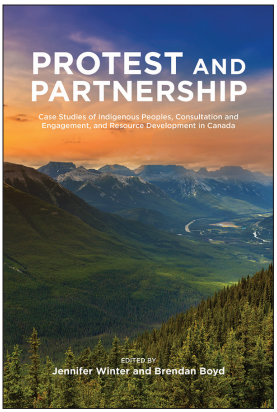
UNIVERSITY OF CALGARY
Press



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

Edited by Jennifer Winter and Brendan Boyd

ISBN 978-1-77385-205-8

THIS BOOK IS AN OPEN ACCESS E-BOOK. It is an electronic version of a book that can be purchased in physical form through any bookseller or on-line retailer, or from our distributors. Please support this open access publication by requesting that your university purchase a print copy of this book, or by purchasing a copy yourself. If you have any questions, please contact us at ucpress@ucalgary.ca

Cover Art: The artwork on the cover of this book is not open access and falls under traditional copyright provisions; it cannot be reproduced in any way without written permission of the artists and their agents. The cover can be displayed as a complete cover image for the purposes of publicizing this work, but the artwork cannot be extracted from the context of the cover of this specific work without breaching the artist's copyright.

UNIVERSITY OF CALGARY
Press
press.ucalgary.ca

Acknowledgement: *We acknowledge the wording around open access used by Australian publisher,* **re.press**, *and thank them for giving us permission to adapt their wording to our policy* http://www.re-press.org

3

Inuit Engagement in Resource Development Approval Process: The Cases of Voisey's Bay and Mary River

Thierry Rodon, Aude Therrien, and Karen Bouchard[1]

In this chapter, we look at the engagement of Inuit communities in two mining projects, namely Voisey's Bay and Mary River, both located in regions where Inuit have signed land claim settlements. Voisey's Bay is a nickel mine in Nunatsiavut that submitted a development proposal for evaluation in 1994, while negotiations were underway on the Labrador Inuit land claim that was settled in 1997, and began operating in 2005, as the Nunatsiavut government, negotiated through the Labrador Inuit Land Claim Agreement (LILCA), was being created. The signing of this land claim is intimately linked to the Voisey's Bay mining project development, as it was used as a leverage to accelerate negotiations (O'Faircheallaigh 2015). The entire consultation process took place before the signing of the LILCA, which meant that an ad hoc engagement process had to be negotiated before the mining project's approval. By contrast, Mary River is an iron mine located on Baffin Island in Nunavut, a Canadian territory created in 1999 through the Nunavut Land Claim Agreement (NLCA) that was signed in 1993. In this particular case, since the mining project was proposed in 2008 and approved in 2012, Inuit engagement was framed by the NLCA.

The engagement of Indigenous Peoples in the resource development approval process throughout Canada has dramatically changed over the past thirty years. Indigenous resistance and litigation in these two case studies have paved the way to several landmark decisions by the Supreme Court of

Canada that formally recognize Aboriginal Rights and redefine the government's role in resource development.

Aboriginal Rights in Canada stem from the long-standing occupation, possession, and use of the traditional lands by Indigenous societies prior to European contact. While some historical treaties were signed in the nineteenth and early twentieth centuries, most of Canada's lands remained unceded Indigenous territories.[2] This includes the North (Yukon, Northwest Territories, and Nunavut), significant portions of BC, large segments of the Maritimes and the entire province of Québec. In order to address this situation, a land claims process was developed in the 1970s by the federal government through negotiated agreements with First Nations (Scholtz 2006). This conversely enabled the institutionalization of Indigenous participation in resource development by way of an impact assessment (IA) process co-managed with Indigenous representatives and that has gone as far as obliging proponents to sign Impact and Benefit Agreements (IBAs) with Indigenous organizations in the most recent agreements.

In this context, one could firstly question the ability of these engagement processes (IAs and IBAs) to provide the leverage required for Indigenous organizations and communities to control development on their lands and to increase their engagement in these approval processes; and secondly, ask whether land claim agreements improve the engagement of Indigenous Peoples in the approval of resource development projects (Papillon and Rodon 2019). These questions appear crucial when it concerns the control and self-governance that Indigenous Peoples are striving to regain over their traditional lands. Furthermore, with the passing of Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act (the UNDRIP Act or the Act), into law on 21 June 2021, the principle of free, prior, and informed consent (FPIC) is now a legal norm for Indigenous Peoples' engagement in resource development.

In order to answer these questions, we will first provide some background context, then present a concise description of Indigenous rights in Canada and of the consultation and participation mechanisms that currently shape Indigenous engagement in resource development projects. Following that, we will analyze Inuit engagement in the approval processes of two mineral development projects in Inuit Nunangat: the Mary River project in Nunavut and the Voisey's Bay project in Nunatsiavut.

These case studies show that while the IA and IBA processes allow proponents to fulfill their duty to consult and to secure the consent of Indigenous organizations, they do not guarantee that the expectations and aspirations of community members will be met. Furthermore, the engagement process of land claim agreements doesn't necessarily lead to an effective and meaningful engagement (Rodon 2017).

An Emerging International Norm: Free, Prior, and Informed Consent (FPIC)

Free, prior, and informed consent is increasingly being considered as a new norm for Indigenous engagement in development projects worldwide. In 2007, the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP), a comprehensive international framework on the rights of Indigenous Peoples. While providing a clear definition of the minimum standards for the dignity and well-being of Indigenous Peoples worldwide, the goals and standards it sets forth are not, however, binding. The initial resistance of Canada and other British common-law settler societies (Australia, New Zealand, and the United States) to signing this document has proven its significance. One of this framework's most contentious elements is the concept of free, prior, and informed consent applied to contexts of resource development on Indigenous territory. In 2010, Canada endorsed UNDRIP while expressing concerns about FPIC when used as a veto. Finally, on May 10, 2016, the federal minister of Indigenous Affairs, Carolyn Bennett, announced at the UN Permanent Forum on Indigenous Issues that "Canada [was] a full supporter of the Declaration without qualification" and that the federal government intended "nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution" (Bennett 2016). The Royal Assent of the UNDRIP Act in 2021 marks a historic milestone in Canada's implementation of UNDRIP, especially given Section 5 of the UNDRIP Act, which requires the federal government "to take all measures necessary to ensure that Canada's federal laws are consistent with the Declaration, and to do so in consultation and cooperation with Indigenous peoples" (Duncanson et al. 2021).

Two interpretations of this concept currently prevail. The first is a more process-oriented vision that simply requires that governments and proponents make an effort to obtain the consent of Indigenous communities. The

second, more substantive in nature, considers that FPIC requires that both a deliberative process amongst the community and a negotiation process with the proponent take place (Papillon and Rodon 2019). As such, FPIC must entail discussions conducted freely and with all relevant information about the project and its impacts before any form of consent is given. Negotiations must necessarily occur between community representatives and the proponents after the deliberative process has taken place with community members (Papillon and Rodon 2017b). A project's outcomes would also necessitate negotiations with the members of the concerned communities and see their interests reconciled with those of the proponent (Papillon and Rodon 2017a). Communities must also be able to refuse projects throughout the FPIC process.

Aboriginal Rights and Indigenous Consultation in Canada

In Canada, a series of landmark decisions by the Supreme Court, such as *Haida* (2004), T*aku River* (2004) and *Mikisew Cree* (2005), established the Crown's duty to consult and sometimes accommodate Indigenous Peoples when proposed activities are believed to potentially have adverse impacts on their rights and related interests (AANDC 2011).

The strength of a nation's Aboriginal Rights and the potential negative impacts of the proposed activity on these rights influence the Crown's duty to consult. If the impacts of proposed projects are limited and the Aboriginal Rights of the concerned communities are weak (for example, not recognized by the federal government or any treaty), the Crown may only have an obligation to notify the Indigenous communities on proposed development activities. In cases where government activities are predicted to cause major negative impacts on Aboriginal Rights, substantial consultations and accommodations are needed. Consultation activities are held at stages deemed fitting by the concerned government department or agency charged with enacting the Crown's duty to consult, in accordance with their operational realities as well as the societal interests at stake (AANDC 2011). If the negative impacts and Aboriginal Rights of the concerned Nation are both strong, it might be necessary to obtain the consent of the concerned Indigenous community.[3]

While the Crown is ultimately responsible for consultation processes, the Crown's duty to consult can be, and very often is, delegated to the company

or government in charge of a project's planning and implementation (the proponent). The proponent may consider this delegation of power as a means of reducing the legal uncertainties surrounding their project. In order to fulfill their obligations to consult Indigenous Peoples, the Crown and proponents use two mechanisms: IBAs and IAs.

Indigenous Participation in the Context of Land Claim Agreements

The Supreme Court of Canada's decision in *Calder et al. v. Attorney-General of British Columbia* (1973), which asserted that the Nisga'a Tribal Council had never relinquished their lands to the Crown, led to the recognition of the existence of Aboriginal titles as a concept in Canadian common law. This ruling led to the Comprehensive Land Claims Policy and the implementation of land claims agreements, also known as modern treaties, by the federal government. This policy enables the provincial and federal governments, as well as Indigenous groups, to negotiate unsettled land claims agreements.[4] The purpose of these agreements is to settle Indigenous land rights and titles through financial compensations, the definition of surface and subsurface rights, and by establishing the rights of Indigenous communities to participate in the management of resources on their lands (Rodon 2017). The right to participate in resource management is usually implemented through co-management boards that oversee land management and the impact review process. Land claim agreements have more recently made the signing of IBAs between proponents and the Indigenous land claim organizations mandatory, thus requiring a form of consensual agreement on the terms and conditions of resource development.[5] This inclusion does not, however, correspond to substantive free prior and informed consent since community participation in IBA negotiations are not mandatory.

Impact Assessment Processes

In Canada, the consultations required for major resource development projects occur, for the most part, during impact assessments (IA)—processes in which proponents play a key role. The legislative and regulatory framework supporting IA processes is quite complex. The federal government adopted its first environmental impact assessment legislation in 1973. Provinces have since established their own distinctive impact assessment processes

for projects that fall under their jurisdiction. Land claims agreements with Indigenous Peoples have also led to the creation of specific processes in the concerned treaty area. The IA process therefore varies according to a project's location. Project proponents are usually required to gather relevant information and to produce reports on their project's foreseen environmental impacts as well as the actions that can be done to reduce these effects (mitigation measures). Proponents must also hold public consultations with Indigenous communities and all other interested parties. Participants are invited to express their concerns during these hearings.

While IAs represent an important participatory exercise that allow Indigenous communities, representatives, and local communities to voice their concerns and to discuss and confront project proponents, their participation remains superficial and passive since they ultimately have little ability to shape the decision-making process (O'Faircheallaigh 2007; Papillon and Rodon 2017a). Hence, consultations merely provide an opportunity for local communities to comment as well as to better understand a project's implications and to identify suitable mitigation and accommodation measures. The hearing process is also based "on liberal democratic cultural values" that do not typically "invite or incite disagreement, debate, or activism" (Scobie and Rodgers 2013). It is therefore not surprising that the conclusions of IA processes are increasingly challenged in court by Indigenous communities who deny their legitimacy as consultation processes (Papillon and Rodon 2017a).[6]

Impact and Benefit Agreements

Other mechanisms used to secure the consent of Indigenous communities are impact and benefit agreements (IBAs). In Canada, IBAs are private contractual agreements that have increasingly become a standard practice for the mining industry. These are seen to provide a form of consent that has been considered to constitute a community's expression of agreement to a proposed project, as determined by the terms and conditions negotiated in the agreement. As such, IBAs somewhat act as a testimony of the concerned communities' acquiescence and thus protect proponents from litigation. IBAs have been defined as a mandatory process in the most recent modern land claim agreements, as with the NLCA and the LILCA. The signing of IBAs were mandatory for the authorization and implementation of the projects in these two cases.

IBAs are private and usually confidential agreements negotiated between project proponents and Indigenous organizations. These agreements include, amongst other things, monitoring and mitigation measures, employment and training benefits, and financial compensation for the communities in exchange for their support in the project's implementation and operation. As such, IBAs constitute legally binding agreements that ensure that the community won't enter into litigation (Papillon and Rodon 2017b).

However, since IBAs are fundamentally private agreements, they are negotiated between representatives of the concerned Indigenous organizations and the proponents, and do not necessarily allow community deliberations. The absence of public deliberations is often interpreted as a means of exclusion, triggering feelings of frustration among community members that stem from a perceived lack of interest in local concerns and preoccupations (Papillon and Rodon 2017a). IBAs may additionally be signed before the end of the IA process, which restricts the community's access to important information regarding a project's potential or predicted impacts and the ability of affected communities to voice their preoccupations to their representative and to oppose the project (Papillon and Rodon 2017b).

The Voisey's Bay Project

The Voisey's Bay mine is an open pit mine operated by Vale Inco, which extracts nickel, copper, and cobalt in Nunatsiavut. Located in an area of northern Labrador without terrestrial links to other communities, the mining site employs approximately 450 people through the fly-in/fly-out model. The mine is located 35 km from the Inuit community of Nain and 80 km from the community of Davis Inlet. The Labrador Inuit live in five communities north of Voisey's Bay, and the Labrador Innus live in two communities south of the Voisey's Bay mine. The Indigenous population was, between 1996 and 2000, approximately 30% of the Labrador population (Laforce 2012). While the Labrador Innu and Inuit nations were both similarly engaged in the mine's approval process, our analysis will essentially focus on the engagement process of the Labrador Inuit communities.

The Voisey's Bay project was first proposed in 1994 when Inuit were fighting for their formal recognition as an Indigenous Nation. This formal recognition would be achieved through the signing of the Labrador Inuit Land Claims Agreement in 2005. The mine's IA process was not, therefore, established by a land claim agreement. The process was rather determined by

a memorandum of understanding signed in 1997 between the governments of Newfoundland and Labrador, the federal government, the Labrador Inuit Association, and the Innu Nation. This provided an opportunity for the signatories to fully participate in the IA process of the Voisey's Bay project. The IA's assessment panel was required to include a representative for each of the four involved parties. The memorandum of understanding also demanded the signature of an IBA, and the conclusion of land claims agreements with the Innu and Inuit. These conditions represented key elements for the approval of the proposed project (Laforce 2012).

The Impact Assessment

The initial project proponents began discussing the extractive project's development with Inuit and Innu Nations between 1994 and 1996. Interviews conducted by Kenny (2015) reveal that negotiations were difficult at first since the proponents did not seriously consider their two Indigenous counterparts or their land claim. Relations improved once Innu people organized protests at the mine site in Voisey's Bay. In response to their opposition, the mining company hired more experienced negotiators. However, negotiations stopped in 1996 when Vale Inco purchased the Voisey's Bay deposits from the previous owners. By then, both the Labrador Inuit Association (LIA) and the Innu Nation were engaged in land claims negotiations with the provincial government for lands that included the Voisey's Bay area (Heritage Newfoundland and Labrador 2011). Negotiations between the LIA and the Innu Nation with the proponent for the IBA as well as with the provincial government for the environmental assessment process restarted a year later, in 1997 (Archibald and Crnkovich 1999; Kenny 2015).

When Vale Inco acquired the project in 1996, Inuit lacked the necessary information to fully take part in the decision-making process since they had only been given a three-page document presenting a descriptive summary of the proposed project (Kenny 2015). They additionally feared a narrow definition of the project footprints by Vale Inco, a definition that would exclude or marginalize Inuit knowledge (Kenny 2015). The LIA therefore prepared and submitted their own report, titled *Seeing the Land Is Seeing Ourselves* (Williamson 1996) which was completed at the same time as the standard environmental assessment process. Their document became a reference throughout the planning processes (Kenny 2015). The Innu Nation and the LIA additionally organized information campaigns and undertook successful

litigation and civil disobedience activities to increase pressure on the proponent and provincial government to reach an agreement on the terms of the environmental assessment process (Kenny 2015). The impact assessment of the Voisey's Bay mine began after the signature of a memorandum of understanding in 1997 and the formation of a joint review panel where the Innu Nation and the Labrador Inuit Association representatives sit alongside the federal and provincial governments. The parties agreed to participate in a joint environmental impact assessment (Gibson 2002). Since the Innu Nation and the LIA had no land claim agreements, both parties made it clear that the conclusion of such agreement would be a key element of the environmental assessment and would be necessary before the Voisey's Bay mine could begin operation (Laforce 2012).

Following the submission of Vale Inco's Environmental Impact Statement in December 1997, the joint review panel, established earlier with the signature of the memorandum of understanding, held public and technical hearings throughout the year 1998 in the ten communities of Labrador and in St. John's (Archibald and Crnkovich 1999; Gibson 2006; Laforce 2012). The Innu and Inuit parties also engaged in "protests, site occupations and court actions to ensure that their voices were heard, and their concerns addressed" (Gibson 2006). From the beginning of August 1997, the Innu and Inuit, who had been arguing with the proponent and the government that the construction of roads and the airstrip would undermine the integrity of the environmental assessment process, initiated an on-site protest and began legal action on that matter.[7] They later won the case, obliging Vale Inco to stop its work on the project's infrastructure (Gibson 2006).

The joint review panel concluded its work in March 1999. Their report stated that the proponents had, amongst other things, to sign IBAs with the Innu Nation and LIA in order for the project to proceed (Gibson 2006). The completion of the land claims negotiations with the provincial government was also declared mandatory to the project's continuation (Gibson 2006).

The IBAs

In parallel to the IA process, the LIA organized consultations, workshops, and research to establish its members' priorities for the IBA (O'Faircheallaigh 2015). One year after the signature of the agreement-in-principles concerning Inuit land claims in 2001, an IBA was approved by referendum by 82% of the Labrador Inuit population and signed in 2002 (Laforce 2012). Two rounds of

information sessions had previously been conducted in all of the five Inuit communities of Nunatsiavut (Kenny 2015). The Labrador Inuit Land Claims Agreement was signed in January 2005, and the mine started its operations in 2005.

Summary of the Voisey's Bay Project Case

As explained above, Inuit communities of Labrador played an integral role in both the definition of the IA process and the IBA. Inuit organizations initially engaged in a conflictual relationship with the proponent during the impact assessment process since they did not believe that they were taken seriously by the company's representatives. The community members and representatives of both nations were highly mobilized throughout the IA process and IBA negotiations (through protests, information campaigns, workshops, and civil disobedience movements, etc.). Community members were not only invited to attend public hearings but were summoned to partake in protests and civil disobedience. By doing so, they came to play a more active role in the decision-making process. The IBA was also signed three years after the conclusion of the impact assessment process. While it remains confidential to this day, the IBA was shared with all the Labrador Inuit communities and adopted by a referendum. The population was therefore fully informed about the content of the IBA and participated in its approval. The communities additionally took part in the deliberation processes of the IA and IBA. Inuit communities were thus able to give their consent to the project. The considerable involvement of community members throughout the process also limited the tensions between the regional and local organizations by allowing the latter to play an important part in the decision-making process. The absence of land claim agreements did not undermine Inuit engagement during the process. On the contrary, Inuit organizations used the land claim negotiations as leverage in their negotiations during the IA and IBA processes and to help community mobilization.

The Mary River Project

The Mary River mine, owned by Baffinland Iron Mines Corporation (BIMC), is located between Pond Inlet and Igloolik on Baffin Island, Nunavut. The mine is located on Inuit-owned land, where Inuit own surface and subsurface rights that are managed by the Qikiqtani Inuit Association (QIA). The approbation

process of the Mary River mining project began in 2008, and the first approval of the project was given by the Government of Canada in December 2012.

As opposed to Voisey's Bay, the Mary River project was developed fifteen years after the signing of the Nunavut Land Claim Agreement (NLCA). The NLCA establishes Inuit ownership of approximately eighteen percent of the land in Nunavut and mineral rights to two percent of these lands, a cash settlement, and the creation and administration of the territory of Nunavut by an elected government. The Agreement also provides for the creation of three designated Inuit organizations, one being the QIA. The QIA is a not-for-profit organization representing the thirteen Inuit communities of the Qikiqtani region and has the mandate to protect and promote Inuit rights and values, as well as lands of cultural significance to Inuit. The NLCA further put into place three co-management institutions mandated to oversee resource development projects, including the Nunavut Planning Commission (NPC), which is "responsible for the development, implementation and monitoring of land use plans that guide and direct resource use and development in the Nunavut Settlement Area"; and the Nunavut Impact Review Board (NIRB), which is charged with assessing the potential biophysical and socio-economic impacts of proposed developments in Nunavut.[8] Inuit organizations appoint half of the members of the NIRB and the NPC to ensure representation of Inuit interests in decision-making. The NLCA stipulates that Inuit Impact and Benefit Agreements (IIBAs) are mandatory for any major development project, such as mining. IIBAs are negotiated with the designated Inuit regional organizations that are in charge of managing Inuit land—in this case, the QIA.

Impact Assessment

The IA process for the Mary River mine started in 2008 and 2009 with the publication of the NIRB's feasibility study (Saywell 2008; Rogers 2009). It was followed by two rounds of technical reviews and public hearings in 2011 (NIRB 2012). While this was happening, several concerns were raised by community members, the Government of Nunavut, and the QIA regarding the lack of baseline information and communication (George 2011a; Williams 2015). The mine submitted its final environmental impact statement in February 2012, and the final hearings were scheduled in July 2012 in Iqaluit, Igloolik, and Pond Inlet. These were broadcasted on IsumaTV in an attempt to enforce a more deliberative engagement model for the Inuit community (George 2012a,

2012b; Scobie and Rodgers 2013). Forty-one community members from eight communities[9] in Nunavut participated in the final hearings (NIRB 2012).

During the hearings, one of the main discussion topics was possible alternative transportation modalities of the iron ore from the mining site, located in Mary River to the Milne Inlet port, located near the Pond Inlet community, and destined for the European market. During the hearings, the Government of Nunavut criticized the important impact a railway would have on the North Baffin caribou herd and insisted that BIMC develop a more detailed mitigation plan (Dawson 2012). Makivik Corporation, the legal representative of Nunavik's Inuit, also voiced their concerns about the year-round shipping route (Murphy 2012). The QIA, for their part, supported the project, saying it was the right choice for the Inuit, but stressed the lack of baseline information[10] (CBC News 2012a; Williams 2015). The mayors of Igloolik and Hall Beach, who originally objected to the port location, changed their minds, stating that they would not oppose the project as long as they received adequate compensation (CBC News 2012a). In 2011, the mayors of the two communities sent letters to the NIRB explaining their position. While "grave reservations over the Steensby site" were continuously held by the community of Igloolik, Paul Quassa (at the time the mayor of Igloolik) insisted that the benefits also had to be considered (CBC News 2011). From January 2012 onwards, the new mayor of Igloolik, Nicholas Arnatsiaq, also supported the project. Many Igloolimiut were, however, more skeptical during the final hearings (CBC News 2012b). While supporting the project, the Pond Inlet community expressed important concerns about the new proposals put forward by the mine. Amongst other things, the hamlet of Pond Inlet insisted that the project had to guarantee that it would not impact the access to country food and ensure the protection of their land (NIRB 2014).

Moreover, during these hearings, community members raised important concerns about the consultation process and whether Inuit organizations, such as the QIA, the Government of Nunavut, and the mayors of Igloolik and Hall Beach acted in their interests (Williams 2015). Some expressed concern about the lack of possibilities for community members to fully participate in the hearings and local representatives felt excluded from the decision-making process and considered that their institutions were not working in their interest (Williams 2015). IsumaTV, a website for Inuit media and art, played an important role with respect to this matter. Feeling that the IA process was more about the delivery of information rather than a platform conducive to

deliberation, IsumaTV recorded and collected Inuit testimonies about the project. They also created a blog, recorded a series of community events and individual interviews, and broadcast call-in radio shows on the event. Their active role during the hearing led the NIRB to include the news media as one of the tools the company would, thereafter, be required to use to inform Inuit communities of their project's development (Scobie and Rogers 2013). Aside from this element, as Williams (2015) noted, the numerous public interventions "failed to have a meaningful impact on the information that was included in the final assessment." The project was finally approved by the Government of Canada in December 2012. Over the course of the same month, the company obtained a project certificate from the NIRB.

Modifications to the Proposal and Phase Two Project

In January 2013, a month after the project's final approval, the proponent requested permission from the NIRB to execute a phased approach and to amend their project certificate. The company planned on slowing down the mine's construction and delay the project's implementation because of a decrease in steel prices (Bell 2013). Rather than sending iron ore by train to a deepwater port in Steensby Inlet, the company would convey the extracted minerals by truck on an all-weather road to a port in Milne Inlet (The Canadian Press 2013). Because of the importance of these changes, in February 2013, the NIRB decided, with the agreement of the federal government, to reconsider Mary River's project certificate (CBC News 2013; George 2013). The NIRB and the federal approved the amended Mary River project in spring 2014.

In October 2014, however, BIMC submitted additional amendments for a Phase Two project: the company aimed to triple the amount of ore shipped through Milne Inlet, from 4.2 million tones to about 12 million tones, for ten months every year (from June until March), which required icebreaking in Eclipse Sound near Pond Inlet and into Baffin Bay (Bell 2014; CBC News 2014). This proposal further entailed an additional 150 voyages per year, floating fuel storage, ice management vessels, and a significant increase of haul truck traffic along the tote road between Milne Inlet and Mary River (Nunatsiaq News 2015).

In an unprecedented opposition, the NPC unanimously rejected BIMC's amended proposals for the Mary River project in April 2015, explaining that their submission did not conform to the land use plan, since icebreaking

activities "would prevent or prohibit wildlife harvesting and traditional activities" (CBC News 2015a; Gregoire 2015a). In April 2015, Charlie Inuarak, the mayor of Pond Inlet, also insisted on the significant impact of icebreaking on wildlife harvesting and traditional activities that these changes could entail, echoing concerns shared by several community members (CBC News 2015b). The QIA and Nunavut Tunngavik Inc. (NTI) both supported the community's position (Bell 2015; CBC News 2015c).

The company, however, challenged the NPC's refusal, and asked the federal government for an exemption from the land use plan (Bell 2015). In a letter sent to the minister of AANDC, the Government of Nunavut supported the mine's request and asserted that they supported a decision that would allow the mine to bypass the land use plan (Gregoire 2015b). The Government of Nunavut's position was also endorsed by the mayor and council of Pond Inlet, who changed sides in July 2015, four months after he had said he supported the NPC's decision (CBC News 2015d). They felt that the best way to address the impacts of the new proposal was through public hearings with the NIRB (CBC News 2015e). In July 2015, AANDC granted the exemption to the mine. This was a controversial decision that was seen as bypassing the NLCA impact process. However, given the significance of the proposed changes, BIMC was required to resubmit its proposal for Phase Two to the NIRB and delay the already planned public consultations.

In 2016, the company made more changes, asking for the construction of a railway from the Mary River site to the Milne Inlet port as a means of replacing the road it had previously requested (Rohner 2016; Skura 2016). Community representatives expressed concern about the project's multiple changes. In the words of Abraham Qammaniq, Hall Beach's community director, "Where do we draw the line? They're not thinking of the land. They're not thinking of the people" (Skura 2016).

Final hearings took place in November 2019. However, the hearings were adjourned only five days after it started at the request of NTI that complained of a lack of time to review the documents and inadequate consultation from BIMC. The motion was supported by all interveners, including the QIA president: "[T]here's just too many outstanding questions that haven't been resolved. From my perspective, if you're going to make a decision for your future, you've got to ensure you have all the information available to make that sound decision. It just wasn't quite there" (Tranter and Anselmi 2019). This happened a few days after it was revealed that the company was promoting to

private investors that it planned shipping up to 18 million tonnes of iron ore every year rather than 12 million tonnes as indicated in the proposal under review (Tranter 2019). This news furthered the distrust toward BIMC.

Because of the COVID-19 pandemic and given the significant opposition and the limit of technical meetings held via teleconference, the hearings were put on hold on April 24, 2020 (Deuling 2020). The NIRB stated that the review process would only resume once travel restrictions were lifted and when Nunavummiut would be allowed to return to work and have public gatherings (Deuling 2020).

Despite significant Inuit opposition to BIMC's expansion project, especially within the five communities of North Baffin, the NIRB resumed public hearings on the expansion of the Mary River iron mine from 26 January to 6 February 2021 in Pond Inlet, with restricted in-person access, online streaming, and television broadcasting (Bell 2021). Frustrated with this process, as we will see in the next section, six Inuit hunters from Pond Inlet and Arctic Bay went to block the Mary River airstrip.

The hearings continued throughout the spring across impacted communities until April 25 (Murray 2021). BIMC subsequently made changes to its proposal in response to Inuit concerns, and hearings resumed during the fall of 2021. This was the fourth attempt at completing the hearing regarding the proposed Phase Two expansion. Once the hearings are completed, BIMC is expected to submit final statements within one month, and the NIRB would have to prepare its final submission for the minister of northern affairs (Venn 2021b). At the date of writing, the review process was still underway.

Negotiating Inuit and Impact Benefit Agreements

In parallel to the Impact Assessment process, BIMC was also renegotiating its IIBA with the QIA (George 2011b). Unlike the IBAs for the Voisey's Bay mine, where there were no land claim agreements signed between the government and the Innu and Inuit Nations, and thus no obligation for IBAs, the IIBA for the Mary River project was required under Article 26 of the NLCA. During the negotiation of the IIBA, the QIA did not disclose any elements of the agreement's content. No information sessions and referendums were held. The QIA and BIMC reached an agreement on the terms and conditions of the IIBA in September 2013, only a few months after the project was granted the necessary approval to move forward (Nunatsiaq News 2013a). A plain-language guide was released and available for the public consultation of local

communities after the IIBA was signed (Nunatsiaq News 2013b). In December 2013, the QIA released a public version of the IIBA without the detail on the financial arrangements and in May 2016, the full IIBA was made public. The QIA did so in an effort to be more transparent and open (Nunatsiaq News 2013c). The full disclosure of the IIBA occurred one month before a conflict resolution mechanism, and arbitration procedures were launched between the QIA and BIMC to settle a dispute over royalty payments and employment levels. This led both parties into arbitration in April 2017 (Nunatsiaq News 2017). The Arbitration Panel made a unanimous ruling in favour of the QIA and determined that BIMC owed the QIA approximately $7.3 million (Nunatsiaq News 2017).

The tensions between the Inuit organization and the local Inuit communities did not, however, lessen after the disclosure of the IIBA. Following the beginning of the arbitration procedures initiated by the QIA, six Nunavut communities, namely Hall Beach, Igloolik, Pond Inlet, Clyde River, Arctic Bay and Resolute Bay, submitted a petition to the NTI in March 2017, requesting their separation from the QIA in order for them to form their own Inuit organization.[11] The secession, which was initiated by Pond Inlet, the most affected community, is primarily due to the disagreements about the use of the royalty payments received from BIMC, currently saved in a legacy fund established by the QIA (Van Dusen 2017). This separation request was rejected by NTI.

As the company submitted amendments to the project in 2016, the QIA demanded a renegotiation of the IIBA. This time however, consultations and community visits were conducted by the QIA prior to the renegotiation of the IIBA. The new IIBA signed in 2019, called the Inuit Certainty Agreement, contains a range of provisions intended to support Inuit interests "in terms of financial transfers (advance and royalty payments), employment, contracting/subcontracting, and training opportunities, as well as social and environmental initiatives" (Loxley 2019, 3). The amended IIBA increases Inuit training and employment at the mine. It also changes the formula for royalty payments, an element that was at the heart of a previous dispute between BIMC and the QIA (Brown 2020). Finally, the new IIBA allowed an Inuit oversight of the project by putting into place an Inuit-led environmental monitoring and financial commitment to build daycares in the affected communities. The QIA's president considered that the new agreement "put Inuit in the driver's seat" (Tranter 2020). Those changes in the IIBA reflect, according to the

QIA, the comments received following public consultations in 2018 (Brown 2020). However, signing the Inuit Certainty Agreement was seen as providing a form of consent prior to the completion of the NIRB process and the final approval by the federal authority.

This led to further tension with the Northern communities and on February 4, 2021, seven Inuit men from Pond Inlet and Arctic Bay, who called themselves the Nuluujaat Land Guardians, drove their skidoos to the Mary River mine and blocked the landing strip, cutting the mine's resupply channels and preventing the miners from exiting the site. Specifically, the protestors feared that their concerns regarding the expansion's negative impact on the caribou population and other wildlife in the area, including narwhal, on which Inuit depend for subsistence, were not being considered by their representatives or the mining company (Beers 2021). In order to stop the protest, the mining company's lawyers were able to obtain a court injunction. However, the blockade ended on February 11 after the mayor of Pond Inlet's mediation (Beers 2021). Negotiations with an elected official, based on constructive dialogues and a proposal responding to the protestors' demands, were more fruitful than the court injunction.

This public expression of discontent toward the extractive operations in Mary River illustrates the frustration engendered by such development projects within communities adjacent to the mine site. It further demonstrates how Inuit express their grievance when official processes and communication channels appear ineffective, but also how they engage in activism in the hopes of enacting meaningful political change. It is worth noting that the Nuluujaat Land Guardians subsequently met with federal Department of Northern Affairs and its minister, Dan Vandal, in May 2021 to "discuss the strengths and values of their communities," as well as "land-based economic options for current and future generations of north Baffin residents ... who do not wish to be involved in mining" (Venn 2021a). This conversation, which happened outside official processes, shows how such a protest catalyzed changes that transgress the event's conclusion.

Finally, in a surprising reversal brought by the increasing pressure on the QIA from Inuit communities impacted by the Mary River project, the QIA announced in March 2021 that it was withdrawing its support of BIMC's Phase Two expansion proposal (QIA 2021). Without the QIA's support, this expansion is unlikely to occur.

Analysis of the Mary River Case

In the Mary River case, the NLCA obliged all concerned parties to negotiate an IBA and set the conditions for the impact assessment. No protests were required for these negotiations to take place. The concerns of local Inuit communities were channelled through established co-management institutions as well as through Inuit organizations created by the NLCA, and their concerns were heard during public hearings. Furthermore, because of the NLCA, the mine had to follow an established process and thus could not minimize the role that the local and regional organizations had to play.

However, the concerns of local community members and the positions of their local and regional representatives often appeared divergent. While important criticisms were raised by community members on the impact of the railway and year-round shipping on wildlife, their concerns and objections often appeared minimized. The hamlets of Pond Inlet, Igloolik and Hall Beach were all, initially, very critical of the Mary River project. However, they changed their position over the course of the environmental assessment process by deciding to support the project so long as they received adequate compensation from the mining company. While the mayors of Pond Inlet, Igloolik, and Hall Beach still outlined the potential negative impacts of the transportation of iron ore, the positive economic impacts justified the project's implementation. For that reason, some community members attending the public hearings expressed their concern toward the way local and regional organizations represented their opinion (Williams 2015). Furthermore, the numerous changes made by the mining company after receiving approval from the NIRB divided Inuit organizations and communities over the process itself. Finally, the secretive nature of the negotiations that led to the first IIBA (the local communities were not informed of the agreement's content before its signature), could possibly explain in part the skepticism and criticisms voiced during the public hearings. The second IIBA was also negotiated behind closed doors, but at least community consultations were held before the negotiation process started. This didn't prevent criticism from some Inuit communities who felt that the IIBA was signed before the IA process was conducted or complete, which led to the blockade of the Mary River airstrip by Inuit hunters who felt their concerns were not addressed. Therefore, both the IA and the IBA processes have not been able to provide a real community engagement, and this is reflected in the multiples episodes of dissension. In

the end, the QIA had to change position because of the pressure from local communities.

Conclusion

These two cases show important variations in the form and extent of community engagement. In both cases, there was a good level of engagement throughout the IA processes, although only in the Nunatsiavut case was there a real community engagement process during the development of the IBA. This engagement included both a deliberative process and a referendum. In the case of Nunavut, information regarding the IBA was only shared with Inuit beneficiaries after the signing of the agreement. The negotiation of the second IBA provided for more engagement, although that didn't prevent dissension among Inuit organizations. In addition, there was no deliberative process on any of the agreements.

In the case of Voisey's Bay, even without a land claim agreement framework, the Inuit negotiators, as well as the Labrador Inuit population, demonstrated a strong engagement both during the IA and IBA processes. This could be explained by the fact that, right from the beginning, negotiations had to take place to define the IA process and that the IBA process was linked to the land claim negotiation. Thus, considerable mobilizations occurred during the different negotiation phases to ensure that Innu and Inuit from Labrador took part in the IA process and that their rights were respected. Since the Labrador Inuit were very involved throughout the process and because the land claim agreements and IBAs were negotiated simultaneously, it appeared sensible to vote for their approval by referendum, especially considering that the IBA was a precondition to the signing of the land claims agreement.

For the Labrador Inuit negotiators, strong opposition from community members could have jeopardized the signing of the Labrador Inuit Land Claims Agreement. This consequently led to a process akin to FPIC, since it involved forms of consultations and deliberations amongst all Labrador Inuit.

In the Mary River case, the engagement processes were established by the NLCA, but as shown above, both the IA and the IIBA were considered unsatisfactory by a number of Nunavummiut. In the case of the IA process, several people felt that they had not been heard or considered, although, through the pressure of the civil society, the IA was made more accessible to community members. As noted by Scobie and Rodgers (2013), IA processes can often "channel and control community residents' engagement" instead of

encouraging it. Negotiations that occurred as part of the IIBA processes were limited to a small group of experts and negotiators. While the QIA, as the designated Inuit organization representing Inuit communities of the region, was mandated to negotiate the IBA, community members were not directly involved, and there was no community consultation nor deliberation. This engendered tensions that subsequently forced the QIA to release the non-financial clauses. With the arrival of a new the QIA president, the financial clauses of the Inuit organization's IBA were finally released. It was, however, too late for community members to influence the decision-making process since the IBA had already been signed.

The Mary River mine had a considerable impact on the Nunavummiut. Firstly, BIMC's incapacity to deliver the financial compensation (royalties) and reach the employment targets promised in the IIBA led to an arbitration process, which was resolved in favour of the QIA but introduced doubts on the company's capacity to meet its commitments. Secondly, the decisions of the federal government to bypass the NPC has shown that the impact assessment process can be easily overruled by the federal government. Finally, tensions arose between the five northern communities and the QIA over the use of the royalties of the Mary River project. This led the communities of North Baffin to formally request their separation from the QIA in order to create their own organizations as permitted by the NLCA. This "secessionist" movement was finally stopped by the refusal of NTI to consider their request and by the efforts of the new the QIA president to re-engage the northern communities' leadership. It could partly be attributed to what could be considered a lack of transparency and deliberation in the negotiation of the IIBA. The negotiation of the second IIBA provided more consultation beforehand, but negotiations were still conducted by a small team and were not approved by the impacted communities or their residents. Finally, the fact that the IIBA was signed before the IA was conducted also created tensions, since it looked like the QIA had consented to the project while the impacted communities had not yet had the chance to participate in the IA process and thus fully ascertain the project's potential repercussions. Finally, the QIA decided to withdraw its support to the second phase of the project, putting an end to this project and to the dissension. Dissensions can be very damaging for small communities and should be considered as a negative externality of the IA and IIBA processes.

As we have seen, the FPIC principles that stem from UNDRIP are emerging as a new norm for Indigenous engagement in resource development. In the case of Voisey's Bay, all the engagement processes were conducted before UNDRIP was adopted, although, in the case of the IBA, a deliberative process was established. In the case of Nunavut, the NLCA only implemented a consultation process through the IA and a negotiation process with the IIBA. As demonstrated, this could have led to the dissent of some Nunavummiut who felt that their concerns were not addressed or even considered. The ambiguity inherent to such consultation and authorization processes appears to call for the implementation of a real FPIC process. These cases further highlight the need to clarify the objectives of consultation and the definition of FPIC.

NOTES

1 The authors wish to acknowledge the important contribution of Luc Brisebois and Bethany Scott from QIA, who helped us in the revision of this article as well as Rosalie Côté-Tremblay for her assistance in the research. However, the views and opinions expressed in this article are the authors' own and do not necessarily reflect the official policy or position of their respective employers.

2 In the Canadian context, unceded lands or territories refer to Indigenous lands that have not been acquired by treaty or by an act of war.

3 See *Delgamuukw v. British Columbia*, 1997.

4 In 2016, there were 29 comprehensive land claim agreements and self-government agreements signed in Canada and 74 unsettled land claims (AANDC, 2016).

5 For example, this is the case with the Nunavut Land Claim Agreement (1993), with the Labrador Inuit Land Claims Agreement (2004), with the Sahtu (1993) and the Gwich'in (1992) comprehensive land claims agreements and with the Tłı̨chǫ Agreement (2003).

6 Between 2010 and 2014, Canadian appeal tribunals (federal, provincial, and territorial) heard 35% more cases on the duty to consult than between 2005 and 2009 (Papillon and Rodon 2017a).

7 *Labrador Inuit Association v. Newfoundland (Minister of Environment and Labour)*, (1997) 157 Nfld. & P.E.I.R. 164 (NFTD).

8 The third is the Nunavut Water Board (NWB).

9 Out of the thirteen communities in the Qikiqtani region.

10 QIA criticized, amongst other things, a lack references and a lack of evidence concerning the project's impact on caribou (Williams 2015).

11 NTI has the signatory of the NLCA is responsible to statute on the demand to create a new designated Inuit Organization. At this time, there is one Designated Inuit organization (DIO) for each Nunavut regions, Kitikmeot, Kivalliq and Qikiqtaluk.

References

Aboriginal Affairs and Northern Development Canada (AANDC). 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.

Archibald, Linda, and Mary Crnkovich. 1999. *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project*. Ottawa: Status of Women Canada.

Beers, Randi. 2021. "Mary River Mine Protesters Announce the End to Blockade." *Nunatsiaq News,* February 11, 2021. https://nunatsiaq.com/stories/article/mary-river-mine-protesters-announce-end-to-blockade/

Bell, Jim. 2013. "Baffinland Slashes Scope of Nunavut's Mary River Project." *Nunatsiaq News*, January 10, 2013. https://nunatsiaq.com/stories/article/65674baffinland_slashes_scope_of_nunavuts_mary_river_project/

———. 2014. "Nunavut Iron Producer Proposes Big Changes for Mary River Baffinland seeks expansion of Milne Inlet, winter shipping, ramped up iron ore volumes." *Nunatsiaq News,* November 5, 2014. http://www.nunatsiaqonline.ca/stories/article/65674nunavut_iron_producer_proposes_big_changes_for_mary_river/ .

———. 2015. "Inuit Org wants Valcourt to Reject Baffinland Request for Land Use Exemption." *Nunatsiaq News,* May 22, 2015. https://nunatsiaq.com/stories/article/65674inuit_org_wants_valcourt_to_reject_baffinland_request_for_land_use_exe/#:~:text=The%20Qikiqtani%20Inuit%20Association%20has,Baffin%20Regional%20Land%20Use%20Plan .

———. 2021. "Despite Inuit Opposition, Mary River Mine Hearing to go Ahead Next Week." *Nunatsiaq News,* January 22, 2021. https://nunatsiaq.com/stories/article/despite-inuit-opposition-mary-river-mine-hearing-to-go-ahead-next-week/

Bennett, Carolyn. 2016. "Speech Delivered at the United Nations Permanent Forum on Indigenous Issues, New York, May 10." May 10, 2016. https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/speech-delivered-at-the-united-nations-permanent-forum-on-indigenous-issues-new-york-may-10-.html.

Brown, Beth. 2020. "New Inuit Benefit Agreement Worth $1B over Life of Mary River." *CBC News*, July 07, 2020. https://www.cbc.ca/news/canada/north/baffinland-signs-environmental-agreement-qikiqtani-inuit-association-1.5639858?fbclid=IwAR3eFAMRfRqGwMBSFTlQiGB0bP0Bp-TdQ7jWwVgeV39qsw447eMXH4DmH4k

Calder et al. v. Attorney-General of British Columbia, [1973] S.C.R. 313.

CBC News. 2011. "Baffin Mayors Soften Stance on Iron Mine Port." *CBC News*, November 9, 2011. http://www.cbc.ca/news/canada/north/baffin-mayors-soften-stance-on-iron-mine-port-1.1049887.

———. 2012a. "Nunavut Braces for Massive Mary River Mine." *CBC News*, September 13, 2012. http://www.cbc.ca/news/canada/north/nunavut-braces-for-massive-mary-river-mine-1.1179502.

———. 2012b. "Final Baffinland Hearings Move to Igloolik." *CBC News*, July 24, 2012. http://www.cbc.ca/news/canada/north/final-baffinland-hearings-move-to-igloolik-1.1194777.

———. 2013. "Baffinland Headed Back to Nunavut Regulators." *CBC News*, April 4, 2013. http://www.cbc.ca/news/canada/north/baffinland-headed-back-to-nunavut-regulators-1.1348367.

———. 2014. "Baffinland Pitches Year-round Shipping from Milne Inlet." *CBC News*, October 3, 2014. http://www.cbc.ca/news/canada/north/baffinland-pitches-year-round-shipping-from-milne-inlet-1.2822346.

———. 2015a. "Oceans North Canada Applauds Decision on Baffinland Shipping." *CBC News*, April 14, 2015. http://www.cbc.ca/news/canada/north/oceans-north-canada-applauds-decision-on-baffinland-shipping-1.3031588.

———. 2015b. "Pond Inlet Mayor Says Residents Share Fears about Baffinland Shipping." *CBC News*, April 10, 2015. http://www.cbc.ca/news/canada/north/pond-inlet-mayor-says-residents-share-fears-about-baffinland-shipping-1.3027724.

———. 2015c. "QIA, NTI team up against Baffinland's request for NPC exemption." *CBC News North*, June 9, 2015. http://www.cbc.ca/news/canada/north/qia-nti-team-up-against-baffinland-s-request-for-npc-exemption-1.3105701.

———. 2015d. "Baffinland Iron Mines Granted Land Use Plan Exemption by Federal Minister." *CBC News*, July 14, 2015. http://www.cbc.ca/news/canada/north/baffinland-iron-mines-granted-land-use-plan-exemption-by-federal-minister-1.3151834.

———. 2015e. "Pond Inlet Council Sides with Baffinland, Premier in Regulatory Dispute." *CBC News*, July 2, 2015.

Dawson, Samantha. 2012. "Mary River Railway Could do Big Damage to Caribou." *Nunatsiaq News*, July 19, 2012. http://www.nunatsiaqonline.ca/stories/article/65674mary_river_railway_could_do_big_damage_to_caribou_gn/.

Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010.

Deuling, Meagan. 2020. "Baffinland Expansion Meetings Cancelled Again." *Nunatsiaq News*, April 27, 2020. https://nunatsiaq.com/stories/article/baffinland-expansion-meetings-continue-to-be-canceled/

Duncanson, S., M. O'Neill Sanger, K. Twa, and C. Brinker. 2021. Federal UNDRIP Bill Becomes Law. *Oster.* Accessed 10 May 2023. https://www.osler.com/en/resources/regulations/2021/federal-undrip-bill-becomes-law.

George, Jane. 2011a. "Draft EIS for Nunavut's Mary River Mine Sparks Stinging Technical Review." *Nunatsiaq News*, October 7, 2011. https://nunatsiaq.com/stories/article/65674draft_eis_for_nunavuts_mary_river_mine_sparks_criticism/.

———. 2011b. "Baffinland Gets its Marching Orders from NIRB." *Nunatsiaq News,* December 15, 2011. https://nunatsiaq.com/stories/article/65674baffinland_gets_its_marching_orders_from_nirb/.

———. 2012a. "Iqaluit Technical Review Puts Spotlight on Nunavut's Mary River Iron Mine Project." *Nunatsiaq News*, May 2, 2012. https://stage.nunatsiaq.com/stories/article/65674iqaluit_technical_review_puts_spotlight_on_nunavuts_mary_river_project/.

———. 2012b. "Baffinland Gives NIRB Final EIS for Mary River: Nunavut Impact Review Board Now Reviewing Huge Environmental document." *Nunatsiaq News*, February 20, 2012. https://stage.nunatsiaq.com/stories/article/65674iqaluit_technical_review_puts_spotlight_on_nunavuts_mary_river_project/.

———. 2013. "Prepare for Another Review, Nunavut Board tells Baffinland." *Nunatsiaq News*, February 12, 2013. https://nunatsiaq.com/stories/article/65674pepare_for_another_review_nunavut_board_tells_baffinland/.

Gibson, Robert. 2002. "From Wreck Cove to Voisey's Bay: The Evolution of Federal Environmental Assessment in Canada." *Impact Assessment and Project Appraisal* 20, no. 3: 151–59.

———. 2006. "Sustainability Assessment and Conflict Resolution: Reaching Agreement to Proceed with the Voisey's Bay Nickel Mine." *Journal of Cleaner Production* 14, no. 3: 334–48.

Gregoire, Lisa. 2015a. "Nunavut Regulatory Org Says No to Baffinland." *Nunatsiaq News,* April 9, 2015. https://nunatsiaq.com/stories/article/65674nunavut_regulatory_org_says_no_to_baffinland/.

———. 2015b. "Nunavut Premier's Leaked Letter to Ottawa Disappoints Board Chair." *Nunatsiaq News*, June 1, 2015. https://nunatsiaq.com/stories/article/65674nunavut_premiers_private_letter_to_ottawa_disappoints_board_chair/.

Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511.

Heritage Newfoundland and Labrador. 2011. "The Voisey's Bay Mine." Heritage Newfoundland and Labrador. July 12, 2018. http://www.heritage.nf.ca/articles/economy/voiseys-bay.php.

Kenny, Caitlin. 2015. "Navigating Complex Planning Processes: The Experiences of Two Aboriginal Governments with Large Mineral Development Proposals in their Traditional Territories." Master thesis, University of Guelph.

Laforce, Myriam. 2012. "Régulation du projet minier de Voisey's Bay au Labrador vers un rééquilibrage des pouvoirs dans certains contextes politiques et institutionnels?" In *Pouvoir et régulation dans le secteur minier: leçons à partir de l'expérience canadienne*, ed. Bonnie K. Campbell, Myriam Laforce and Bruno Sarrasin (Québec: Presses de l'Université du Québec), 157–90.

Loxley, John. 2019. *Assessment of the Mary River Project: Impacts and Benefits*. Ocean North. https://oceansnorth.org/wp-content/uploads/2019/02/Assessment-of-the-Mary-River-Project-Impacts-and-Benefits-final-draft.pdf

Mikisew Cree Nation v. Canada (Minister of Canadian Heritage), [2005] 3 S.C.R. 388.

Murphy, David. 2012. "Makivik Demands Changes to Baffinland's Mary River Shipping Route." *Nunatsiaq Online*, July 20, 2012. https://stage.nunatsiaq.com/stories/

article/65674makivik_demands_changes_to_baffinlands_mary_river_shipping_route/.

Murray, Nick. 2021. "Wildlife concerns still lingering as public hearings into Baffinland's expansion resume." *CBC News North*, April 13, 2021. https://www.cbc.ca/news/canada/north/narwhal-wildlife-concerns-baffinland-mary-river-mine-iron-ore-expansion-nunavut-1.5985301

Nunatsiaq News. 2013a. "QIA, Baffinland Strike Deal on Inuit Benefits, Commercial Lease for Nunavut Iron Project." *Nunatsiaq News*, September 6, 2013. https://nunatsiaq.com/stories/article/65674qia-baffinland_reach_agreement_on_inuit_benefits_commercial_lease_for_/.

———. 2013c. "QIA releases public version of Mary River IIBA." *Nunatsiaq News,* December 9, 2013. http://www.nunatsiaqonline.ca/stories/article/65674mary_river_iiba_made_public/. https://stage.nunatsiaq.com/stories/article/65674mary_river_iiba_made_public/.

———. 2015. "Valcourt Exempts Nunavut Iron Mine Expansion from Land Use Plan." *Nunatsiaq News,* July 14, 2015. https://nunatsiaq.com/stories/article/65674breaking_valcourt_exempts_nunavut_iron_mine_expansion_from_npc/.

———. 2016. "Nunavut Review Board Sends Mary River Scheme Back to the NPC." *Nunatsiaq News*, December 20, 2016. https://nunatsiaq.com/stories/article/65674nunavut_review_board_sends_mary_river_scheme_back_to_the_npc/.

———. 2017. "Arbitration Hearing on QIA-Baffinland Royalties Dispute Starts April 18." *Nunatsiaq News*, April 18, 2017. https://nunatsiaq.com/stories/article/65674arbitration_hearing_on_qia-baffinland_financial_dispute_starts_april_1/.

Nunavut Impact Review Board (NIRB). 2012. *Final Hearing Report: Mary River Project*. Cambridge Bay: NIRB.

———. 2014. *Public Hearing Report: Mary River Project: Early Revenue Phase Proposal*. Cambridge Bay: NIRB.

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

———. 2015. *Negotiations in the Indigenous World: Aboriginal Peoples and the Extractive Industry in Australia and Canada*. London: Routledge.

Papillon, Martin, and Thierry Rodon. 2017a. "Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada." *Environmental Impact Assessment Review* 62: 216–24.

———. 2017b. "Indigenous Consent and Natural Resource Extraction: Foundations for a Made-in-Canada Approach." *IRPP Insight* 16: 1–26.

———. 2019. "From Consultation to Consent: The Politics of Indigenous Participatory Rights in Canada." In *The Prior Consultation of Indigenous Peoples in Latin America: Inside the Implementation Gap*, ed. C. Wright & A. Tomaselli (London: Routledge), 261–75.

QIA (Qikiqtani Inuit Association). 2021. "QIA Board Resolves to not Support the Mary River Phase Two Proposal. Qikiqtani Inuit Association." March 5, 2021. Accessed May 10, 2023. https://www.qia.ca/qia-board-resolves-to-not-support-the-mary-river-phase-two-proposal/

Rodon, Thierry. 2017. "Institutional Development and Resource Development: The Case of Canada's Indigenous Peoples." *Canadian Journal of Development Studies* 40, no. 2: 1–18.

Rogers, Sarah. 2009. "Some Nunavik Residents Worried about Mary River." *Nunatsiaq News,* September 22, 2009. http://nunatsiaq.com/stories/article/918_Some_Nunavik_residents_worried_about_Mary_River/ .

Rohner, Thomas. 2016. "Baffinland Pitches Mary River—Milne Inlet Railway for Nunavut Iron Mine." *Nunatsiaq News*, February 19, 2016. https://nunatsiaq.com/stories/article/65674baffinland_milne_inlet-mary_river_railway_for_nunavut_iron_mine/

Saywell, Trish. 2008. "Robust Economics for Baffinland's Mary River Project." *The Northern Miner*, February 25–March 2, 2008. http://www.canadianminingjournal.com/features/robust-economics-for-baffinland-s-mary-river-project/.

Scholtz, Christa. 2006. *Negotiating Claims: The Emergence of Indigenous Land Claim Negotiation Policies in Australia, Canada, New Zealand, and the United States*. New York: Routledge.

Scobie, Willow, and Kathleen Rodgers. 2013. "Contestations of resource extraction projects via digital media in two Nunavut communities." Études/Inuit/Studies 37, no. 2: 83–101.

Skura, Elyse. 2016. "Baffinland Proposes Changing Mary River Project's Shipping Road to a Railway." *CBC News North*, February 18, 2016. http://www.cbc.ca/news/canada/north/baffinland-new-change-railway-shipping-1.3453469.

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

The Canadian Press. 2013. "Iron Miner Seeks Delay on Railway and Port for Baffin Island Project amid Financing Squeeze." *The Financial Post*, January 11, 2013. http://business.financialpost.com/news/mining/iron-miner-delays-railway-and-port-for-baffin-island-project-amid-financing-squeeze.

Tranter, Emma. 2019. "Nunavut Board Rejects Oceans North Motion to Suspend Iron Mine Assessment." *Nunatsiaq News,* November 3, 2019. https://nunatsiaq.com/stories/article/nunavut-board-rejects-oceans-north-motion-to-suspend-iron-mine-assessment/

———. 2020. "Qikiqtani Inuit Association and Baffinland Sign New Multimillion-dollar Benefit Agreement." *Nunatsiaq News*, August 14, 2021. https://nunatsiaq.com/

stories/article/qikiqtani-inuit-association-and-baffinland-sign-new-multimillion-dollar-benefit-agreement/

Tranter, Emma & Elaine Anselmi. 2019. "Baffinland Hearing Abruptly Ends, with Sessions Cancelled in Pond Inlet. *Nunatsiaq News*, Nov. 7, 2019. https://nunatsiaq.com/stories/article/baffinland-hearing-abruptly-ends-with-sessions-cancelled-in-pond-inlet/

Van Dusen, John. 2017. "High Arctic Communities Consider Splitting from QIA." *CBC News*, February 6, 2017. http://www.cbc.ca/news/canada/north/qia-split-proposed-1.3969477.

Venn David. 2021a. "Northern Affairs Minister Meets with Mary River Mine Protesters." *Nunatsiaq News*, June 8, 2021. https://nunatsiaq.com/stories/article/northern-affairs-minister-meets-with-mary-river-mine-protesters/.

Venn, David. 2021b. "NIRB Hearing on Baffinland Expansion to Resume Monday." *Nunatsiaq News*, October 31, 2021. https://nunatsiaq.com/stories/article/nirb-hearing-on-baffinland-expansion-to-resume-monday/

Williams, Andrew. 2015. "Governmentality and Mining: Analyzing the Environmental Impact Assessment for the Mary River Mine." Master thesis, Carleton University.

Williamson, T. 1996. Seeing the Land Is Seeing Ourselves: Labrador Inuit Association Issues Scoping Report. Prepared for the Labrador Inuit Association. Nain, Labrador.