7) Can you describe for me how you think KI's knowledge and beliefs about the land are being treated so far in this process?
...are they respected &/or valued?
8) Does KI have its own environmental decision-making processes? Please explain. ...processes that reflect KI ways of knowing about the world?

Governance

9) What do you think KIs rights are in this case? Please explain.
...are they being recognized, respected, &/or protected?
10) In your opinion, is the government or industry taking notice of the decisions of KI Chief and Council?
11) How would you describe the relationship between government and KI in this case? Please explain.
12) Can you describe the power relationship in particular?
...who should have the power to make decisions about KI's traditional territory?
...what role do you think KI should play in mining or development decisions?

Participation

13) How is the KI community being involved in issues that affect the traditional territory?
14) Have you tried to get involved? What has been your experience?
...are there barriers that limit KI's ability to impact decisions about the land? ...opportunities?

Extras

15) In trying to learn about the KI and Platinex case, and the relationship between the parties involved, is there anything else that I should know? ...that you would like to add?
If not already mentioned...do you see platinum exploration near BTL as a positive or negative opportunity?

INTERVIEW GUIDE FOR KI DECISION-MAKERS
(KI Chief and the Environment & Lands Director)

Same questions as for KI community members
PLUS additional questions:

Goal

16) In terms of KI's environmental decision-making, what is the ultimate goal for KI?

...ideal or practical

17) Are there any necessary steps to help achieve this goal?

...do certain steps need to be in place first
...are there any issues that must be recognized before the process can begin?

Challenges and Opportunities

18) What key forces do you see limiting KI's environmental decision-making processes?

19) Opportunities for KI?

Common ground?

20) What do you think is necessary for KI and government to cooperate in terms of environmental management?

INTERVIEW GUIDE FOR KI ELDERS

Alternative questions for KI Elders

Informant identifiers

1) 1) When and where were you born?
...how many years in the community?

2) How many years have you spent fishing and hunting in the area?

3) What is your experience / connection to the mining issue in KI?
...affected personally?

4) Could you please describe the relationship between KI people and the land?

5) Is there a word in the language for the *relationship* between people and the land?

6) How did KI make decisions about the land in the past?
...traditional governance prior to the election system, precolonial treaties, etc.
...is there a KI version of the Haudenosaunee two-row, or the Nishnaabe 'dish'

7) Could you tell me a little bit about the 1905 Treaty and what it means today?
...community reaction, interpretations?

...is there anything else that I should know?
...anything you would like to add?

INTERVIEW GUIDE FOR ABORIGINAL / ENVTAL ORGANIZATION REPS

Informant identifiers

1) What is your experience working with Indigenous communities in the context of environmental decision-making?
2) How long have you been involved with KI?
3) What is your experience with the mining issue in KI?
...involved in what role / profession?

Worldview

Skip question #4

5) Do you think there is an understanding by the government of the relationship that Kitchenuhmaykoosib people have with the land? What about the understanding of industry? Please explain.
*6) Do you believe KI's responsibility for protecting the land is being recognized? If so, does the government or industry acknowledge this responsibility? Please explain.
7) Can you describe for me how you think KI's knowledge and beliefs about the land are being treated so far in this process?
...are they respected &/or valued?
*8) Do you have the sense that government environmental management reflects Indigenous worldview or understanding?

Governance

9) What do you think KIs rights are in this case? Please explain.
...are they being recognized, respected, &/or protected?
10) In your opinion, is the government or industry taking notice of the decisions of KI Chief and Council?
11) How would you describe the relationship between government and KI in this case? Please explain.
12) Can you describe the power relationship in particular?
...who should have the power to make decisions about KI's traditional territory?
...what role do you think KI should play in mining or development decisions?

Participation

*13) Do you think that the KI community is being involved in environmental decision-making?
*14) What key forces do you see regarding KI's participation in environmental decision-making processes?
...barriers / opportunities?

Extra

15) In trying to learn about the KI and Platinex case, and the relationship between the parties involved, is there anything else that I should know?

INTERVIEW GUIDE FOR ONTARIO GOVERNMENT REP

Informant identifiers

Please explain your role at the Ministry of …
In what department do you work?
How long have you held this position?
What are your general responsibilities in this capacity?

What is the official role of your department/Ministry in environmental land management or decision-making in the context of issues on or near Ontario First Nations lands?

Do you have experience working with First Nations (or KI specifically) in the context of land management? If yes, please explain.

Worldview

Does your department have a specific 'land ethic or philosophy' upon which it structures its positions and policies? Please explain. (i.e. underlying belief re: relationship between man and the environment)

What is the Ontario government's role in terms of making decisions about the land and the environment?

Is there an understanding by the Ontario government of the relationship that First Nations (or KI specifically) have with the land? Please explain.

What do you think is the relationship between Ontario's current environmental management policy and First Nations' understandings of the land or their relationship to the land?

Governance

How would you describe or characterize the relationship between the Ontario government and Ontario First Nations (or KI specifically) in the context of environmental management?

What rights does a First Nation in Ontario (or KI specifically) have to affect/influence decision-making about their traditional lands? Do you agree with the power FNs have or do not have or how they use that (or not) in decision making on these issues'?

Who do you think should have the power to make decisions about lands in or near First Nation communities in Ontario?

Does the Ontario government keep aware of land management decisions of Ontario First Nations (or KI specifically)? If so, is there recognition of FN decisions, protocols, etc.? Please explain.

Participation

How does your Ministry typically involve First Nations in decision-making about the land?

How is 'consultation' defined according to your department?

How has the Ontario government involved First Nations (or KI specifically) in environmental management decisions? …Are there any barriers or opportunities in this process from your perspective? Please explain.

Extras

What do you think is necessary for the Ontario government and First Nations (or KI specifically) to cooperate in terms of environmental management?

In trying to learn about environmental decision-making in the context of Ontario First Nations and the Province (specifically your department), is there anything else that I should know that we have not discussed?

INTERVIEW GUIDE FOR PLATINEX INC. REP

Identifiers

Please explain your position and role in the company.
How long have you held this position?

What is your experience working with First Nations in regards to mineral development?

Worldview

Does your company have a specific 'land ethic or philosophy' upon which it structures its positions and policies? Please explain. (i.e. underlying belief re: relationship between man and the environment)

What is Platinex's role in terms of making decisions about the land and the environment?

Recognizing that there are often multiple claims to the same plot of land in the case of claims on or near First Nations in Ontario or elsewhere, in your opinion, how can companies like Platinex reconcile their interests with First Nations' claims about their responsibility to protect the land? (if there are any differences in perspectives)

Governance

What role do you think industry plays in mining or development decisions?
...what rights should industry have in the context of deciding on resource projects?

In your opinion, does the resource industry take notice of land management decisions of First Nations?
...what rights do First Nations have? ...what rights should they have?

Who currently has the authority to make decisions about land and resource claims in Ontario? In Ontario's far north?
... do you agree? ...who should have the decision-making authority?

Participation

How do companies like Platinex involve First Nations in decision-making about the land?

Are there barriers and/or opportunities for Platinex to reach agreements with First Nations related to development on or near First Nation lands? ...with the Ontario government?

How is 'consultation' defined according to Platinex?

What efforts are typically put forth in consulting with First Nations communities around land management decisions?

Extras

How would you describe the relationship between Platinex and the Ontario government in the context of environmental decision-making?

How would you describe the relationship between Platinex and the First Nations it works with, in the context of environmental decision-making?

In trying to learn about industry perspectives regarding land management/decision processes on or near First Nation lands in Ontario, is there anything else that I should know that we have not discussed?

APPENDIX L: CASE STUDY INTERVIEW CODING

TREE NODES

Worldview

Paradigm (broad discussion of culture, ways of knowing, knowledge/education and knowledge divide)
Cosmology (including spirituality, the Creator, Creation, God)
Language & terminology (including Indigenous language & Western concepts of 'resource,' 'mgmt.' etc.)
Land ethic (including relationship to land, responsibility to protect land, land identity, etc.)

- Perceived human impact on land

Governance

Rights (including Aboriginal rights, treaty rights, rights infringement, Aboriginal title)

- Right to say 'no' (also code at jurisdiction)
- Rights *and* responsibilities

Government (including government as an institution, ministries, etc.)
Jurisdiction (including authority, power, control, ownership, sovereignty & self-determination)

- Treaty interpretation (including discussions of land surrender versus land sharing)

Law (including courts, case law, jurisprudence, various acts, etc.)

- Mining Act

Local decisions & protocol (including traditional governance, elections, band council policies, etc.)
Power-sharing (including shared jurisdiction, nation-to-nation agreements, coexistence)

Participation

Processes of decision-making (including agreements)

- Co-management
- Consensus approach
- Land use planning
- EA – environmental assessment
- MOU – memorandum of understanding

Consultation & communication (including negotiations between First Nations, government &/or industry)

- Certainty of consultation

Barriers of participation (including obstacles, challenges, etc.)
Facilitators of participation (including opportunities, help, etc.)
Level of community involvement (including KI members' participation)

FREE NODES

Biographical info (including birth, harvesting experience, outsider experience working with FNs, etc.)
Connection to mining issue
Lessons learned (including positive effects of mining issue)
Government – KI relationship (including challenges, past difficulties, etc.)
Industry – FN relationship
Platinex (paragraphs discussing the company specifically)
Ideal decision-making model (reminders for discussion chapter)
Blockades & resistance
Ardoch Algonquins
Lack of FN unity (code at barriers to participation)
Parks & protected areas
Colonialism
Good quotes