



PROTEST AND PARTNERSHIP: CASE STUDIES OF INDIGENOUS PEOPLES, CONSULTATION AND ENGAGEMENT, AND RESOURCE DEVELOPMENT IN CANADA

Edited by Jennifer Winter and Brendan Boyd

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To Consult or Not to Consult? A Tale of Two Provinces

Victoria A. Bikowski and Gabrielle Slowey

Natural resource development is a central component of Canada's national identity; from fish to fur to timber to minerals to oil and gas, Canada's economic history and ongoing development is and has been intimately tied to resource exploitation. In 2020, Canada was the fourth largest producer and third largest exporter of oil globally and has the fourth largest proven oil reserves (Government of Canada 2022c).¹ It is also the fifth largest producer and sixth largest exporter of natural gas (Government of Canada 2022c). Most oil and gas exploration and production take place in Western Canada, and, in varying degrees, across all provinces.

Canada's provincial and federal governments are traditionally strong proponents of the oil and gas industry, promoting economic benefits for all Canadians from coast to coast to coast. Government officials at multiple levels have argued that oil and gas production has resulted in socio-economic, innovative, and even environmental benefits for many Canadians (Benoit 2014, 3). However, not all people in Canada agree with these claims.

Oil and gas development has been, and continues to be, a highly contentious issue for many people in Canada, but none more so than Indigenous Peoples. Oil and gas development most often occurs on or around traditional territories and lands of Indigenous Peoples. As a result, oil and gas development is more likely to affect Indigenous Peoples directly and adversely when compared to non-Indigenous Canadians. It therefore comes as no surprise that Indigenous Peoples are often at the forefront of opposition to resource development, although this does not mean that all Indigenous Peoples oppose oil and gas development projects in Canada (Slowey 2009).

Many different factors influence whether Indigenous Peoples oppose or support natural resource development, ranging from potential environmental harms or adverse impacts to land to job creation and resource revenue sharing agreements. This chapter endeavours to explore these different factors, while focusing specifically on the role of provincial duty-to-consult policies in shaping First Nations' response to development.² We focus on policies emerging from the duty to consult because of the growing importance and influence of this legal doctrine in natural resource development. Resource development frequently triggers the Crown's duty to consult Indigenous Peoples, and these consultation policies guide the form and substance of consultation and engagement activities in light of development projects that affect Aboriginal and Treaty Rights.

This chapter explores how different First Nations respond differently to unconventional oil and gas development that occurs or is proposed in their respective territories and the role provincial consultation policies play. The guiding questions for this chapter are: What factors influence whether a First Nation supports or rejects oil and gas projects? How do consultation policies shape First Nations' responses? We use a case study approach to answer these questions, comparing the experiences of two First Nations that have both challenged and accepted extraction in varying degrees, namely, the Athabasca Chipewyan First Nation and the Fort McKay First Nation, of northern Alberta against that of two other First Nations who have had very different experiences, for different reasons—namely, the Lubicon Lake Band (LLB), also located near Alberta's oil sands and the Elsipogtog First Nation located in proximity to the Frederick Brook Shale play in New Brunswick.

We compare the economic importance of oil and gas development in each province, the impacts of oil and gas development, the operationalization of provincial duty to consult policies, and First Nations' responses to development and consultation. We conclude that where First Nations support development it is clear that the overall impacts include the ability to benefit economically from development, and a sense of having been relatively meaningfully engaged or consulted. The analysis presented below reveals that different approaches to the duty to consult vis-à-vis consultation policies can yield vastly different results. More specifically, poor or inadequate policies can jeopardize major resource development projects, and in turn, undermine the political and economic objectives of provincial governments. The role of consultation policies in aiding natural resource development therefore must

not be underestimated, particularly in provinces (or territories) where natural resources are a vital part of the economy.

1 Alberta's Oil Sands

1.1 *Oil and Gas Production in Alberta*

Alberta is Canada's largest source of oil and gas resources. Historically, oil and gas development has been a key driver of Alberta's provincial economy (Government of Alberta 2022a). Since 1947, the Government of Alberta has exploited its oil and gas resources to meet its economic growth and development objectives, including economic self-sufficiency and global competitiveness. Oil and gas production in Alberta has resulted in significant economic benefits for both the provincial and federal governments (Government of Canada 2022c; Government of Alberta 2023). Production has also enabled Alberta to become a "have" province, which means that the province typically does not receive federal equalization payments from the Government of Canada (2008).³

Economic benefits from oil and gas development can be measured in a variety of ways, but royalty revenue provides a good measure of their fiscal value, at least at the provincial level. Between 2015/16 and 2021/22, the Government of Alberta received \$5,256 million in natural gas and by-product revenue, \$7,107 million in conventional oil revenue, and \$26,262 million in oil sands royalty revenue (Government of Alberta 2023). In total, Alberta received \$38,625 million in oil and gas royalty revenue during this time, comprising 11% of government revenue. This royalty revenue does not even include revenue from bonuses and sales of Crown leases, rentals and fees, freehold mineral tax, or related sources of income.

Alberta is heavily invested in oil and gas production and the Government of Alberta has facilitated this type of resource development because it has been in the provincial government's economic interest to do so. Oil and gas resources are perceived as a critical component of Alberta's long-term economic success. As such, the Government of Alberta has often ignored, or has justified, the environmental and human costs of development, particularly in the oil sands.

1.2 *Impacts of Oil Sands Development*

Extractive methods used in the oil sands have had devastating consequences on the regional environment. Negative impacts include mass deforestation, the displacement and death of wildlife, and the destruction of peatlands, which are vital carbon sinks (Rooney, Bayley, and Schindler 2011, 5). These methods have also compromised the integrity of Alberta's freshwater resources by diverting water from rivers and wetlands, polluting key tributaries (e.g., the Athabasca River) and aquifers with toxic runoff from the production process, and by draining freshwater resources for production usage (Thurton 2020). Thus, oil sands development has disrupted the natural environment by altering the landscape and negatively impacting freshwater resources by drawing upon them as part of the production process (Donev 2018). Development has also resulted in high levels of air pollution in the region and contributes to global climate change by reducing Canada's carbon sequestration potential and by producing significant amounts of greenhouse gases (Dyer and Huot 2010).

There are also human costs associated with development. First, oil sands development threatens the overall health and safety of surrounding Indigenous nations, including human and non-human species. For instance, scientists (unaffiliated with either the provincial or federal government) have found evidence suggesting that water pollution has been the leading cause of emerging rare and virulent forms of cancer and disease (e.g., bile ducts cancer, autoimmune diseases) amongst Indigenous Peoples living near the oil sands (Slowey and Stefanick 2015, 201). Second, oil sands activity has been associated with social problems, including higher levels of substance use in surrounding communities, as well as heightened community exposure to transient populations that have played a role in rising levels of criminal activity (e.g., drug trade, rape, sex trafficking, and violent crime) in the region (Ruddell and Ortiz 2014; Vecchio 2022). Thirdly, the destruction of the natural environment and its resources poses a direct threat to Indigenous culture and identities, which are largely derived from Indigenous Peoples' reciprocal relationship with the land. Given the overwhelming evidence of the environmental and human/non-human costs of development, it is understandable why Indigenous Peoples (and environmental groups) choose to oppose the oil sands. The Government of Alberta and the oil industry often dismiss these costs as trade-offs for economic prosperity. The reality is that the provincial

government invests a lot of time and effort into promoting oil sands development, and its policy on the duty to consult helps ensure greater predictability around the development process.

1.3 *Evolution of Alberta's Consultation Policy*

Prior to developing its first policy on the duty to consult, the Government of Alberta initiated studies throughout the 1970s and 1980s to help inform oil sands policy. One government agency, the Alberta Oil Sands Environmental Research Program (AOSERP), was responsible for exploring how communities neighbouring the oil sands would be affected by development. Specifically, AOSERP investigated the economic, environmental, and social impacts of oil sands development. A key objective of the research was to identify how Indigenous Peoples would be impacted, where Indigenous Peoples would have a place in development (i.e., employment and job opportunities), and how the provincial government would establish a baseline for integrating Indigenous Peoples into the government workforce (Paskey, Steward, and Williams 2013, 57). These investigations signalled the beginning of the Government of Alberta's interest in establishing greater predictability around land management and resource development in the oil sands region.

During the late 1980s and 1990s, there were fewer government-led studies on how Indigenous Peoples would be affected by development. However, by the early 2000s, the Government of Alberta's interest in Indigenous Peoples increased again. In September 2000, the provincial government released *The Government of Alberta's Aboriginal Policy Framework*, which sought to address Indigenous-provincial relations (Government of Alberta 2005, 2). Later, in 2004, Canada's legal landscape changed in such a way that Alberta would have to become even more proactive when it came to Indigenous relations, especially within the context of resource development.

A trilogy of landmark cases on the duty to consult arose from the Supreme Court of Canada (SCC) in 2004 and 2005: *Haida Nation v. British Columbia* (2004),⁴ *Taku River Tlingit First Nation v. British Columbia* (2004),⁵ and *Mikisew Cree First Nation v. Canada* (2005).⁶ Taken together, these cases identified and confirmed that the Crown has an obligation to consult and accommodate Indigenous Peoples on matters that may affect their Aboriginal and Treaty Rights. They also helped establish minimum legal expectations around the duty to consult and essentially required federal and provincial governments to devise and implement courses of action to ensure that the

duty is fulfilled by the Crown (Newman 2014, 15). Although the Government of Alberta already had its *Aboriginal Policy Framework* in place, these landmark cases pushed the provincial government to take Indigenous-provincial relations more seriously and to enact a new policy. By May 2005, the Government of Alberta released its First Nations consultation policy on land management and resource development, which represented a commitment from the provincial government to consult First Nations on matters pertaining to land management and resource development that may affect their constitutional or Treaty Rights (Government of Alberta 2005, 2). In 2013, the provincial government revised its consultation policy and released *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management* (Government of Alberta 2013).⁷ By April 2020, the Government of Alberta amended its policy a second time to make it more comprehensive and streamlined (Government of Alberta 2020). The language used in the policy also changed slightly to focus more specifically on economic development opportunities for First Nations. Key developments and the evolution of Alberta's consultation policy (and guidelines) are noted below (table 5.1).

The Government of Alberta's approach to consultation has not only evolved in response to landmark cases concerning Aboriginal and Treaty Rights, such as *Haida*, *Taku*, and *Mikisew*, amongst others, but also in response to political and legal events concerning Indigenous Rights.⁸ These events include the United Nation's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) on September 13, 2007 (UN General Assembly 2007); the Government of Canada's endorsement of UNDRIP on November 12, 2010 (Government of Canada 2010); and Canada's adoption of UNDRIP on May 10, 2016 (Government of Canada 2016a).⁹ All of these events had an important role to play in encouraging the Government of Alberta to produce a comprehensive consultation policy and corresponding guidelines.

Alberta's 2005 policy on consultation with First Nations explains the purpose of the policy and consultation model, as well as outlines general expectations around consultation and the roles and responsibilities of key parties involved (the Crown, First Nations, and project proponents). The amended 2013 policy provides a more detailed overview of the consultation process and expectations around consultation. The policy covers important topics like Treaty Rights, traditional uses of land, matters subject (and not subject) to the policy, elements of consultation (i.e., content of the duty, scope

Table 5.1: Key Developments and the Evolution of Alberta’s Consultation Policy and Guidelines.*

YEAR(S)	KEY DEVELOPMENTS
2000	<i>The Government of Alberta’s Aboriginal Policy Framework</i> is released in September 2000.
2005	Alberta releases <i>The Government of Alberta’s First Nations Consultation Policy on Land Management and Resource Development</i> in May 2005; The Oil Sands Consultation Group is formed by the ministers of energy, environment, and sustainable resource development.
2006	The <i>Oil Sands Consultation Group Final Report and Recommendations</i> is released on March 31, 2006.
2007	The Aboriginal Consultation Interdepartmental Committee (ACIC) is commissioned by the Government of Alberta in January 2007; <i>Alberta’s First Nations Consultation Guidelines on Land Management and Resource Development</i> is released on November 14, 2007.
2009	<i>The Responsible Actions: A Plan for Alberta’s Oil Sands</i> is released.
2012	Alberta releases its <i>Discussion Paper on First Nation Consultation</i> .
2013	Alberta releases <i>The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management</i> on August 16, 2013; The Aboriginal Consultation Office (ACO) is established; Alberta releases the draft <i>Government of Alberta’s Corporate Guidelines for First Nations Consultation Activities</i> .
2014	A draft version of <i>The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resources Management (Guidelines)</i> is released on May 9, 2014; <i>The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resources Management</i> is released on July 28, 2014.
2015	<i>The Government of Alberta’s Proponent Guide to First Nations Consultation Procedures for Land Dispositions</i> is released on February 3, 2015.
2019	<i>The Government of Alberta’s Proponent Guide to First Nations and Métis Settlements Consultation Procedures</i> is released on December 1, 2019.
2020	Alberta amends its 2013 <i>Policy on Consultation with First Nations</i> on April 1, 2020.

*This table is not a comprehensive list of key developments. Developments related to consultation with Métis Settlements, for example, are not included in the table. External developments, such as landmark cases on the duty to consult, the federal government’s endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and other events that may have played a role in influencing or shaping Alberta’s approach to consultation with Indigenous Peoples are also not listed here.

of consultation, depth of consultation), direct consultation by the Crown, delegated consultation, and key steps in the consultation process (and other considerations) in greater detail than its predecessor. Overall, the new policy is more comprehensive and covers specific topics that are of concern to First Nations and project proponents (industry). The new policy also focuses more on accommodation and reconciliation than its predecessor (Government of Alberta 2013, 1–2; 4; 7), which was mainly focused on establishing a practical consultation process that would create greater certainty (Government of Alberta 2005, 2). Additionally, Alberta’s consultation guidelines effectively clarify the expectations around consultation, the consultation process, and its procedures, as well as provide direction on meeting the administrative requirements of consultation (Government of Alberta 2019).

On balance, the Government of Alberta’s policy and guidelines on consultation with First Nations are comprehensive. They specify the roles, responsibilities, and rights of all rights holders and stakeholders engaged in, and affected by, development; provide a detailed account of how consultation protocols may be approached, which includes information on direct Crown consultation and delegated consultation; describe how consultation processes can be co-ordinated across jurisdictions, agencies, departments, and quasi-judicial bodies; and include a step-by-step process for consultation, which provides details on consultation triggers, stages of the consultation process, and processing timelines. Moreover, successive provincial governments continue to expand the consultation policy, guidelines, and corresponding protocols. Overall, the Government of Alberta has produced a consultation policy and guidelines that effectively lay out what is required and expected for all parties involved in terms of consultation with First Nations in Alberta.

1.4 First Nations Impacted by Oil Sands Development

Most oil sands projects are located within Treaty 8 territory, meaning that twenty-four First Nations are directly or indirectly affected by development, including twenty-three Treaty 8 First Nations in Alberta (Treaty 8 Tribal Association 2021) and the LLB. Some of these First Nations strongly oppose oil sands development, while others do not. The reasons for their support or opposition largely depends on whether their overall experience with oil sands development has been positive or negative. The experiences of three affected First Nations are described below.

ATHABASCA CHIPEWYAN FIRST NATION

The Athabasca Chipewyan First Nation (ACFN) is an Indigenous (Dene) nation located immediately north of the Athabasca oil sands development, approximately 200 kilometres (km) north of Fort McMurray. ACFN has a total registered membership population of 1,396 people (Government of Canada 2022b) and is a signatory of Treaty 8.¹⁰ As a signatory, ACFN has “surrendered” title to lands except for those set aside as reserves (Huseman & Short 2012, 219–20). However, whether land has been surrendered remains a contested issue, particularly in light of oil sands development.

ACFN contends that Treaty 8 obligations have not been met. ACFN leaders claim that their people signed the treaty to have their traditional way of life recognized and maintained without restriction, so long as “the sun shines, the grass grows and the water flows” (Turner 2017, 31–32). One of the guarantees that Treaty 8 made to the ancestors of present-day ACFN members was the “right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered” (Treaty 8 First Nations of Alberta 2023). However, since the oil sands have transformed the ecological integrity of the Athabasca region in a significant way, these vocations can no longer be easily carried out, if at all. Successive Canadian governments have not honoured the promises made in signing Treaty 8 (e.g., land set aside for hunting, trapping, and fishing; agricultural supplies; etc.), and because of oil sands operations and accompanying environmental degradation and change in the region, ACFN members are no longer able to exercise their Treaty Rights. These broken promises and losses have spurred ACFN leadership to legally challenge both the notion of surrendered lands as well as any further expansion of the oil sands. Recent challenges include a 2011 constitutional challenge over five oil and gas leases that Alberta’s minister of energy granted to Shell Canada Ltd. (*Athabasca Chipewyan First Nation v. Alberta [Minister of Energy]*, 2011), a notice of question of constitutional law regarding Shell’s Jackpine Mine Expansion Project in 2012 (*Cold Lake First Nations v. Alberta [Energy Resources Conservation Board]*, 2012),¹¹ and an application for review of a pipeline project that was proposed and approved in Treaty 8 territory in 2018 (*Athabasca Chipewyan First Nation v. Alberta*, 2018). In all three cases, ACFN argued that the duty to consult and accommodate was not adequately discharged.

Overall, ACFN has argued that Alberta’s consultation process undermines its members’ constitutional rights and Indigenous Rights defined

under UNDRIP (Athabasca Chipewyan First Nation 2020). ACFN further claims that the consultation process does not value partnership between First Nations and the Crown, and that most oil sands projects are approved despite First Nations' objections (Lavoie 2018). However, ACFN is not entirely opposed to development because of the value and economic opportunities it creates for its membership.

To clarify, ACFN is one of the few First Nations in Canada that is able to refuse federal government funding (and the accompanying rules and regulations associated with it) (Sterritt 2014). ACFN has signed several impact benefit agreements (IBAs) with oil and gas companies operating in the oil sands and within its traditional territory. Although the provisions of the IBAs are confidential, ACFN leadership has indicated that these agreements have provided enough funding to enable the First Nation to not accept money from the federal government (Sterritt 2014).¹² ACFN has also established twenty companies through its umbrella corporation, Acden (formerly ACFN Business Group), which offers industrial and commercial services to the oil sands industry. The companies generate approximately \$250 million in revenue annually for the First Nation (Sterritt 2014). The revenue generated through IBAs and oil sands-related companies has empowered ACFN to improve standards of living for its membership by providing them with much-needed community infrastructure and social services. Additionally, ACFN leaders have contended that industry partnerships help the First Nation improve its capacity to self-govern (Richards 2020).

It is evident that ACFN does not oppose development per se. Rather, ACFN is opposed to not being treated equally or fairly when it comes to decisions made around resource development. ACFN appears to be more supportive of development when its members can benefit from development, and more importantly, when it is included in major development plans and important decision-making processes. The latter point is particularly evident in ACFN's more recent engagements with Teck Resources Ltd. and the Government of Alberta, where Chief Allan Adam described the consultation process around Teck's Frontier Oil Sands Project as "fresh and positive" and a "model' for how companies planning major projects should move forward in the future" (Bench 2020).

FORT MCKAY FIRST NATION

The Fort McKay First Nation (FMFN) is an Indigenous nation with mixed ancestry (Cree, Dene, and Métis) and a total registered population of 967 people (Government of Canada 2022b). It is a signatory of Treaty 8 and is located in the Regional Municipality of Wood Buffalo, approximately 60 km north of Fort McMurray. FMFN was one of the first Indigenous nations to experience the devastating effects of development given its close proximity to oil sands operations. In the early 1980s, oil sands mining effluent from Suncor Energy Inc.'s mining operations polluted FMFN's water resources. Members had unknowingly been drinking and bathing in this water for up to three weeks (Turner 2017, 198–99). In response, FMFN erected a blockade on the main road through its community to send a message to the Government of Alberta, the Government of Canada, and the oil industry. Shortly afterwards, FMFN engaged in negotiations with the provincial and federal governments to explore business opportunities for the First Nation and to establish the Fort McKay Industry Relations Corporation (Turner 2017, 200–1). Leadership at the time understood that development was going to proceed, regardless of whether FMFN supported or opposed it. FMFN was also struggling economically and saw the oil sands as a way to develop new economic opportunities for the First Nation (Lavoie 2018).

With the expansion of the oil sands, FMFN has raised concerns pertaining to community health and cultural identity. For example, some FMFN members have blamed the oil sands for the rise in cases of asthma, rashes, cancer, and premature births amongst its membership (McCarthy 2015). FMFN has also communicated concerns over the rapid pace of development and how it undermines the ecological integrity of the region, which in turn exacerbates hunting, trapping, and fishing rights infringements and adversely affects cultural identity (Pederson 2007, 38). Additionally, FMFN has expressed its concerns about a lack of consultation over oil and gas projects, particularly consultation over cumulative effects (Pederson 2007, 32). The frequent dismissal of Treaty Rights, a lack of respect or support for individual First Nations' consultation protocols, and inadequate information-sharing are also key concerns (Pederson 2007, 61; 32; 64).

Despite FMFN's concerns, the First Nation has not been as staunchly opposed to development as some other First Nations in Alberta have been, even in light of the ecological and social changes that have occurred. FMFN has taken the stance that change is inevitable, and that change can result in

“cultural evolution and improvement” when mutually beneficial partnerships are formed with industry and the Crown (Fort McKay First Nation 2021). FMFN concedes that its traditional ways of life can be preserved alongside continuous and responsible development (Fort McKay First Nation 2018, 3). FMFN does not shy away from oil sands development and seldom opposes it.

FMFN has used oil sands development to its advantage, wherever possible. In 1986, FMFN established the Fort McKay Group of Companies, which offers a variety of services to oil and gas companies and is wholly owned and operated by the First Nation. By 2016, the Group of Companies was participating in several joint ventures that generated more than \$150 million dollars in revenue annually (Government of Canada 2016b). Through its Group of Companies and other oil sands-related endeavours, FMFN has been able to generate over \$700 million in revenue annually for the First Nation (Hussain 2014) and has over \$2 billion in financial holdings (Tasker 2016). This income has enabled FMFN to buy equity stakes in oil sands projects, such as Suncor Energy Inc.’s East Tank Farm Development,¹³ which help FMFN generate even more revenue (Suncor Energy 2016).

The economic benefits and opportunities generated through FMFN’s partnerships with industry have significantly improved its members’ overall standards of living by providing them with better health services, employment opportunities, social programs, and more (Murphy 2008, 88). Former Chief Jim Boucher has also pointed out that FMFN has zero unemployment and its members have an average annual income of \$120,000 (Bird 2017). Given the socio-economic benefits associated with oil sands development, FMFN has contemplated developing resources on its traditional territory one day. For this First Nation, oil sands development and related activities are a means to secure long-term financial stability for future generations and to increase its independence overall.

LUBICON LAKE BAND

The Lubicon Lake Band of Little Buffalo is an Indigenous (Cree) nation with a total registered population of 533 people (Government of Canada 2017). LLB is situated west of the oil sands, approximately 450 km north of Edmonton, and is geographically located within Treaty 8 territory. However, this First Nation is not party to Treaty 8 because it was by-passed by Treaty Commissioners in 1899 (Ferreira 1992, 27). This error resulted in LLB not being recognized

as a First Nation by the Government of Canada for decades (Government of Canada 2014a).¹⁴

Historically, LLB has strongly opposed oil and gas development in Alberta. This opposition began in the early 1970s when the Government of Alberta constructed roads that facilitated oil and gas exploration through LLB's traditional territory. In 1976, LLB tried to file a caveat against the provincial government to halt construction.¹⁵ Through the caveat, LLB claimed title to approximately 85,470 km², based upon its unextinguished Aboriginal title (Ferreira 1992, 12).¹⁶ However, the claim failed because LLB did not possess a certificate of title, which barred it from filing a caveat (Ferreira 1992, 13).

Between the 1970s and early 1980s, oil production increased and approximately 400 wells existed within a 24 km radius of LLB's territory by 1982 (Ferreira 1992, 12). Expansion was alarming for LLB because rapid development was accompanied by a noticeable decline in wildlife in the area, which its members relied upon for sustenance and maintaining cultural practices (Ferreira 1992, 18–19). These changes compelled LLB to oppose further development. The Nation took action by building a national support network, uniting with other Indigenous nations who shared similar experiences, launching petitions, filing an injunction to halt oil and gas activities, boycotting the Calgary 1988 Winter Olympics, and creating blockades around its territory (Ferreira 1992, 16–18; 24–25).¹⁷ While other Indigenous nations have tried to address their development concerns by asking for buffer zones or a review of development applications, LLB has waged a very public and action-oriented campaign designed to raise maximum awareness to their plight. Yet, despite all their efforts, LLB has not been able to bring development to a halt.

Since 2011, over 70 percent of LLB's traditional territory has been leased for resource development, including oil sands development (Alberta Native News 2018). LLB has pressed the provincial and federal governments for a land claims settlement. An agreement was eventually reached in October 2018, resulting in a \$113 million settlement and the setting aside of 246 km² of land in Little Buffalo (CBC News 2018). LLB is now considered to be a First Nation that is entitled to similar land and treaty benefits that Treaty 8 First Nations are entitled to (Alberta Native News 2018). Whether the settlement changes the First Nation's stance on resource development is unclear, but Chief Billy Joe Laboucan has said the following:

I know there have been a lot of resource extraction in our area ... but it's no use lamenting the past. We're moving forward. We always look seven generations ahead. That's what we've been taught. We're speaking and preparing for the unborn and hopefully that they will have a better future, better homes, good livelihood, good peace of mind and still be able to look after our land and our resources (Bennett 2019).

This sentiment reflects LLB's pragmatism towards oil and gas development within their traditional territory.

1.5 *Summary of Development in the Alberta Oil Sands*

Alberta has valuable oil and gas resources that have yielded considerable economic benefits for the province. However, there are environmental and human costs of development that the provincial government has had to become more attuned to. The Government of Alberta has also been pressured into taking Aboriginal and Treaty Rights more seriously in the context of land management and resource development and has responded accordingly by developing a consultation policy and guidelines. This has been a critical step for establishing greater certainty around oil sands development.

2 New Brunswick's Frederick Brook Shale Play

2.1 *Oil and Gas in New Brunswick*

The Province of New Brunswick has a long history of natural resource development, including oil and gas development. In the early 1850s, mining for oil shale and albertite took place in Albert County and the province's first oil well was drilled in 1859 (Park 2012, 14). The Stoney Creek Field and McCully Gas Fields were discovered in 1909 and 2000, respectively (Government of New Brunswick n.d.).¹⁸ Both fields have produced a considerable amount of oil and gas resources (CBC News 2011),¹⁹ but despite having these producing fields, the province has never been a leading oil and gas producer in Canada.

New Brunswick has historically struggled economically. It has been labelled as a poor, "have-not" province (Government of Canada 2011),²⁰ and assumed the title of Canada's poorest province in 2019 (Jones 2019). New Brunswick's economic struggle is in part due to its historically resource-based economy, troubled by boom-and-bust cycles and sunset industries, as well

as its inability to diversify economically. In response to these shortcomings, the Government of New Brunswick, under the leadership of Premier Shawn Graham, released an action plan in 2007, *Our Action Plan to be Self-Sufficient in New Brunswick*, which outlined how the province would become self-sufficient by 2026 (Hodd 2009, 197). As part of this initiative, the provincial government also sought to turn New Brunswick into an energy hub in the Maritimes (CBC News 2007). Succeeding governments, namely Progressive Conservative (PC) governments, sought to turn this goal into a reality by tapping into the Frederick Brook Shale (FBS) play, including the McCully Field.

The FBS development area spans approximately 150,000 acres across southern New Brunswick (Corridor Resources Inc. 2015). Early estimates suggested that there is over 65 trillion cubic feet (tcf) of gas reserves in the play (Alexander, Qian, Ryan, and Herron 2011, 4–5). A former premier of New Brunswick also estimated that over \$7 billion in royalties and tax revenue could be generated by developing New Brunswick’s shale gas industry; however, the timeline for this estimate was not specified (CBC News 2013c). If this evaluation is correct, then this is a significant amount of money for a historically poor province.

2.2 *Potential Impacts of Shale Gas Development*

The FBS play consists mainly of shale gas resources, which means hydraulic fracturing (“fracking”) is required for extraction. Fracking involves drilling down and horizontally into layers of rock and injecting fracking fluid (i.e., water, sand, and various chemicals) at pressures great enough to fracture the rock and release the oil and gas resources within (Williams, Macnaghten, and Davies 2017).

Fracking is a controversial form of unconventional resource extraction because it requires large amounts of water and chemicals to successfully extract oil and gas from rock formations. A single well requires about 1.5 to 16 million gallons of water, meaning that local freshwater (i.e., surface, groundwater) resources can easily be depleted in the process (U.S. Geological Survey 2020). The chemicals used in fracking fluids can also contaminate water resources, and some forms of contamination can have long-lasting effects (United States Environmental Protection Agency 2016, 37). Fracking may induce earthquakes as well (Grebe 2019), which can cause property damage and bodily harm or injuries.

New Brunswick residents have expressed their concerns about fracking. In Kent County, residents communicated that they were concerned that fracking would result in irreparable harm to the environment (Fast 2016). More specifically, they were concerned about water contamination. First Nations in the county were also worried about how contamination would turn their territories into hazardous and unsafe places to live, fish, and hunt, and subsequently, negatively impact their Aboriginal and Treaty Rights (Howe 2015, at 2352 of 5224).

2.3 *New Brunswick's Duty to Consult Policy*

In November 2011, the Government of New Brunswick released its first consultation policy, *Government of New Brunswick Duty to Consult Policy*, to help protect Aboriginal and Treaty Rights and to improve its relationship with First Nations in the province. The policy explains what the duty to consult is and what the Government of New Brunswick's role is in fulfilling this duty. The policy sets out what triggers consultation and the roles and responsibilities of government (federal and provincial) and First Nations (Government of New Brunswick 2011, 1). A section on the duty to consult policy outlines the policy statement and goal, key objectives of the policy, and guiding principles, while a section on the duty to consult delineates the policy's application, matters subject to the policy, triggers, and roles and responsibilities (Government of New Brunswick 2011). Overall, the policy is brief and does not provide a step-by-step process for consultation.

New Brunswick's consultation policy has not been changed or altered since 2011, but in August 2019, the Department of Aboriginal Affairs released a guide to support industry on consultation and engagement with Indigenous Peoples titled, *Interim Proponent Guide: A Guide for Proponents on Engaging with Aboriginal Peoples in New Brunswick*. This guide provides practical and specific advice on the consultation, engagement, and accommodation process. It differentiates the roles and responsibilities of project proponents and the provincial government in consultation activities, provides advice on determining which Indigenous Peoples to engage with and how to engage with them, clarifies information that is relevant to the duty to consult and accommodate, provides advice on how to document consultation efforts, and clarifies how the provincial government will use relevant information provided to support its duty to consult and accommodate (Department of Aboriginal Affairs 2019). In effect, the *Interim Proponent Guide* provides more guidance

Table 5.2: Key Developments and the Evolution of New Brunswick’s Duty to Consult Policy and Guidelines

YEAR(S)	KEY DEVELOPMENTS
2011	<i>The Government of New Brunswick Duty to Consult Policy is released.</i>
2014	The Government of New Brunswick announces a moratorium on fracking (comes into effect March 2015).
2019	Moratorium partially lifted.
2019	<i>The Department of Aboriginal Affairs releases industry guide: Interim Proponent Guide: A Guide for Proponents on Engaging with Aboriginal Peoples in New Brunswick.</i>

on the consultation process in New Brunswick. However, it is merely a guide and therefore is second in order of authority to the consultation policy.

The development of New Brunswick’s consultation policy and proponent guide corresponds with key events that took place at the time of their releases. The consultation policy emerged at a time when a natural gas and exploration and production companies began seismic testing in Kent County, while the guide was released shortly after a province-wide moratorium on fracking was partially lifted by the provincial government. These events are discussed in the following sections.

2.4 *Communities Impacted by Shale Gas Development*

Little to no public consultation has taken place over potential shale gas development in New Brunswick. In 2009, for example, Premier Shawn Graham and his Liberal government did not release a public notice or engage with the public when the Department of Natural Resources put land up for tenders for shale gas. Nor did his government consult the public on the awarding of leases to Southwestern Energy Resources Canada Inc. (SWN) in 2010 for shale gas exploration (Howe 2015, at 1403 of 5224).²¹ Consultation did not improve when Premier David Alward was elected in 2010 and the PCs came into power. Two key developments are worth noting here: (1) Alward appointed himself as the minister responsible for Aboriginal Affairs, enabling him to have the power to determine whether the duty to consult was triggered or not by shale gas exploration activities, such as seismic testing (Government of New Brunswick 2010); and (2) Alward later determined that seismic testing would *not* adversely affect Indigenous Peoples and their use of lands and

resources for rights-bearing activities, and therefore consultation was not required under these circumstances (Howe, 2015 at 1742–65; 1768–69 of 5224). Alward’s actions meant that consultation with Indigenous Peoples over shale gas activities would be kept to a minimum.²²

It was not until 2011, when SWN began seismic testing, that New Brunswick residents became increasingly aware of potential fracking in Kent County. Concerns around environmental and human costs associated with shale gas development prompted residents to protest fracking in the province (Howe 2015, at 1641 of 5224; 1485 of 5224). The anti-fracking movement in New Brunswick began with non-Indigenous Canadians (i.e., Anglophones, Francophones or Acadians), but quickly became a united front for both non-Indigenous and Indigenous peoples. Indigenous Peoples recognized that their Aboriginal and Treaty Rights could be adversely impacted by development. One First Nation that was at the centre of the movement was Elsipogtog First Nation.

ELSIPOGTOG FIRST NATION

Elsipogtog First Nation (EFN) is an Indigenous (Mi’kmaq) nation located in Kent County, New Brunswick. It is the largest First Nation in the province, with a total population of 3,423 people (Government of Canada 2019a). It has also been labelled as one of the poorest communities in Canada (CBC News 2010). EFN’s traditional territory once consisted of millions of hectares, but now the First Nation resides on about two thousand acres on the Richibucto Indian Reserve No. 15, just southwest of Rexton (Elsipogtog First Nation 2021). EFN is a signatory of the Peace and Friendship Treaties (1725–1779) (Government of Canada 2014b), which means that EFN has never ceded or surrendered lands and resources to the Crown (Government of Canada 2019).²³

EFN led the anti-fracking movement in the province between 2011 and 2013. Like other New Brunswick residents, EFN members were concerned about the environmental risks associated with fracking, but more importantly, they were concerned about Aboriginal and Treaty Rights infringements associated with development. EFN conveyed their concerns to the provincial government through in-person meetings and interlocutory orders. EFN explained to government officials that they were never consulted on shale gas development activities, despite these activities taking place on its unceded territory. However, EFN’s concerns went unaddressed because it was a member

of the Assembly of First Nations Chiefs in New Brunswick (AFNCNB), which meant that the First Nation technically delegated consultation activities to this regional organization (Howe 2015, at 4281 of 5224).

In 2013, EFN withdrew from AFNCNB (CBC News 2013b), because it felt that this organization was insufficiently representing its interests (CBC News 2015). Withdrawing from AFNCNB also enabled EFN to pursue a court injunction to suspend all of SWN's exploratory activities in its territory (CBC News 2013a). However, the New Brunswick Court of Queen's Bench did not grant the injunction to EFN, because there was no evidence that SWN's activities would amount to a degree of harm to the First Nation (CBC News 2013a). The Court reminded EFN that it delegated consultation responsibilities to AFNCNB, so any disputes over how this organization participated in the consultation process should be resolved at trial (CBC News 2013a). Upon failing to secure an injunction, EFN leaders and community members took direct action.

EFN members engaged in protest and erected blockades around SWN's seismic testing zones and equipment and storage facilities. EFN's direct action resulted in standoffs with the Royal Canadian Mounted Police (RCMP) in December 2013, which ultimately ended in outbreaks of violence and mass arrests (Galloway and Taber 2013). The conflict garnered national attention, resulting in EFN gaining more support from both Indigenous and non-Indigenous peoples across New Brunswick and Canada (Howe 2015, at 2359 of 5224). The conflict also encouraged SWN to end its exploratory work in 2013 (APTN National News 2013), and a moratorium on fracking was announced in December 2014 by Premier Brian Gallant and his newly elected Liberal government (Bissett 2014). The moratorium came into effect on March 27, 2015 (Southwestern Energy Company 2015).

2.5 *Moratorium on Fracking*

The Government of New Brunswick's moratorium on fracking stipulated that the development of the province's shale gas resources would not proceed until certain conditions were met. Specifically, the provincial government would not lift the moratorium unless a social licence to operate was in place; the environmental and human impacts of fracking were well understood; a plan to mitigate the impacts was established; a process to respect the duty to consult was created; and a mechanism to maximize the benefits of development was introduced (Government of New Brunswick 2014).

SWN suspended its drilling plans for New Brunswick because of the moratorium. In a letter dated December 16, 2014, SWN's Executive Vice-President of Corporate Development, Jeff Sherrick, communicated to the Government of New Brunswick that SWN would like to continue to work in New Brunswick, but the "moratorium has forced [SWN] to suspend [its] drilling plans and redirect resources to projects to other jurisdictions" (Brown, L. 2015). The letter further pointed to the provincial government's failure to honour its duty to consult obligations as a primary issue for SWN. In effect, SWN argued that because the duty ultimately rests with the Crown, the Government of New Brunswick "needs to do more to advance this file" (Brown, L. 2015). The letter concluded that further investment in the province would require addressing consultation issues, along with other issues outlined in the letter.

In the years following the suspension of SWN's activities, New Brunswick business groups called on the provincial government to reconsider its moratorium on fracking. In response to their requests, the PC government, under the leadership of Premier Blaine Higgs, partially lifted the moratorium on fracking in the province in May 2019. Higgs' cabinet approved an order-in-council to exempt the Sussex area from the province-wide moratorium with the intention of opening the area up for business (Poitras 2019). This decision allowed oil and gas companies like Corridor Resources Inc. to pursue fracking in the FBS play (Intiar 2020).

The partial lifting of the fracking moratorium was not well received by the Liberal opposition, Indigenous groups and peoples, and non-Indigenous peoples of the Sussex area. The opposition described the decision as a "closed-door regulatory change" and criticized the PC government for lifting the ban without consulting New Brunswick residents, including Indigenous Peoples (Brown, S. 2019). Indigenous groups in New Brunswick have described the government's actions as unlawful and warned that this decision may reignite conflict between government, First Nations, and industry (Poitras 2019). Leaders of the Tobique First Nation, Pabineau First Nation, and the Wolastoqey Nation in New Brunswick (WNNB) indicated that it is within their legal rights to be consulted on these matters (Mi'gmaq and Wolastoqey Nations 2019), that consultation should take place even before test drilling is underway (Intiar 2019), and that serious dialogue with First Nations needs to occur before any more developments take place (Poitras 2019). As for non-Indigenous residents, concerns about the environmental costs of fracking

remain and consequently there has been a lack of support for lifting the ban (Weldon 2018).

The Government of New Brunswick released its proponent guide in August 2019, shortly after it partially lifted the moratorium. In theory, the guide would help reduce uncertainty around the consultation process, but regulatory uncertainty remains a key issue for industry. In 2019, Corridor Resources halted its search for investors to back its plan for fracking in Sussex due to uncertainty around consultation and when (or if) Corridor's assets in the McCully Field would become exempt from the moratorium (Magee 2019). In the following year, Corridor was taken over by new management and changed its name to Headwater Exploration. Headwater plans to consult with First Nations and to pursue the exemption and development in the region (Intiar 2020). It has yet to be determined whether Headwater has been successful with its endeavours; only time will tell if history repeats itself.

2.6 *Summary of Potential Shale Gas Development in New Brunswick*

New Brunswick possesses valuable shale gas resources that could potentially put the province on a path towards economic self-sufficiency. However, there are significant environmental concerns that need to be taken into consideration before development proceeds. Moreover, New Brunswick residents, but specifically Indigenous Peoples, need to feel adequately consulted in order to ensure that shale gas activities do not reignite conflict between the provincial government, First Nations, and industry. Such conflict will further inhibit the provincial government's political and economic planning priorities.

3 Findings and Conclusions

Alberta and New Brunswick have different economic histories, relationships with Indigenous Peoples, policies on the duty to consult, and experiences with developing oil and gas resources. However, despite their differences, a lot can be learned about oil and gas development and consultation with Indigenous Peoples when juxtaposing their experiences. Comparing their experiences helps elucidate how economic benefits, nation-to-nation relationships, and feelings towards consultation influence how Indigenous Peoples respond to oil and gas development. Additionally, each province's experience provides insight into how policies on the duty to consult shape community response,

impact resource development projects, and impact the political and economic agendas of provincial governments.

First Nations that stand to benefit economically from oil and gas development are less likely to oppose development. This is mainly because they can improve the standards of living in their communities through a variety of socio-economic benefits and opportunities for their members. Economic benefits from oil and gas development also have the potential to lift First Nations out of absolute and relative poverty. Both ACFN and FMFN have become more accepting of oil sands development since they have achieved economic benefits and opportunities through agreements with government and industry. ACFN and FMFN have also generated a significant amount of wealth for their nations through their involvement in the oil sands. Conversely, both LLB of Alberta and EFN of New Brunswick have not been awarded similar opportunities and have strongly opposed oil and gas development.

Another factor that influences how First Nations respond to oil and gas development are their nation-to-nation relationships with the Crown, as defined by treaties and agreements between the Government of Canada, First Nations, and provincial (and territorial) governments. This is because the parameters of nation-to-nation relationships largely determine the scope of consultation around resource development. The provisions of Peace and Friendship Treaties, Numbered Treaties, Comprehensive Land Claims Agreements, and other modern agreements all shape the scope of the duty to consult differently, even though the duty is legally independent of these agreements. The impacts of oil and gas development on Indigenous nations like LLB, who were historically excluded from the Numbered Treaties, have been especially adverse, because the Nation did not have a right to be consulted by the Crown. The traditional territory of LLB has been compromised for industry profit, and the First Nation has never had a say in how development should proceed. Unsurprisingly, LLB has strongly opposed development for decades. Signatories of the Peace and Friendship Treaties, such as EFN, have also strongly opposed development. This is because its lands and resources were never surrendered to the Crown in exchange for benefits. Thus, it was inevitable that any development taking place on EFN's lands without consultation, or their consent, would incite conflict. As for signatories of the Numbered Treaties like ACFN and FMFN, the notion of ceded territory is debated. However, these First Nations acknowledge that the nature of Treaty 8 often precludes them from challenging the Crown's ownership of lands and

resources. As a result, ACFN and FMFN have taken a pragmatic approach to land management and resource development to try to work in partnership with project proponents and the Crown. Lastly, Comprehensive Land Claims Agreements and other modern agreements can provide Indigenous nations like LLB with opportunities to negotiate the terms of their agreements on more equitable grounds than historic treaties (i.e., Peace and Friendship, Numbered). Indeed, the Peace and Friendship and Numbered Treaties have the shared disadvantage of being tied to a history of the Crown failing in its obligations, which further hinder and impede nation-to-nation negotiations and discussions.

Finally, when First Nations are not adequately or meaningfully consulted, they are more likely to oppose development. This is just common sense. All the First Nations mentioned in this chapter have opposed oil and gas development at some point because they did not feel like they were adequately or meaningfully consulted. However, this review shows that ACFN and FMFN have grown more receptive towards development because they have had more opportunities to engage with project proponents and the provincial government. On the other hand, First Nations like LLB and EFN have opposed development because they were not being treated equitably or fairly and were hardly consulted (if at all) about the developments taking place near their communities and on their traditional lands.

When comparing the overall experiences of both Alberta and New Brunswick, it seems that poorly thought-out and executed policies on the duty to consult can jeopardize resource development projects, and in turn, undermine the political and economic objectives of provincial governments. This has been the case with New Brunswick's inadequate consultation practices that have incited protests and riots, which also inspired the moratorium that was placed on fracking in the province and a company's ire. Although there are *many* factors to consider when evaluating how First Nations, or Indigenous Peoples more broadly, respond to development and the outcomes of resource projects, one cannot help but think that there may be a correlation between comprehensive policies (and guidelines) on the duty to consult and community non-opposition or support for resource projects. More detailed consultation policies clearly delineate expectations around the consultation process and the roles and responsibilities of all key parties involved. Not only do they bring clarity to the consultation process, but there is less room for alternative interpretations. In turn, the process is more direct and predictable,

and less likely to incite conflict between engaged parties. Although the Government of Alberta's consultation policy is far from perfect, and the brevity and vagueness of the Government of New Brunswick's duty to consult policy may not have been the sole cause of conflict in 2013, it is worth considering that these policies have played an important role in shaping community response and development more broadly.

As the cases of Alberta and New Brunswick demonstrate, natural resources are a vital part of provincial economies. For any provinces that are interested in developing natural resources, whether it be oil and gas or other resources, the role that duty to consult policies (and guidelines) play in development should not be underestimated. It is in the interest of provincial (and territorial) governments to devise and deliver duty to consult policies that are, ideally, designed in collaboration with Indigenous Peoples and that ultimately enable Indigenous Peoples to benefit from development taking place in a manner that improves their relationship with the Crown (i.e., reconciliation), and ensures they are meaningfully consulted.

NOTES

- 1 Canada has approximately 172 billion barrels of proven oil reserves, most of which are found in the Alberta oil sands (Government of Canada 2022c).
- 2 The duty to consult is a constitutional legal doctrine found in section 35(1) of the *Constitution Act, 1982*. The doctrine requires the Crown (i.e., federal and provincial governments) to consult, and where appropriate accommodate, Indigenous Peoples over actions or decisions that may negatively impact their Aboriginal or Treaty Rights (Government of Canada 2021).
- 3 Equalization payments are transfers of funds from the Government of Canada to the provinces. These payments are meant to compensate poorer provinces for their relatively weak tax bases and/or resource endowments. Alberta was a "have" province for fifty-five years until 2020 when the COVID-19 pandemic negatively impacted the provincial economy, which resulted in the province becoming eligible for equalization payments (Rieger 2020).
- 4 *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73.
- 5 *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74.
- 6 *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, 2005 SCC 69.
- 7 The Government of Alberta also released *The Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management* in

2015, but investigating Alberta's relationship with Métis, or rather Métis Settlements, and corresponding policies and guidelines is beyond the scope of this chapter.

- 8 Other landmark cases include, but are not limited to: *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650; *Tsilhqot' in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256; and *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40, [2018] 2 S.C.R. 765.
- 9 The federal government's endorsement of UNDRIP demonstrated Canada's commitment to promoting and protecting Indigenous rights, whereas the adoption of UNDRIP signalled that Canada was a full supporter, without qualification, of UNDRIP and made a commitment to its implementation. It is also worth noting here that federal legislation on UNDRIP was eventually enacted in 2021. The United Nations Declaration on the Rights of Indigenous Peoples Act (S.C. 2021, c. 14) received Royal Assent and came into force on June 21, 2021 (Government of Canada, 2022a).
- 10 The ancestors of present day ACFN members signed the treaty at Fort Chipewyan in 1899.
- 11 A notice of question of constitutional law is when a party raises a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a rule of common law.
- 12 One notable and non-confidential example is the trust fund (the Community Sustainability Fund) that ACFN was able to create with the assistance of Total Energy in 2011. The trust fund was established to enhance the quality of life of future generations by supporting community infrastructure projects associated with housing, health, social development, culture, and so on. In 2020, the fund was valued at over \$60 million.
- 13 On September 6, 2016, FMFN signed a participation agreement for the purchase and sale of 34.3 percent equity interest in Suncor's East Tank Farm Development. The East Tank Farm serves as a storage facility for bitumen and dilutant, and as a blending and cooling facility.
- 14 In 1973, LLB was formally granted band status by the federal government, which provided its members with access to annual funding for social assistance, education, and social benefits. LLB was also awarded membership in the North Peace Tribal Council in 1995, which granted it access to a political forum to share and discuss information regarding Aboriginal and treaty rights.
- 15 According to the Government of Alberta, a caveat is a "warning (in land law) that someone is claiming an interest on a parcel of land." In other words, it is a "notice of a claim of interest on land," and its validity can be disputed in court (Government of Alberta 2022b).
- 16 According to Ferreira, LLB claimed 33,000 square miles of land in the area.
- 17 On September 23, 1982, LLB filed for an interim injunction to halt oil and gas activities temporarily until a settlement could be made on its land claims. However, its application was dismissed.
- 18 The Stoney Creek Field was the province's first long-term oil and gas field. It was discovered approximately 15 km south of Moncton by Contact Exploration Inc.

- (Kicking Horse Energy Inc.). The McCully Gas Field, on the other hand, was discovered in 2000 by Corridor Resources Inc. The McCully field is located near Sussex.
- 19 It has been estimated that the Stoney Creek produced over 800,000 barrels of paraffinic oil and 28 billion cubic feet (bcf) of sweet natural gas. By comparison, the McCully Gas Field has produced over 57 bcf of natural gas to date.
 - 20 In contrast to “have” provinces, “have-not” provinces receive equalization payments from the federal government.
 - 21 SWN Resources Canada Inc. is a subsidiary of SWN Energy Company, which is a leading natural gas and natural gas liquids producer in the United States (Southwestern Energy Company 2022).
 - 22 When consultation did occur, it took the form of organized meetings and group workshops led by SWN representatives who gathered “Indigenous perspectives” from community members. During these meetings, participants were not informed that they were being consulted, even though the meetings would be used as evidence of the company’s “neighbourliness” (Howe 2015, at 1885 of 5224).
 - 23 The Peace and Friendship Treaty was signed circa 1760 by Chief Michael Augustine of the Richebuctou (Richibucto) Tribe (Kennedy 2006).

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