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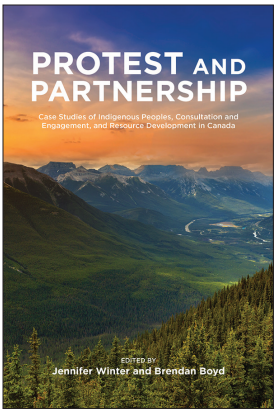

PROTEST AND PARTNERSHIP: CASE STUDIES OF INDIGENOUS PEOPLES, CONSULTATION AND ENGAGEMENT, AND RESOURCE DEVELOPMENT IN CANADA

Edited by Jennifer Winter and Brendan Boyd

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PROTEST AND PARTNERSHIP

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We wish to express our gratitude to the contributors to this volume and the Indigenous communities that have shared their stories.

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Foreword

The genesis of *Protest and Partnership: Case Studies of Indigenous Communities, Consultation and Engagement, and Resource Development in Canada* was a workshop in December 2014 and a conference in November 2016, both hosted by the University of Calgary's School of Public Policy.

The workshop brought together nine Canadian academics with expertise in community-based research, natural resource development, and its effects on Indigenous communities. The purpose of the workshop was to identify potential case studies of successes and failures in consultation and engagement processes for further exploration and research and eventual publication as independent articles. An informal collaboration followed, with the School of Public Policy providing small funding support to engage research assistants for participants pursuing the case studies as independent research projects.

The purpose of the conference was "to share knowledge and stories about policy issues critical to Indigenous Peoples in Canada,"[1] including preliminary results from the case studies. The conference included a keynote address by Chief Jim Boucher of Fort McKay First Nation on the story of the Nation's economic successes; a panel on business and entrepreneurship in Indigenous communities; a panel with case studies of Indigenous communities' experience with resource development; and a panel on improving consultation and engagement processes.

Several of the book contributors—Boyd, McMillan, Rodon, and Slowey—presented work in progress at the conference, and we felt pursuing a book to share the experiences of Indigenous communities with consultation, engagement, and resource development, based on contributors' pre-existing research relationships would be valuable. We felt a collection of case studies, in a book where we could contrast different types of resource development activities where Indigenous Peoples had a variety of critical roles ranging from partners to protestors, would be more powerful than individual articles. Following the conference, Boyd and Winter began the process of developing a book prospectus and securing additional contributions.

The chapter contributors had pre-existing relationships with Indigenous communities, and case study topics were chosen with these in mind. We targeted breadth in Canadian jurisdiction and resource development activities to highlight differences in provincial and territorial Crown-Indigenous relations and show how the type of resource extraction may influence protest or partnership. Our focus is to understand the mechanisms and processes for successful and mutually beneficial resource governance relationships, and to assess what factors contribute to Indigenous Peoples' protest and legal challenge of resource projects. Where possible, we include Indigenous voices. For example, chapter 4 is written with Indigenous community members, and chapter 6 was written at the request of Meadow Lake First Nation.

We hope that these case studies offer important insights into the role of Indigenous Peoples in resource development in Canada—an issue of critical importance to Indigenous Peoples, governments in Canada, and all Canadians.

NOTE

1 S. Lorefice, B. Boyd and Gaétan Caron. 2017. "Indigenous Policy Conference Summary Report: Beyond Reconciliation." *The School of Public Policy Publications* 10, SPP Summary Paper. https://doi.org/10.11575/sppp.v10i0.43131.

Introduction

Brendan Boyd and Jennifer Winter

Indigenous[1] Peoples have become important participants in natural resource development across the globe. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which calls for the free, prior, and informed consent (FPIC) of Indigenous Peoples in decisions that involve or affect them, reflects and solidifies this role. While Canada was one of only four countries that dissented at the time of adoption, Prime Minister Justin Trudeau's Liberal government fully endorsed the declaration in 2016 and enshrined it in legislation in 2021. Part of the reason Canada was initially reticent to sign was because it was unclear how the principles of FPIC sit with Canadian constitutional recognition of Aboriginal Rights (Coates and Favel 2016a, b). In the mid-2000s, a handful of decisions by the Canadian courts established that to maintain the honour of the Crown in its relations with Indigenous Peoples, governments in Canada have a fiduciary duty to consult and accommodate Indigenous Peoples' concerns in decisions or activities that could affect their rights or territories. Constitutional scholar Peter Hogg states that "no area of Canadian law has been so transformed in such a short period of time as the law of aboriginal rights" (Hogg 2009). Gallagher (2011) argues that Indigenous People are being empowered in decision-making to the point where he refers to them as the new "resource rulers" in Canada. Some go further, arguing that resource development provides a means to address the lack of opportunity Indigenous Peoples experience in Canada, and that this opportunity can include improvements in health, social, and cultural conditions (Slowey 2009; Coates and Crowley 2013; Coates 2015, 2018; Coates and Favel 2016b).

Yet many scholars argue that there has been little change for Indigenous Peoples, as court decisions have either been ignored, poorly implemented, or

resisted by governments and non-Indigenous society (Alfred 2001; Borrows 2015; Palmater 2020). Some argue that Indigenous Peoples must work within frameworks and processes established by governments and industry that maintain existing power imbalances (Palmater 2015; Borrows 2016). They suggest these activities demonstrate an assimilationist intent by increasing the presence of the Canadian state and businesses on Indigenous lands and society. Alfred (2001) notes that the state retains the ultimate power to expropriate Indigenous lands, while Palmater (2018a) highlights that Indigenous Peoples do not have control over the means, such as police or military, to deny the state or industry access to their land. Relatedly, governments' preference for policy over formal legislation when it comes to Indigenous rights (e.g., the Inherent Rights Policy) "severely limits Indigenous groups' ability to seek enforcement and accountability through the courts" (Metallic 2017, 18).

Both approaches take a high-level view of court decisions and legal rights, as well as of the broader relationship between Indigenous Peoples, the Canadian state, and society. The purpose of this edited volume is to explore, in detail, the process and institutions used to engage Indigenous Peoples in resource development to understand whether these processes lead to greater involvement and control in decision-making. The contributors to this book ask what determines whether attempts at engagement and involvement lead to the empowerment for Indigenous Peoples in resource development decisions by investigating a cross-section of resource development projects in Canada in which Indigenous Peoples have a critical role. Our goal is to advance understanding of the mechanisms and processes for successful establishment of mutually beneficial resource governance relationships, with attention to factors that contribute to Indigenous protests and legal challenges. While the chapters address a variety of influences, the primary focus is on the institutions, mechanisms, and processes used to consult and engage Indigenous communities as these are important factors to consider in assessing whether these communities are empowered in resource development decisions. This fine-grained analysis of institutions and processes through case studies addresses an important gap in the literature discussing Indigenous Peoples and resource development in Canada. The weakness of this approach is that by peering too closely at the processes used for engagement, one can ignore the broader societal context, including historical and current power and socio-economic imbalances. As we discuss below, the second chapter of this book formally addresses the different perspectives that Indigenous groups,

government, and industry have on engagement processes. Furthermore, each of the chapter authors is a community-based researcher who has made concerted effort to capture and incorporate the perspectives of Indigenous communities and leaders. Indeed, this is the purpose of the case studies and this volume. For example, chapter 4—by McMillan, Maloney, and Gaudet—is co-authored with two members of the Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO).

In this introduction, we have two purposes. First, we provide a brief review of the context relevant to Indigenous Peoples and resource development in Canada. We discuss the political and legal developments in Canada and internationally that have purportedly empowered Indigenous communities and allowed them a greater say in decision-making. Slow and uneven progress in developing equitable and mutually acceptable relationships and outcomes among Indigenous communities, resource development companies, and government necessitates a better understanding of *what works* in these relationships. Thus, the second goal of this introduction is to identify and discuss the different mechanisms used to involve Indigenous communities in resource development decisions and activities. This provides a broad framework in which we situate the subsequent chapters of this volume. Establishing a better understanding of how industry and governments consult and engage with Indigenous communities, and of the relationships that exist among these groups, is essential to creating solutions to what often seems like an intractable problem.

Processes

Historically, Indigenous Peoples have been excluded from decisions about resource development. This has led many to posit a fundamentally exploitative relationship between local Indigenous communities that live close to resources and wealthy governments and corporations that desire to develop those resources (Abele 1997; Green 2003; Howlett et al. 2011). This approach tends to view Indigenous Peoples solely as the victims of resource development. For example, the Berger (1978) report, which reviewed the impacts of a proposed pipeline in the McKenzie Valley in Northwest Territories, is widely seen as ground-breaking for recognizing the adverse impacts of resource development on Indigenous communities. However, the report was largely silent on Indigenous perspectives of the project, relegating them to the role of passive receivers of the impacts of development rather than seeing them as active

participants with control over the future of their people and culture (Angell and Parkins 2011).

Over time, several mechanisms or processes have emerged through which the interests, aspirations and perspectives of Indigenous Peoples and communities can be incorporated into the planning and implementation of projects that could affect them. These include the government's duty to consult, which is often conducted through environmental assessment or other regulatory processes; agreements signed between Indigenous communities and private companies; and shared governance and management arrangements that could include Indigenous communities, government, and industry. These processes occur within broader institutional contexts—most notably, different governance and legal regimes in different provinces and different treaty relationships, including modern treaties, historic treaties, and instances where no treaty exists.

Importantly, we do not assume that either development in all cases or no development in any case is the end goal or most desirable outcome. In some cases, Indigenous communities have worked to stop or dramatically alter resource development activities that would take place on their traditional territories, while in others, they have been keen to participate in projects to improve their situation. We do argue that whatever the outcome, processes should seek to empower Indigenous communities in decision-making while increasing the legitimacy of decisions among all actors. Chataway describes the importance of how decisions are made:

> The importance of process, in addition to good structures, is often overlooked. However, a brief reflection on one's own experiences with decision making indicates that the same outcome, depending upon how it is arrived at, can alienate, divide and anger us, or it can empower and reassure us. This sense of procedural justice, the sense that one has had a voice and been treated respectfully, is so important that it has been found to predict our level of trust in our political representatives, independent of whether decisions are made in our favour or not. For instance, the almost universally opposed White Paper that proposed in 1969 to terminate the Indian Act, may have been largely acceptable to Aboriginal People if it had been developed through a

> broad-based decision-making process with Aboriginal People" (Chataway 2002, 79).

As noted earlier, Indigenous Peoples are often coerced into working with the frameworks and processes established by the state and industry (Palmater 2015). Indigenous Peoples are compelled to adopt fundamentally different worldviews, values, and norms. As Nadasdy states: "First Nations peoples have to learn completely new and uncharacteristic ways of speaking and thinking" (2003, 2). It is therefore essential to consider the interplay between ideas, including worldviews, values, norms, and institutions in assessing the empowerment of Indigenous Peoples. This is not to say that outcomes are unimportant. Indeed, there has been significant debate about whether procedural justice can be separated from substantive justice, meaning the extent to which decisions protect Indigenous rights, minimize harms, and maximize benefits to Indigenous communities (Sossin 2010), given weak policy and legislative protection of Indigenous self-determination (Borrows 2016). However, substantive justice can be difficult to determine; a project can be seen as beneficial or harmful to Indigenous communities depending on its specific characteristics, such as the nature of the activity and the relationship with the community and the role of the state (Anderson 1999, 2002; Slowey 2009; Palmater 2015). In addition, different parties may have different assessments. Chapter 1 of this volume examines how Indigenous Peoples, governments, and industry view and discuss consultation and engagement, highlighting their different approaches and perspectives. In chapter 5, Bikowski and Slowey engage this debate in the context of unconventional energy extraction in Alberta and New Brunswick. They explore whether the design and implementation of consultation and engagement contributes to Indigenous Peoples' perception of a project, compared to more substantive outcomes like the effect on the standard of living in the community and past relations with the Crown. In chapter 4, McMillan, Maloney, and Gaudet explore this issue via the strategies of the Mi'kmaq of Nova Scotia in regaining control of treaty-protected resources. The Mi'kmaq story highlights internal tensions and the challenges of "uneven, competitive, inadequate, and often unpredictable approaches to consultation and negotiation" by Crown and corporate actors.

Duty to Consult

While the duty is consult is founded in the Canadian constitution and its emergence in case law can be traced back to the 1970s, a series of court decisions in the 2000s greatly increased its importance in resource development decisions. The *Haida Nation v. British Columbia* (2004) and *Taku River Tlingit First Nation v. British Columbia* (2004) decisions established the duty to consult in cases where Indigenous groups had a claim to the land in question.[2] The *Haida Nation* case involved the transfer and replacement of a logging licence by the BC government in the traditional territory of the Haida Nation on the Queen Charlotte Islands. The courts ruled that the Haida Nation had a strong claim to the land and the provincial government's actions could affect this. Therefore, to maintain honourable relations with Indigenous Peoples, the government had a duty to consult with them and attempt to address any impacts the decision might have before moving forward. The *Haida* decision highlights the importance of process by indicating that consultation must be meaningful. Although there are no criteria set out for what specifically constitutes meaningful consultation, the decision indicates that it must affect reconciliation between Aboriginal People and the Crown. The *Taku River Tlingit* case involved a mine access road that would cross Taku River Tlingit First Nation (TRTFN) traditional territory. In this instance, the Supreme Court found BC had fulfilled its obligation to meaningfully consult, as TRTFN participated in the lengthy (3.5-year) environmental assessment of the mine. This decision places limits on the Crown's duty, finding "there is no ultimate duty to reach agreement" and "accommodation requires that Aboriginal concerns be balanced reasonably with the potential impact of the particular decision on those concerns and with competing societal concerns" (*Taku River Tlingit First Nation v. British Columbia*, 2004, para. 555).

Mikisew Cree First Nation (MCFN) v. Canada (2005) extends the duty to consult to instances where Treaty Rights were already established. In this case, the court found that the Government of Canada had to consult with the MCFN regarding a new winter road that could affect their hunting and trapping rights designated under Treaty 8.[3] In 2010, *Beckman v. Little Salmon/ Carmacks First Nation* confirmed that even when modern treaties have been signed and contain provisions for negotiation,[4] the duty to consult remains and serves as a constitutional protection or safety net in the relationship. At issue in the case was the transfer of land from the Yukon government to a

private citizen, where Indigenous hunting and fishing rights had already been established through a modern land claims process. Further decisions, such as *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* (2017) and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* (2017) have continued to refine and provide guidance on how the duty to consult should be implemented.[5] Of particular importance is the subsequent 2018 *Mikisew Cree First Nation v. Canada (Governor General in Council)* decision, which affirmed that the duty to consult does not apply to legislative processes. Palmater (2018b) asserts this ruling undermines the very concept and spirit of the duty to consult. The case law continues to develop at a rapid pace. For example, decisions in 2021 addressed the consideration of the cumulative effects of development (*Yahey v. British Columbia*, 2021), the nature of the Crown's fiduciary duty, and how Indigenous Peoples are compensated when it is breached (*Southwind v. Canada*, 2021), and the extension of the duty to consult to economic rights (*Ermineskin Cree Nation v. Canada*, 2021).

Indigenous Peoples have also been pursuing claims of land ownership or title. This would provide direct control over the land and decision-making authority on activities conducted within it. In 2014, the first judicial recognition of Aboriginal land title was in *Tsilhqot'in v. British Columbia*. The decision was the result of a series of court cases over several decades that established the concept of Aboriginal title and establish a test that had to be met to prove ownership of a specified piece of land. While there has been much speculation among experts, and concern by governments and industry, about the effect on resource development projects' approval and implementation, there are limitations to the decision's broader application. These limitations come from the high level of evidence required to prove ownership, the amount of territory over which claims can be made, and the powers that ownership grants (Coates and Newman 2014). Indeed, Manuel (2017) notes that Indigenous Peoples only control 0.2% of Canada's land base. Furthermore, Borrows (2015) criticizes *Tsilhqot'in*, arguing that decision actually legitimizes the myth of *terra nullius*, the notion that a land is unoccupied and can be claimed by a state beginning to occupy it.

Despite legal rulings that the federal government alone can fulfill the duty to consult, it has delegated some aspects of the process to provinces, industry, and arms-length administrative organizations. The predominant instance where duty to consult is delegated is the environmental review process. Bodies that conduct the duty to consult on behalf of the Crown include

federal or provincial environmental assessment agencies, the Canada Energy Regulator (formerly the National Energy Board), and the Canadian Nuclear Safety Commission. Combining Indigenous consultation with existing regulatory bodies and processes makes sense on the surface because they both inform government decision-making (Lambrecht 2013). However, Indigenous leaders and scholars have argued that existing processes have not lived up to expectations in terms of creating meaningful input for Indigenous groups (Wismer 1996; Noble and Udofia 2015). Many have argued that because the only processes available are defined and controlled by the state, whether Indigenous Peoples feel they are fair or not is moot, because there are no other options, and they have no power to change them (Alfred 2001; Palmater 2015; Borrows 2016; Simpson 2017). Other shortcomings of the process identified in the academic literature include insufficient time; asymmetry in capacity between Indigenous communities and government or industry; exclusion of traditional Indigenous knowledge; ambiguity around who, or what part of an institution, is responsible for the duty to consult (Promislow 2013; Ritchie 2013); a focus on individual projects in isolation rather than the cumulative impact of development (Ritchie 2013); and a lack of clarity over when accommodation is required and what form it should take (Mullan 2011).

In addition to the above, there are other issues or complications with implementation of the duty to consult. For example, Gardner, Kirchhoff, and Tsuju (2015) studied a proposed hydroelectricity dam in Ontario where the local Indigenous group was a proponent. The authors found that other Indigenous communities located upstream from the project were affected and were not sufficiently consulted. There is also the question of who should be consulted in cases where more than one group or actor claims to speak for a single community. This issue has arisen when communities have different positions than national or regional Indigenous organizations (Peach 2016). Multiple consultations can affect Indigenous groups in a way that goes beyond those from a single project, as psychological and cultural effects can arise when Indigenous communities are continually required to make their case and explain their concerns (Booth and Skelton 2006). This is particularly true when the consultation process is perceived to be a rubber stamp rather than meaningful engagement and does not empower these groups in development decisions.

The extant research and analysis on the duty to consult shows a process that is still working out flaws and that can result in unintended consequences.

Accordingly, it is essential to understand more about how the consultation process is functioning and what it looks like in practice. Governments in Canada have produced a plethora of guidance documents for public officials that outline what consultation entails and how it should be undertaken (Aboriginal Affairs and Northern Development Canada 2011; Government of Newfoundland and Labrador 2013; Government of Saskatchewan 2013). But this provides only a narrow window into the process. In their chapter comparing two mining projects, one in Nunavut and one in Nunatsiavut, Rodon, Therrien, and Bouchard (chapter 3) address this dilemma by examining whether assessment processes can contribute to meaningful consultation.

IBAs and Economic Development

The most common way industry has engaged and negotiated with Indigenous groups is through impact benefit agreements (IBAs). IBAs are private agreements signed between industry and an Indigenous community that outline the expected impacts if a project moves forward and the benefits the community receives. Some view the emergence of IBAs as a negative development for Indigenous Peoples, while others see them in a more positive light.

Cameron and Levitan (2014) argue that IBAs essentially turn the duty to consult over to private companies and limit Indigenous communities' access to legal and political channels to voice their concerns. Similarly, O'Faircheallaigh (2010) argues that IBAs cannot be separated from political processes and community planning. While they may provide economic benefits, they can also affect Indigenous groups' ability to oppose the project and their access to judicial and regulatory recourse. Dylan, Smallboy, and Lightman (2013) echo this sentiment by suggesting that Indigenous communities have little power when signing IBAs because they do not have the ability to veto development. The project could still go ahead without their involvement, leaving them with little leverage in negotiations. In addition, Indigenous communities have limited tools to address poverty and poor social conditions. This makes them more likely to accept an agreement that does not maximize their benefits because it is the only opportunity to improve their situation.

Fidler and Hitch (2007) question whether the benefits of IBAs are shared fairly and equally within and across communities. In addition, there can be asymmetry of information in negotiations and Indigenous communities do not necessarily have the capacity to be involved as equals in the process. IBAs

are usually private documents, preventing Indigenous communities from learning and gaining expertise in this area. To ensure that Indigenous communities see economic benefits from development, Shanks (2006) argues that revenue sharing should be negotiated between governments and Indigenous groups rather than through IBAs with industry.

The benefits of IBAs are often tied to a specific project, which makes the benefits localized and short term. Coates and Crowley (2013) suggest a regional approach to skill development that allows workers to be mobile and find new jobs in other communities. They also propose an IBA renewal system that ensures benefits will be long-term and is flexible enough to adapt to changes in economic circumstances. One of the shortcomings of IBAs is that they tend to focus on economic goals rather than community or social outcomes. This is often referred to as development in the community versus development of the community (Beckley et al. 2008). While many IBAs now contain provisions for community development (Sosa and Keenan 2001), others argue that to avoid a piecemeal approach, agreements addressing social programs should be negotiated with government rather than industry (Knotsh and Warda 2009). There is evidence to suggest that social development and cohesion within a community are actually prerequisites to economic development (Chataway 2002).

Other scholars have taken a more positive view of IBAs and view them as complementary to government's duty to consult. According to Fidler (2010), IBAs can be mutually beneficial: the proponent increases the certainty that the project will go ahead and be on schedule while Indigenous groups have a voice in development and receive benefits from the project. Prno, Bradshaw, and Lapierre (2010) study three communities that signed IBAs and find that they are all seeing benefits, although not all the benefits that were outlined in the agreements. Gibson MacDonald, Zoe, and Satterfield (2014) argue it is possible to link IBAs to traditional values of reciprocity and mutual exchange in some Indigenous communities. They suggest these agreements mirror early relations between Indigenous Peoples and European settlers and provide the means for this to be restored to some extent. In this volume, Wyatt and Dumoe examine the linkages between governance, community engagement, and economic development in their chapter on the Meadow Lake model of forestry. Similarly, McMillan, Maloney, and Gaudet demonstrate how community engagement within Mi'kmaq communities led to participatory

decision-making around allowable development and created community-driven consultation and negotiation processes.

Treacy, Campbell, and Dickson (2007) provide a list of activities involved in consultation, including providing accurate and timely information, providing financial contributions for expert assistance to these groups, soliciting and confirming Indigenous interests and concerns, offering to work together and share benefits, and fully documenting and sharing with government all interactions. There is evidence to suggest that communities that have control and play an important decision-making role in development decisions experience the best outcomes in terms of community and social development (Rodon and Lévesque 2015). This theme is taken up by Rodon, Therrien, and Bouchard in this volume as they seek to understand if and how IBAs contribute to meaningful consultation of the Indigenous communities that are involved.

Modern Treaties and Co-management

The modern land claims process, also referred to as comprehensive agreements or modern treaties, have been championed as an example of a new era in Indigenous-state relations based on a nation-to-nation relationship and the goal of Indigenous self-governance (Martin and Hoffman 2008; White 2020). This process seeks to address Indigenous rights that have not been established or upheld and address grievances existing treaties have not fulfilled. Since the 1970s, negotiations between the federal government and Indigenous Peoples have led to thirty agreements that provide protection of rights, transfer of land and capital, participation in resource development environmental management, and in some cases provisions for self-governance (Crown-Indigenous Relations and Northern Affairs Canada 2023a, b).

There are serious questions as to whether modern treaties have led to substantive changes for Indigenous Peoples. Some have asserted that the modern treaty process requires the surrender of inherent and traditional rights due to, for example, the inclusion of explicit extinguishment clauses (Diabo 2013; Manuel and Derrickson 2017; Venne 2017). Venne (2017) rejects the modern treaty-making process as illegitimate, as it assumes the Crown remains the assumptive title holder of all lands and Indigenous Peoples are required to assert and prove their claims against this assumption. Rynard (2000) compares two modern treaties—the 1975 James Bay and North Quebec Agreement and the 1999 Nisga'a Final Agreement—and finds that both bear similarities

to historic treaties that extinguished fundamental Indigenous rights. Saku (2002) finds that communities that had signed modern treaties did not display better socio-economic outcomes than other communities. Saku concludes that by themselves, modern treaties do not lead to economic development. Dana, Anderson, and Meis-Mason (2009), focusing on the Dene people in NWT, find that concerns about the effects of resource development on environmental, cultural, and social conditions remain in these communities. Slowey (2007) argues that because the process of negotiation is still set solely by the state, recent agreements such as Paix des Braves have not fundamentally altered the institution of Canadian federalism or empowered Indigenous Peoples. She argues there has not been a movement toward a nation-to-nation relationship or treaty federalism. Alfred (2001) makes a similar observation, noting that the state dictates the terms of treaty negotiation, imposes its own definitions of democratic participation and decision-making, and denies the validity of Indigenous forms of consultation and political representation. In this volume, Cameron, Martin, and Sharpe (chapter 2) examine the history of land claims agreements in Yukon and argue that their presence is a primary reason that there have been few protests among Indigenous communities over resource development. Rodon, Therrien, and Bouchard (chapter 3) also address this debate by examining whether a land claims agreement facilitates Indigenous empowerment in decision-making in the two cases they study. McMillan, Maloney, and Gaudet (chapter 4) look outside the land claims process to the unique experience of the Mi'kmaq people, through the history of the Mi'kmaq Rights Initiative and the KMKNO.

Within modern treaties, smaller-scale collaborative arrangements regarding resource development are possible. O'Faircheallaigh (2007) proposes that Indigenous groups should be involved in ongoing environmental monitoring and management—monitoring projects' environmental impacts and implementation of environmental regulations. One of the issues with Indigenous engagement is that it only occurs as a project is under review. A concern regarding environmental assessment processes is that monitoring and ensuring compliance with standards is often weak. Therefore, there is an opportunity to create a system where Indigenous communities have a role in ongoing environmental monitoring. O'Faircheallaigh (2007) notes there would have to be provisions for inclusion and utilization of traditional ecological knowledge.

As Indigenous Peoples have an important role in the development of resources in Canada, it is essential to understand how their cultures and perspectives influence resource management. The knowledge and perspectives that Indigenous Peoples have acquired throughout their long history living on the land are often referred to as traditional ecological knowledge (TEK). TEK can be distinguished from the processes of inquiry and knowledge-generation that conform to western-based notions of the scientific method and typically inform resource management decisions. In chapter 1, Boyd, Lorefice, and Winter examine Indigenous Peoples' views of evidence and knowledge, how they differ from those of government and industry, and how these factors are incorporated into decision-making. Insight and information gathered through traditional methods first emerged as a way for Indigenous groups to demonstrate their ownership or rights to the land. The recognition and inclusion of TEK in decision-making has been a controversial issue, as Indigenous groups have sought to ensure the knowledge they possess is given equal weight to scientific analysis performed by industry and government.

Indigenous perspectives and knowledge can contribute to the management of resources in Canada. Indigenous involvement in resource development projects and regulatory processes, and the use of TEK, can increase the sustainability of development (Hill et al. 2012). For example, Innu and Inuit communities contributed to the inclusion of sustainable development as a criterion in the environmental assessment of a mining project located at Voisey's Bay, Newfoundland and Labrador (Gibson et al. 2005). However, the extent to which Indigenous involvement will strengthen the quality and durability of resource development decisions will be determined by the process that is used (Reed 2008). The process must fully engage Indigenous groups in a meaningful way to ensure resource development and management incorporates local knowledge. Not only will this increase the legitimacy of the process, but it will also improve the quality of environmental outcomes that are produced.

Indigenous perspectives and TEK have been particularly influential in the study of the forestry sector as they provide a different definition of sustainable forestry compared to that of industry (Karjala, Sherry and Dewhurst 2004). Indigenous approaches to sustainable forestry are place-based and are not connected to a human presence. In contrast, industry's approach is resource-based which focuses on the utility of forests to humans. Parsons and Prest (2003, 779) go further, arguing that Aboriginal forestry is a distinct approach to resource development that "combines current forest management

models with traditional cultural Aboriginal forest practice." The authors argue that this approach is becoming more common with increasing participation of Indigenous communities in forestry.

Wyatt (2008) reviews the history of First Nations involvement in Canadian forestry, finding a spectrum of types of involvement. These include forestry by First Nations, forestry for First Nations, forestry with First Nations, and Aboriginal forestry. Wyatt finds that forestry by First Nations is the most common: Indigenous Peoples are involved but have little decision-making authority in forest management practices. He suggests the first three types of involvement could lead to better representation of Indigenous Peoples, but the term "Aboriginal forestry" should only refer to a situation where practices and values have been informed by Indigenous perspectives in a meaningful way.

Several lessons emerged from the study of Indigenous involvement in resource management: each project has unique features and a one-size-fits-all approach to management will not work; TEK is not just about documentation or recording of knowledge, it is about respecting the relationship between knowledge and knowledge holders; co-management is a social learning process for managing human use of resources, not just an institution for managing the resources; and economic development is a sustainable process toward community goals not just about jobs and business revenue (Wyatt et al. 2010). However, Wellstead and Stedman (2008) are pessimistic about the likelihood that government policy and programming will shift to reflect these lessons and move toward a model of forestry led by First Nations.

The lessons provided by the literature are critical to ensuring that TEK and Indigenous perspectives are not included perfunctorily in decision-making but instead have a real influence on the outcomes of resource management. Once again, there is a need to study how consultation and engagement is conducted to ascertain the role TEK and Indigenous perspectives play in the process and what influence they have on decision-making. For example, are certain consultation practices more amendable to the inclusion of TEK than others? What barriers currently exist to a more equitable weighting of different forms of knowledge in the consultation process? These questions are an important gap in the literature that needs to be addressed.

The Structure of the Book

The chapters in this book present a series of case studies that cover a range of resource development sectors, including oil and gas, renewable energy, mining, and forestry. Indigenous communities in all regions of the country, including the Maritimes, the North, Central, and Western Canada are represented. In chapter 1, Boyd, Lorefice, and Winter examine policy statements and guideline documents on consultation and engagement produced by Indigenous groups, government, and industry to provide context for the later case studies. Recognizing criticisms that the Canadian state imposes legal and policy framework on Indigenous Peoples (Alfred 2001; Nadasdy 2003; Palmater 2015), the purpose is to provide insight into how Indigenous Peoples' perspective differ from the other actors involved in these processes. These differences should set the stage for the case studies and be kept in mind throughout the course of this volume. In chapter 2, Cameron, Martin, and Sharpe describe the development of modern treaties in Yukon, and how this has influenced resource governance in the territory. In chapter 3, Rodon, Therrien, and Bouchard examine the role of land claim agreements, impact assessment processes, and IBAs in contributing to meaningful consultation for mining projects on Inuit territory. In chapter 4, McMillan, Maloney, and Gaudet review the history of the Mi'kmaq Rights Initiative and the KMKNO in establishing the Mi'kmaq consultation and negotiation methods. Bikowski and Slowey (chapter 5) explore what elements influence Indigenous communities' support or rejection of oil and gas projects by comparing oil sands development in Alberta to shale development in New Brunswick. Lastly, in chapter 6, Wyatt and Dumoe describe the governance structure, community engagement, and economic development arising from the Meadow Lake model of forest development.

Finally, and perhaps most importantly, the Indigenous communities included in the case studies have played a variety of roles in the projects that have been proposed or developed on or near their land. For example, as outlined by Bikowski and Slowey, the Fort McKay First Nation in Alberta has developed many business partnerships with the oil sands companies operating on their traditional territory and, although disputes have occurred, they have largely worked with industry as partners. This situation is similar for Meadow Lake and its relationship with the forestry industry, who partnered with Wyatt and Dumoe in their chapter. In contrast, the Elsipogtog First Nation has protested

against proposed shale gas development in New Brunswick, leading to acrimonious relations with the proponent and government. In other cases, such as the Inuit located near the Mary River mine and Mi'kmaq communities involved in the KMNKO process, divisions emerged between the broader organization representing Indigenous interests and the local communities.[6] Studying these cases, and the others included in the book, will provide a better understanding of the agreements, organizations, and mechanisms used to consult and engage Indigenous Peoples and their impact on their empowerment in resource development. It will also create insights and lessons that can improve the design and implementation of those processes and institutions.

NOTES

1 We note that Canadian governments have recently switched to using the word "Indigenous," though the term "Aboriginal" has a specific legal meaning and includes First Nations, Inuit, and Métis. We use the term Indigenous as it is the most inclusive collective noun, as recommended by First Nations and Indigenous Studies, University of British Columbia on the Indigenous Foundations website (2017) and Indigenous Corporation Training blog (2016). Our use of alternative terms reflects the use of those terms in works cited in order to maintain scholarly accuracy and the intent of the original work.

2 A claim could involve actual ownership or title to the land or specific rights of use such as hunting or fishing.

3 Treaty 8 is one of the eleven Numbered Treaties signed between the Government of Canada and Indigenous people between 1871 and 1921. It encompasses parts of northern Saskatchewan, Alberta and BC and part of Northwest Territories.

4 Modern treaties are comprehensive land claim agreements signed starting in 1975 between the Government of Canada, provincial and territorial governments, and Indigenous Peoples (Crown-Indigenous Relations and Northern Affairs Canada 2023a, b). These agreements define Indigenous rights and title and often establish greater self-governance among Indigenous communities.

5 For a history of the duty to consult, see Newman (2017).

6 These communities collaborated on the chapters with Rodon, Therrien, and Bouchard and McMillan, Maloney, and Gaudet, respectively.

References

Abele, F. 1997. "Understanding what happened here." In *Understanding Canada: Building on the new Canadian political economy*, ed. by W. Clement. Montreal-Kingston: McGill-Queen's University Press, 118–40.

Aboriginal Affairs and Northern Development Canada. 2011. *Aboriginal Consultation and Accommodation—Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*. Ottawa: Government of Canada. https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729.

Alfred, Taiaiake. 2001. "Deconstructing the British Columbia Treaty Process." *Balayi: Culture, Law and Colonialism* 3: 37–65.

Anderson, R. B. 1999. *Economic Development Among the Aboriginal Peoples in Canada: The Hope for the Future*. Concord, ON: Captus Press.

———. 2002. "Entrepreneurship and Aboriginal Canadians." *Journal of Development Entrepreneurship* 7, no. 1: 45–65.

Angell, A. and J. Parkins. 2011. "Resource Development and Aboriginal Culture in the Canadian North." *Polar Record* 47, no. 240: 69–79.

Beckley, T. M., D. Martz, S. Nadeau, E. Wall, and B. Reimer. 2008. "Multiple Capacities, Multiple Outcomes: Delving Deeply into the Meaning of Community Capacity." *Journal of Rural and Community Development* 3, no. 3: 56–75.

Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53, [2010] 3 S.C.R. 103.

Berger, Thomas R. 1978. "The McKenzie Valley Pipeline Inquiry." *Osgoode Hall Law Journal* 16, no. 3: 639–47. http://digitalcommons.osgoode.yorku.ca/ohlj/vol16/iss3/5.

Booth, A., and N. Skelton. 2006. "'You Spoil Everything!' Indigenous Peoples and the Consequences of Industrial Development in British Columbia," *Environment, Development and Sustainability* 8, no. 3: 685–702.

Borrows, John. 2015. "The Durability of Terra Nullius: *Tsihlqot'in Nation v. British Columbia*." *UBC Law Review* 48, no. 3: 701–42.

———. 2016. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press.

Cameron, E. and T. Levitan. 2014. "Impact Benefit Agreements and the Neoliberalization of Resource Governance and Indigenous-state Relations in Northern Canada." *Studies in Political Economy* 93: 25–52.

Chataway, C. 2002. "Successful Development in Aboriginal Communities: Does it Depend upon a Particular Process." *The Journal of Aboriginal Economic Development* 3, no. 1: 76–88. https://emedia.captus.com/epub/ebook/JAED-OpenAccess/v3n1/76/

Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., [2017] 1 SCR 1099, 2017 SCC 41.

Clyde River (Hamlet) v. Petroleum Geo-Services Inc., [2017] 1 SCR 1069, 2017 SCC 40.

Coates, K. 2018. *Catching the Next Wave: How BC First Nations Can Benefit from Another LNG Boom*. Ottawa: MacDonald-Laurier Institute. https://macdonaldlaurier.ca/mli-files/pdf/MLI_LNGBoom_Final_web.pdf.

Coates, K. and B. L. Crowley. 2013. *The Way Out: New thinking about Aboriginal Engagement and Energy Infrastructure to the West Coast*. Ottawa: MacDonald-Laurier Institute. http://www.macdonaldlaurier.ca/files/pdf/2013.05.30-MLI-3NorthernGateway-WebReady-vFinal.pdf.

Coates, K. and B. Favel. 2016a. *Understanding FPIC: From Assertion and Assumption on 'Free, Prior and Informed Consent' to a New Model for Indigenous Engagement on Resource Development*. Ottawa: MacDonald-Laurier Institute. https://macdonaldlaurier.ca/mli-files/pdf/MLINumber9-FPICCoates-Flavel04-29-WebReady.pdf.

———. 2016b. *Understanding UNDRIP: Choosing Action on Priorities over Sweeping Claims about the United Nations Declaration on the Rights of Indigenous Peoples*, Ottawa: MacDonald-Laurier Institute. https://macdonaldlaurier.ca/mli-files/pdf/MLI-10-UNDRIPCoates-Flavel05-16-WebReadyV4.pdf.

Coates, K. and D. Newman. 2014. *The End is Not Nigh: Reason over Alarmism in Analysing the Tsilhqo'in Decision*. Ottawa: MacDonald-Laurier Institute. http://www.macdonaldlaurier.ca/files/pdf/MLITheEndIsNotNigh.pdf.

Coates, K. S. 2015. *Sharing The Wealth: How Resource Revenue Agreements Can Honour Treaties, Improve Communities, and Facilitate Canadian Development*. Ottawa: MacDonald-Laurier Institute. https://macdonaldlaurier.ca/mli-files/pdf/MLIresourcerevenuesharingweb.pdf

Crown-Indigenous Relations and Northern Affairs Canada. 2023a. "Modern Treaties." Government of Canada. Last modified February 28, 2023. https://www.rcaanc-cirnac.gc.ca/eng/1677073191939/1677073214344.

———. 2023b. "Treaties and agreements." Government of Canada. Last modified April 11, 2023. https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231.

Dana, L. P., R. B. Anderson, and A. Meis-Mason. 2009. "A Study of the Impact of Oil and Gas Development on the Dene First Nations of the Sahtu (Great Bear Lake) Region of the Canadian Northwest Territories (NWT)." *Journal of Enterprising Communities* 3, no. 1: 94–117.

Diabo, Russell. 2013. "Harper Launches Major First Nations Termination Plan." Socialist Project. Accessed January 10, 2013. https://socialistproject.ca/2013/01/b756/.

Dylan, A., B. Smallboy, and E. Lightman. 2013. "Saying No to Resource Development Is not an Option: Economic Development in Moose Cree First Nation." *Journal of Canadian Studies* 1: 59–90.

Ermineskin Cree Nation v. Canada (Environment and Climate Change), 2021 FC 758. https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/500449/index.do.

Fidler, C. 2010. "Increasing the Sustainability of a Resource Development: Aboriginal Engagement and Negotiated Agreements." *Environmental Development and Sustainability* 12: 233–44.

Fidler, C., and M. Hitch. 2007. "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice." *Environments Journal* 35, no. 2: 49–69.

First Nations and Indigenous Studies, University of British Columbia. 2017. "Terminology," University of British Columbia. Indigenous Foundations. Accessed August 2017. http://indigenousfoundations.arts.ubc.ca/terminology/

Gallagher, B. 2011. *Resource Rulers: Fortune and Folly on Canada's Road to Resources*. n.p.: Bill Gallagher.

Gardner, H. L., D. Kirchhoff, and L. J. Tsuju. 2015. "The Streamlining of the Kabinakagami River Hydroelectricity Project Environmental Assessment: What Is the 'Duty to Consult' with other Impacted Aboriginal Communities when the Co-proponent of the Project is an Aboriginal Community?" *The International Indigenous Policy Journal* 6, no. 3. https://doi.org/10.18584/iipj.2015.6.3.4

Gibson MacDonald, G., J. B. Zoe, and T. Satterfield. 2014. "Reciprocity in the Canadian Dene Diamond Mining Economy." In *Natural Resource Extraction and Indigenous Livelihoods*, ed. Emma Gilberthorpe and Gavin Hilson (London: Routledge), 57–74.

Gibson, R. B., S. Holtz, J. Tansey, G. Whitelaw, and S. Hassan. 2005. *Sustainability Assessment: Criteria, Process and Applications*. London: Routledge.

Government of Newfoundland and Labrador. 2013. *The Government of Newfoundland and Labrador's Aboriginal Consultation Policy on Land and Resource Development Decisions ("The Policy")*. https://www.gov.nl.ca/exec/iar/files/aboriginal_consultation.pdf https://www.gov.nl.ca/iias/wp-content/uploads/aboriginal_consultation.pdf.

Government of Saskatchewan. 2013. *Proponent Handbook Voluntary Engagement with First Nations and Métis Communities to Inform Government's Duty to Consult Process*. Regina: Ministry of Government Relations. http://publications.gov.sk.ca/documents/313/94455-Proponent_Handbook.pdf.

Green, J. 2003. "Decolonization and recolonization in Canada." In *Changing Canada: Political Economy as Transformation*, ed. W. Clement and L. F. Vosko (Montreal-Kingston: McGill-Queen's University Press), 51–78.

Haida Nation v. British Columbia (Minister of Forests) [2004] 3 SCR 511, 2004 SCC 73.

Hill, R., C. Grant, M. George, C. Robinson, S. Jackson, and N. Abel. 2012. "A Typology of Indigenous Engagement in Australian Environmental Management: Implications for Knowledge Integration and Social-ecological System Sustainability." *Ecology and Society* 17, no. 1: 23.

Hogg, P. 2009. "The Constitutional Basis of Aboriginal Rights." In *Aboriginal Law Since Delgamuukw*, ed. by M. Morellato (Aurora, ON: Canada Law Book), 3–16.

Howlett, C., M. Seini, D. McCallum, and N. Osborne. 2011. "Neoliberalism, Mineral Development and Indigenous People: A Framework for Analysis." *Australian Geographer* 42, no. 3: 309–23.

Indigenous Corporation Training Inc. 2016. "Indigenous or Aboriginal: Which Is Correct?" *Working Effectively with Indigenous Peoples* (blog), January 5, 2016. https://www.ictinc.ca/blog/indigenous-or-aboriginal-which-is-correct.

Karjala, M., E. Sherry. and S. Dewhurst. 2004. "Criteria and Indicators for Sustainable Forest Planning: A Framework for Recording Aboriginal Resource and Social Values." *Forest Policy and Economics* 6, no. 2: 95–110.

Knotsh, C. and J. Warda. 2009. *Impact Benefits Agreements: A Tool for Healthy Inuit Communities*. Ottawa: National Aboriginal Health Organization.

Lambrecht, K. 2013. *Aboriginal Consultation, Environmental Assessment and Regulatory Review in Canada*. Regina: University of Regina Press.

Manuel, Alfred. 2017. "From Dispossession to Dependency." In *Whose Land is it Anyway? A Manual for Decolonization*, ed. Peter McFarlance and Nicole Shabus (Vancouver: Federation of Post-Secondary Educators of BC) , 18–21.

Manuel, Arthur and Ronald Derrickson (Grand Chief). 2017. *The Reconciliation Manifesto: Recovering the Land, Rebuilding the Economy*. Toronto: James Lorimer & Company.

Martin, T. and S. Hoffman, S., eds. 2008. *Power Struggles: Hydro Development and First Nations in Manitoba and Quebec*. Winnipeg: University of Manitoba Press.

Metallic, Naiomi. 2017. "The Relationship Between Canada and Indigenous People: Where Are We?" Irwin Law Special Series, Special Lecture 2017—Canada at 150: The Charter and the Constitution. Accessed via https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089051.

Mikisew Cree First Nation v. Canada (Governor General in Council), [2018] 2 SCR 765, 2018 SCC 40.

Mullan, D. 2011. "The Supreme Court and the Duty to Consult Aboriginal Peoples: A Lifting of the Fog." *Canadian Journal of Administrative Law and Practice* 24, no. 3: 233–60.

Nadasdy, P. 2003. *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-state Relations in the Southwest Yukon*. Vancouver: UBC Press.

Newman, D. 2017. "The Section 35 Duty to Consult." In *The Oxford Handbook of the Canadian Constitution*, ed. P. Oliver, P. Macklem and N. Des Rosiers (New York: Oxford University Press) , 349–66.

Noble, B., and A. Udofia. 2015. *Protectors of the Land: Toward an EA Process that Works for Aboriginal Communities and Developers*. Ottawa: MacDonald-Laurier Institute. http://www.macdonaldlaurier.ca/files/pdf/Noble-eAs-Final.pdf.

O'Faircheallaigh, C. 2007. "Environmental Agreements, EIA Follow-up and Aboriginal Participation in Environmental Management: The Canadian Experience." *Environmental Impact Assessment Review* 27, no. 4: 319–42.

———. 2010. "Aboriginal-mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development." *Canadian Journal of Development Studies* 30, nos. 1–2: 69–86.

Palmater, P. 2015. *Indigenous Nationhood: Empowering Grassroots Citizens*. Halifax: Fernwood Publishing.

———. 2018a. "True Test of Reconciliation: Respect the Indigenous Right to Say No." Canadian Dimension. Accessed May 15, 2018. https://canadiandimension.com/articles/view/true-test-of-reconciliation-respect-the-indigenous-right-to-say-no.

———. 2018b. "The Supreme Court Has Just Gutted the Crown's Duty to Consult First Nations." *Maclean's*. October 11, 2018. https://www.macleans.ca/opinion/the-supreme-court-has-just-gutted-the-crowns-duty-to-consult-first-nations/.

———. 2020. "Mi'kmaw Treaty Rights, Reconciliation and the 'Rule of Law'." Canadian Dimension. Accessed September 22, 2020. https://canadiandimension.com/articles/view/mikmaw-treaty-rights-reconciliation-and-the-rule-of-law.

Parsons, R. and G. Prest. 2003. "Aboriginal Forestry and Canada." *The Forestry Chronicle* 79, no. 4: 779–84.

Peach, I. 2016. "Who Speaks for Whom? Implementing the Crown's Duty to Consult in the Case of Divided Aboriginal Political Structures." *Canadian Public Administration* 59, no. 1: 95–112.

Prno, J., B. Bradshaw, and D. Lapierre. 2010. *Impact and Benefit Agreements: Are They Working?* N.p.: Canada Institute of Mining, Metallurgy and Petroleum.

Promislow, J. 2013. "Irreconcilable? The Duty to Consult and Administrative Decision Makers." *Constitutional Forum* 22, no. 1: 63–78.

Reed, Mark S. 2008. "Stakeholder Participation for Environmental Management: A Literature Review." *Biological Conservation* 141, no. 10: 2417–431.

Ritchie, K. 2013. "Issues Associated with the Implementation of the Duty to Consult and Accommodate Aboriginal Peoples: Threatening the Goals of Reconciliation and Meaningful Consultation." *UBC Law Review* 46, no. 2: 397–438.

Rodon, T. and F. Lévesque. 2015. "Understanding the Social and Economic Impacts of Mining Development in Inuit Communities: Experiences with Past and Present Mines in Inuit Nunangat." *The Northern Review* 41: 13–39.

Rynard, P. 2000. "Welcome In, but Check your Rights at the Door: The James Bay and Nisga'a Agreements in Canada." *Canadian Journal of Political Science* 33, no. 2: 211–43.

Saku, J. 2002. "Modern Land Claim Agreements and Northern Canadian Aboriginal Communities." *World Development* 30, no. 1: 141–51.

Shanks, G. 2006. *Sharing in the Benefits of Resource Development: A Study of First Nations-industry Impact Benefits Agreements*. Ottawa: Public Policy Forum.

Simpson, Leanne Betasamosake. 2017. *As We Have Always Done: Indigenous Freedom Through Radical Resistance*. Minneapolis: University of Minnesota Press.

Slowey, G. 2007. "Federalism and First Nations: In Search of Space." In *Constructing Tomorrow's Federalism: New Perspectives on Canadian Governance*, ed. I. Peach (Winnipeg: University of Manitoba Press), 157–70.

———. 2009. "A fine balance." In *First Nations, First Thoughts*, ed. A. Timpson (Vancouver: UBC Press), 229–50.

Sosa, I. and K. Keenan. 2001. *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada*. Canadian Environmental Law Association. http://www.cela.ca/sites/cela.ca/files/uploads/IBAeng.pdf.

Sossin, L. 2010. "The Duty to Consult and Accommodate: Procedural Justice as Aboriginal Rights." *Canadian Journal of Administrative Law and Practice* 23: 93–113.

Southwind v. Canada, 2021 SCC 28. https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18955/index.do.

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74.

Treacy, Heather L., Tara L. Campbell, and Jamie D. Dickson. 2007. "The Current State of the Law in Canada on Crown Obligations to Consult and Accommodate Aboriginal Interests in Resource Development." *Alberta Law Review* 44, no. 3: 571–618.

Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256.

Venne, Sharon. 2017. "Crown Title: A Legal Lie." In *Whose Land Is It Anyway? A Manual for Decolonization*, ed. Peter McFarlance and Nicole Shabus (Vancouver: Federation of Post-Secondary Educators of BC) , 14–17.

Wellstead, A., and R. Stedman. 2008. "Integration and Intersection of First Nations in the Canadian Forestry Sector: Implications for Economic Development." *Journal of Aboriginal Economic Development* 6, no. 1: 30–43.

White, Graham. 2020. *Indigenous Empowerment through Co-management: Land Claims Boards, Wildlife Management, and Environmental Regulation*. Vancouver: UBC Press.

Wismer, S. 1996. "The Nasty Game: How Environmental Assessment is Failing Aboriginal Communities in Canada's North." *Alternatives Journal* 22, no. 4: 10–17.

Wyatt, S. 2008. "First Nations, Forest Lands, and 'Aboriginal Forestry' in Canada: From Exclusion to Comanagement and Beyond." *Canadian Journal of Forestry Resources* 38: 171–80.

Wyatt, S., J-F. Fortier, G. Greskiw, M. Hébert, S. Nadeau, D. Natcher, P. Smith, and R. Trosper. 2010. *Collaboration between Aboriginal Peoples and the Canadian Forestry Industry: A Dynamic Relationship*. Edmonton: Sustainable Forestry Management Network.

Yahey v. British Columbia, 2021 BCSC 1287. https://www.bccourts.ca/jdb-txt/sc/21/12/2021BCSC1287.htm.