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Research Article

The Duty to Consult and Colonial Capitalism: Indigenous Rights and Extractive Industries in the Inuit Homeland in Canada

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Abstract: This article contributes to academic debates about the relationship between Indigenous rights and the expansion of capitalism and colonialism in Canada. Using case studies of duty to consult litigation related to resource extraction on and near Inuit territory, I argue that Inuit experiences with the duty to consult have been mixed. While Inuit have won some important victories in the courts, in other cases the duty to consult has provided a notably weak legal mechanism for Inuit to either stop unwanted extraction or compel the government to impose effective mitigation measures to safeguard Inuit harvesting rights. The duty to consult appears to mostly enable, rather than impede, the expansion of colonial and capitalist social relations in the Inuit homeland.

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There is ongoing debate about the relationship between the Canadian state's recognition of Indigenous rights and the reproduction and expansion of colonial and capitalist social relations. Indigenous scholars associated with the "resurgence" approach to decolonization argue that the liberal recognition-based approach to Indigenous political grievances—present in the constitutional entrenchment of Indigenous rights, land claim and self-government agreements, and countless other gestures towards "reconciliation"—has not fundamentally altered Canadian colonialism and has instead entrenched it (Alfred and Corntassel, 2005; L. Simpson, 2011; A. Simpson, 2014; Coulthard, 2014). These scholars argue that the circumscribed recognition of Indigenous Peoples' rights and interests in these supposedly progressive legal and policy reforms is extremely limited in its potential to disrupt colonial relationships. At the same time, rights recognition serves to intensify and expand both colonialism and capitalism in several ways. For example, liberal approaches to Indigenous rights can lead to a "politics of distraction" that ultimately "diverts energies away from decolonizing and regenerating communities and frames community relationships in state-centric terms" (Alfred & Corntassel, 2005, p. 600). What's more, the Canadian state constructs Indigenous legal identities in a manner that is consistent with Canadian sovereignty and capital accumulation (Alfred & Corntassel, 2005; Coulthard, 2014). In the Canadian North, the recognition of Indigenous rights, especially in modern treaties and self-government agreements, has tied Indigenous governments to economic development strategies that are premised on capitalist extraction (Coulthard, 2014).

Other scholars and public intellectuals see the state's recognition of Indigenous rights as a potential mechanism of decolonization, especially if it includes the recognition of Indigenous legal orders (Borrows & Tully, 2018). Pam Palmater (2015), and Arthur Manuel and Roland Derrickson (2015) argue that Indigenous Peoples' constitutionally entrenched rights are the best hope for Canadians to prevent the ecological destruction threatened by extractive capitalism. Naomi Klein (2014) and Peter Kulchyski (2013) assert that Indigenous rights should play an important role in socialist politics. While these authors are sharply critical of the ways in which the Canadian state currently recognizes and defines Indigenous rights, they nonetheless see potential for the doctrine of Indigenous rights to play important roles in decolonial and anti-capitalist struggles.

This article contributes to academic debates about the relationship between colonialism, extractive capitalism, and the Canadian state's recognition of Indigenous rights, with a critical examination of duty to consult case law surrounding resource extraction in Inuit territory in Canada. I consider how the duty to consult has served as a tool for Inuit communities resisting proposed extraction, as well as how it has undermined and discouraged resistance. While Inuit have used this legal doctrine to win victories against extractive industries, legal requirements for consultation have often served to facilitate, rather than hinder, the expansion and intensification of colonial and capitalist social relations in the Canadian Arctic.

1. Resource Extraction and the Duty to Consult and Accommodate

In the twenty-first century the "duty to consult and accommodate" has become one of the most important legal mechanisms for addressing Indigenous rights claims in the context of resource extraction in Canada. This doctrine was articulated in a series of precedent-setting decisions by the Supreme Court of Canada (for helpful overviews, see: Doyle, 2019; Bankes, 2020a). The duty requires the Crown to consult Indigenous Peoples whenever it is contemplating an action (for example, permitting resource extraction or regulating Indigenous resource use) that could negatively affect constitutionally entrenched Aboriginal and/or Treaty rights.

The extent of consultation and accommodation required varies with circumstances. The court has used the concept of a spectrum to characterize the content of the duty. If an Indigenous right is clearly established (for example, if the right has been proven in court or recognized in a treaty), and if there is potential for serious harm, "deep consultation" is required. Deep consultation can include formal Indigenous involvement in decision making, funding to support Indigenous participation, and accommodation of Indigenous Peoples' concerns and interests. By contrast, if the rights being asserted are not clearly established and the potential for harm is less severe, then a lower standard is acceptable. In some cases, simply notifying the Indigenous group of the proposed action may suffice (Bankes, 2020a; Doyle, 2019).

The courts have been clear that, even when "deep consultation" is required, Indigenous Peoples do not have a "veto" over government decisions. In other words, the Crown is usually not required to obtain the consent of an Indigenous group before permitting resource extraction. Indigenous consent is only required in cases where Aboriginal title has been proven in court (Bankes, 2020a). Moreover, even when proven Aboriginal title is concerned, the Crown can still infringe on title lands without securing Indigenous consent, provided the infringement is "justifiable" (Scott & Boisselle, 2019). Insofar as the court has stated that resource extraction is a justifiable reason to infringe on Aboriginal title, the Crown appears to be well-positioned to circumvent the question of Indigenous consent when authorizing extraction on title lands (Coulthard, 2007). As a result, the duty to consult and accommodate Indigenous Peoples is generally limited to a requirement for the Crown to negotiate in good faith and address Indigenous interests and concerns in government decisions (Bankes, 2020a).

The duty to consult and accommodate lies with the Crown, even when dealing with extraction projects proposed by private corporations. Procedural aspects of the duty can be delegated to regulatory tribunals and corporate actors, and the duty can often be wholly satisfied by existing environmental impact assessment (EIA) processes. However, it is the Crown's legal responsibility to ensure that Indigenous concerns are meaningfully addressed (Bankes, 2020a).

When the Supreme Court of Canada issued its initial decisions on the matter in the early twenty-first century, the duty to consult was celebrated by some as an important tool to protect Indigenous rights before they are proven in court or recognized in agreements with the Crown (Fenwick, 2005). However, there is now mounting criticism of the way the duty has been characterized in Canadian law. Some scholars argue that, because the doctrine does not allow Indigenous communities to provide or withhold their consent to Crown actions, it allows the Crown to act unilaterally, reinforces Crown sovereignty, and therefore undermines the ability of many Indigenous Peoples to establish true nation-to-nation relationships with Canada (Scott & Boiselle, 2019; Doyle, 2019; Hamilton & Nichols, 2019; Ritchie, 2013). Others note that, because the focus is on procedural fairness rather than substantive outcomes, there is an insufficient attention to accommodating Indigenous Peoples' rights and interests in duty to consult litigation (McIvor, 2018). With regards to extractive industries, accommodations are generally limited to changes to project terms and conditions, rather than a decision to reject a proposed project (Bankes, 2020a).

McIvor (2018) argues that the doctrine discourages civil disobedience and other forms of direct action. The power differential between Indigenous organizations and corporate actors, as well as the Crown's ability to act unilaterally, also discourage opposition more generally. Rather than opposing proposals for unwanted extraction and risk ending up with nothing, it often makes strategic sense for Indigenous negotiators to provide support-in-principle, in an effort to win concessions that reduce negative effects and maximize local benefits (Scott, 2020; Zalik, 2015).

Scholars have also raised practical concerns with the consultation processes the Crown relies upon. In practice, consultation processes often fail to meaningfully address issues of concern to Indigenous communities (McIvor, 2018). In some cases, the communities lack the capacity to participate, creating burdens and drawing into question whether consultations are meaningful. Consultation can be more of a curse than a blessing if it requires time and resources from Indigenous communities without providing them meaningful roles in decision making (Huntington et al., 2012; Ariss et al., 2017).

The fact that the Crown can delegate procedural aspects of the duty to consult has also been a source of controversy. The mining companies and regulatory tribunals that end up carrying out consultations are often poorly suited to address concerns Indigenous Peoples raise, especially with regards to cumulative effects of industrial development (Van Lier, 2020; Slowey & Stefanick, 2015; Ritchie, 2013). This project-specific approach to consultation can amount to the piecemeal extinguishment of Aboriginal rights and title (McIvor, 2018). Moreover, the gross imbalance of power between most Indigenous organizations and mining companies—including the mining industry's considerably greater ability to navigate and manipulate regulatory processes—often limits the types of concessions Indigenous Peoples can obtain by negotiating directly with industry (Cameron & Levitan, 2014; Zalik, 2015, 2016).

This article provides a critical analysis of attempts by Inuit to address concerns with proposed extraction through duty to consult litigation. Rather than examine the duty to consult as an abstract legal principle, I focus on the material effects it has had on Inuit relationships with extractive industries. While I make some comments and observations about the duty to consult more broadly, I centre Inuit experiences with duty to consult litigation. In particular, I consider the degree to which the duty to consult has enabled Inuit to resist unwanted extraction and/or impose adequate mitigation measures to resolve their concerns. To conduct this analysis, I examined legal decisions, regulatory documents, and media coverage related to each of the case studies.

2. The Duty to Consult and Inuit Rights in Canada

Most Inuit in Canada are signatories to modern treaties (sometimes called comprehensive land claim agreements) with the Crown. While the specifics of these agreements vary considerably, these treaties all provide mechanisms for Inuit to participate in decisions about extractive industries. This participation often unfolds through Inuit land ownership and mineral rights to some sections of their traditional territory, combined with co-managed impact assessment and land use planning processes. As a result, the duty to consult is a supplement for, rather than the basis of, Inuit rights vis-à-vis extractive industries in Nunatsiavut (north shore of Labrador), Nunavik (Arctic Quebec), Nunavut, and the Inuvialuit Settlement Region (Northwest Territories). However, despite these provisions for participatory rights, Inuit communities with modern treaties are increasingly relying on duty to consult litigation to address resource conflicts. Moreover, the Inuit of NunatuKavut (southern Labrador) have not negotiated a treaty with the Crown. At present, the only legal recognition of Indigenous rights for NunatKavut Inuit is a series of duty to consult cases, which I examine in detail later in this article.

Given the increasingly prominent role of the duty to consult in resource conflicts in Inuit territory, an analysis of Inuit experiences with duty to consult

litigation is a timely contribution to scholarly literature about Indigenous rights and northern politics. At the time of writing, Inuit had initiated duty to consult lawsuits against three proposals related to resource extraction: offshore hydrocarbon exploration in Lancaster Sound (Rodon, 2017); offshore hydrocarbon exploration in Baffin Bay (Johnson et al., 2016; Rodgers & Ingram, 2019); and the Muskrat Falls hydroelectric project in Labrador (Procter, 2020).

The Muskrat Falls hydroelectric project may strike some readers as an odd case study for an analysis of extractive *capitalism*, insofar as it is owned and operated by Nalcor, a Crown corporation of the Government of Newfoundland and Labrador. However, while the project may be state owned, it has nonetheless driven the expansion of capitalist social relations in the Arctic. By disrupting subsistence economies, absorbing some Inuit into the wage labour workforce, and establishing others as small business owners, projects like Muskrat Falls facilitate the development of capitalist class relationships, regardless of whether they are privately or publicly owned (Kulchyski, 2013).

3. Offshore Oil and Gas in Nunavut: Seismic Surveys in Lancaster Sound and Baffin Bay

There is a long history of conflicts over offshore oil and gas extraction in the Qikiqtani (Baffin Island) region of Nunavut. In the 1960s and 1970s, oil and gas companies conducted exploration work in the High Arctic Islands, Lancaster Sound, Baffin Bay, and Davis Strait. By the mid-1970s Inuit had consolidated their opposition to these activities. Major flashpoints in the Inuit struggle against offshore oil and gas included opposition to proposals to extract natural gas from the High Arctic Islands (Erickson et al., 2022). A proposal for exploratory drilling in Lancaster Sound was also the source of significant conflict (Bernauer & Roth, 2021).

In 1993 Inuit and the Government of Canada signed the Nunavut Land Claims Agreement, a modern treaty wherein Inuit exchanged their Aboriginal title to their homeland for specified rights and benefits. Inuit received $1.14 billion, fee simple title (including some mineral rights) to small portions of their traditional territory, and a co-management system for making decisions about land and resources. Famously, the Nunavut Agreement resulted in the division of the Northwest Territories in 1999, creating the new territory of Nunavut. While it is a public government in which all residents can participate, the Government of Nunavut (GN) was intended to provide Inuit with a degree of self-determination, because the overwhelming majority (over 80%) of its electorate are Inuit (Hicks & White, 2015).

Notably, the federal government did not cede political authority over resource extraction in Nunavut. The Government of Nunavut does not have jurisdiction over Crown lands, and Nunavut's co-management boards are advisory, with the federal government retaining final decision-making power on proposed resource extraction (Bankes, 2019; Kulchyski, 2015). The federal government also refused to negotiate clearly-defined rights to many offshore resources in the Nunavut Agreement (Henderson, 2007).

As a result, Inuit do not own any mineral or hydrocarbon resources in marine areas. Nunavut's co-management process for impact assessment and land use planning applies to some marine areas. However, these co-management boards have no formal jurisdiction beyond the "outer land-fast ice zone." While an organization called the Nunavut Marine Council can make recommendations about offshore development beyond this boundary—and the Nunavut Agreement provides mechanisms for Inuit to participate in decisions about offshore fishery quotas—the treaty did not establish a participatory process to make decisions about hydrocarbons beyond the outer land-fast ice zone (Bankes, 2019).

An Inuit organization called Nunavut Tunngavik Incorporated (NTI), established shortly after the Nunavut Agreement was signed, represents Inuit rights and manages Inuit owned lands under the agreement. It shares these responsibilities with three regional Inuit associations. The Qikiqtani Inuit Association (QIA) represents Inuit in the Qikiqtani region. Each community in Nunavut also has a Hunters and Trappers Organization (HTO), which represent Inuit harvesting rights at the local level.

Despite significant historic discoveries of oil and natural gas in the Sverdrup Basin and regular calls for bids for oil and gas rights in the High Arctic between 2000 and 2013, corporate interest in Nunavut's oil and gas resources has been almost non-existent since the Nunavut Agreement was negotiated (AANDC, 2014). The only proposals for hydrocarbon exploration in Nunavut in the twenty-first century were two proposals for seismic surveys near Baffin Island. The first was developed by the Geological Survey of Canada and included surveys in Lancaster Sound (an area Inuit had long sought to protect). The second proposal was developed by a consortium of geophysical companies and focused on Baffin Bay and Davis Strait. Qikiqtani Inuit successfully resisted both proposals with duty to consult litigation.

3.1. Qikiqtani Inuit Association v. Canada (Minister of Natural Resources)

In 2009, the Geological Survey of Canada submitted a proposal to conduct seismic surveys in Lancaster Sound and Baffin Bay. A significant portion of the exploration work was to be carried out within the outer land-fast ice zone, and therefore fell within the jurisdiction of the co-management boards established in

the Nunavut Agreement. Because the proposed seismic surveys were described as "research," the proposal was referred to the Government of Nunavut's Nunavut Research Institute, which has jurisdiction over research conducted in the territory. This created a unique situation where a Nunavut cabinet minister—in this case Daniel Shewchuk, Minister for Nunavut Arctic College—had decision-making authority on offshore resource extraction. The Government of Nunavut referred the proposal to the Nunavut Impact Review Board (NIRB), which began screening the proposal in March 2010.[1]

Several community groups from the northern Qikiqtani region submitted written comments opposing the proposal. A submission from the Qikiqtani Inuit Association (QIA) argued that community consultation had been insufficient and recommended the proposal be returned to the proponent for further development prior to proceeding with the screening.

The Nunavut Impact Review Board submitted its screening report on May 21. It recommended the project be allowed to proceed without a full environmental review and suggested several terms and conditions to reduce environmental impacts and address public opposition. These recommended conditions included directing the proponent to conduct additional public consultation before the project commenced (NIRB, 2010).

On June 30 the Government of Nunavut responded to the NIRB report and issued permits for the surveys. On August 3 QIA filed an application with the Nunavut Court of Justice, requesting the court quash the research permit. The governments of Canada and Nunavut were listed as respondents. QIA also asked the court to issue an interlocutory injunction, temporarily preventing the government from conducting the surveys until the case went to trial. It alleged that both orders of government had failed to fulfill their duty to consult Inuit about the seismic surveys.

The court heard submissions for an interlocutory injunction on August 4 and 5. QIA argued that the NIRB screening and community meetings hosted by the federal government were not effective consultations and that the seismic surveys could significantly interfere with Inuit hunting of marine mammals. Canada and Nunavut argued that the proposed surveys would not have significant impacts and that the duty to consult had been satisfied.

An interlocutory injunction was issued on August 8, one day before the surveys were scheduled to commence. The judge took no position on the "nature or value" of consultations that took place, other than noting that there were "serious issues" to be considered by the trial judge (*Qikiqtani Inuit Association v. Canada*, 2010, para. 30). Because of the political controversy surrounding the injunction, the federal government abandoned the proposed surveys. As a result, the case did not proceed to trial. In 2019 the QIA and Government of Canada signed an agreement for the creation of a national marine conservation area (Tallurutiup Imanga), which will permanently ban hydrocarbon extraction in Lancaster Sound (Bernauer & Roth, 2021). Inuit were therefore successful in using duty to consult litigation as part of a broader campaign to prevent oil and gas extraction in Lancaster Sound.

3.2. Clyde River (Hamlet) v. Petroleum Geo-services Inc.

In early 2011, less than a year after conflict erupted over seismic surveys in Lancaster Sound, a consortium of geophysical companies applied to conduct seismic surveys in Baffin Bay and Davis Strait. The proposed surveys would take place over five years, during the open water season. The resulting data was intended to support future exploratory drilling in the area.

Because the proposed surveys would be conducted beyond the outer land-fast ice zone, they were not screened or reviewed by the Nunavut Impact Review Board. Instead, the National Energy Board (NEB) reviewed the proposal. The NEB was Canada's national regulator for energy resources, including oil and gas, until it was abolished in 2018. When it reviewed the proposal for seismic surveys, the NEB was the centre of significant public controversy, as many argued that it had been "captured" by the oil industry. Among other things, critics pointed to the large number of board members that had previously worked for oil companies, as well as the NEB's tendency to strictly limit who could participate in public hearings. These criticisms were part of a broader public concern with the Harper administration's approach to environmental governance, including changes to federal legislation that relaxed requirements for environmental assessment (Gibson, 2012; Peyton & Franks, 2016; Doelle & Sinclair, 2021).

The National Energy Board review of the proposed seismic surveys was consistent with the Harper administration's broader approach to resource management. The review lacked several common features of environmental assessments (EA) in Canada, including participant funding and formal hearings. Instead of public hearings, the NEB hosted "public meetings" in Qikiqtani communities and accepted written submissions from stakeholders and the public.[2]

Throughout the NEB review, Qikiqtani communities repeatedly expressed clear opposition to the project. Residents of Pond Inlet and Clyde River submitted petitions to the NEB opposing the proposal. The transcripts from the NEB's public meetings, as well as the reports from industry engagement, document significant public opposition to the surveys.

QIA's final comments, submitted in October 2013, requested that the NEB not issue authorizations for the project. It claimed that there had been inadequate consultation with communities and insisted that the federal government conduct

a strategic environmental assessment (SEA) into oil and gas extraction in the Qikiqtani region before permitting proposals for seismic surveys and exploratory drilling.

On June 26, 2014, the NEB issued authorizations for the survey. Its report noted that QIA and Qikiqtani communities participated in the assessment through numerous written submissions and in-person meetings. There was, however, no indication that these letters and oral statements mostly opposed the proposed surveys (NEB, 2014).

QIA's initial response to the NEB's decision was oppositional. President Okallik Eegeesiak told media that QIA was considering legal action over the planned surveys ("Ottawa greenlights", 2014). However, three days later QIA's approach became conciliatory. Northern media reported that QIA was "disappointed" that the NEB approved the surveys, but that it would focus its energies on negotiating benefits and improving mitigation measures (Gregoire, 2014a).

The community of Clyde River, by contrast, remained steadfast in its opposition. Mayor Jerry Natanine told the press that he was determined to continue fighting the surveys. On July 23, residents held a rally to protest the NEB decision. According to the press, over 100 people attended (from a community of roughly 1,000 residents) (Gregoire, 2014b).

In the absence of litigation from QIA, the Clyde River Hamlet Council and Hunters and Trappers Organization (HTO) opted to pursue legal action. In late July, they applied to the Federal Court of Appeal for a judicial review of the National Energy Board's decision to grant authorizations for seismic surveys. The application was filed by the Hamlet of Clyde River, the Clyde River HTO, and Mayor Jerry Natanine. It named the seismic survey companies and Attorney General of Canada as respondents and argued that the Crown had not satisfied its duty to consult Inuit.

The case was heard in April 2015 in a Toronto courtroom. Clyde River argued that Inuit were owed deep consultation and that the NEB process fell well below this standard. They pointed to several procedural shortcomings in the NEB review, including the lack of formal hearings and the proponent's inability to answer basic questions during public meetings. Clyde River also argued that the NEB's assessment alone could not satisfy the duty to consult, because the Crown, not the NEB and seismic companies, should have engaged directly with Inuit.

The Court delivered its decision in August. In a unanimous decision the judges found that the Crown had adequately consulted Inuit and that the NEB's decision to grant authorizations was therefore legal. The Court agreed with Clyde River's assertion that Inuit are owed deep consultation on issues related to the offshore. However, the Court accepted the Crown and seismic companies' claims that the NEB process had provided deep consultation, and therefore dismissed Clyde River's application for judicial review. In the Federal Court's view, consultation was adequate because Inuit organizations and community members had several opportunities to meet with the proponent and express concerns to the NEB. Moreover, the Court found that the proponent had reasonably accommodated Inuit concerns by making minor changes to the spatial extent of the proposed surveys (*Hamlet of Clyde River v. TGS-NOPEC*, 2015).

Notably, in dismissing the appeal, the Court concluded that Clyde River's legal position had been undermined because it had acted in bad faith: "It was not helpful, or consistent with reciprocal, good faith consultation" that the Hamlet and Hunters and Trappers Organization had refused to participate in an Indigenous Knowledge study conducted on behalf of the proponents (*Hamlet of Clyde River v. TGS-NOPEC*, 2015, para. 91). Clyde River's refusal to participate in an industry-sponsored Indigenous Knowledge study was arguably a reasonable position, given that the Hamlet and HTO both opposed the proposed surveys. Under these circumstances, participation would have contradicted the community's position. In this regard, the types of negotiations provided for in the Federal Court's interpretation of the duty to consult appear to preclude principled opposition.

Clyde River was undeterred, and the Hamlet and HTO appealed the decision to the Supreme Court of Canada (SCC). The case was heard in conjunction with a similar appeal brought forward by the Chippewas of the Thames First Nation (CTFN), an Anishinaabe nation in Southwestern Ontario. Written arguments were submitted in Fall 2016 and oral arguments were heard that November.

The SCC issued decisions for both cases on July 26, 2017. In Clyde River's case, the Court found that the Crown had indeed breached its duty to consult Inuit when the NEB issued authorizations for the seismic surveys. The Court therefore overturned the Federal Court's ruling and quashed the NEB's authorization. In a unanimous decision, the judges ruled that Inuit were owed deep consultation and that the NEB assessment fell far short of this. They noted that the NEB process lacked many common mechanisms used to promote procedural fairness in other environmental assessment processes in Canada, including participant funding, formal hearings, and Indigenous representation on review panels (*Clyde River (Hamlet) v. Petroleum Geoservices Inc.*, 2017).

In the *Chippewas of the Thames* case, the Court found that the Crown had fulfilled its duty to consult and dismissed the appeal. The Supreme Court of Canada concluded that the First Nation was not owed the same extent of consultation as Inuit. Moreover, in the Court's view, the NEB process that CTFN had participated in was more robust and participatory than the environmental

assessment for seismic surveys in Nunavut (*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017).

For Nunavut Inuit, the decision was an important affirmation of their rights to offshore resources. Recall that the federal government had refused to recognize Inuit offshore rights in the Nunavut Agreement, depriving Inuit of any direct control over, or clearly-defined financial stake in, offshore oil and gas extraction. The court's recognition that Inuit are entitled to deep consultation when offshore extraction is concerned will provide Inuit with significantly more leverage in future discussions about offshore oil and gas extraction. This may lead to an increased ability to participate in decisions and collect revenue, if or when extraction proceeds.

At the same time, Clyde River's campaign against seismic surveys, including the Supreme Court of Canada's decision, created a great deal of political momentum against hydrocarbon extraction in Nunavut. This momentum may have played a role in the federal government's decision to impose a moratorium on Arctic offshore oil and gas extraction in 2016 (Bernauer & Roth, 2021). Thus, for a second time, Nunavut Inuit successfully used duty to consult litigation to not only stop a specific proposal for hydrocarbon exploration, but also to pressure the federal government to prohibit oil and gas extraction in large parts of the Arctic offshore.

However, the *Clyde River* and *Chippewas* decisions may have contributed to a narrowing of the duty to consult, insofar as they suggest that even "deep consultation" can be satisfied through a regulatory process (Van Lier, 2020). All of the major deficiencies the judges identified with the National Energy Board's approval of seismic surveys—a lack of oral hearings and participant funding, as well as the inability of the proponent to answer basic questions about project impacts in an accessible manner—could be resolved within the framework of a regulatory tribunal. The Supreme Court of Canada had previously held that administrative tribunals with the power to answer questions of law have a responsibility to determine whether Indigenous consultation is sufficient. However, the *Clyde River* and *Chippewas* decisions appear to be the first where the Court clarified a regulatory tribunal can satisfy the duty to consult in full, even when "deep consultation" is required (d'Eca, 2020; Bankes, 2018).

4. Hydroelectric Development in Labrador: The Muskrat Falls Project

While there is a long history of proposed hydroelectric development along the lower Churchill River, the current iteration of the project began in 2006, when Nalcor Energy (a Crown corporation owned by the Government of Newfoundland and Labrador) submitted an application to provincial and federal regulators for a multi-phase project involving several components. The first phase of the proposal involved a generating station and control structure at Muskrat Falls, upstream from the town of Happy Valley-Goose Bay. The project was referred to a federal-provincial joint review panel (JRP) for environmental assessment. Despite clear opposition from Inuit, the proposal was approved by the governments of Canada and Newfoundland and Labrador in 2012. Construction of the Muskrat Falls dam was completed in 2020, and it began generating power the following year.

The case of Muskrat Falls is considerably more complex, both legally and politically, than the case of offshore oil and gas exploration in Nunavut. There are several Indigenous Peoples affected by the project, including Innu from Labrador and Quebec, the Inuit of Nunatsiavut, and the Inuit of NunatuKavut. Located on the north shore of Labrador, Nunatsiavut is governed by the provisions of the Labrador Inuit Land Claims Agreement, a modern treaty signed in 2005 (Kuokkanen, 2019). Nunatsiavut Inuit are politically and legally represented by the Nunatsiavut Government—a self-government organization established under the land claim and a member organization of the national Inuit Tapiriit Kanatami (ITK).

The NunatuKavut Community Council (NCC) is an organization representing people in southern and central Labrador who previously self-identified as "Labrador Métis" or "Inuit Métis," and who now claim Inuit identity (Kennedy, 2014). NCC claims that its members possess Aboriginal rights and title to southern and central Labrador (Hudson, 2021). In 2019 the NunatuKavut Community Council and Government of Canada signed a memorandum of understanding to, among other things, initiate discussions about NCC's land claim.

However, the Indigeneity of NCC members has been challenged by the Innu Nation and Nunatsiavut Government, whose territories overlap with the lands claimed by the NCC (Procter, 2020). Both the Innu Nation and Nunatsiavut Government have initiated litigation to block the negotiation of a land claim between the NCC and the Government of Canada. Moreover, Inuit Tapiriit Kanatami does not recognize the NCC's status as an Inuit organization.

NCC members' Indigenous rights were given a degree of legal recognition by the Courts, because of duty to consult litigation that began before the Muskrat Falls project was formally proposed. In 2006, the trial court found that the Government of Newfoundland and Labrador had a duty to consult the NCC (then known as the Labrador Métis Association) regarding the expansion of the Trans-Labrador Highway (*Labrador Métis Nation v. Her Majestey in Right of Newfoundland and Labrador*, 2006). The Government of Newfoundland and Labrador appealed the decision, arguing that the Labrador Métis had not provided sufficient evidence of their Indigeneity. The Court of Appeal upheld the

trial judge's decision that the Labrador Métis People possessed "a credible but unproven claim" to Aboriginal rights to hunt, fish, and trap in southern Labrador. While the claim to Aboriginal rights, and therefore an Indigenous legal identity, remained unproven, it was "at least strong enough to trigger a duty to consult at the low level requested" (*Newfoundland and Labrador v. Labrador Métis Nation*, 2007, para. 53). According to the Court of Appeal, this right is rooted in an Inuit, rather than Métis, legal identity, because the respondents "established a prima facie connection with pre-contact Inuit culture and a continuing involvement with the traditional Inuit lifestyle" (para. 51).

Most infrastructure associated with the Muskrat Falls project is in Innu Territory, and Nalcor and Newfoundland initially focused consultations and benefit negotiations with the Innu Nation. However, the NunatuKavut Community Council also claims Indigenous rights to the Muskrat Falls area. The project is located upstream of land and waters covered by the Nunatsiavut land claim, leading to concerns that downstream effects (especially methylmercury contamination) could negatively affect Nunatsiavut Inuit harvesting activities. Because of political and legal actions on the part of the NCC and Nunatsiavut Government, both Nalcor and the Government of Newfoundland and Labrador were ultimately forced to include Inuit in consultations (Procter, 2020).

In addition to the complexity of Indigenous legal claims to the project area, there has also been considerably more litigation over the Muskrat Falls project than the seismic surveys in Nunavut. Relevant legal actions include several duty to consult challenges brought forward by Nunatsiavut (*Nunatsiavut Government v. Newfoundland and Labrador*, 2015; *Nunatsiavut Government v. Canada (A.G.)*, 2015); the NCC (*NunatuKavut Community Council v. Nalcor*, 2011; *Grand Riverkeeper Labrador v. Canada*, 2012; *NunatuKavut Community Council v. Canada*, 2015); and the Innu of Ekuanitshit (*Ekuanitshit v. Canada*, 2013). Nalcor also successfully applied for injunctions related to direct action protests (*Nalcor v. NunatuKavut Community Council*, 2012; *Nalcor v. Anderson*, 2017), and several Labrador residents have initiated a class action lawsuit related to property damage as a result of reservoir flooding (*Chiasson v. Nalcor*, 2021). In this article, I focus on duty to consult cases involving Nunatsiavut and NunatuKavut.

4.1. Impact Assessment by a Federal-Provincial Joint Review Panel

The Joint Review Panel's assessment of the Muskrat Falls project began in 2008. Like the National Energy Board's assessment of seismic surveys in Baffin Bay, the JRP's assessment of Muskrat Falls was consistent with the Harper administration's approach to resource management. As panel member Meinhard Doelle later noted, the terms of reference issued by Canada and Newfoundland and Labrador resulted in a comparatively narrow environmental impact assessment (EIA) process, with fewer opportunities for public intervenors to shape the process or influence its outcome. Unlike most other EIA processes in Canada, the panel was not directed to independently determine the scope of issues to be addressed, recommend whether the project should proceed, or report on the adequacy of consultations with Indigenous Peoples (Doelle, 2013).

The Joint Review Panel held public hearings for the project in March 2011 and issued its final report later that year. It concluded that the project would likely have significant adverse effects on fish, caribou, and seals. It made numerous recommendations to minimize the negative effects of the project on the environment. However, because of its unusually narrow terms of reference, it made no recommendation regarding project approval (JRP, 2011).

In 2012 the governments of Canada and Newfoundland responded to the JRP report, approving the project and rejecting many of the panel's recommendations related to methylmercury contamination (Calder et al., 2020). JRP panel members Meinhard Doelle and Cathy Jong would later publicly criticize the rejection of the JRP's recommendations (Doelle, 2015; "Mercury levels", 2015). Both orders of government issued authorizations and licences the following year.

4.2. NunatuKavut Legal Challenges to the Joint Review Panel Process

The NunatuKavut Community Council launched two lawsuits against the Joint Review Panels's assessment of the Muskrat Falls project. When the JRP held public hearings in 2011, the NCC boycotted the proceedings and applied for an injunction to prevent the JRP from continuing with hearings until the NCC's concerns were addressed. Its application argued that Canada, Newfoundland and Labrador, Nalcor, and the JRP had failed to meaningfully consult the NCC. In addition to requesting an injunction to stop the hearings, NCC also requested a court order requiring Nalcor and the province to negotiate an impact and benefit agreement with the NCC (*NunatuKavut Community Council v. Nalcor*, 2011).

The trial judge dismissed the NCC's application. He found that the NCC failed to show sufficient evidence of irreparable harm if the public hearings proceeded or that the balance of convenience favoured granting the injunction. The judge disagreed that consultation thus far had been inadequate. Because neither the consultation nor environmental assessment process had concluded, he also found that it would be premature to rule that NunatuKavut had not been meaningfully consulted. In dismissing the application, the judge noted an apparent contradiction between NunatKavut's demand to be meaningfully consulted and its decision to boycott JRP hearings, suggesting the NCC was acting in bad faith.

The second lawsuit was initiated after the JRP report was released in late 2011. The NCC, together with two environmental organizations, applied to the Federal

Court for a judicial review. The applicants argued that the JRP failed to fulfill its mandate to consider the need for the project, possible alternatives to the project, and potential cumulative effects of the project. According to the applicants, the JRP's analysis of these issues was insufficient, because they were mostly deferred to further studies, to be conducted after the environmental impact assessment was completed. The litigation also raised issues of Indigenous consultation. The NCC argued that the JRP's failure to sufficiently consider cumulative effects prevented it from meaningfully addressing the NCC's concerns. According to the NCC, this resulted in a breach of its right to procedural fairness.

The NCC's application for judicial review was dismissed. The judge found that the JRP had adequately examined the need for, alternatives to, and cumulative effects of the project. Moreover, he concluded that the NCC was provided with ample funding and opportunities to provide information to the JRP regarding its rights and interests, opportunities which (the judge found) the NCC chose not to utilize by boycotting portions of the JRP hearings (*Grand Riverkeeper v. Canada*, 2012).

4.3. Nalcor Application for an Injunction against NunatuKavut

Nalcor began pre-approval construction activities related to the Muskrat Falls project in 2012. As a result of these activities, the trapline of an NCC member was clearcut without his prior knowledge. In response, the NCC organized a protest in October 2012 that included a one-day blockade of an access road. The following day, Nalcor successfully applied to the Supreme Court of Newfoundland and Labrador for a temporary injunction preventing NCC members from further disrupting construction work.

In November, the Court considered whether the injunction should be made permanent. The NCC argued that the protest was an expression of its members' Indigenous rights. It claimed it had not been provided with the resources to meaningfully participate in decisions about pre-approval construction, and that the provincial government's duty to consult the NCC about these pre-construction activities had been breached. As a result, when determining the balance of convenience, the Court considered whether the Crown had breached its responsibility to consult and accommodate NCC members with regards to pre-approval construction activities related to the Muskrat Falls project.

The judge concluded that the balance of convenience weighed in favour of Nalcor and granted a permanent injunction. He found that the NCC had been adequately consulted about the Muskrat Falls project and criticized the NCC for not raising concerns about participant funding sooner. The decision also suggested that the NCC's claims about consultation were undermined because it had not negotiated in good faith.

> The response of NCC appears to be similar to its response to the JRP hearings. Rather than concentrate its resources and energies on the task at hand, it mounted a rear guard action. With respect to the JRP hearings, an injunction was sought. In respect of the Phase V consultation, a battle of correspondence was waged, while never, even for a single application, responding in accordance with the approval guidelines. Ultimately, NCC staged the protest. (*Nalcor Energy v. NunatuKavut Community Council Inc.*, 2012, para. 97)

Thus, for a second time, the NCC's legal arguments regarding consultation were dismissed, partially because of its participation in political protest and direct action.

The NCC appealed the decision. The appeal court granted the NCC's appeal and lifted the injunction, finding that the trial judge made several errors in law, including issuing an injunction with inappropriately broad terms. However, the Court did not determine whether the NCC had been adequately consulted about the Muskrat Falls project, instead finding that the duty to consult was irrelevant to the question of the injunction (*NunatuKavut Community Council Inc. v. Nalcor Energy*, 2014).

4.4. NunatuKavut Legal Challenge to Federal Authorizations

The NCC challenged federal authorizations for the Muskrat Falls project, issued in 2013, arguing that the federal government breached its duty to consult. Its grievances included the fact that participant funding was not provided for most consultations after environmental assessment, and that the government had failed to address outstanding issues identified in the JRP report related to the land use of NCC members. The NCC also challenged the federal government's decision to rely on monitoring, rather than mitigation, to address mercury contamination.

The NCC's application for judicial review was dismissed. The judge acknowledged that the lack of participant funding for post-EA consultation was "unfortunate" (*NunatuKavut Community Council Inc. v. Canada,* 2015, para. 314). However, she also found that Canada's decision to rely on monitoring rather than mitigation to address mercury contamination was a reasonable way to address Inuit concerns. Moreover, the judge concluded that the NCC had acted in bad faith because it had declined to meet with Nalcor and the Department of Fisheries and Oceans about the authorizations. She also noted that the NCC did not fully take advantage of opportunities to provide the JRP and Canada with more information about its members' land use—presumably she found this because NCC had boycotted portions of the JRP hearings.

4.5. Nunatsiavut Legal Challenges to Authorizations

The Nunatsiavut Government also initiated legal challenges to federal and provincial government authorizations. The first was directed at Newfoundland and Labrador. Nunatsiavut argued that the duty to consult had been breached, in part because the province rejected recommendations from the JRP that would have helped minimize the effects of mercury contamination on Inuit harvesting rights.

A provincial judge dismissed Nunatsiavut's application, finding that the decision to issue the permits did not directly interfere with harvesting rights, and that Nunatsiavut should have challenged an earlier (2012) decision releasing the project from further environmental assessment. He noted that just because Inuit disagreed with the province's approach to addressing mercury contamination, it did not constitute a violation of the duty to consult (*Nunatsiavut Government v. Newfoundland and Labrador*, 2015).

The second lawsuit from Nunatsiavut was directed at federal authorizations. It argued that Inuit were not adequately consulted, in part because concerns with methylmercury contamination were not fully considered or accommodated when the authorizations were issued, due in part to the fact that many of the JRP's recommendations were not adopted.

This challenge was dismissed by a federal judge, who found that Canada was reasonable in its approach to balancing Indigenous rights and interests with the potential benefits of hydroelectric development. The judge concluded that Canada's response to the JRP's recommendations—to accept some recommendations for monitoring and reject others related to mitigation—was a reasonable accommodation of Inuit concerns with methylmercury contamination. Paraphrasing the Supreme Court of Canada's decision in *Little Salmon*,[3] he noted that "although the duty to consult may require accommodation where appropriate, the test is not a duty to accommodate to the point of hardship" (*Nunatsiavut Government v. Canada*, 2015, para. 167). He did not, however, explain how or why mitigation for methylmercury would cause "undue hardship."

4.6. Ongoing Conflicts over Methylmercury and the Independent Expert Advisory Committee

In 2015, after construction on the project had begun and the Nunatsiavut and NunatuKavut legal challenges had been dismissed, new research conducted by scholars from Harvard University in partnership with the Nunatsiavut Government suggested that the impacts of methylmercury contamination were likely to be more severe than anticipated. This led to increased concern with the project, especially from Inuit, who continued to demand the implementation of JRP recommendations (Calder et al., 2020) There was initially no serious response from government (Doelle, 2015).

Government passivity regarding methylmercury contamination led to direct action, including hunger strikes and an occupation of the Muskrat Falls construction site in the fall of 2016 (Atlin & Stoddart, 2021). As a result of this political pressure, Nalcor and Newfoundland agreed to explore options for mitigation. An Independent Expert Advisory Committee (IEAC) was established to provide advice on approaches to mitigation (Calder et al., 2020).

The IEAC's recommendations, issued in 2018, were similar to those of the JRP, and included the full removal of topsoil and wetland capping. In early 2019, Newfoundland announced it would implement wetland capping only. However, this was a pyrrhic victory as by this point the window of opportunity for wetland capping had passed, as it would have been impossible to complete before flooding began that summer. As a result, no mitigations were implemented before flooding was completed in October 2019 (Calder et al., 2020).

4.7. Public Inquiry

In 2017 a public inquiry into the Muskrat Falls project was established by the Government of Newfoundland and Labrador in response to growing public frustration with delays and cost overruns. The final report was released in March 2022. Titled *Muskrat Falls: A Misguided Project*, it was sharply critical of the Crown's consultations with Indigenous Peoples.

> GNL [Government of Newfoundland and Labrador] failed to ensure that it and Nalcor acted fairly in its consultations related to Indigenous Peoples and environmental matters. While this Report does not speak to GNL's legal obligation regarding consultation with Indigenous Peoples, it does point out that Nalcor did not act fairly with the Nunatsiavut Government, the NunatuKavut Community Council and the Innu of Ekuanitshit. (Muskrat Falls Inquiry, 2020, p. 39)

The inquiry's findings raise serious questions about the ability of Inuit to use the duty to consult to safeguard their rights. The Nunatsiavut Government initiated two lawsuits in an attempt to halt the Muskrat Falls project and/or compel Canada, Newfoundland and Labrador, and Nalcor to implement adequate mitigation measures. Both attempts failed. Subsequent protests and direct action appear to have been much more effective in pressuring the government to commit to taking action on the issue of methylmercury, and even then the government and Nalcor failed to follow through with promised mitigations. For its part, the

NCC was involved in four separate lawsuits that dealt with the Crown's duty to consult NunatuKavut about the Muskrat Falls project. In all cases, the court ruled against the NCC. If the duty to consult can be satisfied by a process so fraught that a public inquiry determined it was unfair to Inuit, the duty would appear to be of limited value to Inuit seeking to protect a hunting way of life in the face of capitalist expansion.

5. Discussion and Conclusions

Inuit experiences with the duty to consult are clearly mixed. Inuit have used duty to consult litigation to win legal victories against extractive capital, most notably in struggles against offshore oil and gas extraction in Nunavut. The Qikiqtani Inuit Association (QIA) succeeded in using duty to consult litigation to stop seismic surveys in Lancaster Sound. QIA only won an interim injunction, and it is unclear if the court would have granted a permanent injunction or quashed the permits for seismic surveys. However, the QIA successfully used the interim injunction to pressure the federal government to cancel the surveys and, as a result, the case never made it to court. Oil and gas exploration was later banned in Lancaster Sound, as part of a new national marine conservation area.

Clyde River was similarly successful in using the duty to consult to stop seismic surveys in Baffin Bay. In addition to stopping the proposed exploration activities, Clyde River's legal action created political momentum against offshore oil and gas extraction in Nunavut. This momentum was likely one factor in the federal government imposing a moratorium on offshore oil and gas in the Canadian Arctic. Clyde River's legal victory also strengthened Inuit claims to offshore resources, which the federal government had previously refused to include in land claim negotiations.

While these victories are important and noteworthy, the duty to consult nonetheless appears to be a weak safeguard for Inuit rights, and its potential to serve as a legal tool to resist extractive capitalism is clearly limited. Clyde River's appeal was successful only because the National Energy Board's assessment of seismic surveys in Baffin Bay was lacking in many of the hallmarks of procedural fairness in Canadian assessment processes, including formal hearings and participant funding. It is also important to note that Clyde River only won on appeal to the Supreme Court of Canada, as a federal court had previously found that the NEB's (clearly deficient) assessment satisfied the Crown's obligations.

While Qikiqtani Inuit successfully used the courts to stop hydrocarbon extraction in the region for the foreseeable future, they did so in the context of extremely limited pressure from the oil and gas industry. In the twenty-first century, extractive capital has expressed almost no interest in the region's hydrocarbon deposits. Had Inuit been dealing with multiple proposals for extraction, or resisting a project that a large company had already substantially invested in, it is unclear whether these legal victories would have led to the same political outcome. With regards to Clyde River's litigation, the proponent responded to the Supreme Court of Canada ruling by abandoning its proposal, rather than reapplying for licences and permits. In the case of Lancaster Sound, the proponent abandoned its proposed surveys before QIA's case even went to trial.

With regards to hydroelectric development in Labrador, six separate lawsuits dealt with the Crown's duty to consult the Inuit of Nunatsiavut and NunatuKavut about the Muskrat Falls project. None of these legal actions were successful in halting the project, despite examples of apparent bad faith and negligence on the part of the Crown, culminating in the government's failure to implement promised mitigation measures for methylmercury contamination. A public inquiry later found that Newfoundland and Nalcor did not act fairly in their dealings with Nunatsiavut and NunatuKavut. Yet all attempts to stop the project with duty to consult litigation failed. Moreover, all attempts to use duty to consult litigation to compel the government to mitigate methylmercury contamination were unsuccessful. The duty to consult therefore provided a weak tool to either resist extraction or to protect Inuit rights and interests in the context of "responsible" resource development.

The requirement that Indigenous Peoples must negotiate in "good faith" was used by the courts to dismiss litigation and discourage principled opposition to proposed extraction. When it dismissed Clyde River's legal challenge to seismic surveys, the Federal Court of Appeal found that Clyde River's refusal to participate in a proponent's Traditional Knowledge study was evidence of bad faith. Similarly, several of NunakuKavut's legal challenges to the Muskrat Falls project were dismissed (in part) because the NCC's participation in direct action (a boycott of public hearings and a blockade of a construction site) were apparently evidence of bad faith. Thus, not only does Canadian law criminalize Indigenous resistance (Pasternak et al., 2013), it also uses it as grounds to override Indigenous Peoples' right to be consulted.

Rather than providing a means for Inuit to resist extractive capitalism, the duty to consult imposes compromises between Inuit and extractive capital. It requires the state to consider and meaningfully address Indigenous concerns. In the context of resource extraction, this leads to a legal imperative for the Crown to balance the rights and interests of Indigenous Peoples with those of extractive capital. While the state's consultative processes (like environmental assessment) occasionally reject proposals for extraction, the state can usually satisfy its duty to accommodate with terms and conditions on project authorizations.

However, the ability of Inuit to use arguments about consultation and accommodation to compel the government to impose mitigation measures is also limited. The courts have placed restrictions on the types of accommodations that can be owed to Indigenous Peoples, insofar as they cannot cause "undo hardship." This was used as a rationale for rejecting Nunatsiavut's request that government implement measures to mitigate mercury contamination.

The duty to consult has several structural similarities with the resource management processes established in modern treaties between Inuit and the Crown. While both the Nunavut and Nunatsiavut agreements provide opportunities for increased Inuit participation in decisions about extraction (Gondor, 2016; Bankes, 2020b; Peletz et al., 2020), Inuit authority over extraction remains limited (Kulchyski, 2015; White, 2018; Kennedy Dalseg et al., 2018; Kuokkanen, 2019). In the case of Nunavut, the federal government has retained jurisdiction over mineral and hydrocarbon resources (Hicks & White, 2015). The Nunatsiavut government has much broader law-making authority with regards to resources, although this authority is geographically limited to lands Nunatsiavut Inuit retained ownership over under their treaty with the Crown (Bankes, 2019).

In both Nunatsiavut and Nunavut, co-management process like land use planning and environmental assessment are structured to impose compromises between Inuit and extractive capital. These processes minimize conflicts between Inuit and extractive industries by rejecting some types of extraction and imposing mitigation measures on others (Procter & Chaulk, 2012; Bernauer, 2020a; Dokis, 2023). However, despite the creation of participatory structures for resource management—and support for extraction-based economic development by most Inuit organizations—colonial patterns of uneven development persist, insofar as many of the long-term economic benefits from extraction continue to flow out of Inuit territory (Rodon, 2018; Bernauer, 2019), and extractive industries continue to disrupt the resource base that Indigenous subsistence economies depend upon (Parlee et al., 2018; Watt et al., 2021). Elsewhere (Bernauer, 2020a) I have argued that this balancing of interests is part of a hegemonic form of colonial domination, wherein the state produces consent to the colonial and capitalist status quo, in part by granting concessions to subordinate groups (see for example: Poulantzas, 1978; Chaterjee, 1993). While these concessions sometimes go against the short-term economic interests of some mining, oil, or hydroelectric companies, they nonetheless serve the long-term political interests of extractive industries insofar as they help generate public and institutional support for extraction more generally (Bernauer, 2020b).

The duty to consult is similarly structured to balance interests in a way that allows extraction to proceed. It does not provide Indigenous communities with political control over land and resources. Instead, it provides Inuit with opportunities to win concessions from extractive capital. Sometimes these concessions are substantial, like stopping offshore oil and gas extraction in Nunavut. In other instances—including the decision to monitor, rather than mitigate, mercury contamination in Labrador—they are minor. Regardless of their magnitude, concessions won through both co-management structures and duty to consult litigation form part of a broader system of compromises between Indigenous Peoples and extractive capital, which help produce consent for extractivist development strategies.

Notes

1. Documents associated with the environmental screening of the proposed seismic surveys were accessed from the NIRB's public registry (Nunavut Impact Review Board File No. 10YN017).
2. Documents associated with the review of the proposed surveys were accessed from the NEB's public registry (National Energy Board, File No. OF-EP-GeoOP-M711-55545877).
3. *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53.

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Research Article

Canada's Arctic Policies & Truth and Reconciliation: An Examination of Canada's Arctic and Northern Policy Framework through a Reconciliation Lens

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Abstract: In September 2019, the Canadian Government launched Canada's Arctic and Northern Policy Framework. One of the main goals of the framework is to achieve reconciliation with Indigenous Peoples by way of taking a co-development approach. But what does reconciliation look like exactly? And how are we to know whether the federal government is meeting the objective of reconciliation in the development of this framework? Since the release of the Final Report of the Truth and Reconciliation Commission of Canada in December 2015, a number of scholars have written about the question of how to attain reconciliation. One scholar in particular, Deborah McGregor, an Anishinaabe scholar from Whitefish River First Nation, Birch Island, Ontario, proposes six suggestions from which to assess whether reconciliation processes have been implemented in post-secondary institutions. McGregor concludes that these suggestions, while not exhaustive, represent a place from which to begin dialogue about establishing reconciliatory processes within the institution. Using McGregor's suggestions, this article examines whether the federal government has implemented reconciliatory processes in the development of Canada's Arctic and Northern Policy Framework.

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