Planning with Indigenous Peoples: Meaningful Municipal Consultation and Engagement as a Key Part of Relationship Building

by

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Foreword

This major research portfolio fulfills the requirements of the MES degree. It focuses on an important and emergent area of study: the Duty to Consult and Accommodate as it applies to municipalities in Canada. It takes a critical approach to the questions of legal and ethical responsibilities of municipalities in consultation and engagement with Indigenous communities. It also begins to investigate the process of looking forward toward shifts in practices and policies as they begin to appear on the Canadian political and judicial landscape.

Keywords

Urban Planning; Duty to Consult; Municipal Consultation; Indigenous Planning; Free Prior Informed Consent; UNDRIP; Canada

Glossary of Terms

Aboriginal: The term utilized within legal contexts by the Canadian government and court system to indicate Indian (First Nations), Inuit, Métis, and non-status Indigenous peoples in Canada as defined in Section 35 of the Constitution Act, 1982 (Minister of the Department of Aboriginal Affairs and Northern Development Canada, 2011).

Aboriginal Rights: The collective, inherent *sui generis*[1] rights of First Nations, Inuit, and Métis that flow from continued occupation and use of certain areas since before European contact. This consists of *generic* rights that apply equally to all Aboriginal peoples such as rights to: land (Aboriginal title), subsistence resources and activities; self-governance; ability to practice culture and customs, language, spirituality ("cultural integrity"); and enter into treaties. It also refers to *specific* rights, which are held by an individual group and may be recognized in a treaty or defined through the ruling of a court case (Slattery, 2007).

Aboriginal Title: Aboriginal peoples' inherent communal property rights to their lands and waters that predates colonization by European settlers and is recognized in common law as affirmed in *Delgamuukw* (McNeil, 1997).

Indigenous communities or Indigenous peoples in Canada: Referring to First Nations, Inuit, and Métis peoples in Canada who are members of a specific nation, reserve, or distinct culturally or geographically defined group.

Municipalities: The Municipal Act, 2001 refers to a municipal government as one that oversees a geographic areas Canada whose inhabitants are incorporated. There are upper and lower-tier or single-tier municipalities which include cities, counties, towns, townships, charter townships, villages, and boroughs. Also referred to interchangeably in this document as regional, municipal, or local governments, and municipal corporations.

Settler or Settler-Canadian: A term for a person born or living in Canada who does not identify as being First Nations, Inuit, or Métis, or as a descendant from any of these groups. Some Canadians who came to live in Canada as refugees or whose ancestors were brought to North America during slavery do not necessarily identify with that label (Phung, 2011).

Settler Colonialism: The imperialist establishment of a colony though settlement of foreign populations and development of a distinctive identity and sovereignty that over time replaces Indigenous people, cultures, and places with a settler society.

Treaty Rights: Referring to certain rights of Indigenous groups that are protected by the signing of treaties with settler societies.

Turtle Island: An original name across many Indigenous cultures for the continent currently referred to by some as North America; inclusive of Canada, the United States, and Mexico.

[1] Latin phrase, meaning of its own kind; unique; in a class of its own.

Part One: Literature Review

Contextualizing the Duty to Consult:

Towards an understanding of municipal responsibilities

1. Introduction

1.1 Summary of Topic

The Duty to Consult is a constitutionally-entrenched legal responsibility grounded in the 'Honour of the Crown' as a part of its 'fiduciary duty' towards First Nations, Inuit, and Métis people in Canada (Newman, 2009). The Duty dictates the Crown's responsibility to consult with Indigenous communities when conducting land-use planning processes that have the potential to impact their Aboriginal or treaty rights. As a consultation-based system not requiring consent of consulted communities, the Duty is required to be conducted in good faith and provides that when the actions are assumed to have adverse impacts on a community, accommodations must be made. However, without having to seek consent in land-use and other planning processes this dynamic reflects the ongoing patterns of imbalanced distribution of power where the Crown has the ability to grant itself or the proponent the final say in matters. Because of this blatant disregard of their inherent rights, many Indigenous people and communities have had to rely on direct-action and litigation in order to assert their sovereignty in the face of imposed policies and systems of colonization and integration throughout the process of settlement in Canada.

The current federal government of Canada led by Liberal Prime Minister Justin Trudeau has made repeated promises since the 2015 election to adopt UNDRIP as a "Framework for Reconciliation" based on the recommendations by the Truth and Reconciliation Commission of Canada. One of the ongoing themes and direct recommendations from UNDRIP as written by James Anaya, the Special Rapporteur on the Rights of Indigenous people at the time, is the implementation of Free, Prior, and Informed Consent (FPIC) and the right to Indigenous self-governance in accordance with international human rights standards. In his 2014 report on Canada Anaya dedicated four pages out of his twenty-page findings to the governmental consultation practices and the Duty to Consult and Accommodate (DTCA) in particular. Anaya found that the DTCA process created "an unnecessarily adversarial framework of opposing interests rather than facilitating the common creation of mutually beneficial development plans" (Anaya, 2014).

The delegation of responsibility to fulfill of Duty to Consult with Indigenous communities in Canada and accommodate their interests rests squarely on the Crown, who the Supreme Court defines as the federal and provincial governments. Without clear provincial or judicial directives of what their legal responsibilities are in terms of consultation and engagement with Indigenous communities, it is important that municipal governments take an active role in fulfilling their ethical responsibilities and putting reconciliation into practice. Though they are not the Crown, municipalities are directly involved in developing and affecting policy and land-use planning, and make decisions that directly affect Indigenous communities. Municipalities currently do not have any legal responsibilities to initiate consultation or engagement practices unless delegated by the Crown to fulfill the procedural aspects of the Duty.

In this literature review I seek to establish an understanding of the basis of the Duty to Consult and Accommodate and how it applies to municipalities. I take a brief look at the constitutional and legal context of the Duty and how it is entwined with the founding of

Canada itself. In this document I have tried to include pertinent information in order to build a comprehensive understanding. For all of the important information that is laid out in this document that looks at how the Duty to Consult and Indigenous-Canadian relations are tied in to the entire history of Canada though, much is left out. Limited by time, space, and scope, it admittedly just scratches the surface. Entire dissertations could be written on any aspect of this literature review and many have.

The purpose of this document is to build a foundation in order to examine the following research questions within the context of a report as part of my Major Research Portfolio entitled 'Planning with Indigenous Peoples: Meaningful Municipal Consultation and Engagement as a Key Part of Relationship Building':

- At the local municipal level in Ontario, what are current understandings about the Duty to Consult and Accommodate and its role in planning?

- What responsibilities do municipalities and municipal planners have in the Duty to Consult and Accommodate i) from a legal standpoint, ii) from an ethical and moral standpoint?

- What might the processes and results look like if municipalities in Ontario took the initiative to build strong institutional relationships with Indigenous communities, and engage in respectful, culturally sensitive and aware consultation practices, and ongoing collaboration in land use planning processes?

I will begin by looking backwards into our collective history as it applies to the subject. Starting with the early formations of the contractual relationships between the Crown and Indigenous nations in Canada, and how those are translated to constitutional and policy practices. Next my review moves into the judicial context of the Duty, including a brief aggregation of some of the precedent-setting court cases that have shaped the legal aspects of the duty. The review will then examine the body of work surrounding the procedural aspects as well as division of responsibilities surrounding the Crown's Duty to Consult and Accommodate as it exists currently. Finally, in this paper I will look to emerging municipal-Indigenous consultation practices and engagement processes with a particular emphasis on municipal land use planning practices in Ontario.

The scope of the Major Research Portfolio of which this literature review is a component, is focused on the Province of Ontario with particular attention paid to southern Ontario. The literature explored in this document focuses more broadly Canada-wide in order to gain greater comprehension of the federal involvement in the Duty to Consult as the responsibility to uphold the honour of the Crown is two-fold: on a federal level by the federal government, as well as on a provincial level by the appropriate provincial or territorial government. There are also procedural responsibilities that can be delegated to a third-party tribunal, which could be a municipality, as will be explored throughout this document. As the Canadian courts are still in the process of defining the legal responsibilities of municipalities, the overall intention of this project is to explore the legal as well as ethical responsibilities of municipal corporations to consult with and accommodate the needs and interests of First Nations, Inuit, and Métis communities.

Because this topic is still in the process of emerging in the public sphere and crystalizing in the courts, the academic literature pertaining to the Duty to Consult in the municipal context is also still emerging. Many of the documents included in this review are recent reports written by practitioners from different disciplines. This includes information produced by band and hereditary councils, planners, lawyers, court case rulings, and graduate theses and dissertations.

My research findings affirm and expand my understanding of the great discrepancies between the rights and access that non-Indigenous Canadians are afforded in representation, consideration, and participation in municipal processes and policies that Indigenous peoples in Canada have not experienced historically and ongoing. The background research that I have collected, as well as information that interviewees have shared has highlighted that Indigenous peoples in Canada and their knowledges have been excluded from municipal planning processes, structures, and decision-making almost entirely up until very recently. I present collected information and some of my own ideas alongside the diverse expertise that was offered by participants in interviews, to envision and analyze what shifts need to happen moving forward and remedying these marginalizing policies and practices.

Current trends show that some municipalities are starting to make early steps to rectify these exclusionary policies on a case-by-case basis. In terms of creating changes in practices that actually affect Indigenous peoples and communities' representation and involvement in municipal practices though, it is still early days. In my research portfolio I attempt to address those gaps and injustices in examining current and past practices of Canadian municipalities as of October 2017.

1.2 Positioning the Researcher and the Research

I am an Ashkenazi, cis woman, and a settler born in Toronto. Firmly grounded in my culture as part of the Jewish diaspora and my responsibilities as a Canadian, my motivation behind engaging in research that involves Indigenous peoples and settler responsibilities is based in a reclaimed, contemporary, social justice interpretation of Tikkun Olam (עולם תיקון, healing the world, betterment of society). It stems two-fold from: i) my identity as being of a culture whose ancestors resisted and survived racism and genocide; and ii) my responsibility as a non-Indigenous person living in Canada, to uphold the treaties and act in solidarity with the peoples of Turtle Island who have cared for and come from the lands on which I live, from which I benefit, and that I love as the only home that I've known. In particular the Mississauga Anishinaabeg Nation, Haudenosaunee Confederacy, and Huron-Wendat Nation, on whose traditional territories I have grown up and lived much of my life.

I recognize that the way that literature is produced, edited, positioned, and collected is always vulnerable to my own biases. I strive towards becoming continually more aware of where my tacit biases exist as well as critically examining the academy's biases, assumptions, and preferencing of certain information and voices and to hold that at front of mind throughout the research process and beyond. My research methodology is guided by a framework based in Critical Theory. There has been no specific racial or gendered analysis

applied to this review but there has been an overt effort to seek out Indigenous perspectives. I also recognize that my own research paradigm is critical of colonialism and attempt to present factual and balanced assessment through that lens.

This review is a preliminary and very broad sweep to examine what is being written about consultation with Indigenous peoples. Though all of the material presented may not be representative of my opinions, I believe that establishing a fulsome understanding of the current and historical colonial context is important to better assess the Duty to Consult and Accommodate and envision how it may change and move forward.

2. Historical Context of the Duty to Consult and Accommodate

In order to better understand the current context of the Duty to Consult and Accommodate in Canada (also referred to as the DTCA, the Duty to Consult, or the Duty throughout this document) and to try to anticipate its potential future directions, the first examination must be to look at its history. The Duty has been shaped by the judicial and constitutional boundaries as well as the initial Indigenous-Crown relationships and agreements in which it is based. Since early days of settlement, European colonialists who travelled to Turtle Island have been defining and negotiating their relationships with the many nations and cultures whose territory they found themselves in and have been continuing to attempt to define that relationship to both that land and those peoples ever since (Corntassel, 2008; Lavallee & Poole, 2010).

The following events explore pointe along a timeline of the Crown's processes of establishing "sovereignty" over the people and lands of Turtle Island. This includes the mechanisms that have been utilized in attempts to justify and legitimize the colonial assertion of control and the responsibilities that have been designated within these Canadian systems.

2.1. The Treaties

Treaties have always existed between Indigenous nations here on Turtle Island beginning long before colonial settlement here and they continue to provide a framework for relationships between nations (Gunn, 2007; Simpson, 2008). Indigenous scholars such as Simpson (2008) write and speak about pre-colonial Anishnaabeg treaties with other Indigenous nations and how they continue to be upheld by the practicing of Indigenous diplomacies and by shared ethics including peace, respect, justice, reciprocity, and accountability. Treatied relationships were and continue to be political partnerships. They indicate shared rights and responsibilities to uphold the agreements based in mutually acknowledged and respected worldviews.

The tradition of treaty-making continued when European settlers first arrived in Indigenous territories and made their home there. The historical relationship between Indigenous communities and the Dutch, French, and now British Crown in Canada is based in the oral and written covenants that were established for a wide variety of reasons and with a diversity of intentions. Some of the basis of treaties included: trade, establishing relationships, wartime allegiances, and also the colonial settlement of land (Slattery, 2000; Miller, 2009).

In his book, *Compact, Contract, Covenant* (2009), Miller explores what being a treaty partner means and how we have moved through different phases of treaty-making in Canada since Europeans have arrived on the scene and decided to stay. European settler colonists' approaches to relationship-building and upholding responsibilities became very clearly epistemologically and axiologically divergent from Indigenous approaches right from the start of our treaty relationship.

Beginning with the wampum belts and early Indigenous-settler treaties there were very different ideas about the dynamic of the relationship. In the creation of Kaswentha[2] (also known as the Two Row Wampum treaty) the Dutch sought to establish a relationship of paternalism. Upon making this treaty agreement the Haudenosaunee Confederacy told the Dutch they were not interested in the Dutch's proposal of signing as father and child but as equals (Keefer, 2014). This intention was reflected in the wording of the oral commitment and in the design of the wampum representation of Kaswenhta. Keefer (2014) writes that according to Kanien'kehá:ka (Mohawk) historian Ray Fadden, the Haudenosaunee rejected the Dutch's suggestion of paternalism and instead proposed a different view:

"We will not be like Father and Son, but like Brothers. [Our treaties] symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian People, their laws, their customs, and their ways. The other, a ship, will be for the white people and their laws, their customs, and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will make compulsory laws nor interfere in the internal affairs of the other. Neither of us will try to steer the other's vessel" (2014).

The Two Row Wampum is represented by three white rows separated by two purple rows, made of lines of beads (McGregor, 2004; Longboat, 2011). McGregor (2004) and Longboat (2011) explain that the purple rows represent two vessels traveling down the river of life, which is represented by the white beads. One purple row represents a canoe (the Haudenosaunee) and the other a sailboat (the Dutch). They travel side-by-side, never interfering with each other's course but there to help each other if needed. Each white row represents peace, respect and friendship (Turner, 2004; Longboat, 2011). This treaty helps guide the relationship between Indigenous peoples and settlers and as we continue to be bound to this covenant it maintains its relevance in helping us navigate our roles in relation to each other.

[2] Kaswentha (or Guswenta) means " It brightens our minds" in Kanien'kéha (the Mohawk language) as taught to me by Professor Ronronhiakewen Dan Longboat on multiple occasions at Trent University during the period of 2011-2013.

Haudenosaunee knowledge-keepers and traditional teachers remind us that this treaty is said to last as long as the grass is green, as long as the waters flow, and as long as the sun rises in the east and sets in the west (Longboat, 2011; Parmenter, 2013; Keefer, 2014).

The early wampum set the stage for right relationship, one of mutual respect and honour where both parties were given the opportunity to thrive but neither at the others' dominion or expense. They provided the foundation for what had the potential to be a peaceful and sustainable relationship based in friendship, peace, and respect (Keefer, 2014). One can't help but wonder what Canada might look like today if the newcomers had upheld our treaty agreements and responsibilities and used them as the ideological foundation for the nation they established, or what the future could look like if current Canadian leadership and citizens act now to pick up those responsibilities. After the Dutch the Kaswentha then continued in different iterations including the Silver Covenant Chain wampum at the Treaty of Niagara in 1764 after the British defeated the French (Parmenter, 2013). This began different phases of treaties written by the settler government representatives including the Peace and Friendship Treaties, Pre-Confederation and Upper Canada treaties, the numbered treaties, and the modern treaties of the past century (Pratt, 2004).

There are many written treaties that were contested historically and continue to be ongoing. Some have been brought to the Canadian court system in order to have their validity, integrity, and legality examined. In 1997, *Delgamuukw v. British Columbia* recognized oral history in the courts and this legitimized the recognition of treaties as being made up of both written and oral components. The courts have maintained that treaties are sacred agreements as they represent the "exchange of solemn promise", and should be interpreted in a manner that "maintains the integrity of the Crown" (Lawrence & Macklem, 2000, p. 257).

Former Saskatchewan Treaty Commissioner (1997-2007) and judge, David Arnot (2009) explains that by many accounts, some written treaties have been signed under questionable circumstances. Accounts of agreements entered under elements of duress, spoken language barriers, illiteracy, changes made after signing, and intentional subterfuge and duplicity have been concerns and grievances expressed by Indigenous communities and historians. Lack of access to land and territories, the drop of fur prices, rampant disease, and the commercial slaughter of the buffalo, among other environmental conditions also led to nations being driven to make decisions based by dire circumstances (Arnot, 2009).

Arnot (2009) writes about the opportunities for renewed treaty relationships as a potential unifying force and a framework for creating space for First Nation, Métis, and Inuit leadership in their rightful place in roles of leadership within Canadian state. In response to the Royal Commission on Aboriginal Peoples (1996) the Ministry of Indians and Northern Affairs released a document entitled *Gathering Strength: Canada's Aboriginal Action Plan* (1998). This document states an intention to renew the relationship that binds Canada and many Indigenous nations and outline the role that they believe treaties play in that:
"The treaties between the Crown and First Nations are the basic building blocks in the creation of our country… They impose serious mutual obligations and go to the heart of how the parties wanted to live together. The federal government believes that treaties-both

historical and modern-and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people" (p. 6).

"We are all treaty people" is an often-heard phrase these days and one made widely recognized by Arnot. Each new person who touches down on the soil here enters into a covenant with the original peoples of this place where we have arrived and both inherits the benefits of living in this place and takes on the responsibilities that comes with upholding our part of the treaty partnership.

2.2 The Honour of the Crown

The Duty to Consult and Accommodate is grounded in the Honour of the Crown (HOTC). The Duty is traced through to the doctrine known as the HOTC back to its inherited British tradition, an influence that British imperialism had on its colonial offspring (Slattery, 2005). In Britain, the HOTHC meant individuals would swear allegiance to the Crown, which was an actual person. In the Canadian context, the Crown represents a principle connected to ideals and is represented by the federal and provincial governments of Canada (Arnot, 2010). Of the HOTC, Arnot (2010, p. 6) describes it as traditionally being "absolutely central in the historic relationship between sovereign and subject". He writes that the HOTC in Canada ideologically represents the upholding of justice beyond politics and fundamental human rights. It is meant to frame the fulfillment of the treaties' obligations as well as interpretation of legislation, and guide the Crown's responsibilities in a conciliatory way (Valverde, 2011).

In the precedent-setting Supreme Court Case *Haida Nation v. British Columbia (Minister of Forests)* (2004), Chief Justice McLaughlin clearly established that the Duty to Consult is grounded in the Honour of the Crown (Valverde, 2011). In the Canadian interpretation, the honour of the crown represents the fiduciary duty that the Crown (consisting of the federal and provincial governments) has to Aboriginal peoples in Canada, based in the British Assertion of sovereignty (Johnson, and Stoll, 2015). In his doctoral dissertation Glass (2015) breaks down the discursive legal elements of the Duty to Consult to find that the DTCA doctrine is based in extra-legal presumptions. He finds that settler treaty making was conducted in ways that were counter to Indigenous diplomacies and social orders. In his findings, he argues that normative revisions to the Duty to Consult are required to more appropriately reflect the language and legitimacy of intersocietal Indigenous and Canadian legal orders.

2.3 *The Royal Proclamation of 1763*

In 1763, the British Crown sought to assert its power over the French colonialists and in doing so developed The Royal Proclamation and the subsequent Treaty of Niagara, 1764 (Silver Covenant Chain wampum). This followed Britain's "acquisition" of French-claimed territories on Turtle Island (North America) after the French and Indian/Seven Years War (Flanagan, Alcantara, & Le Dressay, 2010). The proclamation was the British Crown's assertion of its "sovereignty" in North America, seeking to establish itself as ruling government by assuming jurisdiction over land use (Fraser & Viswanathan, 2013).

The Royal Proclamation represents some of the earliest forms of land use planning, defining land and resource use, Indigenous interests, and where European settlement was allowed (Dorries, 2012, Fraser & Viswanathan, 2013). Fraser and Viswanathan point out that the proclamation was carried out with no known attempt at consultation or negotiation regarding property rights and territories (2013). The Crown utilized lands that it had claimed to establish the reserve system for Indigenous people, a system that continues to this day. Borrows (1994) points out that it did so though Indigenous sovereignty, land-based laws, and territorial rights were already in practice.

It also set the stage for how lands and resources would be divided among settlers and Indigenous peoples, creating a framework for Indigenous access to territories and assertion of rights in the new colonial context. In 1987, Slattery looked at how The Royal Proclamation made the distinction to identify "Indian" lands and to restrict European settlement and land use. He found that the tone and wording of the proclamation matched the complex nature of the relationship between the Crown and Indigenous peoples in North America. According to Borrows (1994), the Royal Proclamation was written in reflected a spirit of collaboration and it succeeded in creating protections for Aboriginal rights and interests and has played a central role in affirming Aboriginal and treaty rights ever since. Simultaneously, those protections were granted by the Crown's assertion of British sovereignty over Indigenous lands, a central theme of the proclamation. Slattery addresses the contradictory and complex result: "The overall effect is to affirm both the powers and the attendant responsibilities of the Crown relative to Aboriginal nations, as quasi-sovereign entities living under the Crown's protection" (2002, p. 272).

The boundaries of inclusion and exclusion from rights and title have been determined by colonial systems since early beginnings of settlement by Europeans. That means that ownership of lands that were transformed into "Crown Land" by the Royal Proclamation are assessed by British legal metrics of justification such as the doctrine of *terra nullius,* conquest, and cession by treaty. The legitimacy of the Crown's right to title continues to be contested by many.

Based in upon the assertions of the proclamation, the Indian Act also now governs the how reserves and bands can operate in addition to administering "Indian" status to Indigenous peoples who meet the definition. It also allocates and controls resources for healthcare, education, governance, land and resource use and more on reserves, implemented through the band council structure.

The Royal Proclamation of 1763 is widely acknowledged as being one of the pivotal steps in establishing the nature of the relationship between the Indigenous peoples and Crown (later Canada) according to Cotes and Newman (2014). In the preface of their report on the *Tsilhqot'in* decision, reflecting 250 years after the proclamation, they opine that the relationship has not been fulfilled in the spirit in which the Royal Proclamation was written:
"The result has been that the status of many Aboriginal people in Canada remains a stain on the national conscience" (2014).

2.4. Section 91 & 92 of the *Constitution Act (British North America Act), 1867*

In a presentation to her colleagues at the Annual Conference of the Canadian Political Science Association, Dr. Kiera L. Ladner started off with a joke tailor-made for her crowd of Canadian political scientists: "A French national, a Brit, and a Canadian were asked to write an essay about an elephant: the French national wrote about the culinary uses of the elephant, the Brit wrote about the elephant and imperialism, and the Canadian wrote a paper entitled, "Elephant: Federal or Provincial Responsibility?" (2005, p. 1).

The Canadian government celebrated the 150th anniversary of Canadian federalism this year, established through the *Constitution Act (British North America Act), 1867*. In its creation, the *British North America Act of 1867* established the system of Canadian federalism within the framework of British constitutional law. It served to appoint a federal dominion and define the government of Canada. That included dividing newly self-appointed powers between the federal government and the provinces (Slattery, 1992). The jurisdictional division of responsibilities between the federal and provincial governments also has served to direct the Canadian government's relationship with Indigenous peoples.

Some of the responsibilities that were delegated in Section 91 and 92 of the *Constitution Act, 1867* also particularly effected and intersected with Indigenous peoples' rights, livelihoods, cultural practices, health and wellbeing, traditional governance structures and constitutions, access to traditional food, medicine, and water sources, and general freedoms (Borrows, 1994).

The federal government of Canada was granted responsibility for (among other things):

- Indians and land reserved for the Indians (s. 24)
- Matters related to bodies of water including the seas and Great Lakes such as fisheries (s. 12), coastal boundaries and ferries between provinces (s. 13)

The provincial (and now territorial) governments were designated such jurisdictions as:

- Management and sale of public provincial lands and timber (s. 5)
- Organizing and setting up municipal governments (s. 8)
- Civil and property rights (s. 13)
- Non-renewable natural resources, forestry resources, and electrical resources (s. 92 A)

The system of Canadian federalism has been particularly complex for the Canadian governments' dealings with Indigenous peoples. The division of jurisdiction seemingly provides no shortage of intricacies including potential for the offloading of responsibilities and opportunities for matters that arise to be made protracted by the jurisdictional crisscrossing (Ladner, 2009).

"In the infamous Section 91 of the BNA Act, which sets out the long list of federal responsibilities, Subsection 24 lists 'Indians and land reserved for Indians.' That's it. That's where the whole ugly weight of colonialism is compressed, the black hole that devoured our

land and liberty, where the Canadian state claims the privilege of exercising 100 per cent control over Aboriginal and treaty land and Indigenous peoples." (Manuel & Derrickson, 2017. Chapter 3).

2.5 Section 35 of the *Constitution Act, 1982*

In 1982, the power to amend Canada's Constitution was repatriated from Britain and renamed the *Constitution Act 1982*. Section 35 of the *Constitution Act, 1982* has been an integral part of recognizing and affirming inherent Aboriginal and treaty rights in the Canadian Courts and entrenching them in constitutional law (McNeil, 2005).

Prior to the reformation of the Constitution Act in 1982, Aboriginal Rights were derived from common law and therefore parliament was able to override treaty rights (Slattery, 1992; Slattery, 2000). The courts interpreted a narrow and specific definition of Aboriginal rights and extinguishment in *R. v. Sparrow* (1990) and also emphasized reconciliation as a central intention of Section 35 (Sossin, 2010). In Ontario, the *Mining Act* (1990), the *Clean Energy Act* (2006), the *Endangered Species Act* (2007), the *Provincial Parks and Conservation Reserves Act* (2010), and the *Far North Act* (2010) are some of the related provincial land use planning legislation which cites Section 35 of the *Constitution Act, 1982* (Viswanathan, 2013). Viswanathan writes that in acknowledging this, those acts must respect and adhere to the Aboriginal and treaty rights outlined in Section 35. This has not necessarily been the case in practice up until fairly recently and ongoing in some cases.
Section 35 of the *Constitution Act, 1982* provides that:

- "(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

However, claiming Aboriginal rights and title has historically been a difficult and prohibitive process for certain individuals and groups who are Indigenous but do not fit into the judiciary's definition of Registered Indians (also referred to as Status Indians). There has also been gendered discrimination in defining who entitled to assert their inherent rights as Aboriginal peoples and access their material benefits.

Up until the rulings from *Daniels v. Canada (Indian Affairs and Northern Development)* in 2016, Métis and non-status Indians were also excluded from these rights. It remains at this point that Métis and non-Status Indians are still excluded from the option to register under the *Indian Act.*

Another example of exclusion of Indigenous sub-groups from accessing their rights are historically nomadic cultures and communities. Burke (2000) examines nomadic

communities and Indigenous cultures in Canada who have traditionally lived in seasonal camps and how they are excluded by a "gap" in the Doctrine of Aboriginal Title. These groups had to relinquish their cultural practices and be confined to a specific site in order to access their rights and title. The findings from *Delgamuukw* (1997) can be exclusionary to groups who are not claiming site-specific Aboriginal Title (Burke, 2000).

The *Indian Act* has been directed by Canadian courts and parliament to broaden its definition to become more inclusionary through such actions as Bill C-31 (1985), Bill C-3 (2011), *Daniels v. Canada* (2016), and most recently *Gehl v. Canada (Attorney General)* (2017). These changes have created a larger umbrella for who is protected by Section 35 to provide better protection and inclusion for men and women equally, Métis, and non-status Indians.

For those who are working within the realm of Indigenous sovereignty, self-governance, repatriation of land, and resurgence of cultures, there is a tension that exists between utilizing the rights granted through Section 35 as leverage for their nations and dismissal of the sovereignty asserted by the Crown in the first place. Ladner quotes Borrows' assertion of such in his book *Recovering Canada: The resurgence of indigenous law* (2002, p. 113), stating that:

> *"A faithful application of the rule of law to the Crown's assertion of title [and, thus, sovereignty] throughout Canada would suggest that Aboriginal peoples possess the very right claimed by the Crown".*

Despite political support for Indigenous self-governance by the Canadian governments and courts in theory, the actual legal and political systems are slow to implement procedural support for that shift (Borrows, 1998). There has not been adequate space made in Canadian systems for either functional integration of the Canadian constitutional processes into Indigenous systems of governance and law, or the inverse, to occur in parallel.

2.6: The *Truth and Reconciliation Commission: Calls to Action* & the *United Nations Declaration on the Rights of Indigenous Peoples*

In 2009, Honourable Justice Murray Sinclair was appointed the Chair of Canada's Indian Residential Schools Truth and Reconciliation Commission (TRC). After a process of travelling all over the country with other commissioners and witnesses, the TRC culminated in the creation of multiple reports on their findings. These were released alongside a document titled *The Truth and Reconciliation Commission: Calls to Action*. The 94 Calls to Action were categorized under two different themes: Legacy and Reconciliation. The Calls to Action were directed towards specific sectors and institutions for implementation to begin to "redress the legacy of residential schools and advance the process of Canadian reconciliation" (Truth and Reconciliation Commission of Canada, 2015).

The *Calls to Action* addresses public and private institutions from many different sectors, working to unearth the roots of systemic racism and oppression that justified the creation of Indian Residential Schools and that have never been systematically identified and

corrected by public and private structures throughout Canada. One of the pervasive themes throughout many of the Calls was to adopt (in both theory and practice) the *United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP, 2008). In the section 'Canadian Governments and the United Nations Declaration on the Rights of Indigenous People', Call to Action number 43 reads: "We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation".

One of the central themes that is woven throughout the layered affirmation, consideration, and recognition of international Indigenous rights in the UNDRIP report, is the right to free, prior, and informed consent (FPIC). It states that adherence to FPIC is owed to Indigenous people by state governments in many situations, such as before any potential removal from lands (Article 10); with respect to cultural, intellectual, religious and spiritual property (Article 11.2); and in good faith, "before adopting and implementing legislative or administrative measures that may affect them" (Article 19); before storage or disposal of hazardous materials on traditional sites or territories (Article 29.2); use of their lands for military activities; (Article 30.2); and in particular to my project: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (Article 32.2).

Within the Canadian context, the Duty to Consult and Accommodate is the closest legally-enforced responsibility to FPIC that the Crown has to engage with Indigenous communities in situations of potential or perceived infringement on rights or impact by proposed public or private projects (Boutillier, 2017). The context of the specific situation that triggers the test determines the appropriate level of consultation and accommodation required. The level of involvement in consultation is to be matched with size of the project and intensity of potential impacts.

The edges surrounding the right to FPIC are substantially less blurry. Boutillier (2017) examines the rights of Indigenous peoples to FPIC as it has appeared in in international law and jurisprudence as well as state policies. She then places the FPIC within a Canadian political context and writes about how it is fundamentally compatible with Canadian constitutional law particularly concerning the standards of the duty to consult, limitations of rights, and whether FPIC equates to veto power.

Indigenous peoples in Canada's right to FPIC is recognized in international law and has been promised and promoted by the Federal government in Canada but still is not being implemented by any level of Canadian government. (McLeod, Viswanathan, Whitelaw, Macbeth, King, McCarthy, & Alexiuk, 2015; Sadiq, 2017). Sadiq's research takes the Provincial Government of Manitoba as her focus area and provides procedural recommendations for implementation while exploring key operational challenges. She tackles hesitations expressed by government in implementing consent-based processes. She addresses questions around the transition process and procedural function ongoing as well

as the fear that with Indigenous communities having the power to veto projects or dictate process, all land use development might grind to a halt.

In terms of moving closer towards actual practical implementation of UNDRIP as a whole or the stand alone recommendation of FPIC, most progression has been happening in the legal realm. Lorraine Land from Olthuis, Kleer, and Townshend LLP (a lawyer whose firm specializes in Aboriginal Law and who has been working directly in the courts on issues surrounding the Duty to Consult) addresses the gap between adoption of the concept of FPIC and actually implementing it (Land, 2016). Land addresses a roadblock in compliance that is the incompatibility with Canadian constitutional law in its current practice. Upping the minimum requirement from our current consultation-based systems to consent-based processes and veto power in the hands of Indigenous communities could potentially slow down processes of development, urbanization, and resource extraction, but that is not an objectively negative result.

Bruce McIvor of First Nations Law writes in favour of moving towards a process in which Indigenous communities have that veto-power over projects within their territories: "No one suggests these requirements are not onerous. They should be, considering what is at stake—the overriding of constitutionally protected rights, a protection intended to reconcile newcomers' interests with those of the Indigenous peoples of Canada. Of course, there is another path to reconciliation—it is based on consent" (2014).

In reviewing the foundational documents and doctrines that were part of transitioning Canada from being a colony to becoming a state, the recognition that Canadian nationhood and government are inextricable from Canadians' relationships to Indigenous land and nations is affirmed. The assertion of the Canadian state on Turtle Island was justified through its constitution and implemented through the process of land use planning and establishing settler-colonies. In the next section I will examine parts of the Canadian legal framework that has justified land use planning on Indigenous territories and the process by which it is accepted under Canadian law.

3. Legal Context of the Duty to Consult and Accommodate

This section outlines some of the most directly influential legislation and court cases that set out the judicial, legal, and constitutional framework of the Duty to Consult and Accommodate in Canada. The legal protections create a perimeter around the rights and interests of First Nations, Inuit, and Métis people in Canada that can be simultaneously protective and limiting. There is dissonance between the protections provided by those legally-recognized assertions of inherent rights based in the Crown's own constitution and the struggles of Indigenous nations to practice and assert their own legal and constitutional frameworks in their own territories and homelands that pre-date colonization.

The momentum of recognition in the courts is important but as Cherokee scholar Jeff Corntassel points out: "The rights discourse can only take Indigenous people so far" (2008, p. 107). That is, even when some legal protections are provided by the enforcement of

Aboriginal and Treaty Rights, those laws still exists within a colonial ideology based on the British judicial system and fail to recognize and honour Indigenous legal frameworks and systems.

Ladner (2006) explains that in certain cases such as areas in the Mi'kmak territories of Mi'kma'ki, the Crown has reached beyond its own self-designated metrics of legitimation of jurisdiction (by discovery via *Terra nullius,* cession, conquest) to transform Indigenous territories into Crown land. The discordant legal foundations of these assertions supports the understanding that Indigenous constitutional orders and legal systems have never ceased to exist (Gunn, 2007; Ladner, 2006). The debates of jurisdiction are unclear from a Canadian standpoint and extend beyond the division of responsibility between the federal and provincial governments. Still Canadian delegation of jurisdiction leaves little to no room for Indigenous self-determination or self-governance (Denis, 1997). The *sui generis* rights of Aboriginal peoples in Canada and responsibilities of the Canadian Crown that Canadian courts and parliaments have defined and redefined provide some protections for Aboriginal and treaty rights. They are still limited and paternalistic in their being derived from British judicial and parliamentary systems though, without recognition and implementation of existing Indigenous legal frameworks (Gunn, 2007).

Dene author and academic Glen Coulthard writes of his concerns and resistance to the "Politics of Recognition" in his Ph.D dissertation (2007) which he later expanded into his book: *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition (2014).* Coulthard challenges the language around the ongoing public "recognition" by colonial governments of Indigenous rights to land and self-governance and of cultural distinctiveness in efforts towards reconciliation. He explores instead the politics of self-recognition, anti-colonial empowerment, and decolonization. The ideologies and actions Coulthard writes about are reflected in other Indigenous and non-indigenous grassroots movements in support of Indigenous nationalism and resistance to state control.

3.1 Legal Precedents That Help Shape the Duty

For the majority of Canada's history there has been ongoing lack of recognition or protection of First Nations, Inuit and Métis' fundamental human rights and freedoms, let alone their inherent Aboriginal rights to land and sovereignty. Since the founding of the country, Indigenous peoples in Canada have suffered collectively and individually from official policies enforcing and resulting in "government interference" with: Indigenous access to land, freedom to practice and pass on cultures and languages intergenerationally, criminalization of ceremonies and economic pursuits, freedom to practice Indigenous forms of governance, access and practice traditional ways of being on the land, access to traditional food sources and practices, religious freedom, the forced taking of generations of Indigenous children and enrolment in Indian Residential Schools, and denial of due process and equal treatment (Borrows, 2001, p. 26).

Since being entrenched in constitutional law due to Section 35(1), the courts have been able to tease out the fine details on who owes the duty, who can enact it, under what

circumstances, and what does the process look like. The nature of the Duty must be flexible in order to meet the specific cultures, needs and circumstances of individual Nations in varying situations. Sossin asks the salient questions: "Is the Duty a step forward, backwards, or sideways? Will a new process for Crown-aboriginal dialogue lead to new thinking and new possibilities for reconciliation?" (2010, p.97).

The following section is a very brief overview of some of those cases that have set out the parameters and delegated the responsibilities of the Duty. These rulings and their dissents have also provided important affirmation of the inherent and constitutional rights of Aboriginal peoples in Canada. There are many other court cases that easily could be included in this list that have indirectly or directly affected the current legal context, it is by no means comprehensive. Those included were chosen based on their direct impact on the shaping of the Duty to Consult and Accommodate and the courts' delegation of responsibility, affirmation, and upholding of Aboriginal and treaty rights, as well as upholding of the Crown's fiduciary duty to Indigenous nations in Canada. As municipal responsibilities are yet to be determined in the upper courts, the cases pertain to the federal, and provincial and territorial governments.

3.1.1 R v. Sparrow, 1990

R v. Sparrow was an important case that questioned how aboriginal rights are recognized under section 35(1) of the *Constitution Act, 1982* and established the test for their extinguishment. This case dealt with a member of the Musqueam Nation who was charged for fishing with a larger net that was allowed under the *Fisheries Act, 1985.* In questioning whether Sparrow was exercising an "inherent" right, the court recognized that the determinant of inherent Aboriginal rights is their existence prior to 1982. In the developing of the "Sparrow Test" the court found that:

- "Aboriginal rights are not frozen in time – all aboriginal rights that were not extinguished before 1982 must be dealt with as they develop in the modern world.
- In order to extinguish an aboriginal right the Crown must make it "clear and plain" that it intended to do so; simply regulating an aboriginal right does not amount to extinguishing it.
- The Crown owes a fiduciary duty to aboriginal peoples in recognition of their 'special relationship'."

3.1.2 Delgamuukw v. British Columbia, 1997

In the case between Delgamuukw and British Columbia, the plaintiff asserted "aboriginal title and self-government" over their ancestral homelands on the basis that their aboriginal title was never extinguished. It was an important case because it made several decisions on establishing the basis of aboriginal title. It was also very important in that it accepted that Oral History must be given weight in a court of law. This case addressed the following questions:

- What is the nature of the protection given to aboriginal title under s. 35(1) of the *Constitution Act, 1982*?
- Did the province have the authority to extinguish the title after confederation?

Delgamuukw laid out the test to establish aboriginal title and also the test for infringement of aboriginal title. It found that aboriginal title is protected by Section 35(1) and can only be extinguished by the federal government and that "Aboriginal title is inalienable to anyone but the Crown, it arises before sovereignty, and it is held communally".

3.1.3 Haida Nation v. British Columbia (Minister of Forests), 2004

The first in three very important trials for defining the Duty to Consult, *Haida* established that only the Crown has the legal duty to consult with and if necessary, accommodate Indigenous communities prior to making decisions that would affect their existing or potentially existent Aboriginal and treaty rights. This includes decisions that could affect rights or lands that are currently being sought through legislation. In this case, the Haida Nation had a pending land claim and the Minister authorized the transfer of a 30 year old "tree farm license" to Weyerhauser without any communication or consultation with the Haida. This case addressed in particular the Duty as it relates to yet to be proven claims.

The court stated that the extent of the duty is determined by the strength of the claims. Stronger claims require accommodation and involvement of Indigenous communities in decision-making process. However, weak claims only require notification. As stated in paragraph 35 of *Haida,* the duty arises when the Crown "has knowledge, real or constructive, of the potential existence of Aboriginal right or title and contemplates conduct that might adversely affect them."

3.1.4 Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004

Taku River Tlingit engaged in an environmental assessment process engaged by the province. They objected to a road being built through their traditional territory that would lead to a mine that a private company was interested in reopening. The second in the three well-known precedent-setting cases pertaining to the Duty to Consult, *Taku River* addressed the question of what the limits of the Crown's responsibility are in consultation with Indigenous communities. The court found that:

- "Where there is a duty to consult, as long as consultation is done meaningfully then the duty is discharged – there is no ultimate duty to reach an agreement.
- Accommodation requires that the aboriginal concerns be reasonably balanced with other concerns in the decision-making process."

3.1.5 Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005

When the Mikisew Cree opposed a winter road that the federal government had approved through their reserve lands without any consultation, the government then moved the road along the boundary of the reserve, again without consultation. The Mikisew Cree Nation still opposed the project on the basis that it would impact their treaty rights to access and exercise of traditional practices that are central to their culture and that consultation was absent and due throughout the process. The court found that counter to what the Crown presented, a distinct and meaningful process of consultation and accommodation was owed to the Mikisew Cree.

3.1.6 Rio Tinto Alcan v. Carrier Sekani Tribal Council, 2010

The case between the Carrier Sekani Tribal Council and Rio Tinto Alcan dealt with a dam built in the Carrier Sekani's ancestral homelands on the Nechako River and valley. This case addressed the question: "When does a duty to consult arise?". The findings of this case reaffirmed the findings in *Haida* that stated that: "The duty to consult arises when:

- the Crown has knowledge, actual or constructive, of a potential aboriginal claim or right;
- the Crown must be contemplating conduct which engages a potential aboriginal right;
- and there must be the potential that the contemplated conduct may adversely affect an aboriginal claim or right."

Justice McLaughlin also stated that the Duty is owed "when the Crown has knowledge of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. The Crown's failure to consult may lead to a variety of remedies including injunctive relief, an order to carry out additional consultation and/or damages".

3.1.7 Neskonlith Indian Band v. The City of Salmon Arm et al., 2012

The *Neskonlith* case provided the first comprehensive analysis addressing the responsibility of municipalities in consultation with Aboriginal communities and questioned whether municipal corporations were subject to the Duty to Consult.

The findings of the British Columbia Court of Appeals were based in the *British North America Act,* 1867, s.9 (2), which state that municipalities are not the Crown, they are constitutionally recognized as "creatures of the province". As such, the Crown's Duty does not extend to municipalities. However, the procedural aspects become the responsibility of the municipality when delegated by the Crown. The court held that:

- "The ultimate legal responsibility for consultation and accommodation rests with the Crown and the honour of the Crown cannot be delegated.

- Any tribunal (and, by analogy, any municipality) to which the obligation to consult and, if appropriate, accommodate was delegated would require sufficient remedial powers, which have not been granted to municipalities.
- Municipal governments lack the practical resources to consult and accommodate.
- It would be impractical to devolve the Crown's duty to consult to municipalities, since doing so would "bog down" the day-to-day licensing, permit, zoning and planning decisions with which municipalities are concerned.

In looking at this fraction of cases related to defining Aboriginal rights in Canada it becomes clear that those rights are negotiated in the process of the courts, not set in stone (Interview Participant, 2017, pers. comm. July 28). In the history of the Canadian judicial system, Aboriginal rights have not been recognized to be inherent and upheld until fairly recently. However, these recent court rulings have been instrumental in upholding and defining the inherent rights of Aboriginal peoples in Canada.

4. The DTCA and Municipal Governments In Ontario

4.1 Going Through the Motions: What is the Duty to Consult and when is it triggered?

As has been established, the Duty to Consult and Accommodate is a constitutionally-entrenched fiduciary responsibility that the Crown owes to First Nations, Métis, and Inuit, when any public or private proponent proposes an action or project that may affect existing Aboriginal land rights or claims. As stated in *Mikisew Cree* (2005, SCC), the Duty is separate from all other public consultation requirements. Because of their *sui generis* rights Indigenous peoples in Canada are not akin to stakeholders or equity seeking groups and are owed their own distinct process. It also indicates the responsibility to see the Duty to Consult and Accommodate process through and ensure that it is fulfilled in a meaningful way and a way that is consistent with the rulings of the courts (McIvor & Gunn, 2016). Consultation must be conducted in good faith and meet the minimum standards which are laid out by the courts, dependent on the level of potential impacts and the scope of the proposed projects (Lawrence & Macklem, 2000; Glass, 2015).

The Duty is triggered by the Crown's knowledge of a proposed project or action that may adversely affect an existing Aboriginal land right or claim (Johnson & Stoll, 2015). At the Association of Municipal Managers, Clerks and Treasurers of Ontario annual conference in 2015, lawyers Johnson and Stoll presented a brief outline of how to enact the procedural aspects of the Duty, including the consultation spectrum. The spectrum dictates that the scope and intensity as well as potential impacts of the proposed project should be matched with equal depth and involvement in the consultation (Johnson & Stoll, 2015; Pelletier, 2017).

When the project has negligible projected impacts or is very small in scope, it requires less involved consultation. Actions might include giving adequate notice and disclosing relevant information to the community, ensuring adequate time to respond, and discussing issues raised in response (Johnson & Stoll, 2015; Pelletier, 2017). When the project is larger, Johnson & Stoll (2015) recommend that consultation requires more thorough engagement on the part of the proponent. Additionally they might meet and discuss, respond to concerns meaningfully, and give reasons for the decision. Pelletier (2017) adds that proponents should negotiate how consultations should proceed (exchange info, meetings); conduct site visits, research, studies; provide funding for community participation in the decision-making process; and "accommodate by mitigating harm or negotiating benefits" (p. 1). When there are proven rights, as in the case of *Tsilqot'in* (2014, SCC), no matter how big or small the impact, consent is required (Pelletier, 2017).

There are two situations when the Duty to Consult with Indigenous communities is consistently and automatically triggered, and requires involvement by third parties. The first being when an Environmental Assessment (EA) is required on a proposed project (McEachren et al. 2011; McCarthy et al. 2013; Gardner, Kirchhoff, and Tsuji, 2015). When a proponent initiates a project subject to the *Canadian Environmental Assessment Act, 2012* (CEAA), it becomes their responsibility to develop and implement a consultation process. McCarthy et al. (2013) outline that EA legislation exists at both the federal, as well as the provincial and territorial level, for example the *Ontario Environmental Assessment Act, 2012.*

The second situation where the duty automatically has to be met is when any proposed land use activity required archaeological processes (DeVries, 2014). Fraser & Viswanathan (2013) point out the changes in archaeological practices have come out of the Ipperwash Inquiry Report. Recommendation 26 of the report stated that "[t]he provincial government should encourage municipalities to develop and use archaeological master plans across the province" (Ipperwash Inquiry 2007, 2:147). The Ontario Ministry of Tourism and Culture (OMTC) responded to this in the creation of their 2010 document "Engaging Aboriginal Communities in Archaeology: A Draft Technical Bulletin for Consultant Archaeologists in Ontario" and their 2011 document *Standards and Guidelines for Consultant Archaeologists.*

Ontario Association for Archaeological Protocols outlines on their website the profession's standard as laid out by the above documents from the OMTC, which states vague guidelines on how archaeologists should to engage with Indigenous communities and with which compliance is mandatory (Kleer, Land, and Rae, 2011). This has made some progress in solidifying practices throughout the field of archaeology and specifically in the context of municipal heritage planning.

Some Indigenous communities are developing their own archaeological standards and guidelines. Examples of such are the guidelines created by the Missisauga Anishinaabeg community of Curve Lake First Nation and by Saugeen Ojibway Nation, both communities in Southern Ontario.

Viswanathan (2013) points out though that while many other provincial land use policies acknowledge Section 35's protections of inherent Aboriginal and treaty rights such as the *Provincial Planning Act 2014*, the Ontario *Planning Act* (1990) which is the overarching document to which all provincial and municipal land use plans must adhere, falls short in this

regard. The *Planning Act* fails to properly address and acknowledge the rights of Indigenous communities' to be informed of and engaged in meaningful participatory decision-making processes surrounding proposed projects that could impact their traditional territories.

4.2 Findings: The Duty applies to the Crown, not the creature

As "creatures of the province"[3], local and regional municipal governments are not the Crown and therefore are not beholden to the Duty to Consult and Accommodate or the honour of the Crown (Fraser & Viswanathan, 2013; McLeod, Viswanathan, Macbeth, and Whitelaw, 2014; McLeod et al., 2015). Section 35(1) of the Constitution Act outlines the protection of Aboriginal and treaty rights as a part of the Crown's fiduciary duty towards Aboriginal peoples. On the municipal level there is no responsibility to see the Duty fulfilled unless delegated by the federal or provincial government in which case they hold statutory obligations to fulfill the procedural duty (Fraser & Viswanathan, 2013). While the Crown may delegate the procedural aspects of consultation to a third party, the honour of the Crown cannot be delegated and therefore the responsibility continues to rest at this time with the federal and provincial governments (Kleer, Land, & Rae, 2011; Fraser & Viswanathan, 2013).

As touched upon in previous sections, *Haida* (2004, SCC) successfully laid the groundwork in the Supreme Court to ensure that Aboriginal nations would be consulted in matters that would, or could affect their communities, by holding the Crown accountable (Fraser & Viswanathan, 2013). More recently in *Grassy Narrows* (2014, SCC), the Court specifically said that "The Crown is all government power in Canada" but neglected to clarify the role of municipalities in relation to that statement (Johnson & Stoll, 2015). In the case of *Neskonlith* (BCCA, 2012) though, the British Columbia Court of Appeals found that municipalities do not bear the responsibility of ensuring that the duty is fulfilled, as they are not the Crown. There has yet to be a Supreme Court or Ontario Court of Appeals case that has ruled on a similar situation on the municipal responsibility. No matter what if courts ultimately deem that consultation is required by municipalities or not, the Crown's duty is not going anywhere (Kleer, Land, & Rae, 2011).

4.2.1 Municipal-Indigenous consultation responsibilities

Municipalities across Canada are in a challenging position at this time in history as they are receiving conflicting messaging about what is expected of them. *Neskonlith* (2012, BCCA) dismissed municipal responsibility for consultation in British Columbia reasoning that municipal governments lack the resources, remedial powers, and capacity to be expected to take on consultation and accommodation. The Court found that solution impractical and said that it would "bog down" licensing, permits, zoning, and planning processes and decisions that are current municipal functions. Kleer, Land, and Rae (2011) point out that because of the nature of their jurisdiction, municipalities will find themselves responsible for undertaking

[3] As stated in the Section 92(8) *Constitution Act (British North America Act), 1867,* which delegates provinces the power over municipal governments.

consultation processes anyway when delegated by the Crown. Some of the circumstances where municipal actions trigger the duty are where land use planning or specific development projects could affect sacred or cultural sites (including burial grounds) and directly or indirectly restrict traditional harvesting, hunting, fishing, and trapping rights, or occur on lands that are currently subject to claims (Kleer et al., 2011).

This matter has yet to reach the Supreme Court and as such, municipal governments are determining for themselves what their legal responsibilities are in terms of consultation and engagement with Indigenous communities surrounding land use planning and other matters. The issue with this is that municipalities are the institutions "on the ground" dealing with local-scale land use planning and operating within specific traditional territories. They are not operating on *terra nullius,* they are building on village sites and excavating bones, drastically impacting ecosystems and watersheds, and making decisions that have very tangible impacts that affect the lands, livelihoods, health and wellbeing, cultural practices, and rights of both urban and on-reserve Indigenous communities.

Ontario is just beginning to include recommendations of municipal engagement in some provincial policies, most often in relation to archaeology and cultural heritage (McLeod et al. 2015). In an analysis of the content of 337 provincial texts (including provincial acts, regulatory documents, policy statements, and plans), McLeod et al. (2015) found that the vast majority of Ontario's provincial land use and resource management legislation fails to explicitly address Indigenous consultation and involvement let alone exceed the minimum standard in order to develop long-term collaborations and institutional relationships with Indigenous communities. Without specific direction from the Province on these matters, municipalities are flying by the seat of their pants, frozen in risk-averse inaction or finding themselves in conflicts that can result in legal battles or much worse. No matter what their plan of action or lack thereof, they are making it up as they go along. Effects for band councils and Indigenous communities are a whole other major concern and carry very serious and lasting impacts (explored in the following findings report entitled 'Contextualizing the Duty to Consult: Towards an Understanding of Municipal Responsibilities').

Recent developments in recognition through policy are signaling a change in approach. In 2014, for the first time in Ontario planning policy, the *Provincial Policy Statement 2014* (PPS 2014) released by the Ministry of Municipal Affairs and Housing (MAH) included the recognition that municipalities "should" consult and engage with Indigenous communities within whose recognized traditional territories they operate. The PPS 2005 made no references to Aboriginal rights or involvement and the 2014 inclusions were the result of years of lobbying the provincial government by Indigenous band councils, administrations, and advocates. It was the beginning of provincial implementation of delegating consultation duties to municipalities in a broad manner and was the indication of an ideological shift.

The PPS 2014 has changed the definitions of "cultural heritage landscapes" and "built heritage resources" since 2005. Both documents now include references to Aboriginal communities. The PPS 2014 also states the following:

- 1.2.2 "Planning authorities are encouraged to coordinate planning matters with Aboriginal communities." (MAH, 2014, p. 12)

- 2.6.5 "Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources." (MAH, 2014, p. 29).

- 4.3 "This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act*, *1982*." (MAH, 2014, p.33).

In their overview of the changes made in the PPS 2014 that include aboriginal interests, McLeod et al. (2014) highlight some of the key shifts in the recent PPS that directly suggest that municipalities initiate engagement with Indigenous communities over topics such as cultural heritage and archaeological resources. They go further as to suggest the inclusion of collaboration and inclusion of Indigenous traditional knowledges and expertise around land use and planning issues (McLeod et al., 2014).

While the courts have yet to recognize municipal responsibilities independent of the Crown's Duty to Consult, there remains an ethical accountability based in the spirit and agreements of our treatied relationships to the communities whose traditional territories municipalities are engaged in land-use, environmental, and social planning on (McLeod, Viswanathan, Macbeth, and Whitelaw, 2014). Reconciliation is also an integral part of the consultation process and is needing to take a spotlight in the building of new municipal best practices and protocols as recommended by the TRC Calls to Action (Ariss, Fraser, Somani, 2017).

There are also unrealized mutual benefits in cultivating and tending to ongoing relationships and communication. There is also great potential for benefit of the exchange of ideas and approaches while working collaboratively on projects. Establishing trust also provides the foundation to be able to navigate when ideological or circumstantial challenges arise and require attention (Alcantara & Nelles, 2016). There are hundreds of examples across Canada where these reciprocal partnerships are functioning well in municipal and Indigenous communities. Fee for service arrangements include provisions such as water, fire, waste removal, schooling, and working on economic development agreements (Partnerships in Practice, 2002).

In 2001, the Centre for Municipal-Aboriginal Relations developed a committee called the Municipal-Aboriginal Adjacent Community Cooperation Project (MAACCP) committee. The MAACCP committee's mandate was to conduct research and identify best practices in order to further support and grow economic development though these partnerships and provide information for other parties interested in developing Municipal-Aboriginal partnerships (Partnerships in Practice, 2002). Some well-known examples in Ontario are Fort William First Nation and the City of Thunder Bay (Partnerships in Practice, 2002), and Elliot Lake & Serpent River Joint Relations Committee (Gayda 2012, MAH 2009, Alcantara & Nelles, 2016). In Ontario, 113 such collaborations are recorded and explored in Alcantara and Nelles' book on Indigenous-local intergovernmental partnerships in Canada (2016). It

explores the local level dialogue and cooperative partnerships that have been emerging all across Canada to address previous gaps in intergovernmental relationships.

Less common but increasingly so are relationships that are based in or include engagement and collaboration around land use planning practices and policies. In 2009, the MAH published a municipal-Aboriginal relationships document that established their stance on municipalities' involvement in the duty to consult, presented case studies as examples of practice, and offered support to municipalities and their staff to recognize the responsibilities and opportunities.

Of all the current Indigenous-municipal agreements developed, it is clear in Alcantara and Nelles' analysis that service agreements are the predominant driver of these relationships. These service agreements can be the foundation and initial catalyst to establish intergovernmental communication and strengthen community capitol. They can serve to create the foundation an ongoing relationship that in turn could broaden its purposes to encompass other types of collaboration including land use and other forms of planning.

In the ambiguity of attempting to define municipal government duties, municipalities all across Canada are currently left on their own to interpret what their relationships and responsibilities to Indigenous communities. Though legislation may exist in some areas that encourages consultation and engagement with Indigenous communities, it is ultimately left to municipalities to decide whether they wish to develop policy and practices or not. However, the public consciousness around Indigenous issues and reconciliation is also building. With that leeway that municipalities currently have to develop their own processes, there could be opportunities to develop truly reconciliatory and forward thinking practices. This would have to happen alongside the Indigenous communities whose territories municipalities live on and the Urban Indigenous communities who are reside within the municipality boundaries. I see this moment in time as a unique situation where the window of public support and political will is peeking open just a bit and there are opportunities to collaboratively envision and support thriving Indigenous-non-indigenous community relationships on a local level.

5. Conclusion: Gaps in the literature

The literature reflects the presently emerging understanding of the incongruence between 1) the delegation of responsibility for consultation and engagement with First Nations, Inuit, and Métis communities, and 2) local municipal governments. The discourse is lacking in analysis around emergent understandings and responsibilities of best practices and lessons in collaboration. This is likely because those relationships are in early stages of being established and still finding what works for them. There will also be the grey area of municipal responsibilities until the Courts define what municipalities' responsibilities are to Indigenous communities are.

There is also a major focus in the literature on central and western Canada. There are many interesting cases from unceded territories in British Columbia and progressive actions across the prairies, Ontario, and the North. However, I found very little information on what is happening in Quebec and in the Maritimes. I know that there are current struggles in Mi'kmaq against unwanted resource development projects such as Alton Gas and ongoing Innu resistance to energy projects (in particular the Muskrat Falls Dam) but there is fairly minimal recent scholarship focused on the Duty to Consult and municipal consultation with Indigenous communities in Quebec and on the East Coast.

Looking forward, I would like to see more academics alongside Indigenous communities, develop normative content around new ways of developing collaborative, intergovernmental approaches to municipal processes and land use planning, based in respectful, mutual intergovernmental relationships. There is the current opportunity before any ruling by the courts to collectively envision and implement reconciliation in practice and have those changes begin on a local level.

Part Two: Findings Report

Developing Normative Content: Collaborative envisioning of better practices and equitable processes in municipal consultation and engagement with Indigenous communities

1. Introduction

For Indigenous and non-Indigenous peoples alike, this year marking one hundred and fifty years since Canadian Confederation has been a time to reflect on our historical relationship. We examine where we currently stand on upholding those agreements that we've made in the past and fulfilling commitments in our relationships with each other and the land going forward. One thing that remains consistent common ground is our literal common ground: the land that we all live on. Though treaties and agreements that were made in the past and continue ongoing are meant to help us navigate this relationship, they seem to be almost entirely absent from current local level government policies and practices. Canada is not honouring either the directives or the spirit of the Two Row Wampum, the sacred agreement entered by the Haudenosaunee and the Dutch in 1613.

Canadian governments have made public admissions of historical wrongdoing and apologized for their systemic mistreatment of Indigenous peoples implemented through racist and oppressive policies (Corntassel & Holder, 2008). The federal government has released multiple reports in the past twenty years containing recommendations that promote reconciliation, nation-to-nation relationships, equal access to human rights such as clean water and education, and moving forward together into a new era. These processes require extensive research, immense emotional work and exposure of deeply personal and traumatic experiences on behalf of Indigenous participants, and a great deal of time and resources. Some notable examples include the Ipperwash Inquiry, the Indian Residential Schools Truth and Reconciliation Commission (TRC), and currently the National Inquiry into Missing and Murdered Indigenous Women and Girls. One of the more recent promises made by Prime Minister Justin Trudeau in 2015 promotes international legislation and human rights standards in the form of the United Nations Declaration on the Rights of Indigenous Peoples' (UNDRIP) (Boutillier, 2017). However, I believe that federal government's actions are not currently following their words and the continuation of policy and practices based in an imbalanced power dynamic perpetuate a continued relationship of division, exploitation, paternalism, and colonialism.

This findings report follows my first paper in which I reviewed the academic literature, the judicial content and legal precedents set, and constitutional documents. I then aggregated the information to help to navigate the research questions: "What are current understandings about the Duty to Consult and Accommodate and its role in planning?" and "What responsibilities do municipalities and municipal planners have in the Duty to Consult and Accommodate from a legal standpoint?". That literature review document looked backward, reflecting on the basis of Indigenous and non-indigenous governmental relations formed in the foundations of our constitution, important court rulings, and the context of our early and modern treaties. Delving into that deeper understanding and centering the historical and ongoing creation of policy and law at the outset of the work is absolutely integral in contextualizing how we have gotten to where we are today. It also provides necessary understanding to begin to think about how we want to pick up our responsibilities

as treaty partners and tend to this relationship and what must be done and undone in order to do so.

This findings report looks towards the present and future of municipal consultation ideology and practices beyond the current outlined legal requirements. I am guided by the follow research questions: "What responsibilities do municipalities and municipal planners have in the Duty to Consult and Accommodate from a moral and ethical standpoint?" and "What might the processes and results look like if municipalities in Ontario took the initiative to build strong institutional relationships with Indigenous communities, and engage in respectful, culturally sensitive and aware consultation practices, and ongoing collaboration in land use planning processes?"

With a basic foundational understanding of the background and present context of the Duty to Consult and Accommodate, I present my understandings as collected throughout the research process and from interviews with Indigenous and non-Indigenous practitioners who do extensive work within the realm of the Duty to Consult and planning from different sectors. My own guiding principles through this work have been to be curious, to engage critically with the Canadian constitutional and legal frameworks and to strive towards justice, and to pick up my own responsibilities and offer encouragement and support to my communities in doing the same.

2. Methodology

This findings report and the recommendations included in it are intended to be applicable to any Canadian municipality. However, the scope of examples used in this project pertain to the City of Toronto. Interviewees' experiences are mainly connected to the Greater Toronto Area and sometimes more broadly into southern Ontario.

This research was conducted by first undertaking a review of the academic literature, municipal and provincial policy, and the information available from practitioners. This included planners, municipal employees, lawyers, band councils, and band administrations including consultation officers. The scope of the literature encompasses articles, court case briefs, some municipal policies, and band policies pertaining to the Duty to Consult, municipal consultation with Indigenous peoples, Indigenous-Crown relationships around land-use planning, and Indigenous planning.

As part of a Major Research Portfolio, presented in three separate yet connected part, the style of writing is intended to differ from a traditional manuscript-style thesis or major research paper. I include more personal voice and aim to elevate the voices and contributions of participants who have generously offered their time, expertise, and personal experiences to support the creation of this work.

I believe my overall methodological approach was effective. The extensive literature and case review provided me with a solid background and context from which to proceed with

the interviews. I feel very grateful to have been granted the opportunity to interview such gracious participants who very generously shared their time and knowledge with me. I hope that the third component of my major project—a booklet of suggested guidelines for municipalities and municipal planners—will be a useful step in changing our current practices in order to actually work towards reconciliation and respect.

2.1 Review of foundational constitutional documents

As I delved into the literature for the first paper, it became apparent that it was necessary for me to first gain a better understanding of the legislative and judicial context surrounding the Duty to Consult and the broader basis of the Indigenous-Crown relationship. Integral in this process of establishing context was learning about what impacts these documents had on Canadian constitutional law. It was also necessary to gain a better understanding the current Canadian political landscape by researching the British assertion of sovereignty in the Royal Proclamation of 1763, the establishment of federalism in the *Constitution Act 1867,* the Section 35 of the *Constitution Act 1982* and the frameworks and practices for reconciliation recommended in the *Truth and Reconciliation Commission: Calls to Action* & the *United Nations Declaration on the Rights of Indigenous Peoples.* This also included other central relational aspects of the dynamic such the treaties in their different iterations and the Honour of the Crown.

2.2 Sweep of legal cases

In seeking to understand the historical context, the recent legal precedents proved to be equally as important in order to establish a fulsome understanding of the Duty to Consult. The rulings of the Supreme Court have been central in affirming and protecting Aboriginal and treaty rights in the eyes of the Canadian legal system. They have also proved to bring to the fore the awareness and enforcement the practices of honouring inherent *sui generis* rights held by of though constitutional law, particularly since the *Constitution Act 1982.* This is not to say that they are entirely protected or enforced currently, however there has been an improvement in terms of access to procedural rights.

In conducting an overview of some of the more influential and formative court cases that have helped to define Aboriginal and treaty rights and the Duty to Consult and Accommodate, a better understanding of the historical and future trends of Canadian judicial rulings can be gained.

2.3 Interviews

Semi-structured interviews were conducted with six participants. The participants were contacted based on their previous work in their field pertaining to the Duty to Consult and municipal responsibilities. I contacted three other potential interviewees who were unable to

participate because of scheduling conflicts. Each interview that was conducted was scheduled to be one hour maximum. Participants offered unique perspectives and experience and came from varying academic and professional backgrounds. They approached the Duty to Consult and municipal consultation with Indigenous communities from many different and equally important perspectives including personal experience, band council administration, political science, planning, law, municipal service, and academia.

I intended to specifically seek out Indigenous perspectives and opinions, in particular the perspectives of Indigenous women. I wanted to try and focus the study on those perspectives and viewpoints that have been so undeniably excluded from forming of Canadian consultation policies and protocols up until this point. The interviewees that were able to participate were evenly Indigenous and non-Indigenous, as well as being men and women.

The participants were presented with a set of prompting questions (see appendices), however most of the interviews followed a semi-directed, conversational format. The main questions that were prioritized to cover with every participant pertained to their own experiences working within the framework of the Duty to Consult and consultation in general. They were asked what had worked well in their experiences and what, if any, changes in the process they would like to see in the future.

2.4 What is missing from this research?

Intersectionality. As a masters-level project, there were constraints in size and scope of this project and as such there were no specific lenses of gender, sexuality, class, age, or other aspects of identity applied to the research project. In a larger project or in research undertaken by a city or municipality on how to create a protocol or best practices in consultation with Indigenous communities and populations I would strongly suggest that the analysis be more intersectional and considerate of overlapping and interconnecting aspects of identity beyond indigeneity.

Decolonial approaches. I would also recommend that when developing a consultation strategy, deeper community consultation with nations beyond simply their band council system of administration be conducted. The inclusion of traditional or hereditary councils, Elders, Clan Mothers, Traditional Knowledge Keepers, and other leaders identified by their community, would create a more respectful community-based consultation system driven by the needs and wishes of the community as a whole. This is with the recognition that it is quite possible and even likely that there will be a diversity of views and approaches within a community and that there will likely be time and effort in finding a way forward while honouring diverse ides and views.

There is an ongoing tension for me as a researcher between finding possibilities and solutions within the framework of the current structures of governance and thinking about solutions beyond the existing systems. I find myself curious about whether there are ways in which to improve and be able to reach equity and justice within current Canadian government

systems. Taking a critical approach leads to the inevitable questioning of the efficacy of trying to change a structure that is inherently exclusive as it is rooted in processes of colonization and has historically and contemporarily contributed to the erasure of Indigenous cultural ways of knowing and being and systems of governance. However, I believe there is recognition that existing structures are what we currently have to work with and that there are some supports within these structures to affirm and leverage Aboriginal land and treaty rights that have offered some protections from assimilation attempts by the Canadian state. I recognize that the tactic of accepting the limitations of current systems has not historically been a catalyst for strong political or social change. Concurrently, I also see the benefit for working on change from multiple avenues, including from within.

At this time, I believe that there is momentum in building political will to effect change. This is being brought forth by the recent attention on the state admissions of wrongdoing and commitments to change such as the Truth and Reconciliation Commission, and by grassroots Indigenous organizing such as Idle No More and many independent and collaborative actions of resistance to extractive industries. In my opinion, much of the proposed changes made by current and previous governments so far have been promising in terms of their commitments but the follow-thorough on implementation of those practices has been reliably slow or absent. Broken promises and lack of consistency to make good on commitments have fostered and furthered feelings of distrust.

As Richard Van Camp, a Tłı̨chǫ Dene writer from Fort Smith, Northwest Territories describes the relationship of Canada to Indigenous peoples, he sees Canada as a "One Day Uncle", the uncle that makes all sorts of exciting and wonderful promises and plans but then never shows up the next day to make good on them. On the 150th anniversary of confederation this year he wrote to Canada:

> *"So, on your birthday, you're old enough now to hear this: keep your promises. Honour the treaties and all of the Supreme Court rulings that respect un-ceded territory and a duty to consult and quit putting water in jeopardy. Remember what the prophecies say: future wars won't be for gold or money: they will be for water."* (Van Camp, 2017)

3. Findings

3.1 What responsibilities do municipalities and municipal planners have from an ethical and moral standpoint in terms of consulting with, engaging, and accommodating the needs and interests of Indigenous communities?

The anniversary of Canada's 150th year simultaneously marked an ongoing disgrace. The Department of Canadian Heritage coordinated the spending of a reported half of a billion

taxpayer dollars earmarked by the federal government on widespread Canada 150 celebrations and projects including such spectacles as a giant rubber duck (Hannay, 2017). Meanwhile over 100 First Nations remain without potable water, some without indoor plumbing, and many without equal access to education. Destructive results of systemic oppression persist that urgently need to be addressed in policy. They also require actions to back up the promises that have been made to implement remedies to current inequality (Eliot, 2017). While these are federal and provincial responsibilities, municipalities certainly have a hand in shaping and implementing their own policies. They also must address the second-class citizenship and third-world conditions to which many Indigenous peoples continue to be subjected to by the governments that claim the fiduciary duty to them.

> *"All your policies around built history: I want to let you know that this land has a much deeper history than 200 years. And we're representing all the time beforehand. So I want to make sure that when you're talking about this land, you include the previous history too. And it's the law."* (King, 2017)

Municipalities' legal responsibilities currently exist in an undefined space in most of Canada. The only current ruling addressing this specific issue came from the British Columbia Court of Appeals in *Neskonlith v Salmon Arm* (2012). It stated that municipalities do not have the duty to consult and accommodate unless delegated as they are not the Crown. In cases of federal or provincial delegation, the municipalities are responsible for enacting the procedural aspects of the duty but the responsibility to see it fulfilled rests with the Crown (Fraser & Viswanathan, 2013).

Municipalities and local governments in Ontario have yet to receive clear provincial directives about what their responsibilities are. They do not know what is expected of them are in terms of consultation and engagement policies and practices with Indigenous communities (McLeod et al., 2015). However, as municipal and regional governments are responsible for regional land use planning, they are working with land and water and are therefore inherently connected to Indigenous communities and issues surrounding land. Guided by the *Provincial Policy Statement,* 2014 (PPS), Section 35 of the *Constitution Act*, 1982, and the Truth and Reconciliation Commission's *Calls to Action* (2015), municipalities are beginning to put forth their own strategies individually and in collaboration with each other, to fulfill their responsibilities as outlined by the TRC's Calls to Action (McLeod et al., 2017).

I undertook my research with the knowing that it is long past time for municipalities to step up to take on new responsibilities pertaining to working with Indigenous communities with respect to land use issues among others. Currently municipalities have been left to address the legal vacuum by their own accord on a case-by-case basis. Compliance is self-monitored by municipalities and their actions are not externally supervised or enforced. At this point, that continuum of proactive municipal engagement hosts complete inaction on one end. On the other is the most engaged action that I have seen so far, that being the creation of an Indigenous Relations Office within the municipality. Examples of such can be found in Edmonton, Hamilton, Vancouver, Winnipeg, and soon Calgary.

In response to the TRC, the Big City Mayors' Caucus (BCMC) (a sub-group of the Federation of Canadian Municipalities) established a Partnership and Reconciliation Working Group to support municipalities in "reconciliation efforts, enhance our relationships with Indigenous leaders and identify ways to support the federal government in its commitment to implement the TRC Calls to Action" (BCMC 2016, p. 3). The BCMC document outlines their commitments as well as the TRC Principles of Reconciliation and the Calls to Action.

There are many Indigenous-municipal partnerships based around service and business agreements. These types of collaborations are becoming more prevalent and have been steadily increasing in number since the early 2000s (Alcantara & Nelles, 2016). In their recent book on Indigenous-local intergovernmental partnerships, Alcantara and Nelles (2016, p.15) report that they have recorded 332 such partnerships across Canada. The majority of those partnerships are fee-for-service agreements created between Indigenous communities and municipalities. These partnerships could potentially provide a relational foundation on which to expand those agreements into more cooperative and collaborative unions that include meaningful ways to collaborate with Indigenous communities on planning, policy, and city-building matters. Indigenous knowledge and insight have historically been largely excluded in the process of place-making and planning of Canadian cities through the process of segregation through the reserve system and the *Indian Act.* There has been a lack of consultation and underrepresentation of Indigenous people in involvement throughout all levels of government (Williams & Alfred, 2005).

Through the recent process of the Indian Residential Schools Truth and Reconciliation Commission (TRC) and the subsequent report and Calls to Action, Canadian governments and institutions have been called into accountability not only for their design and orchestration of past policies of systemic oppression and genocide but ongoing impacts and continued colonial policies. The TRC calls into account Canadian governments, institutions, service providers, and individual citizens to acknowledge the history and the intergenerational impacts of colonial policies of the Residential School system as well as current inequities and injustices. Ongoing major issues for Indigenous peoples and communities in Canada in which the Canadian government is implicated include: the overrepresentation of Indigenous people (particularly women) incarcerated in the prison system; the overrepresentation of Indigenous children in the child welfare system; missing and murdered Indigenous women, girls, and two-spirit people; and vast inequities between non-Indigenous communities and reserves in such human rights as clean drinking water, healthcare, safe and adequate housing, and equal access and funding for basic education (Anaya, 2014).

During our interview, Bob Rae outlined the dissonance in understandings between the Indigenous and colonial leadership during processes of treaty signing:

> *"By the time the treaties from the 19th century were signed they were all about 'surrender'. You 'surrender' land, that's the words that are used. So we have this conflict that's built into the relationship. Between First Nations who see the relationship between them and Europeans as being a Nation to Nation building of relationship that's based on respect and understanding and a sharing of the land, and then you have a Crown that says 'Yeah Nation to Nation, but we're defining for*

you what this is. And actually in the text of the treaty you've given up your rights to the land'" (2017).

Though municipalities are at this time explicitly excluded from the legalities and responsibilities of being considered "the Crown", they are directly involved in substantial land-use planning in urban centres and on a municipal scale. They also are in charge of delivering services to their constituents and development of lands and waterfronts. These actions within their jurisdiction impact nations who are treaty holders and also the Indigenous communities whose traditional territories overlap but who may not be signatories a treaty, as well as Urban Indigenous populations.

Additionally, though the current trends find Indigenous-municipal relationships based in agreements that exist for the purpose of service and business agreements, these do not necessarily work to address historic injustices or ongoing exclusion from municipal planning and policy practices. However, those existing lines of communication are potential opportunities to build functional business partnerships into collaborative relationships between communities (Alcantara & Nelles, 2016). Standing agreements can serve to "break the ice" and demystify pre-conceived notions and also challenge sustained colonial narratives and assumptions on behalf of the municipalities. That may particularly be the case if municipalities have not made efforts to foster consistent or positive previous communications or learn about the cultures and history of the traditional territories that they are on.

In order to extend themselves towards local government-to-government relationships and intercultural community collaboration with Indigenous nations, I think municipal and regional Canadian governments must do the legwork to ensure that all of their employees understand the historical and contemporary context. They must also work to have Indigenous representation throughout all areas of municipal and local government, not only in roles where they serve to represent Indigenous peoples, but as public servants and decision-makers throughout each division.

Beyond what the courts have ruled thus far, I believe that municipalities' involvement in matters of land use planning are not widely considered to be separate from the Crown in terms of consultation. They hold their own responsibilities to engage in ongoing and distinct consultation, engagement, and relationship-building practices with both the Indigenous nations whose lands they are located upon as well as Urban Indigenous citizens who live within their municipal boundaries. Within a government-to-government relationship (within which one partner is the head of a nation and one is a creature of the province) why shouldn't the municipality –a corporation whose jurisdiction allows them the ability to make permanent and impacting decisions pertaining to land use and distribution of services– be held accountable to the governments of nations with recognized traditional territories and treaty holders?

In *Neskonlith v. Salmon Arm* (2012), the court argued that municipalities do not have the capacity to be held legally accountable for consultation. I wonder through if there is a spectrum of capacity, where such capacity could be proportional to the population and size of local government structure, budget, and personnel resources available, so that there would

presumably be a somewhat correlated amount of consultation. Additionally, when delegated by the Crown, municipal and regional governments inherit responsibility for facilitating the groundwork and fulfilling the procedural aspects so there lies the implicit expectation that they are able expand into that capacity when called upon. So either as the instigator of consultation processes or as the delegate, municipal capacity to undertake meaningful consultation and engagement processes must be sufficiently resourced in terms of budget, staff, and training. Beyond just the ethical and legal implications, municipalities could greatly benefit in co-creating agreements based in proactive and iterative communication and consultation surrounding projects and plans with traditional territorial communities and treaty holders as opposed to undertaking consultation in a reactive way when called on to do so by upper governments.

Municipalities do have an ethical and moral responsibility to engage with Indigenous communities. In the next section I will discuss current trends and best practices based on my interviews and literature review.

3.2 Current trends and best practices

There are disturbing and tragic examples of what can and has happened when Canadian governments move forward with land use plans without regard for or understanding of important cultural or spiritual places (Dorries, 2012). In her thesis, Dorries (2012) outlines how events that unfolded at Kanesatake/Oka, Caledonia, and Ipperwash are a few well-known examples of lack of consultation or consideration in land use planning that resulted in Indigenous communities being forced to use direct action to protect sacred sites and their Aboriginal and Treaty rights.

There are also plentiful anecdotal examples of municipalities that engaged in land use planning without consultation, which in turn created conflict with or drew concern from Indigenous communities. Instead of reacting defensively some municipalities have taken the opportunities to learn from the experience and have worked on building ongoing relationships and agreements around consultation and engagement informed by those relationships (MMAH, 2009). When I asked interview participants whether they had one or multiple outstanding examples of municipalities who were really integrating strong and reconciliatory consultation and engagement strategies into practice, and collaborating with Indigenous communities, the consistent response was “no”. The general consensus among participants was that there were accounts of individual municipalities who seemed to be on the right track. However, no participants gave any prominent examples of municipal or regional governments who had wholly embraced the principle and practice of respectful, culturally sensitive and aware consultation practices, as well as cross-cultural collaboration in municipal planning and policy.

That is not to say that there are not any municipalities that are leading the way in certain aspects of better practices in consultation and engagement. In terms of progressive

practices there are recently established Indigenous policies and Indigenous relations offices within municipal structures. These offices –if adequately resourced and with direct lines of communication to the city manager or deputy city manager– have greater potential and ability to assert presence and offer guidance within the larger municipal corporation. They will be able to better advocate for Indigenous rights and interests in policy, liaise with communities, and guide more culturally-competent practices across departments (Layton, 2017. pers. comm. Sept 22).

These steps are certainly progressive and laudable in contrast to the current municipal practices but in terms of consultation, still lag behind international standards. They are heading in the right direction but certainly require ongoing efforts towards growing equity, representation, and self-determination for Indigenous peoples within municipal government structures and processes.

One interviewee did point to the recently released Indigenous Policy Framework (2017) and accompanying proposed Indigenous Policy presented by the Calgary Aboriginal Urban Affairs Committee.[4] This document is the first of its kind in Canada and has been crafted with care and directed by Elders and traditional knowledge holders from Treaty 7 Nations. The Policy Framework outlines the Indigenous cultural history and context of the place. It includes the shared vision of the strategic alignment with previous policies, plans, and proclamations released by Calgary, the implementation plan, and then their proposed policy and action plan. It outlines specifics of protocols, building accountability, and case studies. The Policy Framework was born out of the White Goose Flying Report (2016), a response to the TRC's Calls to Action.

The draft policy indicates "its active and shared process of reconciliation" which consists of four ways forward including: Ways of Knowing, Ways of Engaging, Ways of Building Relationships, and Ways Toward Equitable Environments. It also commits to exploring opportunities to collaborate on "meaningful and innovative strategic directions and approaches with Treaty 7 Nations and other appropriate Indigenous communities" (2017, p. 3).

The Indigenous Policy Framework and draft Indigenous Policy released by the City of Calgary provides a good example of a finished product (that is specific to Calgary and Treaty 7 Nations) and offers some insight into the depth of consultation and education that was required to create such a document.

A recurrent idea that was raised in the interviews when participants were asked about what they would like to see change, is an independently resourced Indigenous affairs office within the municipal structure. The Cities of Edmonton, Winnipeg, Vancouver, and Hamilton have created specific Indigenous Relations Office, and councillors and employees at the City of Calgary have spoken publically about establishing one in their municipality (Klingbeil, 2017). Having an Indigenous relations office could potentially present both opportunities and challenges for Indigenous peoples employed there. It provides the dedicated space for

[4] At the time of writing, the Indigenous Policy is currently on its way to council and is yet to be adopted.

advocacy, representation, and promotion of Indigenous ideologies and provides support to leverage Indigenous voices within the municipality. It could also add strain on its Indigenous employees who may be put in positions of representing municipal governments within their own communities or other Indigenous communities, and also having to answer to a colonial system of government that is also their employer (Wiebe, 2017, pers. comm. July 24).

Simultaneously, Indigenous interview participants who have had extensive experience working within municipal and other Canadian government structures shared experiences where they felt that they needed to be physically present to monitor and ensure that the promises and commitments made are implemented in the agreed-upon manner. If they weren't there to monitor and ensure that good practices were being maintained or agreements were being implemented, there were little to no other supports to oversee and guide that accountability.

Carolyn King shared a story of sitting in on a Committee of Adjustment (COA) meeting where upon hearing a deputation seeking 29 variances, a COA member who was familiar with the applicant said to him: *"If you find gold and silver, you have my number and if you find bones, throw them over the fence".* This example of flippant and blatant disrespect though seemingly spoken in jest, represents ongoing dismissal of constitutionally entrenched Aboriginal rights and disregard for archaeological practices, which are in place to protect Indigenous sacred sites and cultural history. It is certainly concerning to wonder what is happening when Indigenous people are not in the room or as in the aforementioned case, when they are in the room but others are unaware that they are. This example displays how colonial and racist mindsets persist and can translate into institutionalized discrimination when such mindsets overtly or tacitly influence the people who hold positions of power. Because there is lack of structural framework and seemingly lack of education and awareness there are not effective systems in place to ensure accountability towards Indigenous communities, and uphold Aboriginal and treaty rights on a municipal level. As with other racialized groups, the onus of policing and monitoring those who influence policy and systems of power can end up resting upon on those who are also vulnerable to them. (Griffith et al. 2007). Griffith et al. (2007) outline how for many racialized and marginalized groups, this added burden of oppression continues to be embedded throughout government and ancillary institutions, many of which were established through overtly discriminatory policies, systemic interventions, and continue to be policed and upheld by those same institutions.

From information offered in interviews and in scanning municipal websites, I have found that municipal governments (other that those with distinct Indigenous or Aboriginal relations offices) often rely on either a single employee (as was in the case of Toronto) or a volunteer committee to carry the momentum of building relationships with Indigenous communities and organizations, developing policy or best practices, gathering the political will, implementing, and monitoring the practices. Some smaller or less progressive municipalities do not have any staff dedicated to Indigenous relations at all.

Interview participant Mae Maracle outlined her experience of working with the City of Toronto as the Indigenous Consultant in the Equity, Diversity, and Human Rights Office at the

City and the resistance with which she and the Aboriginal Affairs Committee was met in seeking implementation of their recommendations:

> *"Oftentimes, when this topic comes up about having an Aboriginal Office, they say, 'Well, you know, they're part of the equity-seeking groups' and most Aboriginal people will tell you: 'No we're not part of the equity-seeking groups, we are the original people. We are part of the Constitution of Canada. We are different.' That's one of the arguments. Another argument that you hear is that 'Oh, we don't have the resources' but certainly if there was a willingness to do this, you would find the resources to put this into play and do this kind of work"* (2017).

As the current Toronto Indigenous Consultant is removed by multiple levels of management from the City Manager, any reporting goes through two different managers before reaching the City Manager. As a result of that, there is the potential for loss of context or details as well as multiple non-indigenous interpretations and reinterpretations of the original communication. I think any potential Indigenous Relations Office should have its employees reporting either directly to the City Manager or hold lateral power to the City Manager, without communications having to traverse though multiple managers in between.

Reflecting on his collaboration with Mae on the Aboriginal Affairs Committee, City Councillor Mike Layton outlined that recommended education programs were not currently recognized as a priority by the City of Toronto:

> *"The request for a learning module to be part of our public service education that we did some early consultations on and then went dormant. It's because everybody's doing this off of the side of their desks"* (2017).

Seemingly, the expectation of the role of the Diversity Management and Community Engagement Consultant in the Office of Equity, Diversity, and Human Rights is far beyond the capacity of one person. Out of a team of approximately 33,500 employees, the City currently only funds a single position to monitor, liaise with communities, act as consultant to any Indigenous-related projects, sit on the Aboriginal Affairs Committee, organize Indigenous events, and more (Layton, 2017).[5]

Without building the political will to give the recognition, respect, and allocation of resources that Indigenous relations initiatives require and deserve, systematic implementation and monitoring will continue to fail communities. In recognition of the broader context and the current jurisdictional scan and analysis being conducted by a consultant hired through the Toronto Aboriginal Support Services Council (TASSC), Councillor Layton recognized the changes required on a fundamentally deeper level:

> *"The reality is, unless you have a team of people driving it — and that have enough influence to touch on all of the divisions to ensure that they all have within their institutional mandate something related to either the consultation piece on the applications, or the policy piece, or the reconciliation — you need someone identifying*

[5] At the time of writing, that position sits vacant after the person hired for the position had resigned and filed a complaint to the Ontario Human Rights Tribunal against the City of Toronto for violating her right to smudge.

> *those opportunities and then going and working with those departments and ensuring that they will actually have the authority to go in and say 'Something needs to change, this is it, let's work together to make it happen'"* (Layton, 2017).

Overall, I think that we are still in the early days of determining "best practices" for municipalities, much less municipal planning departments. While some municipalities have taken strides in funding and staffing Indigenous offices, we have a long way to go in sharing responsibility and care for land and waters at the local level.

3.3 Beyond the procedural duty, towards consent

In 2010, The City of Toronto adopted the Statement of Commitment to the Aboriginal Communities in the City of Toronto, which committed to building partnerships and improving relationships and intercultural competency between Aboriginal and non-Aboriginal residents of the City. Toronto officially adopted UNDRIP as a part of their yearlong commitment to Truth and Reconciliation 2013-2014 and then reaffirmed its commitment as part of their Fulfilling Calls to Action from Truth and Reconciliation Commission Report (City of Toronto, 2016). In the Fulfilling the Calls report, the City committed to eight calls of action including Call to Action #'s: 23, 43, 57, 68, 77, 88, and 94, which are applicable to municipal contexts and jurisdictions. The report lays out the specific Call to Action and the City's own proposed action in response to each. In reviewing the actions and speaking with interviewees and others employed by the City of Toronto, many of those plans have not actually been implemented into practice.

I believe that this is a start but doesn't nearly go far enough. Colonial processes have been forcefully disrupting and dispossessing Indigenous lives and communities from their lands, languages, cultures, and governance structures going on 500 years on Turtle Island. Certainly one year of commitment from any city or province will not do the trick in unlearning and dismantling colonial systems and rebuilding new practices. It must be a continuous commitment to actively work towards truth and reconciliation, and careful tending ongoing to that process.

> *"There is institutional and intergenerational damage that's been done that needs to be reversed and the only way to do that is to take proactive steps… Unless we actively fight systemic racism and actively push to change and to reduce barriers for Aboriginal people, it's not going to change."* (Layton, 2017)

The City of Toronto along with the federal government and other local governments have endorsed and officially adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Though it is not necessarily an entirely unique phenomenon in this case, there remains a profound cognitive dissonance between the promises and practices. As UNDRIP expressly asserts the international human rights standard for Indigenous peoples and communities to have Free, Prior, and Informed Consent (FPIC) in any consultation or participation in a broad range of projects (United Nations General Assembly, 2007).

The TRA Call to Action #43 appeals to all levels of government to fully embrace UNDRIP in principle and practice: "We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation."

Not only is FPIC good practice but is also an internationally recognized Indigenous right. Free, prior, and informed consent means Indigenous nations having full control over decisions and development that affect their lands, resources, and cultures. It is one of the core principles throughout the Declaration. There is also confusion and frustration from Indigenous and non-Indigenous peoples alike with the gap between international standards and domestic practice. Indigenous communities are working to shrink that gap by increasingly creating their own consultation standards and asserting existing cultural protocols (Land, 2016). Land (2016) also emphasizes that Crown decisions on Indigenous rights as they pertain to consultation and consent lie at the heart of emerging jurisprudence in Canada and that trends are moving towards FPIC.

The veto-power of FPIC is indeed powerful and may strike fear into the hearts of project proponents and municipal administrators everywhere, with concerns that all urban development will grind to a sustained halt or at least development application processes would become protracted. I believe that this comes from a notion that Indigenous communities are anti-development and anti-urban, however that is a generalized assumption that lumps all communities into having one homogenized viewpoint. I think that it provides an opportunity to create more just and collaborative processes based in mutuality and respect. It also may provide processes that create a more sustainable pace and long-term vision for the development that does occur. There could very well be long-term ecological and economic benefits in creating more considerate, thorough, and discerning development processes.

4. Discussion

4.1 Collaboration in building policy and protocol: Consulting about consultation

In order to move forward in a good way while acknowledging the missteps, exclusions, and erasure of Indigenous people in municipal matters and governance up until this point, I believe that the creation of an Indigenous consultation, engagement, and accommodation policy or policy framework must be done differently. Centering Indigenous voices and leadership in the development and implementation of this is absolutely necessary. Before any sort of policy or best practice guide is developed either for consultation and engagement, participating Indigenous communities must be involved in creating best practices in consultation and engagement. This also applies to strategies surrounding the growth of Indigenous representation through throughout municipal structures or working on adopting Indigenous ideologies and frameworks, as well as working to decolonize oppressive and

exclusive policies and practices. Each community deserves to have their own unique process and relationship with the municipality recognized, whether they would like to be involved with on every new development, none at all, or somewhere in between.

Through this project I focus the ideas and opinions Indigenous and non-indigenous practitioners with applicable backgrounds, complemented and sometimes contrasted by the literature. This includes sharing ideas and creation of normative content and looking to existing best practices as supports in envision the future. However, I do not intend to offer guidelines on the practices and content of Indigenous consultation policy. The intention behind my project is to set the stage to offer some suggestions and guidelines on developing a process to determine how to create formal Indigenous consultation and engagement policies and practices.

4.2 Toronto – A city on shared traditional territories

One of the perceived barriers to creating a cohesive framework is working in the shared territories of multiple Indigenous nations with different cultures, rights, and interests (Rae, 2017, pers. comm. Aug 29). Within the context of Toronto, the lands and shoreline on which the City has been built encompass the traditional territories of the Anishinaabe Toronto Purchase Treaty signatories, Mississaugas of the New Credit First Nation (MNCFN), but also the Haudenosaunee Confederacy (Six Nations), and the Huron-Wendat Nation. There are clear legal responsibilities towards MNCFN as treaty holders, however the obligations towards Six Nations, Huron-Wendat, and Urban Indigenous populations are not predetermined. That does not mean that the City of Toronto does not have any moral or ethical responsibility to consult and engage with all of those communities.

> *"I think there's a view in Toronto which would say that we don't need to do much of this stuff because claims have been settled or they've been negotiated, or there's been a treaty, but the fact is neither the Huron-Wendat nor the Six Nations are Treaty Holders [at this point]."* (Rae, 2017)

It is indeed a complex situation with multiple interests that diverge and overlap and have the potential to be contentious. However, the City of Toronto is responsible for navigating complex situations on a daily basis. I believe that is very possible and absolutely necessary to conduct meaningful consultation with treaty signatories, non-treatied nations who share traditional territories, and Urban Indigenous populations who may also be from other First Nations, Inuit, and Métis communities. In my personal experience while exploring themes of Indigenous-settler relations and current contexts, the conversation has gotten stuck at "It's complicated" and ended there. As if that is a reason not to push through the complexities and discomfort to find the ways in which we can work towards justice and equity. I believe that this has happened often at a municipal level. The complexity of navigating relationships with multiple communities, combined with some risk aversion and a lack of legislative framework to provide external accountability and clearly defined responsibilities is not an acceptable excuse for inaction on the part of municipalities.

One possibility in addressing the discrepancies between legal and inclusive interpretations of treaties in Toronto could be to recognize the traditional wampum treaties that apply here as well. The territories that Toronto exists on is not only subject to the Toronto purchase which is a recognized by Canadian law, but also to the Dish with One Spoon Wampum, and the Two Row Wampum, which are recognized by Indigenous laws and diplomacy (Simpson, 2008). The Dish with One Spoon is a wampum created between Haudenosaunee and Anishinaabe nations but is also includes other Indigenous nations and lays out the ways in which communities will uphold their relationships with each other and how they will share the land in a sustainable and collaborative way (Simpson, 2008). There could be a way to recognize both Canadian and Indigenous intersocietal legal and political orders to effectively recognize the shared territories which we are on (Glass, 2015).

As with multiple legal and political systems, there are also opportunities to recognize Canadian and Indigenous knowledges and find complementary ways for them to work together in planning. Conventional planning approaches where government officials come into communities as the "experts" and dictate the timeline and process for consultation must be entirely reformed. The finer details of how would have to emerge throughout a reflexive and iterative process and collaborative agreements, and municipal planners and employees would follow the lead of those communities and prioritize flexibility, commitment, and complete transparency throughout the process while providing support and resources. This moment in time while awareness and support for reconciliation is building but before any external frameworks are in place for municipalities is a wonderful time to go far beyond the bare minimum and set the bar high for others to meet and surpass.

4.3 What might the processes and results look like if municipalities in Ontario took the initiative to build strong institutional relationships with Indigenous communities, work to decolonize municipal processes, and engage in respectful, culturally aware and sensitive consultation practices and ongoing collaboration in land use planning processes?

> *"Proposing that First Nations and non-First Nation communities can exist in a shared space of mutual trust and respect is influential and inspirational when thinking about how provincial Crown policies can evolve: It is no longer about First Nations as a stakeholders; it is about First Nations as equal partners with equal footing."* (McLeod et al., 2015, p. 15)

In each interview towards the end, I asked each participant if they had any suggestions and ideas of what could improve on the processes, what practices they would like to see implemented, and if they believe these changes can be implemented within the current structure and systems of municipal and local governments. Many strong and insightful themes emerged, some coming from an individual's feedback, some recurring in

multiple interviews. Each generous sharing of ideas came from unique and varied perspectives based in the experience and expertise of the individual contributor.

Though of the wide range of backgrounds and approaches often differed, the suggestions carried along specific themes that I will further unfold and often fit together in complimentary ways. I have divvied up the ideas expressed by participants into four themes. It is a fairly streamlined approach chosen to align with existing systems and ideologies within the municipal structure. In the case of building a consultation and engagement policy or policy framework, extensive Indigenous community consultation, collaboration, and comprehensive and iterative Indigenous-led processes would be absolutely necessary to round out these components.

The TRC calls upon ALL public servants to participate in intensive learning modules and to step individually and organizationally into accountability and meet Call to Action #57: "We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism."

The following four themes serve to aggregate some of the ideas presented by interview participants as well as some derived from the research, and Indigenous communities' publicly available existing protocols and standards. Collectively, the ideas and experiences offered by participants share the combined decades of experience from the perspectives of participants from diverse cultural backgrounds including Anishinaabe, Haudenosaunee, Métis, and Canadians of various ancestries.[6] I intend these themes to support building policies that go beyond existing approaches and frameworks and shift towards centering reciprocity, respect, reconciliation, and Indigenous-led understandings and approaches to inter-governmental relationships throughout each point in the process. The recommendations offered here are not direct guidelines for the content of a policy, they are suggestions that I have developed out of my research process (including ideas shared by interviewees) on how to go about the iterative and collaborative consultation process while working towards building an Indigenous policy or policy framework.

Integral in this is not only making statements of support and promises of inclusion in existing process but also actively collaborating to re-envision and build them alongside a framework. These suggested considerations will serve to explicitly establish recognition of Canadian municipalities' responsibilities and offer guidelines for working towards the development of municipal consultation and engagement strategies and iterative implementation plans that creates external accountability that opens the door to build upon local-level government-to-government relationships.

[6] Participants were not asked to identify what nationality or culture that they identify with. Indigenous participants all volunteered which communities and/or nations they were from. Non-indigenous participants were not asked what cultural background or nationality they identified as.

The following four themes are based within the existing institutional structures and processes, but in my thinking I also strive towards the dismantling of the old systems that no longer work and the creation of new systems. Certain components of how the following categories are shaped and language is used are inspired by the City of Calgary's draft Indigenous Policy Document, however the content and ideas are produced through the interview and research process.

i) Building Cultural Awareness and Competency:

This section is the preliminary work that municipalities need to do to ensure that their planning staff and employees have done before ever approaching Indigenous communities. Education is the underlying theme throughout this section. Learning, listening, curiosity, and receptivity are key to create a foundation of sensitivity and awareness. It is the homework required to be able to responsibly and respectfully ensure that extra work and burden is not placed on those communities in having to educate municipal employees on specific historical and cultural context. There are many resources available online and in books as well as learning opportunities in community setting such as public talks, workshops, or courses that support non-indigenous Canadians of settler ancestry in learning about Aboriginal and treaty rights and where they are derived from. This learning also emphasizes the individual and institutional responsibilities to Indigenous peoples by that comes with the privilege of being a Canadian citizen and treaty partner.[7]

- **Learning protocols:** Protocols for contacting, working with, or making requests of Indigenous Elders, Chief and Council, Traditional or Hereditary Council, or Traditional Knowledge holders; how to appropriately present an honorarium, gift; or compensation for expenses may differ between each culture, nation, and community. If seeking clarification of specific community protocols, search for resources; communities or band administrations often have information up on their website. If you've spent some time researching and there is no information available online, you can call the community's administration office and ask politely.

- **Cultural competency education:** This process of learning needs to centre Indigenous experiences and focus on understanding specific historical and ongoing Indigenous experiences of colonialism and ongoing colonial legacies in institutional structures, processes, and policies, as well as how government institutions play a specific role. As stated earlier in TRA Call to Action 57, required education encompasses *"the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism."*

Education programs such as the daylong Indigenous Cultural Competency

[7] Treaty rights apply to treatied territories and Aboriginal rights apply to all of Canada.

Training (ICCT) offered through the Native Canadians Centre of Toronto address many of these topics in a comprehensive manner. The ICCT course covers such subjects as terminology and definitions, historical events throughout Canada's colonial history and their ongoing impacts, contemporary experiences of Indigenous peoples on and off reserve, highlight contributions and offerings of Indigenous peoples, addressing current issues as they uniquely pertain to Indigenous peoples. It looks at common stereotypes and misconceptions, trauma-informed perspectives on to understand inter-generational and complex trauma, and promotes individual and organizational cultural competency.

As part of educational initiatives, have all City employees read the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Report and Calls to Action, and the treaty (or treaties) that governs the territories where they live and work (in the case of Toronto, it would be the Toronto Purchase). It is also important to gain at least a basic understanding of original names and cultures of the nations who may also have claim to traditional territories, even if they are not treaty signatories. For employees working directly with Indigenous communities, create an opportunity to reflect on their experience delving into what they've learned with their peers with a trained anti-racism or Indigenous relations facilitator.

- **Regular communication about projects:** Expanding the Indigenous portfolio so that all municipal employees may be aware of its priorities, planned actions, and future directions, even if they are not working directly with Indigenous communities or contexts in their professional role.

- **Handling of proprietary information and data:** For employees working with communities and information pertaining to Indigenous individuals and communities, provide training on the First Nations Principles of OCAP® (Ownership Control Access Possession). This training is available online through the First Nations Information Governance Centre (FNIGC) in partnership with Algonquin College.

ii) Consultation & Accommodation

The recommendations in this section reflect the suggestions of interview participants and information drawn from the research in terms of consideration for best practices in the creation of a municipal consultation and accommodation policy. Without strong provincial directives in terms of responsibility to consult with and accommodate Indigenous communities, municipal and regional governments have the opportunity to shape their own consultation and accommodation policy collaboratively with the communities that will be part of the consultation process. One interview participant pointed to the current legislative situation of the Duty to Consult, identifying that:

> *"Ultimately, the duty has to be discharged by the Crown. Indigenous people don't get consulted on how they'd like to be consulted".* (Interviewee. 2017 pers. comm.)

There is no current requirement for the Duty to Consult and Accommodate to be conducted in a way that community approves of, only the courts have had the opportunity to articulate the requirements. Because of that, consultation has historically been conducted in a way to appease the legal requirements, not respecting communities' own requirements and preferences.

When functioning as written in law, the Duty to Consult and Accommodate serves as a protection of Aboriginal and Treaty rights. However, that law is also created and defined by a judicial system that is based in British law. It was constructed as the constitution was developed, which remains a legacy of colonial systems based in oppression and paternalism. In Canadian courts, Indigenous peoples now rely on the protections of their rights that are based in the system that has taken so much from them. Since 1982, many communities have had to defend their rights citing Section 35 of the Constitution Act in order to protect their communities and lands, and operate within a legal system that does not recognize their own legal and constitutional systems. In these cases, they rely on the Supreme Court for the enforcement of recognition of those rights. The particularly lengthy and vicious legal battle between Kitchenuhmaykoosib Inninuwug (ᑭᐦᒋᓇᒣᑯᐦᓯᑊᐃᓂᓂᐧᐊᐠ) and Platinex Inc. serves as a well-documented example of such.

Though consent (meaning full control over decisions and development that affect lands, resources, and cultures) is still not required in situations where the Duty to Consult is required, general trends in recent precedent-setting Supreme Court rulings seem to be moving towards upholding meaningful consultation processes (though not consistently). That is, where "meaningful" is determined by those being consulted with or whose consent is being sought, as opposed to the proponents or governments who may have vested interests in the consultation process working in their favour or best suited to their organizational purposes.

In developing a consultation strategy in municipal cases where the Duty to Consult and Accommodate does not apply unless delegated by the Crown, multiple protocols may need to be developed for different Indigenous communities including Urban Indigenous populations. Because the responsibilities of municipalities have not been dictated by the courts, there is the opportunity to shift the historical patterns of disrespectful consultation practices and to develop practices derived from communities' own protocols and preferences on how, with whom, and about what they would like to be consulted. Some suggestions from participants included:

- Indigenous involvement at the earliest stages: A good working relationship at the very start of a land-use planning process can make all the difference in how the entire experience unfolds. One of the most consistent sentiments expressed throughout these discussions –and beyond in other discussions predominantly with people who deal with community consultation– is that Indigenous communities should be involved in the process before anything occurs.

> *"Consultation never seems to be the first thing that happens and it should be one of the first things that happens. It should be higher [on the scale of importance]."* (Maracle, 2017)

Indigenous peoples and communities have their own unique connection to lands and waters and information on those deep cultural and spiritual connections to places are not often mapped for the non-indigenous and non-local public to comprehend. For this among other reasons, acting with respect and reciprocity and having open lines of communication and iterative consultation must begin at the very beginning of the conception of the project before applications for permits or exploratory surveying occurs. That is when proponents should reach out to Indigenous communities who may be involved or affected.

Introducing consultation in the later stages of land-use projects (or other projects) reinforces that the consultation is just there to "check a box" and doesn't demonstrate that the municipality holds the needs, opinions, or suggestions of the community in high regard. The opportunity for collaboration or an ongoing relationship gets stifled at that point because plans are in process and timelines are already created. At that point, the consultation is just an afterthought and comes across as such. Not only is this a detriment to the communities whose opportunity for meaningful participation and to give feedback get bypassed, but it is also to the detriment of project proponents, who lose out on the unique and invaluable ideas and participation that the community may be willing to offer.

> *"It has to become part and parcel of how you operate, it should never be as a reaction to something."* (Maracle, 2017)

Without an ongoing respectful process with recognition for the unique laws that protect Aboriginal and treaty rights, as well as Indigenous and natural law there is also a much higher chance of conflict later on in the process, an outcome that can be draining and difficult for all involved. King (2017) states that: *"It brings you to the table but ideally we should be at the table before there's a fight".*

Putting the work in at the beginning of the process to learn and follow communities' own consultation standards and protocols and building trust and a good working relationship can support the intention that, no matter the outcome of the proposed project, the impacts of the consultations themselves do not have a detrimental effect on communities. If communications and negotiations are conducted in good faith and with regard for all parties involved, there is less need for adversarial measures to be taken.

- Consultation tailored to specific community needs: The only group that can determine what is best for a specific community is that community themselves. Every group is different and of course there will also likely be diverse needs, interests, views, and opinions among the group. There may also be multiple leaderships and systems of governance within one community as well. Traditional or hereditary leaderships may

operate in conjunction with, alongside, and/or separately from Chiefs and band councils.

Because of all of these and more intricacies and differences between cultures and communities, those communities have the ability to assert what is best for themselves. I have heard many times from band administrations about how current Duty to Consult systems impact consultation and lands staff. Often times the community has the resources to employ a maximum of one consultation officer. However, to meet the high amount of incoming project proposals and consultation packages, it would actually require a team of Elders, traditional knowledge holders, lawyers, engineers, biologists, ecologists, planners, and GIS technicians in order to accurately assess the glut of paperwork within the given timeframes and be able make fully informed decisions that have the potential to impact their entire community. Some bands are creating their own consultation and accommodation standards to try to ensure that any consultations follow their own protocols and try to reduce the burden of the process on their staff and community. Following communities' own protocols (where they exist) is one way to honour communities' ways of engaging. Where they don't exist, creating consultation standards between local non-Indigenous governments and Indigenous governments is key to work towards processes that are mutually beneficial.

- Indigenous impact assessment: One participant suggested that similar to how an Environmental Impact Assessment is required for large scale and potentially harmful project, so should there be an assessment for potential impacts on Indigenous peoples (Wiebe, 2017). It could assist them in gaining a better understanding of how policies may uniquely affect Indigenous communities and Urban Indigenous peoples and hopefully integrate those considerations into policy development going forward.

> *"In an ideal world is where Indigenous people are part of all of those decisions. That our knowledge, our perspectives, our needs and our aspirations: for our communities and for our nations and for our peoples, are factored into those decisions. We talk about assessments on Environmental assessments and these sorts of things but where is the assessment on how it impacts Indigenous people."* (Wiebe, 2017)

This idea could be assistive policy for implementation of Free, Prior, and Informed Consent and support communities in understanding how proposed projects or infrastructure may impact them in different ways. Criteria could be developed by or with the community and include such considerations as cultural, spiritual, environmental, and economic metrics, or other measures that the community decides. Having this kind of metric could greatly ease the workload of consultation and lands staff, and any other community members who are responsible for making those decisions.

Either on a city-wide or Indigenous community level, having a specific process created by the Indigenous communities involved which proponents or government

follow for consultation or consent-based systems can also help non-Indigenous planners or public servants.

iii) Community Engagement & Relationship Building

Of all of the categories, I think that community engagement and relationship building requires unique processes built from ongoing connection and dialogue with individual communities: their cultures, their history of treaty-building and inter-governmental relationships, and the quality of previous engagement.

I believe that there is no specific formula for building relationships, only the requirement to approach the process with respect, humility, good listening skills, and a genuine interest in connecting. Government relations with Indigenous communities have a long-standing history of exploitation and one-sidedness. Actual relationships—whether working relationships between institutions, or interpersonal between individuals—require reciprocity and mutuality as well as receptivity; just because one party is interested in relationship building doesn't require the other(s) to be interested or willing. Relationships are also not built instantaneously or when one party needs something from the other. I have heard and read Leanne Simpson say that it is important to build relationships in times of peace, when there is time for reflection and consideration (Davis, 2010).

Like all relationships, functional working relationships require time, patience, acceptance of difference, communication, and continued willingness to 'show up'. Particularly with our colonial history of systemic and institutional abuse and exploitation of Indigenous nations, not to mention the ongoing making and breaking of promises by Canadian governments, it is understandable that trust in government and industry's intentions has been broken.[8] Remarkably however, in interviews and personal conversations speaking with different First Nations leadership and administrations, many Indigenous communities see that that partnership is necessary going forward and are still willing to come to the table if they are to be treated with respect and as an equal partner.

There are many ways for non-Indigenous institutions and individuals to work towards decolonization and reconciliation. A few of these include: educating ourselves on historical and contemporary colonial policies and mindsets in Canada; taking our cues from Indigenous communities and leaders; listening and learning; respecting diversity of worldviews, legal systems, constitutions, spiritualities, governance structures, and relationships to land, water, and other-than-human beings; and putting in the work to explore and understand our own complex feelings, emotions, and ingrained biases and assumptions within our own communities, not placing that burden on Indigenous peoples.

Below are some of the considerations and actions that municipal governments can incorporate into approaching the process of creating (and co-creating) Indigenous community

[8] Prime Minister Trudeau's promises to implement UNDRIP and ensure clean drinking water on reserves as a couple of more recent examples.

engagement plans and practices, and to reflect upon when working on relationship building (as suggested by interview participants):[9]

- **Broadening engagement:** One suggestion by participant Mae Maracle was to open up a broader ongoing dialogue to provide opportunities for feedback that weren't project-specific. She has witnessed in her 27 years working for the City that the purpose of much of the engagement with Indigenous communities is tied to a project, and serves to inform as opposed to seek feedback. By opening channels for ongoing opportunity for reflexive communication, and providing opportunities for Indigenous Torontonians to offer feedback, a rapport can be developed and Indigenous participation become part of processes. Having that ongoing rapport and opportunity to be heard and participate, community consultation and engagement would be on a spectrum of communication as opposed to emerging in planning or policy processes every now and then and then retreating back out of sight.

- **Promotion of Indigenous businesses, organizations, and initiatives:** Indigenous businesses, organizations, and grassroots initiatives continue to become more prevalent. JP Gladu, president for the Canadian Council for Aboriginal Business (CCAB) advised that: "*When you go into a community, you have to be going in without an agenda. Building relationships, spending time. Treat it like you treat your marriage. You don't meet the girl or boy of your dreams and jump right in. You've got to learn about each other's value. People underestimate the amount of time it takes to build those meaningful relationships before you can go and do business together*" (Archer, 2017).

  Though lacking in the collection and tracking of data pertaining to Indigenous business sector growth in Canada and vastly under-represented in the literature, trends in Toronto would seem to indicate that urban Indigenous businesses and initiatives are gaining momentum and public support.

  A preliminary agreement has been made to create an Indigenous business district in the City of Toronto. A partnership has been created between MNCFN Chief Stacey Laforme, Toronto City Councillor Kristyn Wong-Tam, and the CCAB. This business district, though still in the planning phase, would bridge the early steps of creating positive visible representations of Indigenous people in the urban centres (as will be discussed in the following section) and provide spaces for cross-cultural interactions while supporting Indigenous business owners, organizations, makers, communities, and livelihoods.

[9] This list is by no means exhaustive, but it combines some of the suggestions made by interviewees. To actually participate in genuine community engagement and relationship building, municipalities must take the time to learn about and listen to what the community members offer and what their interests are, and work to understand how to support those interests from within the municipality, using municipal financial resources or access to provincial resources to support the process.

iv) Collaboration & Representation:

> *"How do cities play a role in supporting not just reconciliation but how are meaningful relationships created and how is it done in a way that Indigenous people play a meaningful role in decision-making? Because I think for me, that's what it comes down to. We have not historically been involved in many decisions in this country and particularly in cities."* (Wiebe, 2017)

- **Centering and celebrating Indigenous worldviews, knowledges, and experiences:** Collaboration, relationship building, and specific Indigenous engagement are all important and necessary steps in terms of municipal outreach. However, municipalities and other non-Indigenous institutions have habitually conducted any sort of intercultural consultation, collaboration, or projects within their own cultural or institutional frameworks and on their own timeline. I believe that working collaboratively with Indigenous communities entails a learning process (as touched upon in the Building Cultural Competency section). Part of this is recognizing the unique ways that Indigenous peoples experience the city and practice their cultures within an urban context. These are the people who have the best insight into how they interact with and navigate the city, access services, and experience barriers.

  It's also of great benefit to non-Indigenous individuals and organizations to recognize the possibilities offered in learning about and implementing Indigenous ways of knowing, being, and doing. In taking the time to learn about and graciously accepting traditional knowledge and giving it real weight in development of policy and planning, there are opportunities for mutual exchange, sharing, and making space for reconciliation. Expressed simply and beautifully, one interview participant summed up the reason for valuing and celebrating and centring Indigenous ways of knowing, being, and doing:

  "Our knowledge matters." (Wiebe, 2017)

- **Visual representation- indigenizing & decolonizing public space**: Some of the first steps of Indigenizing cities and institutions are visual representations of Indigenous people, cultures, languages, and art, both in design of the public sphere (Merson, 2014). There is a danger when cities feel that representation begins and ends with 'plaques and murals'. However, these function as a way of claiming public space and making Indigenous art, cultures, histories, and original place names tangible by bringing them into physical form so that non-Indigenous people interact with them on a daily basis. That visual representation reminds us all where we are and on whose land we live, as well as serve as a point of pride and recognition for Indigenous peoples. Toronto has many organizations devoted to promoting and creating public Indigenous art. There are multiple projects that recognize and promote Indigenous place names and place-based cultural heritage including: First Story TO, Ogimaa Mikana: Reclaiming/Renaming, and the Ways of Knowing Partnership. Another such project that Carolyn King has created is called the Moccasin Identifier Project. Her energy levels match her generosity, and her unwavering belief and devotion to her work is contagious when she says, *"My moccasin identifier is going to change the world."*

Ongoing support and promotion for permanent installations both inside municipal buildings and in public spaces as well as encouragement and funding for initiative in private spaces is a good first step for elevating awareness of Indigenous presence and histories. With such a rapid rate of development throughout Toronto, there are opportunities to ensure that Indigenous place making initiatives and organizations are supported by provisions made by Section 37 bonusing.[10] The City does have the Percent for Public Art Program but it makes no mention of supporting Indigenous or Aboriginal- specific projects or programming, and there lies an opportunity.

- **Representation in public service:** There is an under-representation of Indigenous people employed at the City of Toronto throughout all levels and across departments according to multiple interviewees. Working on improving equity in hiring practices to see more Indigenous employees across divisions and within all different occupational levels has been part of the Aboriginal Affair Committee's (AAC) mandate, particularly since Councillor Wong-Tam's office received a complaint about the lack of Indigenous representation throughout the City. The AAC have also been working directly with Indigenous employment organizations to create internships and points of entry for Indigenous students, recent graduates, and qualified job seekers. The AAC has made public commitments to support such practices and the current mayor and council have voiced support. As a volunteer committee though, there is little time, resources, and external accountability in place to ensure that these great ideas and commitments are put into practice. Adequate resources are not allocated and both efficacy and progress are self-monitored, and so in turn, initiatives may be regarded as optional. Current systems lack transparency and accountability to internal structures as well as to broader Indigenous communities, organizations, and leadership.

- **Accountability in advocacy and monitoring initiatives:** Multiple Indigenous interviewees expressed that their experience of advocacy related to Indigenous involvement, consultation, and municipal policy, was a role for which they alone took responsibility. If they didn't take it on, there was the possibility that those laws and agreements would not be honoured or fulfilled, as with a number examples in previous sections.

It is also important to recognize the risk of Indigenous municipal employees who are not working in roles pertaining to Indigenous affairs or relations, being places in positions where colleagues and management lean on then to make inroads with their own or other Indigenous communities. It can be a common experience for racialized people in the workplace to be called upon to consult with people from their own communities, or to be asked for specific cultural information by colleagues,

[10] Section 37 of the *Planning Act* allows for municipalities to grant height and density increases to developers, under the terms that they provide "facilities, services, or matters" in exchange.

though those tasks may not be associated with the scope of their work (Lopes & Thomas, 2016; Hiranandani, 2012).

Municipal-wide systems of accountability need to be established so that the onus and burden of ensuring that the quality and respect of any relations and consultation practices with Indigenous communities are not placed on employees whose jobs have nothing to do with community relations, simply because of their being Indigenous.

5. Conclusion: Changing municipal practices on common ground

> *"It's looking at how we tell a story about ourselves. So I think when people look at consultation, they have to look at it in that way. Consultation is more: how to build that story, how to find out who we are and what it is that we're learning from each other. So I think if you can consider the consultation and engagement process as more of a learning experience. It's more how we understand each other and how we understand how something grows, and how it needs to be nurtured for it to be healthy. You can't just slop it down there and then walk away from it. There has to be a whole caring attention that has to happen."* (Maracle, 2017)

The Duty to Consult and Accommodate is a practice that is grounded in doctrines older than Canada itself and is both a representation and a component of the greater context of settler-Indigenous relations in Canada. The Crown's ideology of "sovereign and subject" has crossed the ocean and shaped the colonial ideals of how the relationship would be in North America. Indigenous leadership has persistently sought to operate on nation-to-nation relationships of respectful equals and of treaty partners since early days (Corntassel & Holder, 2008). The fabric of the contemporary relationship between Indigenous peoples and settler-Canadian society is woven of both Indigenous traditions of political and social relationships, as well as European frameworks, and they continually overlap and coexist but not quite in a fluid or fully functional way. The ideas early covenants such as the wampum belts discussed above are not yet reflected in the ways in which we relate to and support each other with mutual respect, as equals.

The answers and frameworks do not need to be looked for elsewhere. The traditions, the legal, ecological, societal, and constitutional frameworks provide guidance on how to move forward in right relationship with each other and with the land. There are calls to renew the Two Row Wampum that "brightens our minds" and utilize this as a foundation of our relationship moving forward, as a framework to share power, governance, responsibility and care for land and waters (Ransom, & Ettenger, 2001; McGregor, 2008; Parmenter, 2013). There are also calls for Canada to make good on their treaty obligations from the written

treaties as well, and end the ongoing systemic mistreatment of Indigenous peoples in their own lands.

As stated in Paragraph 23 of *Haida* (2004), "The jurisprudence of this Court supports the view that the duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982.*" This project just scratches the surface of some of the history that has led us to where we are today. It also just barely begins to imagine some of the possibilities of how to act in the true spirit of collaboration and justice and start to right some of the many wrong turns that we have taken in the creation of the Canadian state.

With so much talk by governments about reconciliation between nations, again I say that the common ground that we all share is literally our common ground where we currently live. Not that we have equal rights to be here or equal claims to relationship with this place, but this land is the physical space where we all exist. It is the lifeblood that we all equally rely on and we all are equally responsible for its care. Changing our current practices in order to actually work towards reconciliation and respect means equitably envisioning and building this relationship together, based in the land where we all live, based in the rich, complex, and refined systems that come from this land, and based in our agreements to maintain respect for Indigenous sovereignty and act honourably with each others' wellbeing in mind.

… As long as the grass is green, as long as the waters flow, and as long as the sun rises in the east and sets in the west.

Part Three: Booklet

Picking up our responsibilities:
Towards respectful and culturally-sensitive municipal consultation and engagement with Indigenous communities

1. Rationale:

The attached booklet (located as the first appendix for formatting reasons) is populated with distilled content from the findings paper. The booklet is entitled "Picking up our responsibilities: Towards respectful and culturally-sensitive municipal consultation and engagement with Indigenous communities".

The intended audience for this document is civil servants who are employed by a municipality. The geographical and cultural context laid out in the first couple of pages is specific to the City of Toronto. The content presented pertaining to the Duty to Consult and Accommodate, municipal consultation responsibilities, and some of the guiding frameworks such as the Truth and Reconciliation Commission of Canada's Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples, is intended to be broadly applicable to any municipality in Canada though. The considerations in building consultation and engagement practices are also intended to be more widely applicable but are focused within a more urban context.

My intention for this booklet is to offer an abridged and approachable introduction to considerations in Indigenous consultation and engagement for municipalities as outlined in my research project. It provides some context and information on some different ideas to contemplate and explore while developing municipal policies and practices on consultation and/or engagement with Indigenous communities.

This aim of this document is to provide some suggestions of guidelines to shape a process of developing an Indigenous consultation and/or engagement policy or Indigenous policy or policy framework. It is not intended as recommended guidelines for a consultation process or best practices, more what to consider during those first steps when consulting about building a process, policy, or practice. Through these recommendations I hope to encourage municipalities to develop relationships with Indigenous communities in order to build those processes and policies together, so that they may function well and benefit all those involved. Collaboratively building equitable consultation policies and practices will hopefully create processes that do not function as a one-way street where burden is disproportionately shouldered, as many consultation practices have historically.

A note on the cover photo:

The cover photo, taken by Daniel Rotsztain, depicts citizens carrying a large fabric Two Row Wampum treaty belt and carrying it to the Supreme Court of Canada (SCC), with a Canadian flag flying in the background. This photo was taken when the SCC released the ruling of *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 and *Clyde River (Hamlet) v. Petroleum Geo-Services Inc*., 2017 SCC 40, two court cases pertaining to the Duty to Consult and Accommodate. To me, carrying the Two Row to the Supreme Court in the Nation's capitol depicted the literal "picking up" of our responsibilities, and connected to the process of recognizing the legal rights to consultation, as well as what happens when those rights are denied and citizens gather in public to protest.

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- Who's Afraid of the Big, Bad FPIC?: The evolving integration of the UNDRIP into Canadian Law and Policy. By Lorraine Land (2015). Northern Public Affairs

Toronto-specific Resources:

- The Indigenous History of Tkaronto website, University of Toronto Libraries (Information on the Toronto Purchase & much more)
- Native Canadian Centre's Indigenous Cultural Competency Training
- First Story Toronto Website, App, and Bus Tour
- Ogimaa Mikana Project: Reclaiming/Renaming

Dish with One Spoon:

- Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships. By Leanne Simpson (2008). Wicazo Sa Review

Picking up our responsibilities:

Towards respectful and culturally-sensitive municipal consultation and engagement with Indigenous communities

Photo: Ogimaa Mikana Project, 2016

This document was produced as partial fulfillment of the requirements of a Major Research Portfolio for the Planning Program in Master in Environmental Studies at York University under the supportive and generous supervision of Dr. Laura Taylor and Dr. Ravi de Costa

With special recognition and gratitude to interview participants who graciously offered their wisdom and expertise on this topic: Carolyn King, Mae Maracle, Justin Wiebe, Councillor Mike Layton, Bob Rae, and unnamed participants.
All images were used with permission.

Any questions, concerns, or feedback can be directed to zoe.l.mager@gmail.com or taylorl9@yorku.ca

Zoë Mager, 2017.
Faculty of Environmental Studies, York University

Who was this pamphlet written for?

This pamphlet is intended for **municipal employees** from across all sectors, with a special focus on workers who are involved in **land-use and community planning**, **natural and cultural heritage, community engagement, social services**, and any **policy development** and/or implementation work.

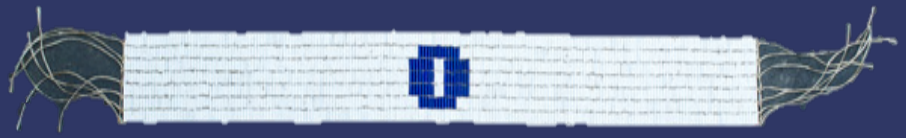
What can I learn from this pamphlet?

This document offers a very brief overview of why municipalities are responsible for supporting **culturally-sensitive**, **respectful**, **and reciprocal** consultation and collaboration practices with Indigenous communities and organizations.

The intention of this document is to acknowledge current gaps between government promises and municipal practices surrounding Aboriginal rights to consultation and accommodation. It builds on current understandings of municipal responsibilities in **consultation, engagement, relationship-building, and representation** of Indigenous communities.

It also lays a basis for why there is a municipal responsibility to **take the initiative** in ensuring that Indigenous leadership and communities are not only heard in municipal-level issues, but have their rights and sovereignty recognized in leadership roles within or **in partnership** with city governments and envisions ways of creating **better municipal practices**.

> *"There is institutional and intergenerational damage that's been done that needs to be reversed, and the only way to do that is to take proactive steps... Unless we actively fight systemic racism and actively push to change and to reduce barriers for Aboriginal people, it's not going to change."*
> – Toronto City Councillor Mike Layton, 2017



Where are we? Tkaronto Context

Territorial Acknowledgement

The City of Toronto is built on the **land and waters** that have sustained and been home to Indigenous peoples for **time immemorial**. This place has been the site of human activity for at least 15,000 years. Toronto (from the Kanienké'ha [Mohawk] place name Tkaronto) is within the traditional territories of the Haudenosaunee Confederacy, Huron-Wendat Nation, and Mississauga Anishinaabeg, specifically Mississaugas of the New Credit First Nation, who are the treaty signatories of the Toronto Purchase.

This land where we live is subject to **treaties**. For those of us who are settlers and beneficiaries of the privileges of living in Canada, we are responsible for **educating ourselves and our communities** about the histories, nations, and treaties of the traditional territories where we live. On individual, community, and institutional levels, we must **uphold our responsibilities** and tend to the covenants that we have inherited.

Dish with One Spoon Territory

There are early treaties based in traditions of Indigenous diplomacy and sometimes created in the form of **Wampum belts**. The Dish with One Spoon is a **sacred agreement** between Anishinaabeg and Haudenosaunee Nations, and includes other Indigenous nations who share these territories. This **pre-colonial treaty** outlines the shared governance of these lands and waters. More information about this is available in the resources section on page 12.

Treaties in Tkaronto

The Toronto Purchase

The land that Toronto is built upon is subject to a treaty called the Toronto Purchase. The agreement was originally entered into by the British Crown and the Missisauga Anishinaabeg in 1787. Both Indigenous and British authorities recognized that this treaty was made in bad faith by the Crown, and it was eventually was rewritten in 1805, and then settled in 2010. The **Missisaugas of the New Credit First Nation** are the legally-recognized treaty signatories of the Toronto Purchase.

Kawentha – The Two Row Wampum

Another original agreement in the form of a wampum belt exists on these territories. It is called the Two Row Wampum treaty, or **Kaswentha** (or Guswenta), which means **"It brightens our minds"** in Kanienké'ha (Mohawk) (as taught by Dan Longboat). It is one of the very first Indigenous-settler treaties and is an ongoing agreement between Haudenosaunee and Europeans. It states that as two peoples: *"we shall each travel the river together, side by side, but in our own boat. Neither of us will make compulsory laws nor interfere in the internal affairs of the other. Neither of us will try to steer the other's vessel"* and that it will last *"as long as the grass is green, as long as the water flows downhill, and as long as the sun rises in the east and sets in the west"* (Keefer, 2014). It is our responsibility to uphold this treaty and as settler-Canadians we have plenty of work to do to get into right relation with our treaty partners.

The Duty to Consult and Accommodate

The Duty to Consult and Accommodate (DTCA) is the **legal responsibility** of the federal, provincial, and territorial governments that represent the Crown in Canada. The DTCA is part of the inherent **Aboriginal rights** that all First Nations, Inuit and Métis peoples have in Canada. The DTCA is recognized and affirmed in constitutional law as outlined **Section 35 of the *Constitution Act 1982*** and upheld by Canadian courts.

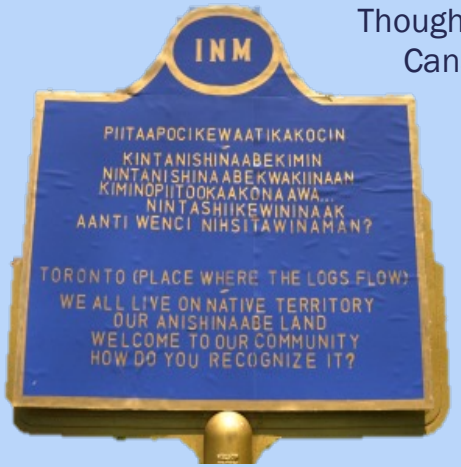
When a proponent (such as any government body or private industry) proposes a project that could potentially impact an Indigenous community and the Crown is aware, **meaningful consultation** and in some cases accommodation of that community are required.

Municipal consultation responsibilities

The Supreme Court of Canada has ruled that the Crown is solely responsible for ensuring that the Duty to Consult and Accommodate is fulfilled, and that the Crown in Canada is represented by the federal and provincial governments. However, the Crown is able to delegate the procedural aspects (meaning the actual implementation of the consultation process), to third parties such as municipalities. However, though municipalities do not have the legal responsibility to ensure that the DTCA is fulfilled, they do arguably have **moral and ethical responsibilities as treaty partners** to take the initiative in **respectful, culturally-sensitive consultation** and engagement.

Photo: Ogimaa Mikana Project, 2013

Why should municipalities consult and collaborate with Indigenous communities?



Though the Supreme Court of Canada has yet to rule on whether municipalities are legally responsible for ensuring that consultation and accommodation are fulfilled, cities and municipalities in Canada are dealing with land-use planning on Indigenous lands and territories. As decision-makers who have the opportunity to put **reconciliation and relationship building** with Indigenous nations into practice on a tangible community level, why wouldn't they? There are many opportunities that exist on a municipal level to shift how cities and local governments **collaborate** with and build **lasting institutional partnerships** with First Nations, Inuit, Métis, and Urban Indigenous communities.

Some municipalities are already working to improve on the **equity of their practices** including developing Indigenous policies, creating and resourcing Indigenous relations offices, and working towards more **Indigenous representation** across sectors and levels of employment.

"It has to become part and parcel of how you operate, it should never be as a reaction to something."
- Mae Maracle, Indigenous Affairs Consultant, 2017.

Implementing the Truth and Reconciliation's Calls to Action

The **Truth and Reconciliation Commission** (TRC) delved into the history of forced removal of Indigenous children from their homes and communities and the government-mandated systemic abuse and cultural genocide that ensued in Indian Residential Schools (IRS). It also worked to address the **ongoing impacts and current policies** that continue to effect families and communities in the forms of **intergenerational trauma**.

In 2015, the TRC created a list of **94 Calls to Action** which addresses public and private institutions across many different sectors, working to unearth the roots of systemic racism and oppression that justified the creation of Indian Residential Schools. The 94 Calls address issues that had yet to be systematically identified and remedied throughout Canada.

One of the major themes throughout the calls was to adopt (in both theory and practice) the **United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP, 2008). In the section 'Canadian Governments and the United Nations Declaration on the Rights of Indigenous People', TRC Call to Action number 43 reads: *"We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation".*

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) & Free, Prior, and Informed Consent

The current federal government of Canada, led by Liberal Prime Minister Justin Trudeau, has made repeated promises since the 2015 election to adopt UNDRIP as a "**Framework for Reconciliation**" based on the recommendations by the Truth and Reconciliation Commission of Canada. One of the ongoing themes and direct recommendations from UNDRIP is the implementation of **Free, Prior, and Informed Consent** (FPIC) as written by former Special Rapporteur on the Rights of Indigenous peoples James Anaya. In the report Anaya also recognized the right to Indigenous self-governance in accordance with international human rights standards. The UN recognizes the rights of Indigenous peoples to have determination over their lands and communities, and that governments owe **good faith negotiations** that require free, prior, and informed consent before any decisions are made or actions are taken on Indigenous lands.

In his 2014 report on Canada, Anaya dedicated a large portion of his findings to government consultation practices and in particular the Duty to Consult and Accommodate (DTCA). Anaya found that the DTCA process created *"an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans"* (Anaya, 2014).

Considerations in building consultation and engagement policies

There is **careful consideration** required in beginning to create an Indigenous policy framework or best practices guide for consultation and engagement with Indigenous communities. In developing a policy or practice, public servants must first **take the time to understand** the **distinct histories, cultures, and protocols** of each of those communities that they may work with, as well as how and about what they would like to be involved in. Cities must provide adequate resources to involved community members, leaders, and organizations in order for them to be able to fully participate in the process without it being detrimental to Indigenous participants.

The **most important considerations** when building consultation, engagement, and collaborative partnerships with Indigenous communities must come from the communities themselves. Through **consulting about how to consult** may seem like an abstract idea, learning and **following individual community protocols and processes** and what they do and don't wish to be consulted about gives the opportunity for more functional and lasting partnerships.

The following suggestions for considerations on developing municipal Indigenous policy and practices come from research in the emerging field. This includes interviews with Indigenous and non-indigenous practitioners who are working with the Indigenous consultation in the areas of planning, law, Indigenous governance, policy, and political science. Many of these ideas come from **their hard work and expertise**.

Considerations in building consultation and engagement policies

i) Building Cultural Awareness & Competency:

- **Learning protocols:** Protocols may differ between each culture, nation, and community. If seeking clarification of specific community protocols for contacting, working with or making requests of Indigenous Elders, Chief and Council, Traditional or Hereditary Council, or Traditional Knowledge holders, or how to appropriately present an honorarium, gift, or compensation for expenses, search for resources online on the nation's own website. If none are available, contact the band office and politely inquire about cultural protocols.

- **Cultural competency education:** The TRC Call to Action number 57 requires that education of public servants should encompass "*the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaty and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism".*

> *"How do cities play a role in supporting not just reconciliation? How are meaningful relationships created and how is it done in a way that Indigenous people play a meaningful role in decision-making?... We have not historically been involved in many decisions in this country and particularly in cities."*
> *– Justin Wiebe, Michif Métis Planner, 2017*

Considerations continued...

- **Ongoing communication about projects to staff:** Expanding the Indigenous portfolio so that all municipal employees may be aware of its priorities, planned actions, and future directions, even if they are not working directly with Indigenous communities or contexts.

- **Proper handling of proprietary information and data:** For employees working with information pertaining to Indigenous individuals and communities, provide training on the First Nations Principles of OCAP® (Ownership Control Access Possession), which is available online.

ii) Consultation & Accommodation:

- **Indigenous involvement at the earliest stages:** Creating open lines of communication at the beginning of the process before any plans are made can build a good working relationship. Putting work in to learn and follow communities' own consultation standards and protocols helps to support that. Bringing consultation in the later stages of land-use and other project reinforces that the consultation is just there to "check a box" and doesn't hold the needs, opinions, or suggestions of the community in high regard. The opportunity for collaboration or ongoing relationship gets stifled at that point because plans are in process and timelines are already created.

Considerations continued...

- **Consultation tailored to specific community needs:** The only group that can determine what is best for a specific community is that community themselves. Every community is different and there will also likely be diverse needs, interests, views, and opinions among the group. There may also be multiple leaderships and systems of governance within one community as well. Traditional or hereditary leaderships may operate in conjunction alongside, or separately from Chiefs and band councils. Consultation practices must be tailored to work for the community themselves, based on their own protocols and processes.

- **Indigenous impact assessment:** Similar to how an Environmental Impact Assessment is required for large scale and potentially impactful project, so too should there be an assessment for potential impacts on Indigenous peoples. This idea could be assistive policy for implementation of Free, Prior, and Informed Consent, and support communities in understanding how proposed projects or infrastructure may impact them in different ways. Criteria could be developed by or with the community and include such considerations as cultural, spiritual, environmental, and economic metrics, or other measures decided by the community.

Considerations continued...

iii) Community Engagement & Relationship Building:

- **Broadening engagement:** Community engagement and relationship-building requires unique processes built from ongoing connection and dialogue with individual communities with particular consideration of: their cultures, their history of treaty-building and inter-governmental relationships, and the quality of previous engagement. Having that ongoing rapport and opportunity to be heard and participate, community consultation and engagement would be on a spectrum of communication, as opposed to emerging for a specific project intermittently, and then retreating back out of sight.

- **Promotion of Indigenous businesses, organizations, and initiatives:** Simple ways of supporting Indigenous-owned and run businesses, organizations, and initiatives are to patronize them, collaborate with them, offer grants and financial support for small-businesses and projects, and promote events and offer to host in city spaces.

iv) Collaboration & Representation:

- **Centering and celebrating Indigenous worldviews, knowledges, and experiences:** Cities and other non-Indigenous institutions have habitually conducted any sort of intercultural consultation, collaboration, or projects within their own cultural or institutional frameworks and on their own timeline.

Considerations continued...

Reciprocal collaboration means that Indigenous community worldviews, systems, timelines, and ways of knowing and doing are centred, respected, and honoured, and removal of the automatic expectation that municipal processes are the status quo.

- **Visual representation: indigenizing & decolonizing public space:** Some of the first steps of Indigenizing cities and institutions are visual representations of Indigenous people, cultures, languages, and art, both in design of the public sphere. Visual representation reminds us of where we are, whose land we live on, and serves as a point of pride and recognition for Indigenous peoples.

- **Representation in public service:** There is an under-representation of Indigenous people employed in many municipalities throughout all levels and across departments. Working on improving equity in hiring practices to see more Indigenous employees across divisions and within all different occupational levels is paramount to seeing higher representation. This would foster a safer, more accommodating and welcoming workspace for Indigenous and other racialized peoples.

- **Accountability in advocacy and monitoring initiatives:** Municipal-wide systems of accountability need to be established so that the responsibility of monitoring and enforcing policies rest with more than just the Indigenous representatives or office. They also must ensure that the onus and burden of maintaining the quality of consultation practices are not wrongfully placed on any Indigenous employees simply because of their being Indigenous.

Interview Questions

Research Project Title: Planning with Indigenous Peoples: Meaningful Municipal Consultation and Engagement as a Key Part of Relationship Building

Researcher: Zoë Mager, Graduate Planning Student, Faculty of Environmental Studies (under the supervision of Professors Laura Taylor & Ravi de Costa)

Style of Interview: Semi-structured, conversational

Guiding Questions:

1. Who are you and where are you from?

2. If not your own, what nation's territory (or nations' territories) do you live within currently?

3. What is your relationship to and/or understanding of the Duty to Consult and Accommodate? (As per Section 35 of the *Consultation Act 1982*)

4. Do you have experience with the Indigenous-municipal consultation and/or engagement, and if so, what is that experience?
   If yes to question 2:
   - Did you feel that that consultation process was meaningful?
   - Was it conducted in a culturally sensitive and respectful way?
   - How did that affect you?
   - What worked and what didn't?
   - How could it have gone better?

5. What do you think Indigenous communities have to benefit from municipalities and cities changing/improving consultation standards?

6. What do you think municipalities have to benefit?

7. What might meaningful consultation look like to you?

8. How would you like to see that change in the future?

9. What do you hope that relationship looks like in 10 years?

10. Is there anything else that you would like to share about, or related to, this topic?

Informed Consent Form

Study name:

Planning with Indigenous Peoples: Meaningful Municipal Consultation and Engagement as a Key Part of Relationship Building

Researcher:

Zoë Mager – Planning Student, Masters of Environmental Studies, York University
zoe.l.mager@gmail.com

Under the supervision of Associate Professors:
Laura Taylor - Faculty of Environmental Studies, York University
taylorL9@yorku.ca or (416) 736-2100, ext. 22628

Ravi de Costa - Faculty of Environmental Studies, York University.
rdc@yorku.ca or (416) 736-2100, ext. 21079

Purpose of the research:

This research project seeks to delve into the current state of municipal-Indigenous consultation practices within planning and in particular current best practices and approaches within municipal planning in Ontario. The focus of the practical aspect of the project will be a booklet of research findings directed towards staff within the Planning Department at the City of Toronto who are currently engaged in consultation processes with Indigenous peoples in Toronto, and Indigenous communities whose traditional territories Toronto's municipal boundaries exist within.

The methodological approach of this research combines different sources of information including: i) publications and writing related to the Duty to Consult and Accommodate; ii) documents released by governments, non-government organizations, academic, and industry associations; and iii) semi-directed interviews with people who may have insight into municipal consultation and engagement practices with Indigenous communities.

What you will be asked to do in the research:

As a research participant, I will ask you a set of questions about your experience with municipal consultation processes. The length of the interview is 60 minutes or less. Unless you agree otherwise, your confidentiality and/or anonymity will be maintained.

Risks & Benefits:

There are no perceived risks to you and there are no direct anticipated benefits to you. The intended benefits of the project are to better inform and push the dialogue within the municipal setting toward more respectful, collaborative, and culturally sensitive consultation and engagement practices.

Voluntary participation & withdrawal from the study:

Your participation in the study is completely voluntary and you may choose to stop participating at any time. You can stop participating in the study at any time, for any reason, if you so decide. Your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researchers, York University, or any other group associated with this project. In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible.

Confidentiality:

Data will be collected by recording software. All information will be stored under password protection and destroyed one year after the research is complete.

Questions about the research?

If you have any questions about the research in general or your role in the study, please contact the student researcher or supervising professors at the contacts provide on the first page of this document.

This research has been reviewed and approved by FES Human Participants Research Committee on behalf of York University. They can be contacted at: Senior Manager & Policy Advisor for the Office of Research Ethics, 5th floor, York Research Tower, York University, 416-736-5914 or ore@yorku.ca.

Consent and Signature:

"I _____ consent to participate in the Major Research Portfolio entitled *Planning with Indigenous Peoples: Meaningful Municipal Consultation as a Key Part of Relationship Building* conducted by Zoë Mager. I understand the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent."

Additional consent:

I give consent to be audio recorded during this interview.	☐ Yes	☐ No
I give consent for quotes (verbatim) to be used.	☐ Yes	☐ No
I give consent for my name to be used.	☐ Yes	☐ No
I would like to receive a pdf copy of the Final Report.	☐ Yes	☐ No

Participant Name: _____ Participant Signature: _____

Researcher Name: _____ Researcher Signature: _____

Date: _____

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Certificate #:	**2017 - 204**
Approval Period:	**06/16/17-06/16/18**

ETHICS APPROVAL

To: **Zoe Mager – Graduate Student**
Faculty of Environmental Studies
zoemager@hotmail.com

From: Alison M. Collins-Mrakas, Sr. Manager and Policy Advisor, Research Ethics
(on behalf of Denise Henriques, Chair, Human Participants Review Committee)

Date: Friday, June 16, 2017

Title: **Planning with Indigenous Peoples: Meaningful Municipal Consultation as a Key Part of Relationship Building**

Risk Level: ☒ Minimal Risk ☐ More than Minimal Risk

Level of Review: ☒ Delegated Review ☐ Full Committee Review

I am writing to inform you that this research project, **"Planning with Indigenous Peoples: Meaningful Municipal Consultation as a Key Part of Relationship Building"** has received ethics review and approval by the Human Participants Review Sub-Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines.

Note that approval is granted for one year. Ongoing research – research that extends beyond one year – must be renewed prior to the expiry date.

Any changes to the approved protocol must be reviewed and approved through the amendment process by submission of an amendment application to the HPRC prior to its implementation.

Any adverse or unanticipated events in the research should be reported to the Office of Research ethics (ore@yorku.ca) as soon as possible.

For further information on researcher responsibilities as it pertains to this approved research ethics protocol, please refer to the attached document, **"RESEARCH ETHICS: PROCEDURES to ENSURE ONGOING COMPLIANCE".**

Should you have any questions, please feel free to contact me at: 416-736-5914 or via email at: acollins@yorku.ca.

Yours sincerely,

Alison M. Collins-Mrakas M.Sc., LLM
Sr. Manager and Policy Advisor,
Office of Research Ethics

RESEARCH ETHICS: PROCEDURES to ENSURE ONGOING COMPLIANCE

Upon receipt of an ethics approval certificate, researchers are reminded that they are required to ensure that the following measures are undertaken so as to ensure on-going compliance with Senate and TCPS ethics guidelines:

1. **RENEWALS:** Research Ethics Approval certificates are subject to annual renewal.
    a. Researchers will be reminded by ORE, in advance of certificate expiry, that the certificate must be renewed
        i. Researchers have 2 weeks to comply to a reminder notice;
        ii. If researchers do not respond within 2 weeks, a final reminder will be forwarded. Researchers have one week to respond to the final notice;
    b. **Failure to renew an ethics approval certificate or** (to notify ORE that no further research involving human participants will be undertaken) **may result in suspension of research cost fund and access to research funds may be suspended/withheld** ;

2. **AMENDMENTS:** Amendments must be reviewed and approved **PRIOR** to undertaking/making the proposed amendments to an approved ethics protocol;

3. **END OF PROJECT**: ORE must be notified when a project is complete; Failure to submit an "End of Project Report" **may result in suspension of research cost fund and access to research funds may be suspended/withheld.**

4. **ADVERSE EVENTS**: Adverse events must be reported to ORE as soon as possible;

5. **AUDIT:**
    a. More than minimal risk research may be subject to an audit as per TCPS guidelines;
    b. A spot sample of minimal risk research may be subject to an audit as per TCPS guidelines.

FORMS: As per the above, the following forms relating to on-going research ethics compliance are available on the Research website:

a. Renewal
a. Amendment
b. End of Project
c. Adverse Event