



Native Women's
Association of Canada

L'Association des
femmes autochtones
du Canada

Indigenous Women and Impact Assessment Final Report

The Native Women's
Association of Canada

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Head Office
85 Albert Street, 12th floor
Ottawa, ON K1P 6A4
Toll-free: 1-800-461-4043

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INTRODUCTION

The *Impact Assessment Act* came into force on 29 August 2019, bringing in sweeping changes to the federal legislative framework for impact assessments. Among the many reforms introduced by these legislative changes are new and important requirements that factors related to Indigenous peoples, and Indigenous women in particular, be taken into account in impact assessment processes and that Indigenous women's knowledge must be considered in certain decision-making.

This report outlines the various issues and concerns of Indigenous women as they relate to impact assessments. The goal of this report is to provide proponents, governments and impact assessment practitioners generally with information that will help ensure Indigenous women are meaningfully and respectfully engaged in impact assessments and that their rights, concerns, interests and knowledge are properly taken into consideration and respected.

A review of the literature and engagement with Indigenous women experts in these matters identified five broad areas of concern with respect to impact assessments of industrial projects:

1. Governance and Decision-making
2. Health and Safety
3. Culture
4. Economy
5. Environment

Governance and Decision-making encompasses several issues related to the representation of Indigenous women in Indigenous Governing Bodies and in discussions and negotiations with governments and proponents. A major area of concern is the level of respect for the right to self-determination as implicated by the standards of the duty to consult and the right to give or withhold consent and, especially, women's equal rights to affect these processes and decisions.

Health and Safety concerns are varied and broad but include important matters such as the relationship between industrial projects and increased rates of sexual violence against Indigenous women and girls, substance abuse and social services, and project impacts on the physical and mental health of Indigenous women.

Cultural concerns are based on the deep and distinct spiritual and cultural relationships that Indigenous women have with nature. Impacts on traditional activities, values, and land access/rights can interfere with cultural practices that are central to Indigenous women's identities.

Economic concerns include both matters related to protecting traditional economic activities and accessing the economic benefits from industrial projects. Including Indigenous women in impact assessment processes is vital to striking the right balance between preserving the right and capacity to engage in holistic traditional economic activities while equitably benefiting from industrial activities where development takes place.

Environmental concerns cover many aspects including biodiversity, water, climate change and country foods. The deep relationships Indigenous peoples have with nature create a dynamic in which adverse impacts on any environmental spheres will implicate the rights and interests of Indigenous peoples.

Appendix A of this report is a guidance document for impact assessment practitioners designed to assist them in applying the information contained in this report to the practice of impact assessment as it relates to Indigenous women. Appendix B of this report is an information guide to assist Indigenous women who wish to better understand impact assessment processes and opportunities for engagement.



ABOUT NWAC

The Native Women's Association of Canada (NWAC) is a National Indigenous Organization representing the political voice of Indigenous women, children, Two-Spirit, and gender diverse people in Canada, inclusive of First Nations on and off reserve, status and non-status, disenfranchised, Métis, and Inuit. An aggregate of twelve Indigenous women's organizations, NWAC was founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of Indigenous women within their respective communities and Canadian societies.

For over 45 years, NWAC has established strong and lasting governance structures, decision-making processes, financial policies and procedures, and networks to help achieve its overall mission and goals. Today, NWAC engages in national and international advocacy aimed at legislative and policy reforms that promote equality for Indigenous women, girls, Two-Spirit, and gender diverse people, including 2SLGBTQQIA people. Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the well-being of all Indigenous women, girls, and gender-diverse people as well as their families and communities.



METHODOLOGIES

This report is the result of academic and legal research and engagements with Indigenous women. On January 18th and 19th, 2020, NWAC hosted a Roundtable of Indigenous women from across Canada, all of whom have expertise in impact assessment and/or industrial impacts on Indigenous peoples and Indigenous women, children and gender diverse people. In preparation for this Roundtable, NWAC conducted research on the relevant issues and provided a background document to the participants in advance of the gathering.

The Roundtable participants shared their experiences and views on a wide range of issues related to impact assessment and industrial projects, including matters related to governance and self-determination, sexual violence, socio-economic impacts and opportunities, and environmental impacts. The participants provided NWAC with further resources to review in preparing this report. The background research, notes from the Roundtable, and subsequent sources identified by the participants all informed this report.

Prior to the finalizing of this report, the Roundtable participants were provided with an opportunity to review the draft document and provide further information and corrections.



LEGISLATIVE FRAMEWORK

Legislative History of Impact Assessment

The origins of impact assessment (or “environmental assessment” or “environmental impact assessment”) in Canada can be traced back to the Government of Canada’s inquiry into a proposed pipeline in the Mackenzie Valley in 1974. This inquiry was led by Justice Thomas Berger who released his final report (the “Berger Report”) in 1977, providing a template for impact assessment that remains influential today.¹

Impact assessment is a process of identifying the future consequences of a current or proposed physical action² and can be undertaken at three “scales”: project, strategic, and regional.³ The formal federal policy and legislative framework for impact assessment began with the 1984 *Environmental Assessment and Review Process Guideline Order*.⁴ This Order applied to proposals undertaken by federal departments, which were financed by the government of Canada, may have had environmental effects within federal jurisdiction, or were located on federal lands.⁵

Federal environmental assessment processes were legislated for the first time with the *Canadian Environmental Assessment Act*, which came into force in 1992 (CEAA, 1992).⁶ CEAA, 1992 applied to any proposed project where the federal government was a proponent or funder; required the federal government to issue a permit, license, or approval; or the project would require use or ownership of federal lands.⁷ Any project that fell within these categories would trigger an assessment.

CEAA, 1992 operated as a mechanism to, among other things, facilitate public participation in decision-making related to proposed resource development projects. The enactment of this legislation also coalesced with increasing legal recognition of Indigenous and treaty rights and the Canadian courts’ outlining of the government’s duty to consult with Indigenous peoples affected by proposed projects.⁸

¹ Gamble, D. J. (1978). The Berger inquiry: An impact assessment process. *Science*, 199, 946-952. doi: 10.1126/science.199.4332.946; O’Faircheallaigh, C. (1999). Making social impact assessment count: A negotiation-based approach to indigenous peoples. *Society & Natural Resources*, 12, 63-80. doi:10.1080/089419299279894.

² International Association of Impact Assessment, “About IAIA”, Online: IAIA <https://www.iaia.org/about.php>

³ Expert Panel Review of Environmental Assessment Processes, *Building Common Ground: A new Vision for Impact Assessment in Canada* (Ottawa: Environment and Climate Change Canada, 2017) <https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf> at 17 [Building Common Ground].

⁴ Ibid at 20.

⁵ Environmental Assessment and Review Process Guidelines Order, SOR/84-467 (22 June 1984) at s 6.

⁶ Canadian Environmental Assessment Act, SC 1992, c. 37 (2010-07-12 to 2012-07-05), [CEAA, 1992].

⁷ Ibid at s 5.

⁸ Manning, S., Nash, P., Levac, L., Stienstra, D., & Stinson, J. (2018). Strengthening impact assessments for Indigenous women. Retrieved from Canadian Research Institute for the Advancement of Women website: <http://fnn.criaw-icref.ca/images/userfiles/files/Strengthening%20impact%20assessments%20for%20Indigenous%20women.pdf>

There was, however, only a limited authority recognized under CEAA, 1992 for Indigenous governing bodies to undertake assessments. The participation of Indigenous governing bodies in assessment-related processes include circumstances where a band council is the proponent of a project to be carried out in whole or on part on reserve lands, provides financial assistance to the project, or takes other action for the purpose of enabling the project to be carried out.⁹ The scope of assessments under CEAA, 1992 was determined by the government¹⁰ and there was no legislated requirement under the Act to consider factors related to Indigeneity or gender.¹¹

A determination under CEAA, 1992 that a proposed project which was likely to cause unjustifiable significant adverse environmental effects would effectively prohibit any federal government authority from exercising a power that would permit the project to be carried out.¹²

The 2012 amendments to the *Canadian Environmental Assessment Act* (CEAA, 2012) replaced the assessment-triggering mechanisms with project designation through ministerial orders¹³ and regulations (the “Projects List”).¹⁴ The change from the triggering approach to the project list resulted in a sharp decline in the number of projects being subject to the Act. For instance, in the 2011-12 fiscal year alone, 2,807 projects underwent a screening process under CEAA, 1992. In contrast, only 19 assessments were conducted under CEAA, 2012 from the legislation’s coming into force until late 2016.¹⁵

The Expert Panel for the Review of Environmental Assessment Processes was established by then Minister of Environment and Climate Change, Catherine McKenna, in August 2016.¹⁶ The mandate of the Expert Panel was to consider and report on the purpose and goals of modern-day environmental assessment, in the context of the government’s policy of regaining public trust in environmental assessment processes.¹⁷

The Expert Panel’s Final Report included recommendations for sweeping changes to the impact assessment legislative framework. These recommendations included: project approval being contingent on a project’s contribution to sustainability (rather than justifiable significant adverse effects); as well as including Indigenous peoples in decision-making at all stages of impact assessment processes and improving impact assessment authorities’ knowledge of Indigenous peoples and their rights, history, and culture.¹⁸

Minister McKenna sponsored Bill C-69 in the House on 8 February 2018, introducing sweeping reforms to Canada’s legislative framework for impact assessment.¹⁹ After significant amendments at the House and Senate committee stages, the Bill received royal assent on 21 June 2019²⁰ and came into force on 29 August 2019.²¹

⁹ CEAA, 1992, *supra* note 6, at s 10.

¹⁰ *Ibid* at s 15.1(1).

¹¹ *Ibid* at s 16(1).

¹² *Ibid* at s 37.

¹³ Canadian Environmental Assessment Act, 2012, Sc 2012, c 19, s 52, at s 14 [CEAA, 2012].

¹⁴ *Ibid* at s 84(a).

¹⁵ Leahy, Derek, “Fixing Canada’s environmental assessments” TVO News (9 December 2016) Online: TVA News <https://www.tvo.org/article/fixing-canadas-environmental-assessments>.

¹⁶ Building Common Ground, *supra* note 3, at 2.

¹⁷ *Ibid* at Annex 1, p 108.

¹⁸ Building Common Ground, *supra* note 3, at 3.

¹⁹ LEGISinfo, House of Common Bill, C-69, 42nd Parl, 1st Sess <https://www.parl.ca/legisinfo/BillDetails.aspx?Language=E&billId=9630600>.

²⁰ LEGISinfo, House of Common Bill, C-69, 1st Sess, 42nd Parl, <https://www.parl.ca/legisinfo/BillDetails.aspx?Language=E&billId=9630600>.

²¹ Order Fixing August 28, 2019 as the Day on which the Act Comes into Force, PC 2019-1186, (2019) C Gaz II, Vol 153, No 17 (at 6076-6081).

Impact Assessment Act

Under the new *Impact Assessment Act* (IAA), several improvements to the participation of Indigenous peoples in the impact assessment processes are legislated. For example, the Act:

- ◇ Reaffirms the commitment of the Government of Canada to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);²²
- ◇ Includes impacts on Indigenous peoples' lands, culture, health, social or economic conditions in the prohibited activities of projects²³ (unless it is determined that no impact assessment is required²⁴);
- ◇ Requires the Minister to consider adverse impacts of a physical activity on the rights of Indigenous peoples – including Indigenous women – before making an order designating that physical activity as subject to the Act;²⁵
- ◇ Requires the Impact Assessment Agency to offer to consult with Indigenous groups at the early stages of the assessment process;²⁶
- ◇ Requires that any adverse effects of a project on the rights of Indigenous peoples and any comments received from Indigenous peoples be taken into account in deciding whether an assessment is necessary;²⁷
- ◇ Requires that impact assessments take into account impacts on Indigenous rights, knowledge, and culture; assessments and studies conducted by Indigenous governing bodies; and the intersection of sex and gender with other identity factors such as indigeneity;²⁸
- ◇ Requires that the assessment report must set out how the Agency took into account Indigenous knowledge in determining the effects that are likely to be caused by a proposed project;²⁹
- ◇ Requires the Minister to take into account impacts on Indigenous peoples in determining whether the adverse effects of the project are in the public interest;³⁰ and
- ◇ Requires regional and strategic impact assessments to take into account Indigenous knowledge, including the knowledge of Indigenous women.³¹

Several of these provisions are particularly relevant to Indigenous women including the requirement to consider the knowledge of Indigenous women before making certain ministerial decisions and the requirement that impact assessments take into account sex and gender with other identity factors.

While the changes to Canada's impact assessment legislative framework brought in under the IAA are contentious, there are several provisions that are clearly improvements for Indigenous women. If implemented properly, these changes will likely contribute to the reduction of adverse effects of industrial projects on Indigenous women and the more equitable distribution of positive impacts.

²² Impact Assessment Act, SC 2019, c 28, s 1 at Preamble [IAA].

²³ Ibid at s 7(1)(c) and (d).

²⁴ Ibid at s 7(3).

²⁵ Ibid at s 9(2).

²⁶ Ibid at s 12.

²⁷ Ibid at s 16.

²⁸ IAA, supra note 22, at s 22(1).

²⁹ Ibid at s 59(3).

³⁰ Ibid at s 63(d).

³¹ Ibid at s 97(2).

GBA+ AND CRGBA+

Gender-based analysis (GBA) was founded in tandem with second-wave feminism, which centered on reproductive rights, wage equality, and gender-based violence.³² GBA+ is an analytical process used to assess how diverse groups of women, men, and gender-diverse people may experience policies, programs and initiatives differently. The “+” acknowledges that GBA goes beyond biological (sex) and sociocultural (gender) differences to consider the many other identity factors that make us who we are (e.g. race, income, education, age, etc.). GBA+ helps us ask questions that allow us to recognize and move beyond our assumptions; identify potential impacts of policies, programs, and services on people’s lives; uncover intersectional power structures and dynamics; and find ways to address the varying needs of diverse populations in Canada.³³ In the context of impact assessment, GBA+ is an essential tool for identifying potential gendered harms and risks that may otherwise be overlooked.³⁴ The goal of applying GBA+ to impact assessment processes is to better understand the negative and positive effects that designated projects may have on diverse population groups, including Indigenous women.³⁵

While GBA+ has been effective in advancing women’s equality, it often fails to meaningfully address the political, economic, social, and cultural realities of Indigenous women and gender-diverse people. Responding to the shortcomings of mainstream GBA+, culturally relevant gender-based analysis plus (CRGBA+) considers the historical and current issues faced by Indigenous women and gender-diverse people, including the historical and ongoing impacts of colonization and intergenerational trauma. Ultimately, CRGBA+ must go beyond simply identifying project impacts on particular groups and work toward a better understanding of why certain groups experience project impacts differently, including factors such as unequal power dynamics and colonial relationships.³⁶

Applying a CRGBA+ lens is important in order to minimize the risk of perpetuating further marginalization, oppression and/or violence against Indigenous women and gender-diverse people. It is essential to consider the impacts of projects, programs, and policy, specifically as they pertain to First Nations, Métis and Inuit women and gender-diverse people. Incorporating a culturally relevant gender-based perspective into impact assessment is one way of minimizing the potential for harm to these groups.



³² Reading: The women’s movement. (n.d.). Retrieved from Lumen Learning website: <https://courses.lumenlearning.com/alamo-sociology/chapter/reading-the-womens-movement/>

³³ Department of Justice. (4 December 2019). Policy on gender-based analysis plus. Retrieved from Department of Justice website: <https://www.justice.gc.ca/eng/abt-apd/pgbap-pacsp.html>.

³⁴ United Nations (September 1995). Beijing declaration and platform for action: The fourth world conference on women. Retrieved from UN website: https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

³⁵ IAA, supra note 25, at s 22(1)(s).

³⁶ Walker, H., Reed, M. G., & Thiessen, B. (February 2019). Gender and diversity analysis in impact assessment. Retrieved from Research-Groups University of Saskatchewan website: <https://research-groups.usask.ca/reed/documents/CEAA%20Report.FINAL.%20Walker%20Reed%20Thiessen.%20Gender%20Diversity%20in%20IA.Feb%208%202019.pdf>.

2SLGBTQIA

NWAC recognizes that sexuality and gender are fluid and that one's gender and sexual identity is specific and personal to that individual. Prior to colonization, Indigenous communities across Turtle Island and Inuit Nunangat had their own definitions and understandings of these identities. Patriarchal and heteronormative values introduced to Indigenous communities by European settlers disrupted these systems which had given people the freedom and safety to live as their authentic selves. These European values were upheld and enforced through assimilation attempts such as residential schools, forced migration, the Sixties Scoop, and violence towards Indigenous women, girls and gender-diverse people. These systems of power erased a rich and proud history of Two-Spirit people in most Indigenous nations where there had been room for alternative genders and sexual identities beyond that of male/female gender binaries and heterosexual orientations.³⁷

Two-Spirit (2S) is a term that incorporates Indigenous views of gender and sexual diversity and encompasses sexual, gender, cultural and spiritual identities. It may be used among some Indigenous communities/peoples as an alternative or in addition to identifying as LGBTQ+, although not all LGBTQ+ Indigenous people consider themselves to be Two-Spirit (2S). Though suppressed through the process of colonization, Two-Spirited people may have specific roles, particularly within governance structures and with respect to transmitting distinct and highly valued cultural knowledge. These roles are specific to each individual community and may vary. Due to its cultural and spiritual context and significance, the term Two-Spirit should only be used for Indigenous people.

An essential component of CRGBA is remaining critically reflective of how societal sexuality and gender norms are operating in our everyday lives, including the work we do at NWAC. It is vital for us to remain an active participant in resisting the perpetration of these harmful colonialist ideals.



³⁷ Taylor, C. G., & Ristock, J. L. (2011). We are all treaty people: An anti-oppressive research ethics of solidarity with Indigenous LGBTQ people living with partner violence. In J. L. Ristock (Ed.), *Intimate partner violence in LGBTQ Lives* (pp. 309-328). Routledge.

Equal and Specific Rights of Indigenous Women

The United Nations General Assembly adopted UNDRIP on 13 September 2007.³⁸ Canada initially voted against the Declaration; however the Minister of Indigenous and Northern Affairs announced at the United Nations Permanent Forum on Indigenous Issues on 10 May 2016 that Canada is now a “full supporter of the Declaration without qualification” and asserted a unilateral undertaking of adopting and implementing the Declaration in accordance with the Canadian Constitution.³⁹

Although it is a non-binding instrument in international law, UNDRIP codifies at least some rights that are binding as customary principles of international law,⁴⁰ such as the cornerstone principle of the right of peoples to self-determination.⁴¹

All of the rights set out in the Declaration are equally guaranteed to men and women⁴² and the full implementation of the Declaration domestically further affirms the equal benefit and enjoyment of Indigenous rights by men and women via section 35(4) of the *Constitution Act, 1982*.⁴³ UNDRIP also sets out specific rights of Indigenous women with respect to economic opportunity⁴⁴ and protection from violence.⁴⁵

UNDRIP is a framework for reconciliation, the building of respectful relationships, and meaningful consultation with Indigenous peoples based on the principles of free, prior and informed consent (FPIC), which encompasses respect for the intellectual property rights of Indigenous peoples, including traditional knowledge, innovation, and traditional practices.⁴⁶ The Declaration also codifies the duty of states to consult and cooperate with Indigenous peoples in order to obtain their FPIC before approval of any projects affecting their lands, territories, or resources.⁴⁷

“We need to say: ‘No, Actually we are equal!’ that has to be brought to the forefront and we need to be ready to be upfront about it and the men will really see and deal with the issue then.”

-PARTICIPANT, INDIGENOUS WOMEN AND IMPACT ASSESSMENT ROUNDTABLE

³⁸ UNOHRC, “Declaration on the rights of indigenous peoples” <https://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>.

³⁹ INAC, “Speech delivered at the United Nations Permanent Forum on Indigenous Issues” (10 May 2016), New York <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>.

⁴⁰ Wiessner, Siegfried, “United Nations Declaration on the Rights of Indigenous Peoples” United Nations Audiovisual Library of International Law, (2009) at 5, https://legal.un.org/avl/pdf/ha/ga_61-295/ga_61-295_e.pdf.

⁴¹ See, for example, the common Article 1 of the International Covenants: UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, at 171; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, at 3.

⁴² UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, at Art 44 [UNDRIP].


⁴³ The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 35(4).

⁴⁴ UNDRIP, supra note 42 at Art 21.2.

⁴⁵ Ibid at Art 22.2.

⁴⁶ Croal, P., Tetreault, C., and members of the IAIA IP Section. (2012). Respecting Indigenous peoples and traditional knowledge. Special Publication Series No. 9. Retrieved from the International Association for Impact Assessment website: https://www.iaia.org/uploads/pdf/SP9_Indigenous_Peoples_Traditional_Knowledge.pdf [Croal et al., 2012]

⁴⁷ UNDRIP, supra note 42, at Art 32.2.



A holistic interpretation of UNDRIP clearly sets out the duty of states to consult and cooperate with Indigenous peoples to obtain their FPIC with respect to industrial projects in a manner that recognizes and respects the equal rights of men and women.

Article 21.2 of UNDRIP requires states to take effective and special measures to ensure the continuing improvement of the economic and social conditions of Indigenous women. In the context of industrial projects, impact assessment processes should ensure that the adverse and positive effects of proposed projects on the socio-economic conditions of Indigenous women are taken into account in order to ensure compliance with the Declaration. This requirement may be met by the proper implementation of section 22.1(s) of the IAA which mandates that impact assessments take into consideration the intersection of sex and gender with other identity factors.

The failure of the Senate to pass Bill C-262 – which would have recognized UNDRIP as a universal international human rights document with application in Canadian law and required that all the laws of Canada be consistent with the Declaration⁴⁸ – denies the Canadian legal framework of a valuable tool for the interpretation of the rights and duties with respect to Indigenous women under the IAA. The Government of Canada, however, committed in the Speech from the Throne for the first session of the 43rd Parliament to co-develop and introduce legislation to implement UNDRIP within the first year of the new mandate.⁴⁹

The enactment of an UNDRIP Bill will provide significant guidance with respect to understanding Indigenous rights, and the rights of Indigenous women in particular, as they relate to impact assessment processes in Canada.

Bill 41, the *Declaration on the Rights of Indigenous Peoples Act*, did receive royal assent at the British Columbia Legislative Assembly and came into force on 28 November 2019.⁵⁰ This Act affirms the application of UNDRIP to the laws of British Columbia⁵¹ and requires the provincial government to take all measures necessary to ensure the laws of the province are consistent with UNDRIP.⁵²

Given the important amendments to Canada's impact assessment legislative framework as they relate to gender and Indigeneity and the progress toward the implementation of UNDRIP domestically, there is good reason for optimism that the equal and specific rights of Indigenous women can be respected and advanced through modern impact assessment processes.

⁴⁸ Bill C-262: An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples" 42nd Parl, 1st Sess (As Passed by the House of Commons, 30 May 2018) <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-262/third-reading>.

⁴⁹ Governor General, "Moving Forward Together: Speech from the Throne" 43rd Parl, 1st Sess (5 December 2019), at 9.

⁵⁰ BC Leg Ass, "Progress of Bills" 4th Sess, 41st Parl (2019) <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/progress-of-bills>; BC Bill 41, Declaration on the Rights of Indigenous Peoples Act, 4t Sess, 41st Parl, at Cl 10 <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/progress-of-bills> [Bill 41].

⁵¹ Bill 41, supra note 50, at Cl 2.

⁵² Ibid at Cl 3.



THE KNOWLEDGE OF INDIGENOUS WOMEN

Indigenous knowledge can mean different things to different people and cultures, but it broadly refers to the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. For Indigenous peoples, this knowledge informs day-to-day decision-making and it is integral to all of the elements of their culture, including language, social interactions, spirituality and the use of resources.^{53 54} Indigenous ways of knowing are transmitted through first-hand observation and oral tradition and have ecological, social, and spiritual aspects.⁵⁵

Indigenous knowledge is taught and learned through ceremonies, dreams and visioning, fasting, story-telling, observation and reflection, doing, creating and interactions with the land.⁵⁶ It is deeply rooted in Indigenous peoples' histories and experiences but is also dynamic, adapting to ecological, technical, and socio-economic changes.⁵⁷

Indigenous women's physical, spiritual, and cultural relationship with the environment and its resources creates an intimacy and invaluable knowledge base for program and policy development. Although there are differences across communities, the relationship between Indigenous women and the land is often characterized by a sense of responsibility. "Responsibility to the land and non-human entities means ensuring they are healthy and viable for future generations. Such responsibilities can range from acting as keepers and teachers of community-based ecological knowledge, to initiating action to protect the land and environment when it is threatened."⁵⁸

⁵³ Croal et al., 2012.

⁵⁴ UNESCO. (2017). Local and Indigenous knowledge systems. Retrieved from UNESCO website: <http://www.unesco.org/new/en/natural-sciences/priority-areas/links/related-information/what-is-local-and-indigenous-knowledge>.

⁵⁵ NWAC, National Roundtable on Impact Assessment (Ottawa: January 18-19, 2020), pg 28 [Roundtable Notes].

⁵⁶ Indigenous Corporate Training, Inc. (6 April 2018). What does Indigenous knowledge mean? A compilation of attributes. Retrieved from <https://www.ictinc.ca/blog/what-does-indigenous-knowledge-mean>.

⁵⁷ Dene Cultural Institute. (1995). Traditional knowledge and environmental assessment. Submission to BHP Diamond Mine Environmental Assessment, Yellowknife, Canada.

⁵⁸ NWAC, "Indigenous Gender-based Analysis for Informing the Canadian Minerals and Metals Plan" (September 2018) https://www.minescanada.ca/sites/default/files/indigenous-gender-based-analysis-cmmp_.pdf at 11 [NWAC, Minerals and Metals]

Improvements in education on Indigenous worldviews and knowledge can help ameliorate cooperation and understanding between traditional knowledge holders and technical experts.⁵⁹ Such improvements in education ought to emerge from direct engagement with Indigenous peoples on their lands.⁶⁰

The inclusion of traditional knowledge in impact assessment processes can provide an important source of baseline data.⁶¹ New requirements under the IAA that mandate the consideration of the knowledge of Indigenous peoples, and Indigenous women in particular, will likely have positive effects on the exchange of this type of information; however, without access to resources, Indigenous women may lack the capacity to prove the legitimate basis of concerns and positions on proposed projects, particularly in the context of processes that prioritize scientific knowledge over traditional knowledge or lived experience.⁶²

Indigenous and scientific knowledge are not in conflict with each other when they are employed appropriately; rather, these two ways of knowing can be complementary and provide more thorough and broader understandings. Indigenous ways of knowing often, like the scientific process, encourage investigation and experiment in search of answers to medicinal or socio-economic questions. The Secwepemc peoples, for example, facilitate these ways of knowing by bringing Elders together with children to inspire curiosity and the thirst for knowledge.⁶³

Receiving and Using the Knowledge of Indigenous Women

The knowledge that Indigenous women are responsible for carrying and conveying to the next generation is viewed as sacred and their responsibilities as stewards of this information – which has developed and been passed on over millennia – are taken very seriously. Impact assessment processes that respect the rights of Indigenous women to participate can be opportunities for Indigenous women to share and even strengthen their knowledge, because these discussions often lead to more learning about the land as well as sharing stories and songs among Indigenous people as communities come together to discuss proposed projects.⁶⁴

In 2013, the United Nations Framework Convention on Climate Change (UNFCCC) released a technical paper on best practices for the use of Indigenous knowledge for climate change adaptation and the application of gender-sensitive approaches (UNFCCC Technical Paper). While this paper is specific to climate change adaptation, it provides useful recommendations for the full engagement of Indigenous knowledge holders in the exchange of knowledge. This includes eight basic requirements for engagement:

- (a) Recognizing Indigenous peoples as knowledge holders;
- (b) Establishing mutual trust and respect;
- (c) Involving Indigenous knowledge in all assessment phases, from conception through to outputs;
- (d) Recognizing resource owners/users and knowledge holders;
- (e) Involving appropriate local intermediaries and leaders;
- (f) Ethical approaches;
- (g) Free, prior, and informed consent; and
- (h) Benefit-sharing.⁶⁵

⁵⁹ Roundtable Notes, supra note 55, at 9.

⁶⁰ Ibid at 10.

⁶¹ Ibid at 9 and 27.

⁶² Roundtable Notes, supra note 55, at 5.

⁶³ Clark, N. G. (2018). *Cu7 me7 q'wele'wu-kt.* "Come on, let's go berry-picking". Revival of Secwepemc wellness approaches for healing child and youth experiences of violence (unpublished doctoral dissertation), Simon Fraser University, Burnaby, BC, Canada, at pg. 17.

⁶⁴ Roundtable Notes, supra note 55, at 4.

⁶⁵ UNFCCC, Technical Paper: Best practices and available tools for the use of Indigenous and traditional knowledge and practices for adaptation, and the application of gender-sensitive approaches and tools for understanding and assessing impacts, vulnerability and adaptation to climate change, FCCC/TP/2013/11 (31 October 2013), at para 63 [UNFCCC, Best Practices].

Capacity funding that supports the protection and sharing of Indigenous women’s knowledge is also necessary to level the playing field for Western and Indigenous ways of knowing in impact assessment processes.⁶⁶

These basic requirements for engagement are applicable to impact assessment processes and may help facilitate the respectful and effective exchange of knowledge with Indigenous women. Ensuring that Indigenous women’s free, prior and informed consent is obtained before their knowledge is used in the impact assessment processes and decision-making will ensure that knowledge holders, practitioners, and decision-makers all understand and agree how this knowledge will be collected, used, and protected.

Some participants at the Indigenous Women and Impact Assessment Roundtable expressed support for the gathering and archiving of Indigenous knowledge for use in impact assessment processes, as this knowledge provides important information for government and industry.⁶⁷ Before such catalogued information may be made public or otherwise disclosed, the authority collecting the Indigenous knowledge under the IAA must determine first, whether the information provided is confidential, and second, whether the knowledge holder has provided written consent that the information may be disclosed.⁶⁸ If such consent has not been given, this information may only be disclosed under limited circumstances, such as its existing public availability and requirements for procedural fairness and natural justice in legal proceedings.⁶⁹

Impact assessment processes provide Indigenous women with opportunities to share their knowledge and perspectives in order to enable proponents to better plan their activities and to help decision-makers make better decisions. However, ensuring that this information is properly received, used and considered requires that Indigenous women are appropriately engaged.

⁶⁶ Roundtable Notes, *supra* note 55, at 10.

⁶⁷ Roundtable Notes, *supra* note 55, at 43.

⁶⁸ IAA, *supra* note 22, at s 119(1).

⁶⁹ *Ibid* at s 119(2).

IMPACT ASSESSMENT AND INDIGENOUS GENDER-BASED CONCERNS

Governance and Decision-Making

The right of Indigenous peoples to self-determination necessarily encompasses respect for their jurisdiction and authority over their lands, territories, and resources, including decision-making with respect to impacts on those assets. Indigenous governing bodies (IGBs)⁷⁰ are included within the IAA's definition of "jurisdiction" and the Act requires the promotion of cooperation and coordinated action with Indigenous governing bodies with respect to impact assessments.⁷¹ The legislative recognition of IGBs' authority to undertake impact assessments⁷² is a measure that recognizes the right of Indigenous peoples to participate in the governance of industrial projects on their lands and territories.

The MMIWG National Inquiry has called on the Government of Canada to implement UNDRIP, specifically including the recognition, protection and support of Indigenous self-governance and self-determination.⁷³ The Principles Respecting the Government of Canada's Relationship with Indigenous Peoples recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.⁷⁴

The lack of women's representation on Indigenous Governing Bodies, however, has a deleterious effect on their participation in impact assessment processes and the consideration paid to issues important to Indigenous women in these processes.⁷⁵

Indigenous women continue to be shut out of impact benefit agreements (IBAs) and there is a need for a national discussion on ensuring their full participation in these types of negotiations.⁷⁶ The MMIWG National Inquiry has called on all parties involved in the negotiation of IBAs to include provisions related to the safety and security of Indigenous women, girls, and gender diverse persons as well as their equitable benefit from industrial projects.⁷⁷

"The concept of native self-determination must be understood in the context of native claims. When the Dene people refer to themselves as a nation, they are not renouncing Canada or confederation. Rather they are proclaiming that they are a distinct people, who share a common historical experience, a common set of values, and a common worldview. They want their children and their children's children to be secure in that same knowledge of who they are and where they come from."

-THOMAS BERGER, J., BERGER REPORT, PAGE 172

⁷⁰ IAA, supra note 22, at s 2.

⁷¹ Ibid at s 6(1)(e).

⁷² Ibid at ss 21(b) and 31(1) for example.

⁷³ National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1b, at Call to Action 1.2.v, p 177 https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf (ISBN: 978-0-660-30489-2) [MMIWG].

⁷⁴ Canada, Department of Justice, Principles Respecting the Government of Canada's Relationship with Indigenous Peoples (2018), at Principle No 4 <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>.

⁷⁵ Roundtable Notes, supra note 55, at 11.

⁷⁶ Ibid at 35.

⁷⁷ MMIWG, supra note 73, at Call to Action No. 13.3, p 196.

When engaging in consultation processes, Indigenous women will primarily put the needs of the community first.⁷⁸ This is one of the many reasons that it is vital that their voices are meaningfully heard in impact assessment processes as well as in provincial and national discussions on resource development.⁷⁹ Yet, governments and proponents tend to engage with the men in Indigenous communities, excluding the perspectives of women and youth. This can be addressed by meeting separately with women and youth in culturally and gender-appropriate ways⁸⁰ and by prioritizing such meetings in their engagement efforts with Indigenous communities.⁸¹

The absence of any accountability mechanism where IBAs fail to adequately address women's concerns has been a source of frustration among Indigenous women.⁸² When engaging with Indigenous peoples in the context of benefit sharing agreements, proponents should be aware of the risk of underrepresentation of Indigenous women and take measures to ensure that any agreements are gender-sensitive and appropriate. This may be achieved by meeting directly and perhaps separately with Indigenous women and asking questions specifically about gender-based concerns, including those set out in this report.

Proponents should also engage with Indigenous women's organizations to ensure their proposed projects and relationships with Indigenous peoples respect the equal and specific rights of Indigenous women, children and 2SLGBTQIA people. The British Columbia Indigenous Women's Council, for example, works to bring different government departments together to talk about priorities of Indigenous women to facilitate coherence in government policy with respect to Indigenous rights.⁸³ These types of services could enhance coherence in corporate policies and relations as well as in industry standards.

Some Indigenous women want industry to be their allies, to meet with them and listen to their concerns, to work collectively with them to address the issues and to share how industry can help in healing processes.⁸⁴ Moving forward, Indigenous women need allies who are educated about issues affecting them because their work to protect Indigenous rights and lands takes them away from their children and some feel they cannot do it all on their own.⁸⁵

While there is a significant diversity of opinions on particular projects and industries between and within Indigenous communities, some Indigenous women are supportive of new, closer relationships with project proponents that reflect the spirit of reciprocity, shifting from impact benefit agreements to partnerships and revenue sharing arrangements.⁸⁶

The historical context for many Indigenous peoples with respect to government decision-making for industrial projects is one of widespread and profound harm.⁸⁷ Past experiences with adverse project impacts and bad faith engagements have caused a loss of trust in these processes.⁸⁸

The modernized framework for impact assessment under the IAA presents an important opportunity to correct failures in decision-making that contribute to the disproportionate and unjust distribution of benefits and burdens associated with natural resource projects. Consultation processes that meaningfully include Indigenous women are bound to produce better decisions for everyone.

⁷⁸ Roundtable Notes, supra note 55, at 4 and 15.

⁷⁹ Ibid at 8.

⁸⁰ Roundtable Notes, supra note 55, at 41.

⁸¹ Ibid at 18.

⁸² Ibid at 5.

⁸³ Ibid at 28.

⁸⁴ Ibid at 28.

⁸⁵ Ibid at 35.

⁸⁶ Ibid at 41.

⁸⁷ Amnesty International, "Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada" (2016) at 18 <https://www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL%20web.pdf> [Out of Sight, Out of Mind].

⁸⁸ Roundtable Notes, supra note 55, at 5.

The Duty to Consult

Governments may exercise regulatory authority that affects how Indigenous rights are exercised so long as such regulations are consistent with the rights of Indigenous peoples guaranteed under the Constitution⁸⁹ and the objectives of the legislative or regulatory mechanisms are obtained in a manner that upholds the honour of the Crown.⁹⁰ The duty to consult arising from the honour of the Crown varies in the circumstances, from a minimum duty to discuss important decisions to the requirement to obtain full consent on very serious issues.⁹¹ Though the requirement that the Crown must act honourably in all its dealings with Indigenous peoples (the “honour of the Crown”) gives rise to different duties in different circumstances,⁹² in all instances, the Crown must act in good faith to engage in meaningful consultation appropriate in the circumstances.⁹³

The purpose of the consultation and accommodation process is to reconcile competing societal interests with the rights of Indigenous peoples, not to arrive at an ultimate agreement on a particular decision.⁹⁴ The reconciling of competing societal interests should not be interpreted as a limitation on the right of Indigenous peoples to use their lands only in accordance with traditional activities; rather, Indigenous peoples may use their lands for a broad variety of purposes, including meeting the present-day needs of their communities.⁹⁵ The examination of likely impacts of proposed industrial projects on Indigenous rights and lands, therefore, ought not to be limited to effects on traditional practices and customs, but should consider all potential impacts.

The duty of good faith in consultation processes applies both to the Crown and Indigenous peoples⁹⁶ and failure to engage in the consultation process in good faith can amount to an abuse of process on the part of Indigenous peoples,⁹⁷ or the quashing of administrative decisions on judicial review taken by the government.⁹⁸

The Crown must fulfill its fiduciary duty to Indigenous peoples through good faith engagements in consultations that recognize the constitutionally protected rights of Indigenous peoples and by dealing with the relevant resources in a manner that benefits the affected Indigenous peoples. The measures required to meet the duty to consult lie along a spectrum. At one end, where the claim to title is weak or the potential for infringement is minor, the duty may be easily satisfied through simply giving notice, disclosing information, and discussing issues. At the other end of the spectrum, where there is a strong prima facie case for the claim to title and the potential infringement of the relevant rights and risk of non-compensable damages is high, deep consultation is required.⁹⁹

Some participants at the Indigenous Women and Impact Assessment Roundtable expressed concern that consultations are sometimes, or often, undertaken insincerely or in ways that are inconsistent with Indigenous standards.¹⁰⁰ From Indigenous perspectives, consultation is about accountability, inclusiveness, or wellness that is undertaken in a respectful, receptive, and valued manner and there are views that this is not how consultation takes place in impact assessment processes.¹⁰¹

Other Roundtable participants raised concerns that consultations can be a form of “trade-off negotiation”, in which Indigenous communities are put in positions where they feel they have to decide between preserving their nations’ natural heritage for their children and future generations or accessing economic benefits.¹⁰²

⁸⁹ R v Sparrow, [1990] 1 SCR 1075 at 1101.

⁹⁰ Ibid at 1078.

⁹¹ Haida Nation v British Columbia (Minister of Forests), 2004 SCC 73, at 24 [Haida Nation].

⁹² Ibid at 17-18

⁹³ Ibid at 41.

⁹⁴ Ibid at 49 and 50.

⁹⁵ Delgamuukw v British Columbia, [1997] 3 SCR 1010, at para 121.

⁹⁶ Behn v Moulton Contracting Ltd, 2013 SCC 26 at 29.

⁹⁷ Ibid, at 42.

⁹⁸ Haida Nation, supra note 91, at 52 and 53.

⁹⁹ Ibid at 43 and 44

¹⁰⁰ Roundtable Notes, supra note 55, at 5.

¹⁰¹ Ibid at 5.

¹⁰² Ibid at 5.

Indigenous peoples often define words that are central to industrial projects differently from non-Indigenous peoples. For example, “consultation,” “land,” “economy,” and “economic development” may take on different meanings for First Nations, Métis, and Inuit communities than for industry and government representatives.¹⁰³

These types of issues with common and technical language can have major impacts on the success of communication between proponents, impact assessment practitioners generally and Indigenous peoples.¹⁰⁴ The use of technical jargon is a common challenge for Indigenous communities in the consultation process, creating a need for such terminology to be explained to community members prior to impact assessment processes.¹⁰⁵

While it is important to provide information materials in various degrees of language accessibility, it is also important to avoid conflating an absence of academic sophistication with an absence of intelligence or capacity, as many Indigenous women who are not formally educated possess a great deal of cultural and ecological sophistication.¹⁰⁶

Engagement with Indigenous women in impact assessment processes should endeavor to understand the values and priorities of affected communities and should include interactive discussions in which research, technology, and Indigenous knowledge are shared in safe spaces.¹⁰⁷ These discussions should embrace Indigenous traditions of coming together physically to look each other in the eye and listen to the other.¹⁰⁸

“Silence is not consent.”

- PARTICIPANT, INDIGENOUS WOMEN AND IMPACT ASSESSMENT ROUNDTABLE



¹⁰³ Ibid at 17.

¹⁰⁴ Roundtable Notes, supra note 55, at 8 and 41.

¹⁰⁵ Ibid at 6.

¹⁰⁶ Ibid at 37.

¹⁰⁷ Ibid at 9.

¹⁰⁸ Ibid at 9.

Impact Assessment practitioners should familiarize themselves with the cultural calendars of the communities with which they will engage because seasonal and festive events can have significant effects on community members' availability to participate in engagement processes.¹⁰⁹ In addition to temporal considerations, practitioners should also consider the appropriateness of the engagement venue, such as capacity¹¹⁰, safety, and cultural appropriateness.

By building relationships and learning about the cultures, traditions, and knowledge of Indigenous women, governments and industry can avoid common pitfalls and miscommunications. For example, it is common for Indigenous women participating in consultation and engagement sessions to refrain from speaking for an extended period. Often, participants will first sit and listen to the information being presented and take time to discuss the matters with their family before offering responses. Proponents and governments should take particular care not to confuse participants' reluctance to provide immediate thoughts and opinions as a form of passive consent.¹¹¹

Engagement processes with Indigenous women should avoid "sales pitch" approaches¹¹² and should, instead, focus on genuine and sincere dialogue that takes into account potential needs for extended timelines¹¹³ for discussions and that ultimately ensure all stakeholders fully understand each other's concerns and perspectives. This understanding will often require proponents and impact assessment practitioners to be receptive to knowledge about the impacts of colonization, including residential schools.¹¹⁴

Free, Prior and Informed Consent (FPIC)

With growing recognition of Indigenous rights as codified in UNDRIP, the requirement of obtaining the consent of affected Indigenous peoples may be evolving.

The right to self-determination, set out in the common articles of the International Covenants and UNDRIP, encompasses the right of peoples (not just "nations") to freely determine their political status and freely pursue their economic, social, and cultural development. The economic rights encompassed within the right to self-determination are addressed further in Article 32.2 of UNDRIP, which requires consultation with, and FPIC of, Indigenous peoples prior to the approval of projects that may affect their lands or other resources.¹¹⁵

While UNDRIP is a non-binding instrument of international law, the preamble of the Declaration recalls the fundamental importance of the right to self-determination of all peoples recognized in several cornerstone instruments of binding international human rights law, including the Charter of the United Nations and the common Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.¹¹⁶

¹⁰⁹ Ibid at 36.

¹¹⁰ Ibid at 36.

¹¹¹ Ibid at 5.

¹¹² Ibid at 38.

¹¹³ Ibid at 38.

¹¹⁴ Ibid at 38.

¹¹⁵ UNDRIP, supra note 42, at Art 32.2.

¹¹⁶ Ibid, at preamble.



FPIC is a human rights norm grounded in the rights to self-determination and to be free from racial discrimination as set out in the International Covenants and the International Convention on the Elimination of All Forms of Racial Discrimination.¹¹⁷ UNDRIP has three major rationales for FPIC: First, restoring control over lands and resources; second, restoring cultural integrity, pride and self-esteem; and third, redressing power imbalances between Indigenous peoples and states, with a view to forging new partnerships based on rights and mutual respect.¹¹⁸

International human rights law informs the contextual approach to statutory interpretation in Canada¹¹⁹ and, in the absence of conflicting legislation, prohibitive rules of customary international law are incorporated into Canadian domestic law through the doctrine of adoption.¹²⁰

This duty under international law to obtain FPIC may be distinguishable from the duty to consult and accommodate pursuant to the honour of the Crown. While both duties are an expression of the procedural duty to consult in good faith, the substantive goalposts of each principle may vary. For instance, while the honour of the Crown may require, only in certain circumstances, that the Crown obtain the consent of affected Indigenous peoples before taking an action which may affect them, the duty to obtain FPIC as codified under UNDRIP may require obtaining consent in all decision-making affecting the rights of Indigenous peoples.

The duty to consult and the duty to obtain FPIC are both procedural rights, each of which can arguably be interpreted to provide a “veto” power to either federal or provincial governments or Indigenous peoples. Chief Justice McLachlin clarifies in *Haida Nation* that the duty to consult on land use pending settlement of land claims does not amount to a veto.¹²¹ She further reiterated in *Ktunaxa Nation v BC* that *Haida Nation* makes clear that, with respect to unsatisfied land claimants, section 35 of the Constitution does not provide a veto over development.¹²² There are also strong views by some Indigenous groups that interpreting consent as a veto is incoherent¹²³ and grounded more in political rhetoric than legal principle.¹²⁴

“We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.”

-TRC CALL TO ACTION NO. 43

¹¹⁷ Free, prior and informed consent: a human rights-based approach, A/HRC/39/62, UNHRC, 10-28 September 2018, at paras 3 and 7 [A/HRC/39/62].

¹¹⁸ *Ibid* at para 11.

¹¹⁹ *Baker v Canada* (Minister of Citizenship and Immigration), [1999] 2 SCR 817, at 70.

¹²⁰ *R v Hape*, 2007 SCC 26, at 39.

¹²¹ *Haida Nation*, *supra* note 9], at para 48

¹²² *Ktunaxa Nation v. British Columbia* (Forests, Lands and Natural Resource Operations), 2017 SCC 54 (CanLII) at para 23, [2017] 2 SCR 386, <http://canlii.ca/t/hmtxn>.

¹²³ Kwulasultun, Douglas White III, “consent” Union of BC Indian Chiefs (21 October 2019) at 2 [UBCIC “Consent”].

¹²⁴ Danesh, Roshan, and Robert McPhee. 2019. Operationalizing Indigenous Consent through Land-Use Planning. IRPP Insight 29. Montreal: Institute for Research on Public Policy, at 7 [Operationalizing Consent].

“The Government of Canada recognizes that meaningful engagement with Indigenous Peoples aims to secure their free, prior and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.”

- PRINCIPLES RESPECTING THE GOVERNMENT OF CANADA’S RELATIONSHIP WITH INDIGENOUS PEOPLES, NO. 6

While it certainly is incoherent to conflate the substantive right of a veto with the procedural rights under FPIC, the issue of unilateral decision-making authority is an underlying concern for the differently interested parties. The current framework under which federal and provincial governments can make approval decisions if they satisfy the duty to consult and accommodate adversely implicate the right of Indigenous peoples to self-determination. Inversely, full implementation of UNDRIP into Canada’s domestic law necessarily includes recognition of the Indigenous right to give or withhold consent to projects, which can impact federal and provincial governments’ decision-making authority (as it relates to impacts on Indigenous lands and resources). But the characterization of FPIC as a veto is very likely an inaccurate interpretation of the right. Rather, it is likely better characterized as a procedural right. Specifically, it has been characterized as a right governing the relationship between Indigenous and non-Indigenous governments.¹²⁵

These are issues related to decision-making authority and relationships between governments, not veto rights. The word “veto” signifies an unimpeded right or an absolute power without balancing other rights and this is inconsistent with the intent of UNDRIP which comprehensively balances various rights.¹²⁶

Another flaw in the argument that consent constitutes veto is the distribution of decision-making authority between Indigenous governing bodies and federal and provincial jurisdictions.¹²⁷ Consent is properly understood as “an expression of Indigenous self-determination and of the need to reconcile Indigenous sovereignty with assumed Crown sovereignty”.¹²⁸

The conundrum presented by the false dichotomy of preserving non-Indigenous government decision-making powers for industrial projects or granting an Indigenous “veto” may be addressed by properly clarifying the distinction between consent and veto. The veto myth can be further unraveled by clearly identifying the jurisdictional spheres of Indigenous governments in the context of reconciliation and consent-based decision-making, in which distinct governments and jurisdictions use cooperative structures and mechanisms where they both have decisions that must be made.¹²⁹ With the proper delineation of Crown and Indigenous decision-making authority, the myth of the FPIC veto falls naturally away.

The procedural nature of the right to give or withhold FPIC is evidenced in the three indivisible, interrelated, and cumulative constituent parts of the right: First, the right to be consulted; second, the right to participate; and third, the right to lands, territories and resources.¹³⁰ The rights to be consulted and to participate in the processes are necessary procedural component parts of the substantive right to self-determination related to lands, territories and resources.

¹²⁵ Operationalizing Consent, supra note 124, at 9.

¹²⁶ UBCIC “Consent”, supra note 123, at 31.

¹²⁷ Ibid at 32.

¹²⁸ Ibid at 44.

¹²⁹ Ibid at 58.

¹³⁰ A/HRC/39/62, supra note 117, at para 14.

On this basis, it is clear that UNDRIP does not “envison a single moment or action, but a process of dialogue and negotiation over the course of a project, from planning to implementation and follow-up”.¹³¹ As governments move forward with nation-to-nation relationships that conform with UNDRIP and FPIC, work must be done to ameliorate or develop dispute resolution mechanisms that govern how two or more sovereigns will address decision-making that includes matters within both or all of their spheres.¹³²

The process for obtaining FPIC from Indigenous communities will not be the same for all communities¹³³ and practitioners should ensure that they engage early on in discussions with Indigenous peoples about what that process looks like and what consent means to them.

In all circumstances, however, FPIC, by definition, means consent that is granted by informed peoples and without duress. Ensuring that inappropriate pressures are not applied to communities in the process of obtaining consent may, in itself, require providing capacity-building resources to ensure the community and community members have access to information and expertise related to the project and its impacts.¹³⁴ FPIC also requires that consent is granted in advance of any decisions affecting Indigenous rights and, therefore, requires sufficient time for the community and its members to review and discuss the relevant information.¹³⁵

The United Nations Human Rights Council notes that the process of obtaining consent should respect the following principles respecting the “free” aspect of FPIC: First, there must be no duress; second, the consultations must be undertaken in good faith by the parties; third, Indigenous peoples should be represented in accordance with their own laws, customs and protocols, taking into consideration gender representation, by self-determined institutions and leaders; fourth, Indigenous peoples should be able to guide and direct the consultation process; and fifth, Indigenous peoples should be able to contribute to deciding on consultation methods, timelines, locations, and evaluations.¹³⁶

“Indeed, patterns are already emerging where consent is much talked about, debated, demanded, and defined, but little active and tangible work is taking place to advance its practical implementation.”

*-DOUGLA WHITE III
KWULASULTUN, “CONSENT”
21 OCTOBER 2019, PG 43*

¹³¹ Ibid at para 15.

¹³² Operationalizing Consent, supra note 124, at 10.

¹³³ Roundtable Notes, supra note 55, at 39.

¹³⁴ Ibid at 40.

¹³⁵ Ibid at pg 40.

¹³⁶ A/HRC/39/62, supra note 117, at para 20.

The Council also notes that the “prior” aspect of FPIC should entail involving Indigenous peoples as early as possible in the conceptualization and design phases of projects and providing the time necessary for Indigenous peoples to absorb, understand and analyze the relevant information.¹³⁷ And finally, the Council notes that the “informed” component of FPIC requires that the information made available should be sufficient, objective, accurate, clear and comprehensible, taking into account language and culturally-appropriate procedures. Additionally, adequate resources and capacity should be provided for the exercise of decision-making related to the project in a manner that does not compromise independence.¹³⁸

Where consent to a project is given, it should be consistent with the laws, customs, and protocols of the Indigenous peoples giving consent and should be recorded in a written instrument negotiated by the parties.¹³⁹

Consent-based decision-making models can fall into three general categories: First, exclusive decision-making authority by one jurisdiction; second, appointment of a decision-maker by both jurisdictions; and third, joint decision-making with agreed-upon conflict resolution mechanisms.¹⁴⁰ In all three categories, proponents who are successful in obtaining consent of the affected Indigenous peoples will be far more successful in ultimately obtaining the decisions they seek.

Projects that will or may impact unceded lands face particular risks associated with regulatory uncertainty because of the potential for changing legal duties with respect to the establishment of Aboriginal title. For example, a project approval may need to be canceled if the project was approved prior to the establishment of Aboriginal title and such title is subsequently established.¹⁴¹

While the duty to consult rests with the Crown,¹⁴² a proponent may play a role in the consultation process and any failure on the part of that proponent to satisfy delegated elements of the duty to consult would be the responsibility of the Crown.¹⁴³ Practically, this means that achieving Indigenous consent is the wisest course of action for proponents.¹⁴⁴ Industry would be well-served by adopting approaches where Indigenous consent is pursued and confirmed prior to major regulatory processes.¹⁴⁵ Where such consent is possible, it may be best achieved through long-term planning processes that include the joint development and ownership over such processes, such as land use planning processes.¹⁴⁶

¹³⁷ Ibid at para 21.

¹³⁸ Ibid at para 22.

¹³⁹ Ibid at para 30.

¹⁴⁰ Operationalizing Consent, supra note 124, at 20.

¹⁴¹ Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at 92.

¹⁴² Haida Nation, supra note 91, at 53.

¹⁴³ Taseko Mines Limited v. Canada (Environment), 2017 FC 1100 (CanLII), <http://canlii.ca/t/hp4jc> at 99.

¹⁴⁴ UBCIC “Consent”, supra note 123, at 40-41.

¹⁴⁵ UBCIC “Consent”, supra note 123, at 66.

¹⁴⁶ Operationalizing Consent, supra note 124, at 17.

Early meaningful engagement can enable proponents to determine whether and under what circumstances a community is prepared to give their consent to a project. Pushing forward with unacceptable projects is likely to create unnecessary costs for proponents, face significant approval challenges and undermine reconciliation. Participants at the Indigenous Women and Impact Assessment Roundtable noted that the failure on the part of governments and proponents to accept the refusal of Indigenous peoples to consent to projects on their lands, where the customs and knowledge of the community establish that the proposed project is not compatible with Indigenous rights, is an ongoing source of frustration.¹⁴⁷

Health and Safety

Impact assessment practitioners ought to be sensitive to the historical and ongoing experiences of Indigenous communities and community members with colonization. When engaging a community in the impact assessment process, it is important to understand that the community may already be coping with other traumas, such as the impacts of residential schools.¹⁴⁸ When engaging specifically with Indigenous women in impact assessment processes, it is important to understand that, because of the disproportionate distribution of adverse industrial impacts on health and well-being based on sex and indigeneity, they are more likely to raise these types of concerns.¹⁴⁹

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) calls upon resource extraction and development industries and governments to anticipate and recognize the increased demands industrial projects put on social infrastructure, such as policing, social services, and health services.¹⁵⁰ It also calls upon all resource extraction and development industries to consider the safety and security of Indigenous women, girls and gender diverse people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring.¹⁵¹

“Our community is sick with what Colonialism has done to us.”

-PARTICIPANT, INDIGENOUS WOMEN AND IMPACT ASSESSMENT ROUNDTABLE



¹⁴⁷ Roundtable Notes, supra note 55, at 5.

¹⁴⁸ Ibid at 7.

¹⁴⁹ Ibid at 4.

¹⁵⁰ MMIWG, supra note 73, at Call for Justice, 13.5.

¹⁵¹ MMIWG, supra note 73, at Call for Justice 13.1.

Sexual Violence

Indigenous women and girls suffer higher rates of violent crimes because of a synergy of social, economic and historical factors, including sexism and racism.¹⁵² While impact assessment processes cannot solve the epidemic of violence against Indigenous women and girls in Canada, they are a good place to start.¹⁵³ Specifically, the inclusion of Indigenous women in impact assessment processes and decision-making must be augmented to ensure these issues, their underlying causes, and potential remedies are properly considered and implemented.

Increases in violence toward Indigenous women in the context of resource extraction projects¹⁵⁴ often take the form of gendered, sexualized, and racialized harassment and violence in the workplace. The intensive work schedules in extraction industries can also exacerbate gender-based family and sexual violence in Indigenous communities.¹⁵⁵

Most industrial project workers are young males from outside the region who work for prolonged periods away from home and under difficult conditions. This mass influx of mostly male workers who work on project sites and who have high levels of disposable income have been linked to increases in sex work among Indigenous women¹⁵⁶ as well as increased rates of sexually transmitted infections and higher rates of teen pregnancies among Indigenous girls in nearby communities.¹⁵⁷ There are several factors that contribute to this increased rate of sexual violence in proximity to work camps, including the fly-in-fly-out model, disconnection from local communities, substance abuse, and racist and sexist views toward Indigenous women that create an atmosphere sometimes referred to as “rigger culture”.¹⁵⁸

¹⁵² Out of Sight, Out of Mind, supra note 87, at 51.

¹⁵³ Roundtable Notes, supra note 55, at 13.

¹⁵⁴ Perkins, P. E. (2017). Canadian Indigenous female leadership and political agency on climate change. In M. G. Cohen (Ed.), *Climate change and gender in rich countries: Work, public policy and action* (pp. 282-296). New York: Routledge. [Perkins, 2017]

¹⁵⁵ Nightingale, E., Czyzewski, K., Tester, F., & Aaruaq, N. (2017). The effects of resource extraction on Inuit women and their families: evidence from Canada. *Gender & Development*, 25(3), 367-385 [Nightingale et al., 2017].

¹⁵⁶ Joly, T. L., & Westman, C. N. (2017). Taking research off the shelf: Impacts, benefits, and participatory processes around the oil sands industry in northern Alberta. Saskatoon: University of Saskatchewan; Perkins, 2017. [Joly & Westman, 2017]

¹⁵⁷ Buell, M. (2006). Resource extraction development and well-being in the north: A scan of the unique challenges of development in Inuit communities. Ottawa: National Aboriginal Health Organization [Buell, 2006]; Peterson, K. (2012). Community experiences of mining in Baker Lake, Nunavut (unpublished doctoral dissertation), University of Guelph, Guelph, Ontario, Canada; Out of Sight, Out of Mind, supra note 87, at 37.

¹⁵⁸ NWAC, *Minerals and Metals*, supra note 58, at 25.

The large influxes of money to regions hosting industrial project contributes to increased rates of drug addiction and other forms of exploitation by organized crime, including forcing individuals into the sex trade to pay off drug debts.¹⁵⁹ Increases in worker population and disposable income into a region puts upward pressure for commercial sex services, and the exclusion of women from well-paying jobs and increased costs of living may contribute to higher rates of participation in the sex trade.¹⁶⁰

Indigenous women may enter sex work as a source of income for themselves and their families, while others—particularly those experiencing poverty or struggling with mental health concerns or addictions—are victims of human trafficking.¹⁶¹ The Interim Report for the MMIWG National Inquiry identifies a connection between resource extraction industries and sex trafficking, noting that Indigenous women, girls and 2SLGBTQIA people are overrepresented in the sex trade. The link between prostitution and resource extraction stems from the culture and values associated with hyper-masculine industrial camps. This subculture makes Indigenous women and girls more vulnerable to coercion into sex work and to violence¹⁶² and creates different exploitation pathways for Indigenous women as compared to non-Indigenous women.¹⁶³

Community service providers are often unprepared for the sexual violence committed by workers at industrial camps because they are not properly informed about the camps.¹⁶⁴ Aggravating the lack of community service providers’ technical capacity to address such forms of violence is the lack of Indigenous women and girls’ access to adequate government supports and services to reduce the risk of violence.¹⁶⁵

¹⁵⁹ Out of Sight, Out of Mind, supra note 87, at 39.

¹⁶⁰ Ibid at 49.

¹⁶¹ Stienstra, D., Levac, L., Baikie, G., Stinson, J., Clow, B., & Manning, S. (2016). Gendered and intersectional implications of energy and resource extraction in resource-based communities in Canada’s North. Retrieved from FemNorthNet/The Canadian Research Institute for the Advancement of Women website: <http://fnn.criaw-icref.ca/images/userfiles/files/SSHRC%20KS%20Report.pdf> [Stienstra et al., 2016]

¹⁶² Canada, *The National Inquiry into Missing and Murdered Indigenous Women and Girls: “Our Women and Girls are Sacred”*, Interim Report, (Ottawa, Privy Council Office, 2017). [Canada, 2017]

¹⁶³ Roundtable Notes, supra note 55, at 11.

¹⁶⁴ Gibson, G., Yung, L., Chisholm & Quinn, H. with Lake Babine Nation & Nak’azdli Whut’en. (2017). Indigenous communities and industrial camps: Promoting healthy communities in settings of industrial change. Victoria, B.C.: Retrieved from The Firelight Group website: http://www.thefirelightgroup.com/thoughallnotpass/wp-content/uploads/2016/03/Firelight-work-camps-Feb-8-2017_FINAL.pdf, at pg 53.

¹⁶⁵ Out of Sight, Out of Mind, supra note 87, at 4.

The lack of protection, advocacy, and information for sex workers is a great concern for Indigenous women who feel impact assessments for proposed projects should take into account the availability of coordinated community, health, and social services for sex workers.¹⁶⁶

The continued prevalence of disproportionate adverse effects of industrial projects on Indigenous women and their underrepresentation in economic benefits may be a symptom of the exclusion that women experience in resource governance, from pre-project decision-making to implementation and monitoring.¹⁶⁷

Issues related to sexual violence against Indigenous women, girls, and gender-diverse people need to be raised by Indigenous governing bodies. It may also be necessary to provide these leadership bodies with gender-based training and education about the relationship between industrial projects and sexual violence that will inform negotiations with industry and government.¹⁶⁸ Some Indigenous leaders believe that, in addition to educating companies, workers and Indigenous governing bodies about sexual violence against Indigenous women and girls, women and girls in the communities should also be taught about their rights and ensuring their safety.¹⁶⁹

Where violence is committed against Indigenous women and girls, there must be accountability. Including the voices of women in impact assessment engagement processes can help ensure that agreements with proponents or governments ensure accountability for sexual violence, not just for perpetrators but also for companies and contractors.¹⁷⁰ Binding and severe consequences for sexual violence in or near industrial workplaces need to exist to compel companies to ensure adequate safety for Indigenous women and communities.¹⁷¹

Sexual violence committed by project workers against Indigenous women and girls can very quickly poison company-community relationships and turn communities and individuals that otherwise support projects into adamant opponents.¹⁷² The contribution of sexual violence to Indigenous opposition to industrial projects has long been an issue in Canada, dating back to the 1864 Chilcotin War.¹⁷³

While Indigenous leaders may recognize that it may be only a small percentage of men that are responsible for the epidemic of sexual violence against Indigenous women in or near industrial project worksites and camps, they also recognize that failure to address the sexist and racist culture that tolerates such violence likely perpetuates the situation.¹⁷⁴ To address the root causes of sexual violence against Indigenous women and girls, men must be educated and trained not to be “bystanders”.¹⁷⁵

¹⁶⁶ Roundtable Notes, *supra* note 55, at 11.

¹⁶⁷ Dalseg, S. K., Kuokkanen, R., Mills, S., & Simmons, D. (2018). Gendered environmental assessments in the Canadian North: Marginalization of Indigenous women and traditional economies. *The Northern Review*, 47, 135-166, doi: 10.22584/nr47.2018.007, at p 150.

¹⁶⁸ Roundtable Notes, *supra* note 55, at 11.

¹⁶⁹ *Ibid* at 11.

¹⁷⁰ *Ibid* at 12.

¹⁷¹ *Ibid* at 13.

¹⁷² *Ibid* at 13.

¹⁷³ Roundtable Notes, *supra* note 55, at 13; Hopper, Tristin, “What really happened in the Chilcotin War, the 1864 conflict that just prompted an exoneration from Trudeau?” *National Post* (27 March 2018) <https://nationalpost.com/news/canada/what-really-happened-in-the-chilcotin-war-the-1864-conflict-that-just-prompted-an-exoneration-from-trudeau>.

¹⁷⁴ Roundtable Notes, *supra* note 55, at 12.

¹⁷⁵ *Ibid* at 12.

Before work is begun on projects, mechanisms such as women’s shelters need to be put into place to address these types of adverse impacts.¹⁷⁶ Unfortunately, most First Nations reserves in Canada do not have shelters for women escaping violence.¹⁷⁷

Both the Truth and Reconciliation Commission (TRC) and the MMIWG Inquiry have made recommendations for actions to help address violence against Indigenous women related to extractive industry activities. The TRC has called on businesses to provide education for managers and staff on the history of Indigenous peoples, including the legacy of residential schools, UNDRIP, treaties and Indigenous rights, Indigenous law, and Indigenous-Crown relations.¹⁷⁸

The first Call for Justice of the MMIWG National Inquiry is for all levels of government to work with Indigenous peoples to develop a National Action plan to address violence against Indigenous women, girls, gender diverse, and 2SLGBTQQIA people that includes equitable access to basic rights, such as employment, housing, education, safety and health care.¹⁷⁹ The economic vulnerability of Indigenous women and barriers to basic educational, safety, and health care services contributes to their risk of sexual violence. A National Action Plan that addresses these vulnerabilities should recognize the implications of industrial activities in both the perpetuation of these issues as well as the potential solutions.

The MMIWG National Inquiry also calls for the establishment of culturally competent crisis response teams in all communities and regions to meet the immediate needs of an Indigenous people, families, and/or communities after traumatic events.¹⁸⁰ Post-trauma counseling services that are culturally relevant, such as drum and ceremony, can help survivors to heal.¹⁸¹

The relationship between industrial projects and violence against Indigenous women, girls, gender diverse and 2SLGBTQQIA persons is complex. That the safety of some of the most vulnerable people in society is jeopardized by certain industrial projects is highly relevant to whether a project is in the public interest and deeply implicates reconciliation processes. The MMIWG National Inquiry has called for further inquiries and studies to better understand the relationship between resource extraction and other development projects and violence against these marginalized groups.¹⁸²

Addressing the prevalence of sexual violence against Indigenous women and girls related to industrial projects may be at least partially achieved by combining improved public understanding and education respecting Indigenous peoples with company codes of conduct that include zero tolerance policies for such heinous actions.¹⁸³ Programs that bring Elders and Knowledge Keepers into workplaces to raise awareness may also be effective at addressing the disproportionate rates of sexual violence Indigenous women, girls, gender diverse, and 2SLGBTQQIA people experience as a direct or indirect result of industrial projects.¹⁸⁴

¹⁷⁶ Roundtable Notes, supra note 55, at 17.

¹⁷⁷ Out of Sight, Out of Mind, supra note 87, at 24.

¹⁷⁸ Truth and Reconciliation Commission of Canada, Calls to Action, (Winnipeg: TRC, 2012) at No. 92.iii [TRC].

¹⁷⁹ MMIWG, supra note 73, at Call for Justice 1.1.

¹⁸⁰ Ibid Call for Justice 3.5

¹⁸¹ Roundtable Notes, supra note 55, at 11.

¹⁸² MMIWG, supra note 73, at Call for Justice 13.5.

¹⁸³ Roundtable Notes, supra note 55, at 10.

¹⁸⁴ Ibid at 11.



Industrial work camps can be very dangerous for women and especially Indigenous women. While some employers and supervisors act rapidly to address harassment, others ignore or even condone the behaviour.¹⁸⁵ The discrepancy between responsible project proponents that take sexual violence and harassment seriously and those that do not create an industry of risk for Indigenous women. The safety and protection of women in the workplace cannot be a variable left up to the whim of employers and supervisors. Both industry and government must ensure that proponents are held to account with respect to the identification and implementation of project conditions that guard against the development of rigger culture responsible for facilitating this type of behaviour.

Substance Abuse and Social Services

Industrial projects can result in unintended pressures on social services; however, by including Indigenous women in the impact assessment process and decision-making, these issues can be identified early and the proper provisions and conditions can be put in place to ensure that these risks are reduced and that opportunities for positive impacts are maximized.

Rates of drug and alcohol abuse and addiction often increase in the presence of industrial work camps, resulting in significant family impacts¹⁸⁶ and putting pressures on already limited community health and social services.¹⁸⁷ The huge spikes in suicide and substance abuse related to industrial projects are a significant concern for Indigenous women.¹⁸⁸ The introduction of large amounts of money to communities and families, without adequate social services, can have unintended adverse impacts. One participant at the Indigenous Women and Impact Assessment Roundtable noted that a land claim settlement in their community resulted in many community members using the settlement money to feed their addictions.¹⁸⁹

Without the necessary supports and social services, the large injections of money that sometimes accompany industrial projects may have unanticipated adverse effects.

Increased substance use and abuse is one of the most common health impacts of resource extraction projects.¹⁹⁰ Specifically, the increased income from mine employment and zero-tolerance for substance use on job sites can lead to increases in problematic substance use. Workers who come home after long and stressful shifts may “blow off steam” by using drugs and alcohol. This substance abuse is directly linked to increased rates of sexualized and gendered violence, generally toward Indigenous women and girls.¹⁹¹

Despite often greater needs for social services due to colonial laws, programs, and policies, per capita federal funding for social services on reserves is often significantly less than that which is provided in non-Indigenous communities.¹⁹² This combination of greater demand and lower capacity funding for social services in Indigenous communities creates adverse synergistic effects that stress these important services beyond capacity, leaving the most vulnerable at risk. Some Indigenous women feel that project proponents do not feel they have any responsibility for the adverse social effects of their projects, despite the benefits they obtain from their activities.¹⁹³

Industrial activities can put added pressure on already stressed public services and infrastructure in northern and remote communities; however, early engagement and proper planning can ensure that both mining companies and Indigenous communities benefit from shared investments in programs and infrastructure.

¹⁸⁵ Out of Sight, Out of Mind, supra note 87, at 43.

¹⁸⁶ Gibson, G. & Klinck, J. (2005). Canada's resilient north: The impact of mining on Aboriginal communities. *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health*, 3(1), 115-141. Retrieved from <http://caid.ca/JAICH2005v3n1p115.pdf>, at 123-4.

¹⁸⁷ NWAC, *Minerals and Metals*, supra note 58, at 27.

¹⁸⁸ Roundtable Notes, supra note 55, at 8.

¹⁸⁹ Ibid at 29.

¹⁹⁰ Arruda, G. M., & Krutkowski, S. (2017). Social impacts of climate change and resource development in the Arctic: Implications for Arctic governance. *Journal of Enterprising Communities: People and Places in the Global Economy*, 11(2), 277-288. doi: 10.1108/JEC-08-2015-0040; Joly & Westman, 2017, supra note 156.

¹⁹¹ KAIROS, “Gendered impacts: Indigenous women and resource extraction” (Ottawa: 20 November, 2014) at 6 https://www.kairosCanada.org/wp-content/uploads/2015/05/KAIROS_ExecutiveSummary_GenderedImpacts.pdf.

¹⁹² Out of Sight, Out of Mind, supra note 87, at 23.

¹⁹³ Roundtable Notes, supra note 55, at 14.

The development of industrial projects can have positive benefits for social services. Using community legacy projects that can be incorporated into IBAs can create major benefits for the community by protecting and advancing traditional activities.¹⁹⁴ But for IBAs to properly address issues affecting the broader community and women and children specifically, the negotiations and ultimate agreements must be inclusive of Indigenous women and should take into account the importance of land, culture, and wellness.¹⁹⁵

Physical and Mental Health

Industrial projects can cause or contribute to a diverse range of physical and mental health illnesses for Indigenous peoples due in part to their geographic proximity to projects and socio-cultural relationships with nature. These effects are often felt most by women and youth with few resources to reduce the risks and effects of illnesses.

The proximity of many Indigenous communities to sources of industrial waste as well as the close cultural, spiritual and economic relationships they have with nature contribute to disproportionate risk of exposure to heavy metals among Indigenous people.¹⁹⁶ Indigenous women face even greater risks associated with exposure to industrial waste because of the combined vulnerabilities of socio-cultural proximity and physiological susceptibility.¹⁹⁷ For example, women are more susceptible than men to the harmful impacts of radiation from nuclear waste and uranium mining.¹⁹⁸ Further, women of childbearing age and their children are particularly sensitive to methylmercury (MeHg),¹⁹⁹ which is often found in water, fish, and wildlife stocks near hydroelectric dams. Mercury contamination near both dams and the Alberta tar sands are becoming a particular concern for both pregnant women and their children.²⁰⁰

Resource extraction projects have been linked to various negative health outcomes for Indigenous communities.²⁰¹ This relationship was also noted by participants at the Indigenous Women and Impact Assessment Roundtable who have identified an increase in illnesses such as cancers related to industrial projects on their land – and a deficit in available health services to address these illnesses – but feel that the burden of proving the adverse effects of these projects on the health of their community members rests on the affected communities.²⁰²

¹⁹⁴ Ibid at 4.

¹⁹⁵ Ibid at 17.

¹⁹⁶ NWAC, Minerals and Metals, supra note 58, at 13.

¹⁹⁷ Mining Watch Canada, “Overburdened: Understanding the Impact of Mineral Extraction on Women’s Health in Mining Communities” (May 2004) at p 5 https://miningwatch.ca/sites/default/files/Overburdened_0.pdf.

¹⁹⁸ Runyan, A. S. (2018). Disposable waste, lands and bodies under Canada’s gendered nuclear colonialism. *International Feminist Journal of Politics*, 20(1), 24-38. doi: 10.1080/14616742.2017.1419824, at p 26.

¹⁹⁹ Manning et al., 2018, supra note 8.

²⁰⁰ Pirkle, C. M. L., Muckle, G., & Lemire, M. (2016). Managing mercury exposure in northern Canadian communities. *CMAG*, 188(14), 1015-1023. doi: 10.1503/cmaj.151138.

²⁰¹ Arruda & Krutkowski, 2017, supra note 190.

²⁰² Roundtable Notes, supra note 55, at 15.

In northern Alberta, unusually high rates of abnormal cancers and lung diseases have been attributed to communities' proximity to tar sands.²⁰³ Further, improper remediation of resource extraction sites after projects are completed can pose substantial long-term health hazards for Indigenous people and communities such as arsenic poisoning, as in the case of the Giant Gold Mine near Yellowknife, NWT.²⁰⁴

In the Aamjiwnaang First Nation, located in Sarnia in southwestern Ontario and also known as "Chemical Valley" because it is home to more than 60 refineries and chemical plants, the birth rate (female:male) reached nearly 2:1.²⁰⁵ This is a statistical anomaly directly related to extreme pollution. Another study found that 39% of women in Aamjiwnaang had suffered at least one stillbirth or miscarriage,²⁰⁶ which is also a consequence of living in this highly polluted area.

The ongoing and historical externalization of disproportionate adverse effects of industrial activities onto Indigenous peoples contextualizes many communities' concerns with proposed projects. Despite a 54 per cent reduction in mine exceedances since 2003, the ongoing risks of major mine effluent releases or accidents as well as the massive legacy of 10,000 abandoned mine sites pose an ongoing and significant concern for some Indigenous communities.²⁰⁷

In addition to the adverse impacts industrial projects can have on physical health, resource extraction projects have also been linked to mental health concerns. For example, the increased challenges and stressors that accompany resource extraction projects' impact on northern and remote communities already embedded in complex legacies of colonization has been linked to high rates of suicide.²⁰⁸ Youth are often disproportionately adversely affected by social impacts of industrial projects²⁰⁹ and there are insufficient resources to address the staggering rates of suicide among Indigenous youth.²¹⁰ The temporary nature of employment in most resource extraction projects also causes anxiety and worry among Indigenous women, who depend on this employment to support their families.²¹¹

The working conditions in the resource sector are often difficult and potentially dangerous and workers who may need mental health supports may not have access to the help they need because of the camps' distance to medical services or due to working long shifts.²¹²

More broadly, the environmental degradation associated with resource extraction industries impedes Indigenous peoples' ability to live off the land. Since living off the land promotes wellness, strength, and happiness among many Indigenous communities,²¹³ losing this capability has implications for mental health and well-being.

²⁰³ Joly & Westman, 2017, supra note 156; Westman, C. N. & Joly, T. L. (2019). Oil sands extraction in Alberta, Canada: A review of impacts and processes concerning Indigenous peoples. *Human Ecology*, 47, 233-243. doi: 10.1007/s10745-019-0059-6.

²⁰⁴ Hird, M. J. (2017). Waste, environmental politics and dis/engaged publics. *Theory, Culture & Society*, 34(2-3), 187-209. doi: 10.1177/0263276414565717.

²⁰⁵ Native Youth Sexual Health Network and Women's Earth Alliance. (2016). Violence on the land, violence on our bodies: Building an Indigenous response to environmental violence. Retrieved from website: http://landbodydefense.org/uploads/files/VLVBToolkit_2016.pdf. [NYSHN, 2016]

²⁰⁶ NYSHN, 2016, supra note 205.

²⁰⁷ NWAC, Minerals and Metals, supra note 58, at 15.

²⁰⁸ Stienstra et al., 2016, supra note 161, p. 41.

²⁰⁹ Roundtable Notes, supra note 55, at 15.

²¹⁰ Ibid at 31.

²¹¹ Rixen, A., & Blangy, S. (2016). Life after Meadowbank: Exploring gold mine closure scenarios with the residents of Qamini'tuaq (Baker Lake), Nunavut. *Extractive Industries and Society*, 3(2), 297-312. doi: 10.1016/j.exis.2015.09.003.

²¹² Out of Sight, Out of Mind, supra note 87.

²¹³ Ibid.

The disproportionate exposure to dangerous substances and unequal access to health services between Indigenous and non-Indigenous peoples is a source of great frustration for Indigenous women who feel that there must be greater accountability for this inequitable distribution of rights and environmental burdens.²¹⁴ Respecting the right of Indigenous women to participate in assessment and decision-making related to the project can help ensure the proper considerations and conditions are made to address these issues.

Culture

The interconnectedness of Indigenous women to their lands and their relationships with nature are critically important to their identity and a primary concern of focus when engaging in impact assessment discussions.²¹⁵

Resource extraction projects can have negative cultural and spiritual impacts for Indigenous communities²¹⁶ because they can impact Indigenous peoples' sense of place or place attachments by disrupting or destroying the sacred character or spirit of an area or piece of land.

The cultural impacts of resource extraction industries can be especially pronounced for Indigenous women, given their unique cultural connection to the land.²¹⁷ A loss of access to land due to extraction projects impacts women's cultural activities such as language,²¹⁸ food harvesting and picking medicinal plants, yet these impacts are often ignored in land use studies and research.²¹⁹ Research has also found that Indigenous women are concerned that resource extraction industries are destroying traditional/ cultural practices such as salmon fishing.²²⁰

It is important for impact assessment practitioners to understand that traditional hunting, fishing, and gathering activities provide more than sustenance for Indigenous peoples.

These activities reinforce values such as sharing, self-identity, and holistic systems of understanding of health, well-being, and self-respect.²²¹ Additionally, these activities also help maintain and revitalize cultures and traditions impacted by colonization.²²² When that access to traditional foods and harvesting economy is threatened by resource extraction, so too is the cultural identity of communities.

While it is not the sole threat to traditional cultures, it is reasonable to see the mining industry as a culture importing norms, expectations, and ways of (re)organizing time, values and priorities within Indigenous communities. The sudden changes introduced by the culture that accompanies the mining industry can destabilize the continuity of formal social structures and roles that influence how Indigenous communities operate.²²³ For example, the official language requirements of French and English at mines can impede the sharing of cultural knowledge and having a space in which to speak Inuktitut.²²⁴

Inuit women have expressed concerns about these cultural impacts of resource extraction industries.²²⁵ Indeed, for many northern Inuit communities, resource extraction industries are at odds with their cultural practices of respectful and sustainable use of the environment and its resources.²²⁶ Mining, for example, is not a sustainable industry; in the long term it is only a temporary use of the land.

The unique and specific impacts of industrial projects on the cultures of Indigenous peoples, especially Indigenous women, demand appropriate consideration in the impact assessment process, particularly in the context of past industrial impacts on Indigenous culture and the process of reconciliation.

²¹⁴ Roundtable Notes, supra note 55, at 17

²¹⁵ Roundtable Notes, supra note 55, at 18.

²¹⁶ Buckland, J., & O'Gorman, M. (2017). The Keeyask hydro dam plan in northern Canada: A model for inclusive indigenous development? *Canadian Journal of Development Studies/Revue canadienne d'études du développement*, 38(1), 72-90. doi: 10.1080/02255189.2016.1224969

²¹⁷ NWAC, Minerals and Metals, supra note 58.

²¹⁸ Roundtable Notes, supra note 55, at 22.

²¹⁹ Kermaal, N. (2016). Métis women's environmental knowledge and the recognition of Métis rights. In N. Kermaal & I. Altamirano-Jiménez (Eds.), *Living on the Land: Indigenous women's understanding of place* (pp. 107-137). Athabasca University Press.

²²⁰ Nightingale et al., 2017, supra note 155.

²²¹ Ibid.

²²² Out of Sight, Out of Mind, supra note 87, at 33.

²²³ Czyzewski, K., Tester, F., Aaruaq, N., & Blangy, S. (2016). The impact of resource extraction on Inuit women and families in Qamani'tuaq, Nunavut Territory. Retrieved from Pauktuutit Inuit Women of Canada website: <https://www.pauktuutit.ca/wp-content/uploads/Quantitative-Report-Final.pdf> [Czyzewski et al., 2016]

²²⁴ Ibid at 51

²²⁵ Ibid at 7

²²⁶ National Aboriginal Health Organization (NAHO). (2008). Resource extraction and Aboriginal communities in northern Canada: Cultural considerations. Retrieved from website: https://www.saintelizabeth.com/getmedia/7efe95d2-e85b-4908-add6-5dca7bf850bf/Cultural_EN.pdfasp

Economy

Colonial structures and legislative frameworks such as the *Indian Act* work to undermine traditional governance and knowledge, contributing to social issues that can be exacerbated by industrial projects.²²⁷ Colonial structures have contributed to conditions of dependency for some Indigenous communities and families that detracts from traditional economic activities.²²⁸ Under these colonial systems, Indigenous women face the added harm and insult of further economic duress because of barriers to economic opportunities in non-Indigenous sectors such as mining and energy.

Some Indigenous women feel that the federal government has amassed large sums of money from the extraction of natural resources from the lands and territories of Indigenous peoples, but that Indigenous peoples do not have access to or reap benefits from these funds.²²⁹ There is also frustration with the disproportionate distribution of employment opportunities on the basis of gender, with Indigenous men having access to employment opportunities while women and children suffer most of the adverse socio-economic, cultural and environmental consequences of industrial projects.²³⁰

A participant at the Indigenous Women and Impact Assessment Roundtable noted that economic benefits from industrial projects suffer from the “penguin effect”. Penguin colonies in Antarctica rotate from the exterior to the interior of the colony to conserve heat. In the context of economic benefits from industrial projects, it seems as though government is in the centre, then men, with women on the outside, prevented from accessing the benefits at the center.²³¹

Because Indigenous women often approach discussions about financial benefits from proposed projects from a community-centric approach, they will often raise concerns about how purported financial benefits relate to community health and well-being.²³² The differences in priorities and concerns within and between Indigenous communities, such as the dichotomy between economic development and environmental and cultural conservation, can create conflicts and contribute to the subordination of environmental and socio-cultural priorities to economic development.²³³

²²⁷ Roundtable Notes, supra note 55, at 17.
²²⁸ Ibid at 33.
²²⁹ Ibid at 30.
²³⁰ Roundtable Notes, supra note 55, at 16.
²³¹ Ibid at 8.
²³² Ibid at 4.
²³³ Ibid at 5.



“I understand the need for economic stability, but what about our mother?”

-PARTICIPANT, INDIGENOUS WOMEN AND IMPACT ASSESSMENT ROUNDTABLE



The experience of being marginalized because of advocating on behalf of social, familial, and environmental priorities can be all the more frustrating where the products of a proposed project do not appear to have any relevance or benefit to the affected communities or, if there are benefits, they have not been effectively communicated.²³⁴

Article 21.2 of UNDRIP requires states to take effective and special measures to ameliorate the socio-economic conditions of Indigenous women, youth and children²³⁵ and the Inter-American Commission on Human Rights has called for action to address the root causes of inequity and discrimination against Indigenous women in British Columbia, including ensuring respect for their economic rights.²³⁶ When approaching economic impacts of proposed projects, it is important for practitioners to understand the multiple challenges faced by Indigenous women, especially the adverse effects of industrial development on traditional economic activities as well as the lack of economic opportunity for women in primary economic sectors. One of the benefits of applying a culturally-relevant gender-based analysis (CRGBA+) of these issues is the process' ability to help governments identify collaboration opportunities and determine the necessary supports to increase Indigenous women's involvement in economic sectors.²³⁷

Traditional Economies

The concept of economy is often very different for Indigenous peoples than for non-Indigenous peoples. Indigenous peoples tend to employ a much more holistic definition of the economy, as traditional economies are based on relationships with land and others which satisfy not only sustenance and wealth needs, but also serve as sources of psychological well-being and identity.²³⁸ When looking at investing in traditional economic activities, attention must be given to the use of language and the different meaning of terms for Indigenous peoples.²³⁹ Discussions with Indigenous women about economic benefits will likely be substantially different than analogous discussions with industry and government representatives.

The traditional economies in Canada's northern communities are largely based on hunting and fishing. Harvesting animals provides not only meat for food but also fur and skin for clothing and bones for tools, art, and games. The annual worth of the harvesting economy is approximately \$40 million,²⁴⁰ and the arts and crafts sector contributes about \$33 million to Nunavut's economy. In 2011, Nunavut's commercial turbot fish industry was worth approximately \$70 million.²⁴¹

²³⁴ Ibid at 6.

²³⁵ UNDRP at Art. 21.2.

²³⁶ Out of Sight, Out of Mind, supra note 87, at 14.

²³⁷ Newfoundland and Labrador, Women's Policy Office, Guidelines for Gender Inclusive Analysis: An integrated approach to policy/program development (St. John's, 2003) at 15 <https://www.gov.nl.ca/exec/osw/files/genderbased-gender-inclusive-analysis.pdf>

²³⁸ Canada, Mackenzie Valley Pipeline Inquiry, Northern Frontier Northern Homeland, vol I (Ottawa: Minister of Supply and Services Canada, 1977) at 108 [Berger Report].

²³⁹ Roundtable Notes, supra note 55, at 30.

²⁴⁰ Government of Nunavut. (2019). Nunavut Economy. Retrieved from website: <https://www.gov.nu.ca/eia/documents/nunavut-economy>

²⁴¹ Ibid.

Indigenous women across Canada engage in berry picking to supplement their income, as well as for cultural and relaxation purposes, which can be interrupted by project-related traffic.²⁴²

The deleterious impacts of resource extraction projects on fish and wildlife (discussed in the Environment subsection) therefore have direct impacts on these economies. Inuit women have expressed concerns about the impact of the mining industry on knowledge of traditional economic practices, given shifts in schedules and decreased access to animals such as caribou.²⁴³

While project proponents and governments tend to emphasize the importance of economic benefits associated with proposed industrial projects, it is important to understand the broader meaning of “economy” for many Indigenous women and the concerns that the Western model of economic development may result in adverse impacts for traditional economic activities and elements.

Employment

Employment opportunities are an important benefit for Indigenous women in the context of resource extraction projects.²⁴⁴ These benefits, however, are confronted by concerns that such projects can constrain alternative forms of development, particularly in traditional economic sectors that provide income and sustenance as well as social and cultural services through close relationships with the land.²⁴⁵

There are also significant concerns that there is an unfair distribution of jobs-related benefits from projects, creating community conflict and a type of class system. Those individuals and families that are able to thrive from jobs provided by industrial projects may approach industrial development with a singular attention on the benefits of employment, taking away from the communal nature of the community.²⁴⁶

²⁴² Roundtable Notes, supra note 55, at 23.

²⁴³ Czyzewski et al., 2016, supra note 223

²⁴⁴ Garvie, K. H., & Shaw, K. (2016). Shale gas development and community response: Perspectives from Treaty 8 territory, British Columbia. *Local Environment*, 21(8), 1009-1028. doi: 10.1080/13549839.2015.1063043; Nightingale et al., 2017, supra note 155.

²⁴⁵ Kuokkanen, R. (2019). At the intersection of Arctic indigenous governance and extractive industries: A survey of three cases. *The Extractive Industries and Society*, 6(1), 15-21. doi:10.1016/j.exis.2018.08.011

²⁴⁶ Roundtable Notes, supra note 55, at 4 and 5.

Employment opportunities are an important benefit for Indigenous women in the context of resource extraction. The MMIWG National Inquiry has called for all levels of government to prioritize measures that include the elimination of economic marginalization of Indigenous women and 2SLGBTQQIA people²⁴⁷ and the TRC has called on businesses to adopt UNDRIP with specific actions to ensure equitable access to jobs, training, and education opportunities for Indigenous people.²⁴⁸

Justice Thomas Berger noted in his 1977 report on the Mackenzie Valley Pipeline Inquiry that Indigenous peoples’ desire to participate in the wage economy should not be misinterpreted as a repudiation of traditional economic activities, but rather that there is a desire to engage in both wage and traditional economic activities.²⁴⁹

Despite this desire to balance traditional economic activities with industry jobs, there are concerns that transitioning to shift work income models is a form of modern colonization.²⁵⁰ These concerns that the state exercises modern assimilation tactics upon Indigenous peoples via economic transitions away from traditional practices is founded on experience. For example, when reflecting on the *Alaska Native Claims Settlement Act* of 1971, the former President of the Alaska Federation of Natives contended that the settlement was a “means of transforming native peoples from hunters and gatherers into entrepreneurs and capitalists in as short a time as possible.”²⁵¹

The demands and pressures of the wage economy extend beyond impediments to traditional economic activities, contributing to a “keeping up with the Joneses” dynamic; rising wages from industrial projects have resulted in competition between some families in terms of who can buy their children the most stuff. The introduction of these materialist values is viewed as inconsistent with Indigenous cultures.²⁵² The spin-off benefits from industrial projects are temporary and tend to go to a few families.²⁵³

²⁴⁷ MMIWG, supra note 73, at Call for Justice 1.3.

²⁴⁸ TRC, supra note 178, at No. 92.ii.

²⁴⁹ Berger Report, supra note 238, at 110.

²⁵⁰ Roundtable Notes, supra note 55, at 5.

²⁵¹ Berger Report, supra note 238, at 176.

²⁵² Roundtable Notes, supra note 55, at 5.

²⁵³ Roundtable Notes, supra note 55, at 6.

While such benefits are important for those families that benefit from the increased income, unintended consequences on families and communities can arise in the form of community divisions, absent working parents, and increased rates of suicide.²⁵⁴

There are many clear benefits for Indigenous women who manage to access meaningful employment opportunities with industrial projects, including financial independence, self-confidence, and motivation to achieve educational goals.²⁵⁵ Even these benefits, however, can cause shifts in gender roles in which the woman becomes the primary breadwinner. This shift may contribute to increased rates of stress and family violence, since it may threaten notions of masculinity and understandings of men as “providers”.²⁵⁶

The common realities of shift work and fly-in, fly-out work sites in resource extraction industries [e.g. distance between work sites and communities, and the length of shift schedules]²⁵⁷ often separates families for long periods of time²⁵⁸ which can also increase Indigenous women’s risk of family conflict and violence.²⁵⁹

Further, working conditions for women in resource industries can be highly stressful, isolated, and characterized by rampant drug and alcohol abuse in some sites. Job sites, labour camps, and travel to and from sites and camps can be dangerous for female employees.²⁶⁰ A 2016 Amnesty International report found that sexual harassment and racism combine to create particularly severe problems for Indigenous women. A retired Aboriginal support worker noted: “there’s an assumption [in the oil patch] that if you’re an Aboriginal woman you’re an easy lay.

Some oil patch men prey on Aboriginal women, and I suspect this racial attitude plays an important part”.²⁶¹

Public education initiatives and social services supports to minimize and address these risks need to be contemplated in the assessment of project impacts on communities and Indigenous women and children specifically.

Indigenous peoples often negotiate preferential business contract opportunities and hiring opportunities with industry proponents prior to major development or extraction projects on Indigenous lands.²⁶² These hiring opportunities are often only available to Indigenous people living on reserve or in Indigenous communities.²⁶³

It is important to note that, while the mining industry is the largest private sector employer of Indigenous peoples in Canada,²⁶⁴ there are few skilled and highly paid jobs available for women in resource extraction projects. Women make up a very small minority of the workforce in this industry and most are employed in poorly paid jobs.²⁶⁵ For example, in Canada, only 3% of mining workers are women,²⁶⁶ and most are employed in “feminized” roles such as housekeeping and office work, which are often precarious and devalued.

Although Indigenous women are more likely to be educated than Indigenous men, they are less likely to be employed than Indigenous men, yet also less likely to be unemployed.²⁶⁷ This suggests that Indigenous women are less likely to be in the job market than Indigenous men and therefore more likely to be dependent on the income of a spouse.²⁶⁸

²⁵⁴ Ibid at 7.
²⁵⁵ Nightingale et al., 2017, supra note 155.
²⁵⁶ Nightingale et al., 2017, supra note 155.
²⁵⁷ Bernauer, W. (2011). Mining and the social economy in Baker Lake, Nunavut. Saskatoon: Centre for the Study of Co-operatives. Retrieved from University of Saskatchewan website: <https://usaskstudies.coop/documents/social-economy-reports-and-newsletters/mining-and-the-social-economy-copy.pdf>, at p 9.
²⁵⁸ Koutouki, K., Lofts, K., & Davidian, G. (2018). A rights-based approach to Indigenous women and gender inequities in resource development in northern Canada. Review of European, Comparative & International Environment Law, 27, 63-74. doi: 10.1111/reel.12240; Roundtable Notes, supra note 55, at 46.
²⁵⁹ Czyzewski et al., 2016, supra note 223; Nightingale et al., 2017, supra note 155.
²⁶⁰ Out of Sight, Out of Mind, supra note 87, at 42.

²⁶¹ Ibid, at 42.
²⁶² Manning et al., 2018, supra note 8, at 5.
²⁶³ Native Women’s Association of Canada. (2015). Bridging the gap: Aboriginal women and resource development. Retrieved from website: <https://www.nwac.ca/resource/bridging-the-gap-aboriginal-women-and-resource-development-engagement/>
²⁶⁴ Mining Industry Human Resources Council. (2016). Strengthening mining’s talent alloy: Exploring Aboriginal inclusion. Retrieved from website: https://www.mihrc.ca/pdf/publications/MiHR_Aboriginal_Report_EN_WEB.pdf, at p 3. [MIHRC, 2016]
²⁶⁵ KAIROS, 2014, supra note 191; Cox, D., & Mills, S. (2015). Gendering environmental assessment: Women’s participation and employment outcomes at Voisey’s Bay. Arctic, 68(2), 246-260. Retrieved from: <https://www.jstor.org/stable/43871323>
²⁶⁶ KAIROS, 2014, supra note 191.
²⁶⁷ Arriagada, Paula, Women in Canada: A Gender-based Statistical Report, Statistics Canada (23 February 2016) <https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14313-eng.pdf?st=A75aO1bx>, at 16, 19 and 22.
²⁶⁸ NWAC, Minerals and Metals, supra note 58, at 28; Out of Sight, Out of Mind, supra note 87, at 43.

“We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate educational and employment gaps between Aboriginal and Non-Aboriginal Canadians.”

- TRC CALL TO ACTION NO.

Proponents, governments, and impact assessment practitioners should recognize that despite a real and pressing need for economic development, Indigenous peoples' interest in maintaining their traditional economic activities is based on deep spiritual connections to the land and cultural practices. Economic opportunities that are unable to accommodate and balance traditional and modern lifestyles can have significant adverse effects on traditional economies and culture.

Training and Advancement

Resource extraction projects can bring education and training opportunities for Indigenous women, particularly those who plan to work in extractive industries. However, lack of affordable and accessible childcare as well as inadequate finances create barriers for Indigenous women to access these education and training programs.²⁶⁹ Indigenous women who are mothers often have to use their monthly living allowance to pay for expensive childcare, leaving little money for other necessary living expenses.²⁷⁰

A study focusing on Indigenous women who worked at Voisey's Bay Mine in Labrador found that there were no training programs specifically designed to address women's needs. Women in this study felt that it was easier for men to obtain training and to receive promotions than women, in part because they were seen by their supervisors as token hires.²⁷¹

²⁶⁹ Buell, 2006, *supra* note 157.

²⁷⁰ Hodgkins, A. (2017). Challenging transitions: Trades and trade-offs for racialized youth in Canada's mining industry. *International Studies in Sociology of Education*, 26(2), 121-137. doi:10.1080/09620214.2016.1191967

²⁷¹ Cox & Mills, 2015, *supra* note 265.

While many of the 400 active bilateral agreements between mining companies and Indigenous communities contain commitments by companies to provide education and training to local community members,²⁷² mining continues to be a male-dominated industry²⁷³ and sexism and harassment in the industry is so persistent that it has instigated the social media hashtag campaign #MeTooMining.²⁷⁴ Moreover, some Indigenous women feel that, because Indigenous workers are often limited to positions requiring only a high school diploma, projects often do not lead to educational benefits in the community.²⁷⁵

In order to overcome the significant barriers that women face in obtaining meaningful employment opportunities in the mining industry, employers must enhance their workplace cultures to address gender issues including work-life balance and educational and training opportunities.²⁷⁶ More funding for higher education should also be made available for Indigenous women to break down these employment barriers.²⁷⁷

²⁷² Mining Association of Canada, "Facts and Figures 2017: Facts and Figures of the Canadian Mining Industry" (2017), at 61 <http://mining.ca/sites/default/files/documents/Facts-and-Figures-2017.pdf>


²⁷³ Keenan, J. C., Kemp, D. L., & Ramsay, R. B. (2016). Company-community agreements, gender and development. *Journal of Business Ethics*, 135(4), 607-615. doi:10.1007/s10551-014-2376-4

²⁷⁴ Jane Sponagle, "#MeTooMining digs into sexual harassment, assault in mining industry" (14 March 2018), CBC News <https://www.cbc.ca/news/canada/north/metoo-mining-yellowknife-sexual-harassment-geologist-1.4576029>.

²⁷⁵ Roundtable Notes, *supra* note 55, at 6.

²⁷⁶ MIHRC, 2016, *supra* note 264.

²⁷⁷ Roundtable Notes, *supra* note 55, at 35.



The boom and bust of primary sectors can leave Indigenous communities with very little long-term benefits. Planning should address the training and education needs of communities to meaningfully participate in projects in a way that avoids the worst effects of the bust.²⁷⁸

Properly implemented corporate policies and cultures in combination with meaningful and strategic educational opportunities for Indigenous women and girls can help ensure the equitable and long-term distribution of economic benefits from industrial development in a way that secures high-level, professional and management positions for Indigenous women. Such policies must be combined with broader workplace cultures of respect for Indigenous peoples, especially women and gender diverse people. Engaging early, meaningfully and respectfully can help proponents plan for and implement policies and practices that ensure the equitable distribution of project benefits.

Environment

Indigenous women often have unique gender-based cultural practices that are intimately connected to the land and environmental systems. Additionally, women's physiology and life processes are different from men and environmental contamination can result in relatively greater health risks. Impact assessments must take into consideration the vulnerability of Indigenous women to environmental impacts based on their spiritual and cultural relationships with nature, their geographic proximity to projects, and their physiological susceptibility to health risks from environmental contamination.

The rights of Indigenous peoples are indivisible from the land.²⁷⁹ Some Indigenous women view resource extraction industries as incompatible with Indigenous economic systems because industrial economic models lack the principles of reciprocity which characterize Indigenous cultural traditions of sharing.²⁸⁰ Many Indigenous women are concerned that resource extraction companies ignore Indigenous economic principles; such concerns are hardened by the primary sector's many failures to properly reclaim the land after the projects are completed and the lack of accountability and transparency for such transgressions.²⁸¹

Indigenous peoples often view themselves as stewards of the land.²⁸² These worldviews and values are related to the principle of reciprocity and sharing. One participant at the Indigenous Women and Impact Assessment Roundtable shared explained one of the cultural traditions that exemplifies the importance of these principles in her culture. When a hunter in her community catches a caribou for the first time, they may not keep it for themselves, but must instead share it with others to teach the hunter about the importance of giving to the whole community as well as to acknowledge what the hunter has accomplished.²⁸³

²⁷⁸ Ibid at 34.

²⁷⁹ Roundtable Notes, *supra* note 55, at 5.

²⁸⁰ Ibid at 30.

²⁸¹ Ibid at 35.

²⁸² Ibid at 28.

²⁸³ Ibid at 31.

Indigenous peoples have acquired and guarded knowledge, practices, and relationships with the land over thousands of years. Their knowledge, cultures, and ways of life are indivisible from environmental systems. It is exceedingly important for proponents, governments and impact assessment practitioners to understand that adverse environmental effects also impact individuals, families, communities, and nations. The degradation of natural systems can profoundly and irreversibly affect social and knowledge frameworks that have flourished for millennia. The preservation of these ways of knowing is a profound responsibility for Indigenous knowledge holders and it is incumbent on proponents, industry, and governments to ensure that the environmental systems on which this knowledge is connected are properly respected, preserved and, where necessary, reclaimed.

Biodiversity

Project level and cumulative impacts on biodiversity can have a direct impact on Indigenous cultural practices. For example, the collapse of caribou populations has forced some drum-makers to exchange the use of caribou skin with other skins, changing the drum-making process and the resulting instruments.²⁸⁴ Similarly, the accumulation of industry on the banks of the Fraser River have led to declines in salmon stocks, affecting fishing practices.²⁸⁵

Indigenous peoples are indivisibly connected to their lands and are highly sensitive to environmental changes. Some Indigenous women have raised concerns about the environmental impacts of projects, such as those affecting caribou populations and have expressed frustration at the lack of assessments of the cumulative effects of industry on these adversely affected environmental components.²⁸⁶

A major challenge with project-level impact assessment, however, is understanding and mitigating cumulative effects. Under the *Impact Assessment Act*, assessments must continue to take into account cumulative environmental effects,²⁸⁷ however, the Agency is required to determine the scope of the factors to be considered in the assessment²⁸⁸ and such a decision must be fair to the proponent. In this context, project-level assessments can be a limited mechanism for assessing cumulative effects of human activities on biodiversity.

While a project-level assessment must take into consideration the extent to which a project contributes to or hinders the Government of Canada's ability to meet its environmental obligations²⁸⁹ (such as international biodiversity-related commitments), effectively assessing the impacts of physical activities on biodiversity may be more effectively undertaken through cumulative effects assessment at the regional, national or international level.

The new *Impact Assessment Act* accounts for the limitations of project-level assessments in accounting for cumulative effects by establishing a legislative framework for regional assessment. The Minister of the Environment and Climate Change can now establish regional assessment committees and authorize the Agency to conduct regional assessments of the effects of existing or future physical activities carried out in a region.²⁹⁰

Project level assessments must take into account cumulative environmental impacts, such as biodiversity loss, impacts on Indigenous peoples, Indigenous knowledge provided with respect to the project, and assessments undertaken by or on behalf of Indigenous governing bodies,²⁹¹ however, the regional assessment provisions of the Act present an additional and (arguably) more effective mechanism for assessing biodiversity loss and protection in Canada.

²⁸⁴ Roundtable Notes, supra note 55, 24.

²⁸⁵ Ibid at 24.

²⁸⁶ Ibid at 15.

²⁸⁷ IAA, supra note 22, at s 22(1)(a)(ii).

²⁸⁸ Ibid at s 18(1.2).

²⁸⁹ Ibid at s 22(1)(i).

²⁹⁰ IAA, supra note 22, at s 93(1).

²⁹¹ Ibid at s 22(1).

While information about a particular project's contribution to or hindrance of Canada's ability to meet its international commitments to the conservation of biodiversity should be obtained the project-level assessments, regional assessment processes may be a more effective mechanism under the *Impact Assessment Act* for understanding the cumulative impacts of human activities on biodiversity.

Importantly, regional assessments under the *Impact Assessment Act* must take into account scientific and Indigenous knowledge, including the distinct knowledge of Indigenous women.²⁹² Ensuring that Indigenous women are afforded full, meaningful, and effective opportunities to contribute their knowledge to these assessment processes is pivotal in ensuring the accuracy and effectiveness of our understanding of the cumulative impacts of human activities on biodiversity.

Water

Indigenous women often have special cultural relationships with nature and are sometimes referred to as "Water Carriers". Although the Government of Canada has begun to address this infrastructural problem,²⁹³ long-standing issues of access to clean drinking water cause daily hardships and risks for Indigenous communities that colour water issues with complexities of racial discrimination and undermine the process of reconciliation.

Industrial projects often pose a particular risk for water resources²⁹⁴ and the legacy of 10,000 abandoned mining sites in Canada²⁹⁵ constitute a significant concern for the water resources and rights of Indigenous women.

²⁹² Ibid at s 97(2).

²⁹³ Indigenous Services Canada, "Ending long-term drinking water advisories" (17 February 2020) Online: Indigenous Services Canada <https://www.sac-isc.gc.ca/eng/1506514143353/1533317130660>.

²⁹⁴ For example: the Mount Washington Mine in British Columbia impacts on the Tsolum River fisheries (NOAMI, Lessons Learned on Community Involvement in the Remediation of Orphaned and Abandoned Mines: Case Studies and Analysis (February 2003) <http://www.abandoned-mines.org/wp/wp-content/uploads/2015/06/LessonsLearnedCI2003.pdf>, at p 18) and the Mount Polly disaster impacts on First Nations fisheries (Mack, J. & Williams, L. "Time for mining to clean up its act" Vancouver Sun, (2018, May 16) Online: <https://vancouver.sun.com/opinion/op-ed/jacinda-mack-and-loretta-williams-time-for-mining-to-clean-up-its-act>).

²⁹⁵ Tremblay, G. A. & Hogan, C. M. (December 2016). Managing orphaned and abandoned mines: A Canadian perspective [paper presentation]. Dealing with Derelict Mines Summit, Singleton, NSW, Australia. <https://www.abandoned-mines.org/en/document/publication/>, at p 2.

Threats to water exist at the project, regional, and global levels. Individual projects or industrial activities in a particular region can directly contaminate local drinking water sources and water bodies. Further, industrial and urban activities around the world can result in heavy metal deposits in northern regions via atmospheric circulation. These sources of contamination pose a threat to the sources of country foods on which Indigenous peoples continue to depend for sustenance.²⁹⁶

Project level assessments under the *Impact Assessment Act* must consider the positive and negative effects of projects on the environment,²⁹⁷ including water.²⁹⁸ The requirement that regional assessments take into account the knowledge of Indigenous women is also a potentially important mechanism for addressing project impacts on water by ensuring that regional assessments possess baseline information related to water as well as both the real and potential effects of physical activities on water.

Participants at the Indigenous Women and Impact Assessment Roundtable expressed their belief that water must be a priority for community wellness.²⁹⁹ Given the long and ongoing history of adverse effects of water contamination on Indigenous peoples, these views are well-founded. For example, The Mount Polly tailings-dam disaster saw millions of cubic meters of mine water leak from containment, resulting in significant negative effects on biodiversity and the livelihoods of local First Nations fishers.³⁰⁰ The dumping of effluent from the Dryden Mill into the Wabigoon-English river system contaminated the fish Asubpeeschoseewagong (Grassy Narrows) First Nation relies on as a staple with methylmercury. This contamination has caused inter-generational poisoning: the children of mothers who had eaten the fish while pregnant are four times more likely to experience nerve disorders and learning disabilities.³⁰¹

²⁹⁶ National Collaborating Centre for Aboriginal Health. (2012). The state of knowledge of Aboriginal health: A review of Aboriginal public health in Canada. Retrieved from website: <https://www.ccnca-nccah.ca/docs/context/RPT-StateKnowledgeReview-EN.pdf>, at 24.

²⁹⁷ IAA, supra note 25, at s 22(1).

²⁹⁸ Ibid at s 2.

²⁹⁹ Roundtable Notes, supra note 55, at 24.

³⁰⁰ Mack, J. & Williams, L. "Time for mining to clean up its act" Vancouver Sun, (2018, May 16) Online: <https://vancouver.sun.com/opinion/op-ed/jacinda-mack-and-loretta-williams-time-for-mining-to-clean-up-its-act>.

³⁰¹ Thompson, Jon, "Why the people of Grassy Narrows are still eating the fish" TVO news, 17 December 2018 <https://www.tvo.org/article/why-the-people-of-grassy-narrows-are-still-eating-the-fish>.

The direct impacts of projects on water bodies and drinking water as well as the cumulative effects of human activities on water more generally must be taken into consideration in the assessment of proposed projects. These assessment processes need to meaningfully engage Indigenous women in order to properly understand the baseline conditions, the likely impacts, and the significance of these impacts for the health and well-being of Indigenous women and children.

Climate Change

The UNFCCC and Intergovernmental Panel on Climate Change have noted that women are disproportionately affected by climate change due to, *inter alia*, gender inequality in access to resources and decision-making.^{302, 303} A substantial body of literature on gender inequality has highlighted women's critical role in natural resource management and their disproportionate vulnerability to climate change as a result of these roles.³⁰⁴

In determining whether the adverse effects of a project are in the public interest under the *Impact Assessment Act*, the Minister³⁰⁵ or the Governor in Council³⁰⁶ must consider the extent to which the effects of the project hinder or contribute to Canada's ability to meet its environmental obligations and its commitments in respect of climate change.³⁰⁷ Currently, Canada estimates that its greenhouse gas (GHG) emission reduction measures will reduce national emissions to 583 megatons annually by 2030, leaving a 66 megaton annual emissions gap from Canada's commitment of reducing emissions to 30% below 2015 levels by 2030 under the *Paris Agreement*.³⁰⁸ Canada's 30% target, however, is inadequate to address its share of responsibility in addressing climate change as indicated by the Intergovernmental Panel on Climate Change (IPCC) in its Special Report on 1.5° C Global Warming. In this Special Report, the IPCC determines with high confidence that global GHG emissions must be reduced by at least 40-50% to contain global warming to 1.5° C by 2030.³⁰⁹

In light of the gap between Canada's targets under the Paris Agreement and attainable reductions through existing and planned measures, as well as the significant gap between Canada's emission reduction targets and the reductions required to contain global warming to 1.5° C, any project that does not result in a net reduction of GHG emissions faces a significant challenge in the public interest determinations pursuant to section 63(e) of the *Impact Assessment Act*.

While no individual project is likely to unilaterally drive anthropogenic climate change, the factor to be determined in the public interest determination under the Act is not whether a project causes or contributes to climate change, but whether the project hinders or contributes to Canada's ability to meet its climate change commitments, such as its Paris Agreement targets.

³⁰² UNFCCC, Best Practices, *supra* note 65, at Box 8.

³⁰³ *Ibid* at para 72.

³⁰⁴ *Ibid* at para 72.

³⁰⁵ IAA, *supra* note 25, at s 60(1)(a).

³⁰⁶ *Ibid*, at s 62.

³⁰⁷ *Ibid*, at s 63(e).

³⁰⁸ Canada, Environment and Climate Change Canada, 7th National Communication and 3rd Biennial Report (Ottawa: 2017), at 010 https://unfccc.int/files/national_reports/national_communications_and_biennial_reports/application/pdf/82051493_canada-nc7-br3-1-5108_eccc-can7thncomm3rdbi-report_en_04_web.pdf.

³⁰⁹ IPCC, 2018: Summary for Policymakers, In: Global Warming of 1.5°C. An IPCC Special Report on the impacts

of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways,

in the context of strengthening the global response to the threat of climate change, sustainable development,

and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla,

A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis,

E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.) In Press, at 18 <https://www.ipcc.ch/sr15/chapter/spm/>.

Indigenous women want the impacts of climate change to be considered in impact assessments. The close relationships they have with nature present important sources of information that are relevant to issues related to climate change.³¹⁰ Melting permafrost, loss of wetlands and changes to land cover can have significant implications for GHG emissions, and Indigenous women are uniquely situated to inform government decisions-makers about these potential impacts.

Food Security and Country Foods

Project impacts that limit the quality or quantity of country foods create disproportionate risks for Indigenous women because of their economic vulnerability and dependence on country foods for sustenance as well as their close spiritual and cultural relationships with the land. Including Indigenous women in impact assessment processes and decision-making can help ensure that these disproportionate impacts are identified and contained.

Country food (a term referring to traditional Inuit food such as game meats and foraged foods) can be compromised by toxic pollution that kills animals or makes them unsafe to ingest.³¹¹

³¹⁰ Roundtable Notes, supra note 55, at 35.

³¹¹ Kenny, T. A. (2019). Climate change, contaminants, and country food: Collaborating with communities to promote food security in the Arctic. In A. M. Cisneros-Montemayor, W. W. L. Cheung & Y. Ota (Eds.), *Predicting Future Oceans* (pp. 249-263). Elsevier. doi: 10.1016/B978-0-12-817945-1.00024-1

Large industrial projects have contaminated Indigenous lands that were used for farming, affecting agriculture and employment.³¹² Infrastructure related to extractive industries (e.g. roads) can also destroy animal habitats or disrupt migration routes, negatively impacting hunting feasibility.³¹³ For example, the W.A.C. Bennett Dam in northeast BC flooded more than 1,200km² of forest, creating a large reservoir, which cut off animal migration routes and has led to the drowning of hundreds of caribou and moose.³¹⁴ Declining caribou numbers threaten food security in communities that rely heavily on caribou meat and products.

Projects that interfere with the rights and abilities of Indigenous peoples to occupy their traditional lands and exercise traditional harvesting practices can infringe a range of human rights, including the rights to health and culture.³¹⁵

³¹² Roundtable Notes, supra note 55, at 22.

³¹³ Nightingale et al., 2017, supra note 155.

³¹⁴ Loo, T. (2007). Disturbing the peace: Environmental change and the scales of justice on a northern river. *Environmental History*, 12(4), 895-919. Retrieved from <https://www.jstor.org/stable/25473166?seq=1>

³¹⁵ Out of Sight, Out of Mind, supra note 87, at 14.

Particularly in northern and remote Indigenous communities, where food in conventional grocery stores can be very expensive, country food is a source of affordable nutrition for Indigenous women and their families. High rates of unemployment among many Indigenous women in these communities³¹⁶ and men's absence while working at resource sites leaves women in these contexts especially vulnerable to food and water security challenges brought about by resource extraction projects. For example, a study with the Nak'azdli First Nation in central BC found that losing access to wild/country food could have greater impact on female-headed households than on male-headed households, because the former is more likely to eat traditional foods.³¹⁷ It is clear that resource extraction industries pose challenges for Indigenous women to maintain their means of food procurement. Industry impacts may also require both men and women having to travel further and further away from the community to hunt and gather berries.³¹⁸ The Listuguj Mi'gmaq First Nation relies on the salmon fisheries, but have been forced to fish outside designated areas due to mill effluent, leading to conflicts between the federal and First Nation governments.³¹⁹

Moreover, contamination of the land and food supply can result in contaminated breastmilk, fracturing mother-child bonding processes and threatening children's health.³²⁰

Understanding the disproportionate distribution of project risks as they relate to food security requires a strong understanding of the relationship of the affected Indigenous peoples with nature as well as an understanding of the socio-economic dynamics that further distribute risk unevenly on the basis of gender and age. Impact assessment processes that engage early and respectfully with Indigenous women are important opportunities to properly understand and address these issues.

³²⁰ Ibid at 22.

³¹⁶ Kunkel, T. (2017). Aboriginal values and resource development in native space: Lessons from British Columbia. *Extractive Industries and Society*, 4(1), 6-14. doi: 10.1016/j.exis.2017.01.001

³¹⁷ Quintessential Research Group Inc. (October 2014). Socio-economic impact assessment of Spectra Energy's Westcoast Connector Gas Transmission Project on Nak'azdli band and community members. Retrieved from Amnesty International Canada website: <https://www.amnesty.ca/sites/amnesty/files/Amnesty%20International%20Submission%20ENVI%20C-69%20April%202019.pdf>, at p 34.

³¹⁸ Roundtable Notes, supra note 55, at 23; Amnesty, *Out of Sight, Out of Mind*, supra note 87, at 35.

³¹⁹ Ibid at 23.





CONCLUSION

This report has provided an overview of some of the main issues related to Indigenous women's engagement in impact assessment processes in the Canadian context. It has also included the concerns voiced by Indigenous women who are experts in industrial impacts on Indigenous peoples as well as impact assessment processes.

The main goal of this report is to provide legal, academic, and experiential information to industry proponents, government, impact assessment practitioners, and Indigenous communities to ensure that Indigenous women are meaningfully and respectfully engaged and that their rights, concerns, interests and knowledge are respected and incorporated in impact assessments. The appendices of this report provide more detailed guidance on promising practices for industry proponents and impact assessment practitioners (see Appendix A) as well as detailed guidance on impact assessment for Indigenous women (see Appendix B).

Common concerns regarding impact assessment of industrial projects raised by the Indigenous women experts who participated in NWAC's Roundtable fell within five broad areas:

1. Governance and Decision-making
2. Health and Safety, particularly sexual violence
3. Culture
4. Economy
5. Environment

As it pertains to governance and decision-making, proponents need to be responsive to the reality that while some Indigenous women want to work collaboratively with industry, longstanding patterns of being actively excluded from discussions and negotiations with government and proponents, as well as experiences with adverse project impacts, have led to deep frustrations and distrust. Further, it is important to recognize the dilemmas faced by many Indigenous communities when making decisions regarding industrial projects, such as the feeling that they have to decide between preserving their nations' natural heritage or accessing economic benefits.

As it pertains to health and safety, proponents and impact assessment practitioners must understand the ways in which colonialism, racism, and sexism combine to intensify the risks of sexual violence and other physical and mental health concerns for Indigenous women, girls, and gender diverse people. It is also critical to acknowledge that although impact assessment processes cannot singlehandedly solve the epidemic of violence against Indigenous women and girls in Canada, they play a pivotal role in addressing this epidemic.

As it pertains to culture, the interconnectedness of Indigenous women to land and to nature, and the cultural and spiritual loss that accompanies the disruption and destruction thereof, must be understood and addressed. Government and industry proponents should be alive to the negative impact primary sector projects can have on Indigenous culture, ranging from land-based activities to the ability to speak Indigenous languages in workplace settings.

As it pertains to economic impacts, government and proponents need to be aware of the ways in which colonial structures have created economic dependency, with particularly egregious impacts on Indigenous women. Indigenous women experience the "penguin effect", experiencing not only the negative impacts of not having access to traditional economic activities, but also the barriers to economic opportunities in non-Indigenous sectors (e.g. being limited to entry-level positions).

As it pertains to environmental impacts, addressing the cumulative effects of industry projects is crucial. Industry projects can have deleterious impacts on biodiversity, food security (via impacts on hunting and harvesting practices), water quality, and climate change. Moving forward, governments, impact assessment practitioners, and industry proponents must work with Indigenous women, who already have expertise in these areas and can provide sustainable solutions, to ensure increased accountability and transparency regarding potential environmental damage, and work to mitigate such damage before a project commences.



APPENDIX A: IMPACT ASSESSMENT PRACTITIONERS' GUIDANCE FOR ENGAGING WITH INDIGENOUS WOMEN

Introduction

Indigenous women experience the effects of industrial projects differently than non-Indigenous persons and Indigenous men. Their geographic proximity to projects, economic conditions, socio-cultural roles, and physiological susceptibility are all factors that contribute to the disproportionate distribution of benefits and burdens of industrial development; however, historical and ongoing colonial mechanisms have marginalized many Indigenous women from their traditional leadership roles, resulting in impact assessment (IA) and decisions-making processes that do not account for or address their concerns.

The coming into force of the *Impact Assessment Act (IAA)* has introduced new legislative requirements for the early and ongoing engagement with Indigenous peoples and the consideration of Indigenous and gender issues in IA processes and decision-making. These legislative developments can help ensure that women are included in IA processes and that their concerns are addressed in decisions.

This document should be read together with the Impact Assessment Agency of Canada's *Guidance on Gender-based Analysis Plus (GBA+) in Impact Assessment* and the Native Women's Association of Canada's report on *Indigenous Women and Impact Assessment*, to which this guidance document is an appendix.

The recommended steps for undertaking GBA+ during the early planning phase of an assessment set out in the Agency's *GBA+ Guidance* provides important information regarding GBA+ that practitioners should familiarize themselves with. This guidance document is intended to assist practitioners when engaging specifically with Indigenous women, gender diverse, and 2SLGBTQQIA persons.

Legislative Framework

Under the IAA, proponents, governments and practitioners are required to offer to engage with Indigenous peoples, and Indigenous women in particular. The Impact Assessment Agency (the Agency) is required to offer to consult with Indigenous groups from the early stages of the assessment process and must take into account any adverse effects of a project on the rights of Indigenous peoples when deciding whether an IA is required. Likewise, proponents are required to prepare and submit to the Agency an Initial Project Description (IDP) of their proposed project even before a determination that an Impact assessment is required.

The IDP must include information on the Indigenous peoples that may be affected by the proposed project and a summary of the engagements with these peoples and the key issues raised by them. The proponent must also respond to the Agency's summary of issues, including those issues raised by or related to Indigenous peoples.

The Agency must then determine, after taking into consideration, *inter alia*, impacts on Indigenous peoples, whether the proposed project must undergo an IA. Under the IAA, IAs must take into account Indigenous knowledge, assessments and studies conducted on proposed projects and, importantly, the intersection of sex and gender with other identity factors.


Because Indigenous women are differently affected by adverse and positive project impacts, it is important that a culturally relevant gender-based approach (discussed below) to engagement with Indigenous peoples is employed from the earliest stages of project planning. Failure to properly plan and implement consultations with Indigenous peoples from the start can result in assessment processes that do not include representation of Indigenous women and gender diverse persons, denying all parties involved in the assessment process of the opportunities to properly identify all the relevant issues and possible conditions that inform decision-making.

CRGBA+

In 1995, the federal government committed to using gender-based analysis (GBA) as an analytical process to assess how diverse groups of women and men may experience programs, initiatives, and policies. The goal of implementing GBA is to advance gender equality in Canada, as enshrined by the *Charter of Rights and Freedoms*. In 2011, gender-based analysis plus (GBA+) was put forward as a more inclusive version of GBA to include individuals of diverse genders and backgrounds. The “plus” in GBA+ acknowledges that GBA goes beyond different experiences based on biological (e.g. sex) and socio-cultural (e.g. gender) factors. While GBA+ has been effective in advancing women’s and gender diverse people’s equality, it often fails to meaningfully address the political, economic, social, and cultural realities of *Indigenous* women and gender-diverse people. Responding to the shortcomings of mainstream GBA+, culturally relevant gender-based analysis plus (CRGBA+) considers the historical and current issues faced by Indigenous women and gender-diverse people, including the historical and ongoing impacts of colonization and intergenerational trauma.

CRGBA+, as practiced by NWAC, has **four key characteristics**:

1. It is **distinctions-based**, recognizing and accounting for the distinct lived experiences not only between but within First Nations, Inuit, and Métis communities and individuals. In contrast to pan-Indigenous approaches, CRGBA+ recognizes that these three groups have all had separate experiences with colonization and will be impacted differently by policy, programs, and phenomena (e.g. an Inuk woman living in Inuit Nunangat will experience climate change differently than an Inuk woman living in urban Ottawa).
2. It recognizes and respects **sexual and gender diversity**, remaining critically reflective of the ways in which patriarchal and heteronormative norms about sexuality and gender have (and continue to) impact Indigenous communities. (For example, recognizing the erasure of and violence towards Two-Spirit peoples in extractive industries and work camps as a form of colonization).
3. It is **intersectional**, incorporating the idea that different aspects of everyone’s identities come together to create unique experiences in relation to power. (For example, upon the introduction of an industry project in a community, the lived experience an able-bodied, English-speaking Indigenous woman will be distinct from that of a disabled woman who only speaks Inuktitut).
4. It is respectful and inclusive of **Indigenous knowledge**. A CRGBA+ approach acknowledges how assimilative and oppressive colonial agendas have and continue to actively delegitimize Indigenous ways of knowing. [For example, in the context of processes that prioritize scientific knowledge over traditional knowledge or lived experience, Indigenous women may lack the capacity to prove the legitimate basis of concerns and positions on proposed projects (see p. 15 of Final Report)].



In the context of impact assessment, CRGBA+ can help industry proponents and impact assessment practitioners ask questions that allow for a recognition and undoing of limiting or harmful assumptions; identify potential impacts of projects, programs, and policies on Indigenous women and gender-diverse people's lives; uncover intersectional power structures and dynamics; and find ways to address the varying needs of diverse Indigenous women and their communities in Canada. The goal of applying CRGBA+ to impact assessment processes is to better understand the gendered negative and positive effects that designated projects may have on diverse population groups, including Indigenous women, which may otherwise be overlooked.

Applying a CRGBA+ lens into impact assessment is important in order to minimize the risk of perpetuating further marginalization, oppression and/or violence against Indigenous women and gender-diverse people.

The Indigenous Right of Gender Equality

Indigenous rights are guaranteed equally to men and women under the *Constitution Act, 1982* and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Moreover, UNDRIP has codified specific rights of Indigenous women with respect to protections from all forms of violence and the amelioration of their socio-economic conditions.

These equal and specific rights are responsive to the discrimination Indigenous women have faced and continue to face in the context of colonization as well as the unique and distinct socio-economic conditions and risks they face as a result of the intersection of indigeneity and gender.

As the Government of Canada progresses on its efforts to fully implement UNDRIP domestically, it is highly advisable for IA practitioners to ensure that impact assessment processes conform with the rights set out in that Declaration. This includes ensuring Indigenous women can exercise the same rights as Indigenous men with respect to engagement, consultation and decision-making and that assessments take into account specific issues of inequality, discrimination and vulnerability with respect to proposed projects. The processes and considerations set out below can help ensure these requirements are met.

Eight Basic Requirements for Engagement with Indigenous Women

A 2013 technical paper on best practices for the use of Indigenous knowledge in climate change adaptation by the United Nations Framework Convention on Climate Change has recommendations for engagement with Indigenous knowledge holders in a gender-sensitive approach that is pertinent to engagement with Indigenous women in IA processes. The eight basic requirements for engagement outlined in that technical paper are:

1. Recognizing Indigenous peoples as knowledge holders;
2. Establishing mutual trust and respect;
3. Involving Indigenous knowledge in all assessment phases, from conception through to outputs;
4. Recognizing resource owners/users and knowledge holders;
5. Involving appropriate local intermediaries and leaders;
6. Ethical approaches;
7. Free, prior and informed consent; and
8. Benefit sharing.

Each of these requirements as they relate to Indigenous women in IA are explored below.

1. Recognizing Indigenous Peoples as Knowledge Holders

What is the Knowledge of Indigenous Women?

Indigenous knowledge can mean different things to different peoples and cultures, but it broadly refers to the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. This knowledge is conveyed through traditional activities such as ceremonies, fasting events, story-telling and interactions with the land.

The knowledge of Indigenous women is often quite distinct from the knowledge of Indigenous men. Although it is similar in that it is also deeply rooted in close relationships with nature, it is also distinct because it is often influenced by gender roles in which women fulfil specific responsibilities to nature and sustainability for future generations. These responsibilities can include keeping and teaching specific types of ecological knowledge.

Recommendation: From the earliest planning phases of a project, begin engagement with Indigenous women by first expressing recognition that Indigenous knowledge is a legitimate and valuable way of knowing and source of important information, deserving of respect and consideration. Express recognition that the knowledge of Indigenous women is often distinct from the knowledge of Indigenous men and that it is an equally legitimate and valuable way of knowing and source of important information.

How does Indigenous knowledge relate to scientific knowledge?

It is important to note that Indigenous knowledge is not in conflict with scientific knowledge or processes; rather, these are two ways of knowing and understanding the world. Indigenous knowledge has evolved over thousands of years and can be a valuable source of baseline environmental and socio-cultural data. Moreover, Indigenous traditions and activities are deeply connected to nature, providing front-line and real time information about environmental change from unparalleled experts in ecosystem observation.

The new requirements under the IAA that mandate the consideration of Indigenous rights and knowledge and sex and gender-related factors are important improvements to the legislative framework that can help ensure that the adverse and positive impacts of project on Indigenous women are identified, considered and addressed. However, without sufficient capacity resources, it is unlikely that Indigenous women will be able to provide this important information to the impact assessment process.

Recommendation: Undertake best efforts to incorporate the knowledge of Indigenous women to interpret scientific data and information and work cooperatively with Indigenous women in ongoing monitoring efforts. Share scientific information and reports in accessible language with Indigenous women and invite them to comment on this information. This information can be used to inform both the IPD and the detailed project description (DPD). The use of such information in the IPD and DPD should specifically reference the knowledge shared by Indigenous women and how it was/ will be used to address the issues raised in the summary of issues (Sol).

Recommendation: Impact assessment practitioners should familiarize themselves with capacity funding programs available to Indigenous women, such as the Impact Assessment Agency of Canada's Indigenous Capacity Support Program, and undertake best efforts to ensure that Indigenous women and organizations representing and advocating on their behalf are informed of these funding opportunities. Proponents should also consider making capacity funding available specifically for Indigenous women, youth, 2SLGBTQQIA persons, and Elders to participate in all stages of the IA; however, they should be careful not to appear to be "buying" approval from Indigenous groups.

How is Indigenous knowledge shared?

Indigenous women are holders and conveyers of knowledge. It is information and ways of knowing that have developed and been passed on over millennia and the knowledge holders assume the responsibility of carrying and passing on this knowledge with great seriousness. From non-Indigenous perspectives, it can be interpreted as a kind of intellectual property, the ownership of which is held in trust by women. This knowledge is often shared through story-telling but can also be conveyed through song and dance and land-based interactions.

Recommendation: Express recognition of the important responsibility Indigenous women have in holding and conveying their knowledge. Ask about the traditional customs and practices for the sharing of information and undertake to understand and abide by those customs and traditions when engaging with the knowledge-holders.



How should Indigenous knowledge be used and protected?

Different nations have different customs, traditions and protocols with respect to the holding and sharing of traditional knowledge. While Indigenous women often want to share their knowledge with proponents and governments to ensure decision-making is properly informed, there are also significant concerns that their knowledge will not be received, used and protected appropriately.

Because there may be specific protocols and procedures for the sharing of knowledge and because this information is often sensitive or confidential, it is important that impact assessment practitioners offer to have early conversations about culturally relevant and gender-appropriate ways of sharing, using and protecting information between Indigenous women and the practitioners.

Recommendation: Offer to create an Indigenous Engagement Plan (IEP) collaboratively with each Indigenous group that will be engaged. Include in each IEP a specific section for Indigenous women. The IEP should outline the engagement processes, tools, strategies and protocols for engagement and set out how Indigenous knowledge will be shared with the practitioners and how information about the project and IA will be shared with the Indigenous group. The IEP should also describe how confidential information will be identified by the Indigenous knowledge-holders, how confidential Indigenous knowledge will be treated and under what circumstances the practitioner may be required to disclose it, how the knowledge will be used in the impact assessment process, and how the information will be stored and disposed of.

Note, the Agency is responsible for offering to develop, with Indigenous peoples, an Indigenous Engagement and Partnership Plan during the planning phase of the assessment process. For more information on this process, see: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-indigenous-engagement-partnership-plan.html>.

How should the knowledge of Indigenous women be stored?

Some Indigenous women support the development of a searchable database of Indigenous knowledge that can be used, inter alia, to inform IAs of proposed projects. Practitioners may want to explore the possibility of including some or all of the information shared with them in such a database.

Recommendation: When collaborating on the development of an IEP, IA practitioners should ask if the Indigenous knowledge holders agree to sharing some or all of the information they share with the practitioner in a long-term searchable database for future IAs.

Information that is confidential should be properly identified and protected. Inadvertent disclosure of confidential knowledge of Indigenous women without their free, prior and informed consent can permanently damage the practitioner's, proponent's or government's relationship with the affected group and would constitute a violation of their rights as Indigenous peoples.

Recommendation: As noted above, the IEP should set out the processes and protocols for sharing, identifying, using and protecting confidential Indigenous knowledge. It is advisable that this information be properly identified, codified and stored in secure, access-protected locations.



2. Establishing Mutual Trust and Respect

What are some existing barriers to establishing trust?

Indigenous women have faced centuries of sexist colonial measures that specifically work to subordinate the traditional roles of women in society. This has attacked and undermined the traditional leadership roles of women in many nations and continues to influence women's underrepresentation in modern Indigenous governing bodies.

Recognizing the sexist nature of past and ongoing colonial mechanisms may help Indigenous women trust that impact assessment practitioners understand and appreciate the unique challenges they face with respect to governance and decision-making related to resource use and industrial projects.

Misunderstandings and knowledge gaps with respect to proper protocols and procedures for engaging with Indigenous peoples and issues with respect to the who, what, when, why and where of engagement, can cause challenges that further undermine trust. Moreover, these types of misunderstandings and breaches of protocol can be interpreted as disrespectful.

Recommendation: Express recognition of the gendered nature of colonization and undertake to offer to meaningfully engage with Indigenous women throughout every stage of the IA process.

Recommendation: Express support for Call for Justice 1.2.v of the MMIWG Inquiry calling on the Government of Canada to implement UNDRIP, specifically including the recognition, protection and support of Indigenous self-governance and self-determination.

Recommendation: Express support for the equal rights of Indigenous men and women as set out in section 35 of the *Constitution Act, 1982* and UNDRIP.

Recommendation: Undertake preliminary research about the peoples and the histories of those peoples before reaching out for engagement purposes. Once a preliminary understanding of the nation is acquired, offer to make contact with leadership of the community. At the earliest stages of your involvement in the IA process (i.e., at the planning phase), inquire if it would be possible and appropriate for the community to appoint a liaison contact person to the impact assessment practitioners (sometimes referred to "gatekeepers" in the research community). The community liaison may fulfill different roles for different communities, but can include educating the practitioners about the customs, traditions and protocols of the community; connecting the practitioners with leaders, organizations and individuals; helping to plan and schedule engagement sessions; and convey information between the practitioners and the community. Ensure that the liaison understands that engaging with Indigenous women leaders, organizations and individuals is a priority for the practitioners.

How do personal relationships affect trust and respect?

It may be trite to say, but personal relationships between the IA practitioners and community members are exceedingly important for the sharing of Indigenous knowledge. Developing meaningful and trusting relationships with leaders, organizations and community members can be complicated by political and social divisions within the community. Navigating community politics while developing meaningful relationships with a diverse representation of the community can be difficult, but it is important to ensure that practitioners engage with, and are seen to engage with, the various groups within each Indigenous community.

Recommendation: While engaging with Indigenous communities, endeavor to build respectful and trusting relationships with diverse groups within each community. Be transparent about your efforts to be inclusive of all the voices within the community. Some communities or leaders may insist that any and all engagements and communications go only through a specific leader or governing body. In this case, explain the responsibility of IA practitioners to be as inclusive as possible of all the voices in the community, and offer to address concerns related to representation and diverse participation through the development of the IAPP.

Is silence a sign of support?

Engaging with Indigenous communities can take time. Indigenous women may expect that engagements take place over several sessions, often sitting and listening during initial engagement sessions in order to learn about processes and proposed activities. They will often take this information back to their communities and families to discuss in order to participate in subsequent engagement sessions. Unfortunately, proponents, governments and impact assessment practitioners sometimes are unaware of these types of procedures and erroneously assume that a lack of opposition at initial engagement sessions is a sign of indifference, support, or even consent to proposed activities.

This miscommunication can harm the relationship between Indigenous peoples and the IA practitioner, proponent or government.

Recommendation: When developing the IEP with Indigenous women, clarify engagement processes and timelines (including legislative timelines) so that there is agreement and understanding on engagement processes and significance. Include in the IEP specific procedures for inviting and receiving feedback and for identifying support, opposition, concerns and consent for various elements of the IA process and the proposed project.

How should disputes be resolved?

Misunderstandings, disagreements and conflicts happen. The IEP is an important tool for limiting these issues, but it cannot avoid conflict altogether. Further, it is important to recognize Indigenous conflict resolution strategies. Ensuring that all parties discuss and agree to the process for respectfully resolving disagreements and conflicts at the earliest stages of engagement can help ensure that, where conflicts do arise, they do not entirely derail the engagement process.

Recommendation: In cooperation with Indigenous groups, develop conflict resolution sections of the IEPs. Ensure that these conflict resolutions are respectful of and compliant with the customs and traditions of the Indigenous peoples.

3. Involving Indigenous Knowledge in all Assessment Phases

At what stage of the IA process should Indigenous peoples be engaged?

Under the IAA, proponents must engage with affected Indigenous peoples from the planning phase of the project and the Agency is required to offer to consult with Indigenous governing bodies and any Indigenous group that may be affected by the proposed project. In deciding whether a proposed project must undergo an impact assessment, the Agency must consider impacts on Indigenous peoples and comments received from Indigenous peoples with respect to the proposed project.

Where a project is to undergo an impact assessment, Indigenous governing bodies must be given the opportunity to be consulted, the assessment must take into account impacts on Indigenous rights, Indigenous knowledge, Indigenous studies or plans concerning the regions related to the proposed project, and the intersection of sex and gender with other identity factors (i.e., Indigenous women). The IA report must set out how Indigenous knowledge was taken into account in determining project effects.

If the Minister refers the impact assessment to a review panel, they must consider adverse impacts of the proposed project on Indigenous peoples. In determining whether a project is in the public interest, the Minister must take into consideration impacts on Indigenous peoples.

Ultimately, from the earliest stages until the final stages of the IA process, Indigenous peoples must be engaged in order for decisions to be properly made under the Act and in order for the rights of Indigenous peoples to be respected. Working cooperatively with affected Indigenous peoples, especially women, at the earliest stages to develop an IEP that sets out the who, what, where, when and why of engagement will greatly contribute to engagement processes and experiences that are productive, informative, inclusive, respectful, culturally appropriate and gender sensitive.

Recommendation: In developing an IEP cooperatively with Indigenous groups, including Indigenous women, practitioners should endeavor to provide as much information about the different impact assessment processes under the Act and highlight the various opportunities for engagement. Identifying timelines and deadlines for each stage of the IA process may help communities, groups and individuals better plan for their engagement in the process.

4. Recognizing Resource Owners/users and Knowledge Holders

Indigenous peoples have inhabited the lands and territories of present-day Canada for at least 10,000 years. Their societies have evolved based on extremely close relationships with nature, equipping Indigenous peoples with profound knowledge about the environment and contributing to cultures that view the Earth as a mother that must be respected and whose gifts must be reciprocated.

Indigenous worldviews often diverge from Western ideals with respect to land, particularly as they apply to land and resource ownership and management. While Indigenous land and resource management is based on reciprocal relationships with nature and has a communal focus, the Western model of land and resource management is based on a relationship in which humans “own” nature and has a capitalistic focus on profits.

Acknowledging Indigenous land and resource rights requires understanding and respect for the importance of land to Indigenous peoples. Expressing support for Indigenous land and resource rights in a process that is inconsistent with the underlying values governing Indigenous land use and management may be seen as insincere or misleading.

Land and resources are intricately interwoven into the socio-cultural, economic and political lives of Indigenous women. Indigenous identities, stories, traditions, celebrations and daily lives are deeply connected to their relationships with nature and each other. Any project which aims to undermine the integrity of environmental systems can have significant adverse impacts on Indigenous peoples.

Indigenous men and women, while both equally connected to nature, often have different stewardship responsibilities with respect to their knowledge and culture, which are inseparable from the land. Adverse impacts on environmental systems, then, may impact Indigenous women and men differently.

Recommendation: While it is important to express recognition of the rights of the land and resource rights of Indigenous peoples, proponents, governments and IA practitioners should ensure that they understand what those land and resource rights mean to the Indigenous peoples who hold those rights. Practitioners should engage with Indigenous communities to understand their relationship to the land and how the proposed project can impact the uses, rights and responsibilities related to the relevant land and resources. Practitioners should frame their recognition of land and resource rights in a manner that evidences their understanding of the significance of these rights and a genuine effort to understand if and how the proposed project may affect these rights. Particular attention should be paid to the relationships of Indigenous women with the relevant lands and resources.

5. Involving Appropriate Local Intermediaries and Leaders

Indigenous nations and communities are not homogenous groups. Many nations have a plurality of leadership structures based on traditional and/or hereditary customs as well modern democratic systems. There are also civil society and private sector leaders who hold significant influence in their communities and regions. Nations and communities also consist of diverse political and ideological groups.

Stereotypes often portray Indigenous peoples as a single group with a unified leadership and specific set of policy priorities. The reality, however, is that there are three very distinct groups of Indigenous peoples in Canada – First Nations, Métis, and Inuit – composed of hundreds of different nations and communities, each with a wide diversity of political, ideological, spiritual, economic and social values and priorities. This is why it is important that CRGBA+ employ a distinction-based approach.

When engaging with Indigenous peoples, practitioners should be aware of the diversity of groups within each nation and community. While it is important to respect the right of Indigenous peoples to select their leadership in accordance with their procedures, laws, traditions and customs, it is also important to ensure that all groups, especially marginalized groups such as women and 2SLGBTQQIA persons, are provided with opportunities to meaningfully participate in IA processes and decision-making.

Recommendation: Express recognition and support for the right of Indigenous peoples to select their leaders and representatives in accordance with their own procedures as well as the equal rights of male, female, and gender-diverse Indigenous individuals. During initial discussions with leadership, ask about the representation of women, children, youth, Elders and 2SLGBTQQIA persons. Express the importance of engaging with these groups in order to ensure their concerns and interests related to the proposed project are included in the assessment process. Ask about proper procedures and protocols for engaging with these groups and reiterate that engagement with these groups is not meant to undermine the community's right to select their own representatives. Ensure that the protocols and procedures for engaging with various groups within a nation or community are addressed in the IEP.

6. Ethical Approaches

What are ethical approaches in impact assessment?

The following ethical approaches are not exhaustive, and it is important that when engaging with Indigenous peoples, proponents, governments and IA practitioners have early discussions with community leaders and elders about questions of ethics with respect to consultation, governance and decision-making.

Diversity: The ethical issues in impact assessment can be complex. Dynamic and diverse ethical systems between Indigenous peoples can complicate the ethical rules by which IA practitioners ought to abide when engaging with Indigenous peoples. Recognizing the principle of diversity itself, then, is an important ethical consideration in IA processes and decision-making.

Rights-based approach: Recognition of Indigenous rights, including the equal and specific rights of Indigenous women, is necessary to ensure that one party does not, and is not seen to, undertake actions and harbor values that subordinate the rights and interests of one group over another. Thus, another ethical approach to IA is the genuine recognition of Indigenous rights, including the rights of Indigenous women.

Flexibility, acceptance and accommodation: Differences in world views, culture, traditions and daily lives can make engaging and communicating between Indigenous and non-Indigenous peoples difficult. As the purposes of impact assessment include taking into account all effects – positive and negative – of proposed projects, failures in communication can result in certain communities or groups being denied meaningful opportunities for IA processes and decisions to consider and address adverse impacts on them. This can lead to disproportionate distributions of benefits and burdens from the project and undermine the moral and legal validity of project-related decisions. On this basis, the principles of flexibility, acceptance and accommodation ought to be recognized as ethical approaches to be applied in IA.

Capacity building: Another factor which can impede the full analysis of project effects is capacity. Many Indigenous nations, communities, organizations and individuals face significant financial challenges. Without the availability of capacity funding, these peoples, organizations and individuals are often unable to meaningfully participate in IA processes. Therefore, support and sharing with respect to capacity is also an ethical approach in IA.

Honesty and Transparency: Misleading statements or purposefully confusing communities and individuals that may be impacted by projects can result in undisclosed risks that are unfairly distributed to already marginalized groups. Moreover, overly complicated procedures can frustrate and confuse participants, impeding their ability to fully engage in the process. On this basis, honesty and transparency are ethical approaches that should be employed in IA.

Equality: Indigenous women, children and 2SLGBTQQIA persons are often disproportionately impacted by the adverse socio-economic, environmental and health effects of projects while they are also often under-represented in the benefits from industrial activities. Therefore, equality on the bases of sex, gender, gender identity and expression, and age are also ethical approaches important to IA.

7. Free, Prior and Informed Consent

What is the standard for consultation with Indigenous peoples in Canada?

The duty to consult and accommodate is likely evolving in the context of the growing recognition of the rights of Indigenous peoples as codified by UNDRIP and the Government of Canada's commitment to fully implement that Declaration. With respect to physical activities that may affect the lands and resources of Indigenous peoples, Article 32.2 of UNDRIP requires that governments consult with Indigenous peoples to obtain their free, prior and informed consent (FPIC) before approving projects.

The right to give or withhold consent is also a cornerstone of the right to self-determination of peoples as protected by binding instruments of international law, including the *Charter of the United Nations* and the common Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.

While the current standard for consultation with Indigenous peoples in Canada does not always require consent, proponents and governments that aim to advance proposed projects should obtain consent from affected Indigenous peoples. Failure to obtain consent would result in a breach of the Government of Canada's commitment to UNDRIP and customary principles of international law and can cause significant costs and delays due to court challenges, protests and public outrage.

Recommendation: Engage with Indigenous communities to determine under what circumstances and by what processes the community may consent to the project as it affects the lands, territories and resources of the affected peoples. Ensure that Indigenous women are included in this process and that any consent of the community or nation is inclusive of the consent of Indigenous women. Ensure that these processes are identified in the IEP.

What is "free" consent?

Free consent refers to the absence of undue pressure or influence that may force Indigenous peoples to acquiesce to certain activities. Duress may take the form of active and obvious threats, but may also result from systemic and subtle factors, such as a lack of capacity to assess and respond to proposed activities or even the promise of economic growth that forces the community to choose between environmental and cultural preservation and much needed income to address extreme poverty.

Recommendation: Express recognition of and support for the Indigenous right to give or withhold consent for activities as they relate to their lands, territories and resources. Engage in discussions to identify any factors that may cause undue pressure or duress with respect to consent. Afford attention to the concerns of Indigenous women that may affect their freedom to give or withhold consent.

Free consent is also consent that is arrived at through consultations that are undertaken in good faith by all parties and which accommodates participation by, and representation of, Indigenous peoples in accordance with their laws, customs and protocols, taking into consideration gender representation.

Recommendation: Inquire about the laws, customs and protocols related to representation of the Indigenous peoples with whom you are seeking to engage. Ask specifically about the participation and representation of women and gender-diverse people.

What is “prior” consent?

Prior consent is consent that is given before a decision or series of decisions have been made. Failure to engage with Indigenous peoples, including Indigenous women, at early stages of the IA process can result in decision-making regarding the assessment process and scope or proposed project that do not take into account important factors.

Recommendation: Engage early with Indigenous peoples, and Indigenous women specifically, to identify processes for decision-making and opportunities to participate in these processes throughout the planning, IA, and regulatory oversight phases. Ensure that the IEP accommodates time requirements for Indigenous peoples to reflect on the shared information, seek further advice and guidance, analyze the information and consult with the community.

What is “informed” consent?

Informed consent is consent that is given based on sufficient, objective, accurate and comprehensible information. Where important information is withheld or missing or where information is presented in a misleading, biased, inaccurate, or confusing manner, any consent that is given may be undermined. A common challenge in communication between proponents, governments, and IA practitioners and Indigenous peoples is language. Language barriers and the use of overly technical or scientific language can obstruct the exchange of information.

While information regarding proposed industrial projects and impacts is often very technical in nature, it is important that meaningful efforts are undertaken to ensure information is provided in a clear, accessible and honest manner.

Recommendation: Express recognition and appreciation for the importance of communicating clear, honest, accurate and accessible information. Explain that information about proposed activities may often be presented in technical and scientific terms but offer plain language translations or offer to facilitate meetings between the community and technical experts to more clearly explain the information.

8. Benefit-Sharing

What benefits arise from IA?

Distinct from benefit sharing related to project activities, sharing of IA benefits refers to how the benefits from the *assessment* will be shared, not how benefits from the *project* will be shared. Impact assessments can be time- and cost-intensive undertakings; however, they also produce significant amounts of data and facilitates many discussions. These processes can produce significant benefits of relevance to Indigenous peoples and especially to Indigenous women. Some of these benefits include:

- ◆ Baseline information about environmental systems;
- ◆ Statistics and studies on social issues and social services;
- ◆ Information about cultural and economic activities;
- ◆ Facilitation of discussions between Indigenous peoples and non-Indigenous governments, organizations, businesses and individuals.

These benefits, if appropriately distributed, can provide important resources to Indigenous women with respect to, for example, research on violence and social services; the exchange of songs, dance and stories between communities and nations; information about economic issues and opportunities; environmental conditions and risks; community health concerns and availability/needs in health services.

Recommendation: When collecting and organizing data in the planning and IA processes, ensure that non-confidential information is made available in easy-to-use and searchable databases. Endeavour, where possible, to summarize complex reports/ studies or encourage the providers of such information to do so. Communicate to Indigenous communities, organizations, and individuals that this information will be made available and how it can be accessed. Ensure that the database is available to the public and endeavor to promote awareness of this information with researchers. Be careful not to disclose confidential Indigenous knowledge without free, prior and informed consent of the knowledge-holder.

Common Concerns

Indigenous women experience the impacts from industrial projects differently than non-Indigenous peoples and Indigenous men. The intersectionality of Indigeneity and gender expose Indigenous women to specific vulnerabilities due to their geographic proximity to projects, close cultural and spiritual relationships with nature, dependence on traditional economic activities, economic marginalization, physiological susceptibility to environmental contaminants, and the epidemic of violence against Indigenous women and girls.

The disproportionate distribution of adverse project impacts are exacerbated by the often inequitable allocation of project benefits that deny Indigenous women the same level of opportunity in employment, training and education that Indigenous men often enjoy from projects.

Many of the issues related to the disproportionate distribution of benefits and burdens onto Indigenous women from industrial projects are largely symptomatic of ongoing colonial structures and sexist and racist attitudes. The attempted deconstruction of the governance roles of Indigenous women through colonial policies and legislation, such as the *Indian Act*, have worked to degrade the leadership roles of women in Indigenous nations and communities. The marginalization of women from consultation and decision-making processes has irrigated the soil in which these issues flourish.

Ensuring that the processes mandated under the IAA effectively identify and address the concerns of Indigenous women requires that the equal rights of Indigenous peoples are recognized and respected, including the right of women to participate equally in decision-making related to self-governance and self-determination. This necessarily includes meaningful and equal participation in IA processes.

When engaging with Indigenous women in IA processes, proponents, IA practitioners, and governments should be aware that there are several areas of common concern among Indigenous women related to industrial activities. The following, non-exhaustive, list of common concerns should be reviewed together with this Guidance Document's parent report, *Indigenous Women and Impact Assessment*.

Health and Safety

- ◆ Harassment in workforce and impacts of rigger culture (e.g. STIs, sexual violence, substance abuse, pregnancies).
- ◆ Sex work and associated exploitation.
 - ◆ The lack of protection, advocacy, and information for sex workers is a great concern for Indigenous women who feel IA should take into account the availability of coordinated community, health, and social services for sex workers.
- ◆ Industry and governmental accountability for sexual violence and the need for better protection.
- ◆ Drug and alcohol abuse and addiction
 - ◆ impacts on social and health services and family violence.
- ◆ The burden of proving adverse health effects of industrial projects.
- ◆ Suicide rates, especially among youth
 - ◆ lack of resources to address this epidemic.

- ◇ Availability of shelters and post-trauma, culturally relevant counseling services (e.g. drum and ceremony).
- ◇ Workplace training and education programs delivered by Elders and Knowledge Keepers to address sexual violence and race- and sex-based discrimination.

Cultural

- ◇ Recognition of the interconnectedness of Indigenous women to their land and to nature
- ◇ Disruption or destruction of a sense of place or place attachment causing or contributing to loss of cultural and spiritual identity/meaning.
- ◇ Recognition of and respect for cultural practices and values of sustainability.
- ◇ Adverse impact on language (e.g. due to English/French requirements).
- ◇ Access to and quality of food, country foods, and medicine.

Economic

- ◇ Colonial structures of economic dependency and impacts on traditional economic activities.
- ◇ The synergistic effects of disproportionate distributions of adverse social, cultural, health and environmental impacts with the inequitable distribution of employment, advancement, training and education opportunities on Indigenous women and 2SLGBTQIIA+ persons.
- ◇ Effectiveness of the influx of money in addressing community issues such as poverty and access to social and health services.
 - ◆ The risk of the exacerbation of existing stresses on these services.
- ◇ Prioritizing often temporary and unsustainable economic growth over environmental and cultural conservation.
- ◇ Unclear communication about relevant benefits to communities, beyond economic development.
- ◇ Transitioning from traditional economies to shift work and modern trends in colonization.

Environmental

- ◇ Compatibility of resource extraction industries with Indigenous systems, especially with respect to the lack of principles of reciprocity.
- ◇ Lack of accountability and transparency regarding environmental damage.
- ◇ Availability of nature-based cultural materials, such as animal skins,
 - ◆ Damaging consequences for cultural traditions and activities.
- ◇ Impacts on access to, quantity of and quality of country foods, including meat, fish, berries and medicines.
 - ◆ This is especially relevant to Indigenous women and children, who are relatively more dependent on country foods and disproportionately bear the burden of food insecurity and poverty.
- ◇ Effectiveness of studying and understanding cumulative effects at the project level.
- ◇ Impacts on access to clean drinking water and fresh water sources.
- ◇ Greenhouse gas emissions and the effects of climate change.
- ◇ Contributions to climate change mitigation and/or adaptation.





APPENDIX B: INDIGENOUS WOMEN AND IMPACT ASSESSMENT QUICK GUIDE

Opportunities for Engagement under the IAA

What is impact assessment?

The *Impact Assessment Act* (IAA) regulates how proposed industrial projects that are within the jurisdiction of the Government of Canada will be assessed and which factors will be considered to determine whether projects will be approved. The IAA also determines under what conditions approval will be granted.

The text of the IAA can be found online here: <https://laws-lois.justice.gc.ca/eng/acts/I-2.75/FullText.html>

An overview of the impact assessment (IA) process and the roles and responsibilities of various actors can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html>

There are five phases of impact assessments under the IAA: Planning, impact statement, impact assessment, decision-making, and post decision. **This document identifies opportunities for Indigenous women to participate in each of these five stages.**

What are the purposes of impact assessment?

While there are about 15 stated purposes of the IAA, the ultimate goal of IA under the Act is to identify adverse and positive impacts of proposed projects in order to determine whether carrying out the project would be in the public interest. Several of the IAA's stated purposes are related to Indigenous peoples, including: promoting cooperation, coordination and communication between the federal government and Indigenous governing bodies (IGBs) and Indigenous peoples more broadly in IAs; ensuring respect for the rights of Indigenous peoples in IA processes and decision-making; and ensuring that Indigenous knowledge is taken into account in IAs.

What kinds of projects are subject to impact assessments?

Projects are subject to the IAA if they fall within a type of physical activity that is included in the *Physical Activities Regulations* (a.k.a., "The Projects List") or the Minister of the Environment and Climate Change Canada designates a physical activity as being subject to the IAA. A project that is subject to the IAA is referred to as a "designated project".

The Projects List can be found here: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-285/index.html>. Generally, these activities include:

- ◆ Construction activities in national parks and protected areas;
- ◆ The construction, operation, decommissioning and abandonment of various types of mines and mills depending on their production capacity;
- ◆ The construction, operation and decommissioning of nuclear facilities;
- ◆ Oil and gas extraction, production, refining and storage facilities;
- ◆ The construction, operation, decommissioning and abandonment of electrical transmission lines;
- ◆ The construction, operation, decommissioning and abandonment of oil and gas pipelines; and
- ◆ The construction, operation, decommissioning and abandonment of various renewable energy projects.

Where can I find more information on IA processes for Indigenous peoples?

The Agency has developed guidance for Indigenous participation in IA that can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html>.

Phase 1: Planning

If a proposed project is a designated project, the proponent must provide the Impact Assessment Agency of Canada (“the Agency”) with an Initial Project Description (IPD). The IPD must include certain information, including a list of the Indigenous groups that may be affected by the project and summaries of the engagements that have taken place with these groups, including a summary of key issues raised at these engagements, and a description of future plans for engagement. For a full list of the information that must be included in the IDP, visit: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-283/index.html>.

Because IAs must take into account impacts that the project may have on Indigenous rights as well as Indigenous knowledge and the intersection of sex and gender with other identity factors, Indigenous communities, groups and individuals who participate in the early planning engagement sessions should try to determine whether the proposed project may impact on any of these factors.

Indigenous women are often differently impacted by the effects of industrial activities and are often underrepresented in consultation and governance processes and decision-making. This is one of the reasons it is important for Indigenous women to raise issues of concern to them at this early planning phase.

Because engaging in IA processes can be costly, Indigenous women should apply for capacity funding, such as the Agency’s Indigenous Capacity Support Program. More information on this program can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/public-participation/indigenous-capacity-support-program.html>.

While no Indigenous community and group is the same, some common concerns of Indigenous women with respect to industrial projects include:

- ◆ Equal participation in processes and decision-making in consultations and negotiations affecting the governance of Indigenous lands and resources;
- ◆ Health and safety concerns, particularly:
 - ◆ Increased rates of sexual violence and human trafficking related to industrial work camps;
 - ◆ Workplace harassment and discrimination against Indigenous women in mining and energy sector projects;
 - ◆ Increased rates of spousal abuse, addiction and mental health and suicide in relation to industrial projects; and
 - ◆ Pressures on health and social services related to industrial projects;
- ◆ Impacts of projects on access to traditional lands and the practice of cultural activities;

- ◇ Economic concerns, including:
 - ◆ Negative impacts of industrial projects on traditional economic activities and access to consumable country foods;
 - ◆ Equal employment, career advancement, training and education opportunities; and
- ◇ Environmental impacts on biodiversity, water, climate change and food security and country foods.

The IPD is then posted on the Agency's online registry. This provides the public with an opportunity to participate meaningfully in preparations for a possible IA of the project. The Agency must also offer to consult with any Indigenous group that may be affected by the project. **Note that the Agency must offer to consult with any Indigenous Group, not limited to IGBs.** This includes groups and organizations representing Indigenous women.

The Agency must then provide the proponent with a summary of issues (Sol) with respect to the project, including issues raised through public comments and consultations with Indigenous groups. The Agency must also post the Sol on its website.

The proponent must then respond to the Sol by providing the Agency with a notice that sets out how it intends to address the issues raised in the Sol and include a detailed description of the Project (DPD). The Agency must then post the completed notice to its website.

The Agency must then determine, taking into account impacts on Indigenous rights and comments received from Indigenous groups, among other things, whether the project must undergo an IA. If the Agency decides that it must undergo an IA, the Agency must, within 180 days from the Agency posts the IPD on its website, provide the proponent with, among other things,

- ◇ a notice of commencement of the IA that sets out the information and studies the proponent must provide;
- ◇ Indigenous Engagement and Partnership Plan (IEPP);
- ◇ plans for public participation; and
- ◇ the Tailored Impact Statement Guidelines (outlining the information the proponent must provide in its impact statement).

Indigenous peoples will continue to have opportunities to engage with the Agency on the development of these plans and guidelines.

The Agency must then post the notice of commencement of the IA to its website.

The Minister may, if it is in the public interest, or must under certain other circumstances, refer the IA to a review panel within 45 days of posting the notice of commencement of the IA on the Agency's website.

Review panels are responsible for, among other things, conducting IAs of the projects referred to them, including holding public hearings that give the public meaningful opportunities to participate, and preparing and submitting to the Minister reports that include information the effects of the project and how Indigenous knowledge was taken into account in the assessment process.

If the IA is referred to a review panel, the Minister may enter into agreements with IGBs to form joint review panels. If the IA is not referred to a review panel, the Agency is responsible for conducting the IA and must set out in its report how it took into account and used any Indigenous knowledge provided with respect to the designated project.

These requirements ensure that, where Indigenous women provide information about the effects of the proposed project either to the Agency or a review panel, this information must be considered. The Agency or review panel must show how this information was considered.

Phase 2: Impact Statement (IS)

The proponent must develop and submit an impact statement (IS) to the Agency within three years of the date the notice of commencement of the IA was posted to the Agency's website. The IS must include all the information and studies identified in the Agency's notice of commencement of the IA. If the proponent does not provide the Agency with the information and studies required within the three-year period (or any granted extension of that period), the IA is terminated.

In order to provide information required under the notice of commencement, the proponent will need to engage with affected Indigenous peoples and with Indigenous women, in order to meet the requirement of considering the intersection of sex and gender with other identity factors.

The Agency reviews proponents' IAs using the Tailored Impact Statement Guidelines (TISG) (<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-nuclear-safety-act.html>). This review determines whether the IS provides the required information and studies, including information related to engagement with Indigenous peoples, baseline conditions of affected Indigenous peoples, and effects on Indigenous peoples and their rights. If the IS does not provide the required information, the Agency will require the proponent to provide further information.

The Agency engages with the public, other government departments and agencies, Indigenous peoples and jurisdictions in the review of the IS. If the Agency is satisfied with the IS, it posts a notice of this determination on its website. Any issues in the IS with engagement, baseline conditions, or effects of the project as they relate to Indigenous women should be raised before the Agency posts its determination that it is satisfied with the IS. Deficiencies in the IS can have detrimental effects on the IA's ability to account for and address impacts on Indigenous women.

If the IA is referred to a Review Panel, the Agency may continue to require the proponent to collect information and conduct studies until the Review Panel is established.

Within 45 days of the day the Agency posts the notice on its website that the IS is accepted, the Minister must establish the terms of reference for the panel if the IA is referred to a Review Panel. The Agency must appoint one or more members to the Panel within this 45-day period from a roster of qualified persons established by the Minister.

Phase 3: Impact Assessment (IA)

The Agency is responsible for conducting the IA in a manner that provides opportunities for the public to meaningfully participate. For Indigenous women who face challenges participating in the process through formal engagement and consultation processes with Indigenous peoples, these public participation opportunities provide another avenue to raise concerns.

The Agency must post a draft version of its IA report to its website and invite public comment on the draft report. The IA report must be finalized and submitted to the Minister within 300 days from the day the Agency posted its notice that it was satisfied with the IS. The Agency must set out how it took into account and used Indigenous knowledge provided to it with respect to project effects. The report must also summarize any comments received from the public and the Agency's recommendations for mitigation measures, follow-up programs and the Agency's conclusion. The Report must then be posted to the Agency's website.

The Agency may delegate carrying out the IA or preparing the IA Report to IGAs. The Minister can also substitute IAs conducted by IGAs, on request by the IGA, with IA processes under the IAA. The Minister may approve substitute IA processes only if certain criteria are met, including that the substitute processes include consultations with Indigenous peoples and the consideration of factors such as impacts on Indigenous peoples and their rights as well as the intersection of sex and gender with other identity factors.

If the IA is referred to a Review Panel, it is responsible for conducting the IA and preparing the IA report, including information on how the panel took into account and used any Indigenous knowledge provided to it.


The Agency, however, continues to lead government consultations with Indigenous groups in accordance with the Indigenous Engagement and Partnership Plan and prepares a report of government consultations with Indigenous groups. The Agency is also responsible for drafting potential project conditions based on the Panel's IA report and invites public comment on those potential conditions.

Indigenous women have opportunities to engage in several formats throughout the IA process and the draft report stages. Whether as delegates from IGBs, as Indigenous organizations, or as private citizens, Indigenous women have opportunities to make written and/or oral submissions to the Agency or Review Panel to share their knowledge, experience and concerns about the positive and adverse effects of the proposed project. This is an important opportunity for Indigenous women to educate proponents, governments, and practitioners about Indigenous cultures and ways of knowing, socio-economic issues and environmental concerns and how project impacts on any of these systems can adversely and disproportionately affect women.

Phase 4: Decision-making

The Minister must, within 30 days of the Agency's report being posted to its website, determine whether the adverse effects of the project are in the public interest taking into account various factors including impacts on Indigenous groups and Indigenous rights. The Minister's determination must also set out any conditions to be imposed on the project, deadlines for beginning the project, and a description of the project.

The Minister *can*, and, under certain circumstances, must refer the determination of whether the adverse effects of the project are in the public interest to the Governor in Council.



In the event the Governor in Council makes this decision, the decision statement must be issued within 90 days of the IA report being posted to the Agency's website.

While there is no opportunity for Indigenous decision-making at this phase in the process, any decision that is inconsistent with the rights of Indigenous peoples may have to be challenged at court.

Phase 5: Follow-up and Monitoring

The Agency must establish participant funding programs for the public to participate in the design and implementation of follow-up programs for the ongoing monitoring of the project and its compliance with the conditions set out in the decision statement. More information on the Indigenous Capacity Support Program, see: <https://www.canada.ca/en/impact-assessment-agency/services/public-participation/indigenous-capacity-support-program.html>.

Although the proponent is responsible for carrying out the follow-up programs set out in the IA report, the Agency may establish monitoring committees related to the implementation of follow-up programs, including with respect to the interests and concerns of Indigenous peoples. Given the often significant and disproportionate adverse effects of some industrial projects on the basis of indigeneity, sex, and gender, it is advisable that Indigenous women pursue participant funding and advocate for the establishment of Indigenous monitoring committees to ensure that the appropriate conditions are imposed on projects and that those conditions are effectively monitored.

Where there are reasonable grounds to believe that a project is operating without proper approvals under the IAA or that a proponent is in breach of project conditions, individuals can also report the matter to the Agency's enforcement officers. These officers may, if on discovery of a contravention of the Act, issue a notice of non-compliance and order the proponent to stop doing something or take an action in order to comply with the IAA.

These opportunities for ongoing monitoring of compliance are important mechanisms to ensure that the conditions imposed on projects to address the issues of concern for Indigenous women are properly abided by.



Native Women's
Association of Canada

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L'Association des  
femmes autochtones  
du Canada