Meaningful Consultation:
Nation-to-Nation or Domination & Assimilation?

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Abstract

The interaction between the Canadian governments, at both the provincial and federal level, with Aboriginal groups over natural resource management is the focus of this work. Meaningful consultation, seen as both a tool and a discourse, has been used to mitigate this interaction over the past two decades. In asking the question, *Can meaningful consultation provide a solution to the tensions between Aboriginal communities and the state on issues of resources management in Canada?* I argue that it is not a solution in its current form, because it is being defined and implemented within a wider capitalist and colonial framework and therefore does not allow for devolution of power and authority from the state to Aboriginal peoples. Based on the analysis of interviews, documents and literature, I contend that as long as no broader steps towards decolonization are taking place, meaningful consultation will remain a superficial method of consulting without accommodating.

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Any mistake in this study, due to the interpretation of documents, language or argumentation, belongs to me.

Acronyms

Acronym	Title
AAFN	Ardoch Algonquin First Nation
AFN	Assembly of First Nations
AP	Aboriginal People
BC	British Colombia
CBC	Canadian Broadcasting Corporation
FN	First Nations
FP	First People
GoC	Government of Canada
IDB	Inter-American Development Bank
INAC	Indian and Northern Affairs Canada
ITK	Inuit Tapiriit Kanatami
KI	Kitchenuhmaykoosib Inninuwug
MC	Meaningful Consultation
MNDMF	Ministry of Northern Development, Mines and Forestry
MSRM	Ministry of Sustainable Resource Management
NGO	Non-Governmental Organization
NStQ	Northern Secwepemc te Qelmucw
NWAC	Native Women's Association of Canada
ONCA	Ontario Court of Appeal
RCAP	The Royal Commission on Aboriginal People
s.35	Section 35
SCC	Supreme Court of Canada
TRTFN	Taku River Tlingit First Nation
UN	United Nations

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CHAPTER 1
INTRODUCTION

The topic of this research is *meaningful consultation* in the Canadian context. Specifically, I look at the interaction between the Canadian Governments, at both the provincial and federal level, with Aboriginal groups over natural resource management. This interaction has been framed in a *meaningful consultation* (hereafter referred to as MC) discourse over the past two decades. The purpose of this research is to analyze this process.

The importance of this research is rooted in the history of conflict between First Peoples (FP) of Canada and the Government of Canada (GoC), specifically over land management and natural resource use. There have been many steps along the way from treaties, assimilation and reservations, to self-governance, autonomy and resistance, yet there are still fundamental and ongoing challenges regarding resource exploitation practices. MC is the most recent landscape of interaction attempting to mitigate these issues. It has been widely discussed and implemented in various forms and mutations by multiple stakeholders across Canada. Therefore, now is a crucial time to explore MC. Specifically, it is crucial to take into account the voices that believe MC is nothing new and will not change the current colonial power dynamics between the GoC and FP, and to compare these voices with those believing that this is a major step towards decolonization and increased power for FPs.

In order to explore the above issues I focus on the research question: **Can *meaningful consultation* provide a solution to the tensions between Aboriginal**

communities and the state on issues of resources management in Canada? My argument is that meaningful consultation is not a solution in its current form. Because MC is a tool being defined and implemented within a wider capitalist and colonial framework it does not allow for "devolution of power and authority to local groups" (Schwartz & Deruyttere, 1996, p3). This devolution of power and authority is at the core of my understanding of the ideal form of MC and has developed as the underlying spirit and intent of MC through discussions with a variety of individuals working outside of the Canadian state from First Peoples to Non-Governmental Organizations (NGOs) to academics to consultants. My vision involves the devolution of power and authority from the Canadian state into the hands of Aboriginal Peoples for a more equal power sharing relationship (such as Nation to Nation as I develop below). I contend that as long as no broader steps towards decolonization[1] are taking place, MC will remain a superficial method of consulting without accommodating. MC is an effective initiative working within a larger colonial framework rendering it less effective. With the system as it is, where there is a conflict[2], the Canadian state's goal of capitalist economic growth more often overshadows Aboriginal communities' goals that do not fall within that paradigm.

One of the underlying assumptions shaping this research question is that the world fits together through political economy matrices. The premise that political and economic systems can not be separated from one another, and that in order to

[1] As defined in the paragraphs following.
[2] There are instances where Aboriginal communities have the same or similar goals of capitalist economic growth as the Canadian state. Based on the research I have undertaken for this project I have found that these situations are far fewer than the times of conflict and differing goals. Therefore I will focus on the conflictual situations in this paper.

meaningfully understand the dynamics one has to look at political and economic systems as a whole. In other words, one has to look at the political economy. In this research I am looking at the politics that both encapsulate and mingle with economic decisions about natural resources creating conflict in Canada. My understanding of the world is that the conflicts arising from the political economy of natural resource access, use and management are the fundamental global challenges facing humanity today. I hope that by tackling one small piece in this research project, it will allow some insights into the larger picture.

Another key assumption is decolonization is an important step in building new relations between Aboriginal and non-Aboriginal people in Canada. The standard definition of decolonization is the "process by which colonies become independent of the colonizing country" (Encyclopaedia Britannica, 2002). However, in the Canadian context, as Green (1995) defines it, decolonization is about "facing up to the colonial past, in taking responsibility for it, and in collective commitment to restitution and to a new neo-colonial, mutual and negotiated relationship between Aboriginal and immigrant peoples" (p100). Facing up to the past means exposing the myth of white settlers creating civilization on *terra nullius*[3]. "Taking responsibility means understanding that the national wealth has been accrued at the expense of Aboriginal peoples, in ways that were legislatively mandated by governments acting on non-Aboriginal Canada's behalf" (Green, 1995, p100). In this same vein, I look here at ways in which MC is being legislatively mandated with the vision of engaging in a new form of governance in Canada; a non-colonial one. What

[3] Latin phrase meaning 'land belonging to or inhabited by no one'

exactly that looks like I do not deconstruct in this paper; rather, I explore the possibility that we may be taking a small step towards it with MC.

First, a note on terminology. Throughout this paper I employ the term 'Aboriginal' to mean Aboriginal peoples of Canada specifically, and not Aboriginal peoples from other parts of the world (e.g., Maori, Maya, Tuareg, San, Pygmy). Aboriginal peoples of Canada include three distinct groups: Inuit (Arctic dwelling indigenous), Métis (decedents of First Nation and European inter-marriages) and First Nations (e.g., Mohawk, Cree, Algonquin, Iroquois). I also use the terms First Peoples and Indigenous peoples synonymously with Aboriginals to describe these three groups that reside within the current borders of Canada (INAC, 2005).

This paper is organized as follows. In the remaining pages of *Chapter 1*, the research methodology is outlined and theoretical framework is explored. Methods include illustrative examples, interviews, literature review of peer-reviewed articles and a document review of primary source materials. The theoretical framework includes a constellation of Foucault's discourse analysis (Dryzek, 2005; Foucault, 1972, 1978; Mills, 2003; Weedon, 1987); feminist theories of oppression and privilege (Froc, 2009; Mackey, 2000; McClintock, 1997; Thobani, 2007); Habermas's (1976) concept of ideal speech, tying in Hannah Arendt's notions of deliberative democracy (Arendt, 1963; Bohman & Rehg, 1997; Young, 1996) and Eckersly's (2004) concept of the *Green State.*

Chapter 2 provides the context of meaningful consultation. First, a historical perspective of state - Aboriginal relations in Canada will highlight the nature of their interactions concerning natural resources since first contact. Second, MC is defined

in a broader sense and then in the Canadian context. How did this model come to exist in Canada and what is the current situation? I look at Section 35 (s.35) of the *Constitution Act, 1982* (GoC), Supreme Court of Canada (SCC) cases, and origins and application of MC.

Chapter 3 examines key Supreme Court of Canada cases that form the foundations for present-day notions of the duty to consult. Six cases are investigated: Sparrow (S.C.C., 1990), Van der Peet (S.C.C., 1996), Delgamuukw (S.C.C., 1997), Haida Nation (S.C.C., 2004), Taku River Tlingit First Nation (S.C.C., 2004) and Mikisew Cree First Nation (S.C.C., 2005). The first three are significant in determining theory for MC and the second three put that theory into practice dealing with challenging MC implementation scenarios.

Chapter 4 is a critical analysis of data collected, based on an extensive document review of primary source government material. First, evidence is presented of current federal and provincial efforts in MC. Second I delineate the space between GoC and FN concepts of MC, by comparing them to ideal speech and deliberative democracy. Third, is a critical analysis of GoC efforts, tying in feminist theories of power and oppression. Specifically, I demonstrate that some ministries tasked with implementing MC have conflicting interests (e.g., economic growth and Aboriginal well-being), and that the GoC language used is non-binding and inconsistent.

Chapter 5 summarizes the paper, presenting Eckersly's (2004) *Green State* as an alternative paradigm to strive for in terms of state – Aboriginal interaction over natural resources.

METHODOLOGY

The methodology for this paper includes interviews, as well as both a literature and document review using discourse analysis. In addition, I invoke an indigenous method by locating myself within the research (Absolon & Willett, 2005). This is fundamentally important as I am working with colonialism and Aboriginals in Canada and my personal history is that of the white settler colonizer. By using language such as "I" and "my" I actively locate myself within the research in order to avoid reproducing colonial power dynamics such as speaking on behalf of FPs and silencing marginalized voices in the research process. Furthermore, I recognize that the ongoing conflicts between FPs and GoC are not a binary of good versus evil. I will draw out the nuances and complexities of the case, looking at both the strengths and weaknesses of the GoC. One limitation in the scope of this research essay is that I critically analyze the GoC and their MC literature and practices for both strengths and weaknesses, presenting FN MC as a contrast with many strengths. What is missing is a critical engagement to explore any weaknesses of FNs literature and practices of MC. This is something to be worked into a longer or separate paper.

Interviews with seven people were conducted. This included individuals working in Canadian non-profits and NGO's focusing on research as a method for change, as well as academics and consultants who are currently working on cases of meaningful consultation with Aboriginal groups and natural resource conflict both in Canada and abroad. Most participants were previously known to me through taking part in various conferences related to the research topic and others were recommended by the initial contacts. Due to the small sample size and the sensitive

nature of the subject matter both the names of the individuals and their organizations are kept confidential and are only available to the researcher, supervisor and second reader.

The interviews were conducted both over the phone and in-person based on location of the participant, and maximum convenience for them. Face-to-face conversations took place in participants' offices, or at coffee shops. All participants knowingly consented to partake in the research according to my Carleton University approved ethics process. Both the *Letter of Information* and *Consent Form* used for this project are attached in *APPENDIX I: CARLETON UNIVERSITY ETHICS DOCUMENTS.* Five out of seven interviews were recorded using an electronic device and portions of each were transcribed in order to incorporate direct quotes into my work.

I employed an in-depth interview style, also known as the unstructured interview (Berry, 1999), with each of the participants. This style of interviewing aims to achieve a holistic understanding of the participants' views by using open-ended questions and probing techniques (Richard, 1996). During the interview process I kept an awareness that the interviewee may be influenced by preconceptions of the interviewer, such as race, gender, ethnicity, skin color, age, socio-economic class and occupation (Hubbell, 2003).

A qualitative literature review of secondary sources was completed on the major bodies of knowledge relating to theory, methodology and the research subject matter. As a method, a literature review sets the scope of the research, examining all relevant literature previously produced within the given domain. It is used to determine the needed area of inquiry in a particular field (Creswell, 2009).

A document review of primary sources was undertaken. This includes information directly from the people or situations under study (Creswell, 2009, p183). For example, publically available material from the GoC regarding MC tools and processes; Supreme Court of Canada (SCC) documents for each of the six cases; media sources for specific events such as the Statement of Apology[4]; and stakeholder statements, among others.

The overarching method used to examine the interviews, literature and documents is discourse analysis. According to Dryzek (2005): "A discourse is a shared way of apprehending the world. Embedded in language… Discourses construct meanings and relationships" (p9). This method was used as the lens to examine the language used by each stakeholder when defining MC. The theoretical aspects of discourse analysis are explored further in the next section.

THEORY: FROM DISCOURSE TO DELIBERATIVE DEMOCRACY

While investigating the contradictions in the GoC's MC theory and practice (Chapter 4), I employ feminist post-colonial theories to illuminate the roots of the current patriarchal, colonial mindset, which values the domination of nature and those associated with nature (Mackey, 2000; McClintock, 1997). One key concept is Thobani's (2007) *exalted subject* or "the figure of the national subject [which] is a much venerated one, exalted above all others as the embodiment of the quintessential characteristics of the nation and the personification of its values, ethics, and civilization mores" (p3). The exalted subject, or national subject, is

[4] The *Statement of Apology – to former students of Indian Residential Schools* on June 11, 2008 by Prime Minister Stephen Harper on behalf of the Government of Canada (GoC, 2008)

comprised of the colonizer, settler and immigrant identities, which are raised to the place of the citizen in Canada, while Aboriginal peoples are marginalized as Others, de-humanized and invalidated (Thobani, 2007, p5). The exalted subject is privileged within the Canadian colonial state framework. Furthermore, the exalted subject is the only human, and therefore, worthy subject. In contrast, Aboriginal peoples are seen as Other, as wild animal, and inseparable from nature. From within the colonial mindset, the domination of *exalted subject* over *Aboriginal Other* becomes neutral and normal. The natural order of things is control and exploitation of Aboriginal populations and the natural environment for capitalist economic gain, the accumulation of profit and ever-upward progress for the exalted citizen.

Conversing with the exalted colonial state's notion of MC are Aboriginal conceptions. The stark contrast is seen in the two worldviews through MC. While investigating Aboriginal community philosophies of MC (Chapter 4), I draw in Habermas's (1976) *ideal speech* and Hannah Arendt's *deliberative democracy* (Arendt, 1963; Bohman & Rehg, 1997; Young, 1996; Whiteman & Mamen, 2002). Ideal is the key term here because the sources I draw upon for this section really speak to ideal and pure ways of groups interacting. This means equal power for each group coming together in good faith at the table; each voice is given ample opportunity to be heard and to jointly establish the final compromised consensus outcome. The disparity between this worldview of equality and the colonial coercive domination paradigm has been one that has plagued FPs in Canada since Canadian domination and assimilation began (see Chapter 2).

The blatant limitation in theoretical choice here is using non-Aboriginal academics in an Aboriginal setting. Far from attempting to recreate colonial dominance in this paper I use ideal speech and deliberative democracy because their definitions are near identical to Aboriginal community documents discussing MC, for example the *2009 Northern Secwepemc te Qelmucw (NStQ) Consultation Guidelines: A Guide for Government and Third Parties* (NStQ, 2009). Unfortunately, non-Aboriginal thinkers are more readily on-hand in academia and thus I concede a further limitation of my work.

In an attempt to reconcile the vast tensions between the exalted colonial state worldview and that of certain Aboriginal understandings, I invoke Eckersly's (2004) concept of the *Green State* in the conclusion (Chapter 5). The endeavor here is to acknowledge the capitalist economic growth model while altering the power structure behind it, for example, to give equal credence to all people (not just exalted citizens) as well as elevating the environment to a place of authority. This lofty goal based in the Green State theory calls for nothing short of a paradigm shift.

The underlying current weaving its way throughout the research is *discourse analysis* (also discussed in methodology above). I have chosen discourse analysis as a theoretical lens through which to explore MC; specifically, the power dynamics between the GoC and FNs. The reason why a discourse analysis is so attuned to the research here is because "discourses are bound up in political power… it is a sign of power that actors can get the discourse to which they subscribe accepted by others… some interests are advanced, others suppressed" (Dryzek, 2005, p9). The model of MC created and practiced by the GoC is inherently political and holds a

particular kind of power because of structural, ideological, and material resources that make up typical state structures. The current Canadian Government is the colonial settler state, which gained dominance with policies of Aboriginal assimilation and marginalization. Therefore when looking at interactions between the colonial state and the colonized population, such as those concerning decision making for natural resource management, it is necessary to examine relations of power. Discourse theory, rooted in Foucault (1972, 1978), can be used as a tool to understand relations of power through investigating language (Mills, 2003). Foucault (1978) contends that: "Discourse transmits and produces power; it reinforces it, but also undermines it and exposes it, it renders it fragile and makes it possible to thwart it" (p100-101). One purpose of this research is to expose the discourses of the GoC and FPs in the field of MC. Furthermore, the intention is to understand these discourses, and search for tools to improve unequal power relations that exist. Perhaps MC actually provides a tangible conduit whereby colonial power relations can be unveiled, and fissures exposed allowing for transformation.

CHAPTER 2
HISTORICAL RELATIONS AND EVOLVING DEFINITIONS

The key concept explored in this research is that of meaningful consultation. In this section, I undertake an historical inquiry into the relationship between the First Peoples and the Canadian colonial state. This sets the stage for MC by outlining how resource management interactions have been shaped by politics over time. I then define MC in relation to broader notions of consultation that have been developed in other domains, such as international development. I conclude by explicitly contextualizing MC within present-day Canada.

HISTORICAL RELATIONSHIP BETWEEN FIRST PEOPLES AND THE CANADIAN COLONIAL STATE

The relationship between the colonial Canadian state and Aboriginals in Canada has moved through two key phases, with a possible shift into a third. From the 15th Century up until the 19th Century there was a *Nation-to-Nation* relationship. From the 19th Century to late 20th Century was one of *Domination & Assimilation*. Currently, from the late 20th Century to the present, and with markers such as Royal Commission on Aboriginal People (RCAP), the apology for residential schools and MC, some argue that we are moving towards a *Nation-to-Nation* relationship once more (I-5, 2010). Others, perhaps pessimists, would say that *Domination & Assimilation* is alive and well (I-7, 2010). These tensions are explored below.

Nation-to-Nation: 15th to 19th Century

> "The wonder of it was that early contact between two such different societies should have been so cooperative" (Miller, 1989, p20)

Some of the first well-known meetings between Europeans and First Peoples include John Cabot in 1497, Jacques Cartier in 1534, and Henry Hudson in 1611. Emphasized in the quote above, early interaction was predominately cooperative as opposed to violent as is the dominant misconception. As Dickason (2006, p31) explains: "It was a contact that can be described as casual, at least at first… the Europeans had come not to colonize, but to exploit the enormously rich fishing grounds", followed by the tapping into the existing fur trade. Europeans were just one nation among many on Turtle Island[5]. They were equal for the most part, subordinate even because they were reliant on existing political and economic structures for their trading goals. They did not create the fur trade; they just joined in and expanded it. During the time of the fur trade there was a relationship of mutual dependence and mutual benefit as the FNs gathered and sold the beaver pelts to the Europeans, who in-turn then re-sold them in their own markets (Miller, 1989, p32).

The Royal Proclamation of 1763 is a key signifier for the *Nation-to-Nation* dynamic. This came about soon after Britain became the European power, exerting dominance over the French. The Royal Proclamation is the British Crown's policy on land negotiations, wherein "…the Crown recognized that any lands possessed by First Nations in what was then British North America, would be reserved for them

[5] "Turtle Island – the old/new name for the continent [of North America], based on many creation myths of the people who have been living here for millennia, and reapplied by some of them to 'North America' in recent years. Also, an idea found world-wide, of the earth, or cosmos even, sustained by a great turtle or serpent-of-eternity" (Snyder, 1981, xi).

unless, or until, they ceded that land to the Crown" (Erasmus & Sanders, 1992, p6). As Borrows (1997, p155) explains, First Nations were active participants in this process, from formulation to ratification of the Royal Proclamation. That is to say that this event was not one thrust upon a powerless society but rather an agreement between two equal nations sitting together at the table. A specific example of this is the 1764 Treaty of Niagara, which grew out of the Royal Proclamation's fair and voluntary land dealings agreement between British and Aboriginals. This Treaty was signed with members from 24 Aboriginal nations and Crown officials (Robert, 2005). Borrows goes on to espouse that this recognition of active participation of First Peoples is integral for a true understanding of Canadian history. This is because, by seeing Aboriginal-British relations as one solely of domination and assimilation is to falsify history and to dis-empower and ignore in the present what was a strong group of Aboriginal nations in the past. In fact, the Royal Proclamation still stands as a positive guarantee for First Peoples self-governance, as it has never been revoked.

Therefore, by the end of the 1700's the dynamic between British and First Peoples was one of *Nation-to-Nation*, including economic partnership and military alliance throughout the French-English wars. However, this all changed with increased European immigration in the 19th Century.

Domination & Assimilation: 19th to late 20th Century

> "Canadian officials have, since the early nineteenth century, viewed Aboriginals as inferior" (Frideres, 1998, p4)

In the early 1800's, white settlers arrived in numbers larger than they ever had before; partly due to the War of 1812. The European - Aboriginal dynamic shifted from one of economic and military alliance to one of conflict. The British began working to remove indigenous peoples from the land in order to establish agricultural settlements for the new immigrant populations (Miller, 1989, p84). At this point, the British colonial government developed official programs and destructive policies aimed at forcing Aboriginals to surrender their cultures and lifestyles (Frideres, 1998, p4). Notable legacies from this period are the Indian Act of 1876, and the establishment of reserves[6] and residential schools[7]. In contrast to the Royal Proclamation of 1763, which was inclusive for First Peoples, the British North America Act (later renamed the Constitution Act of 1867), which founded the internal governance system of Canada, *excluded* the voices and participation of First Peoples (Erasmus & Sanders, 1992, p7). The Constitution Act gave the federal government legislative responsibility over 'Indians and their lands', which then led to the first incarnation of the Indian Act in 1876 that still controls every aspect of Aboriginals' lives in Canada to this day (Erasmus & Sanders, 1992, p8). With this

[6] "Reserves are lands set aside for the exclusive use of status Indians and only status Indians can "own" land on a reserve, but not all Indian bands have reserves." They are parcels of land... "set aside either by treaty and various forms of crown grants or by Indian purchases from funds received from surrenders in the British Maritime colonies, Lower Canada and Upper Canada" (The Canadian Encyclopedia, 2010a).

[7] "Residential schooling was seen as a way to "integrate" Aboriginal people into the mainstream Canadian population. The schools were run by Christian churches, facilitated by priests and nuns. With promises of creating a future for Aboriginal people in a new world, children were ripped from their traditional homes and families. The children were also forced to assimilate into white culture by being punished for speaking their indigenous languages, dressing in a traditional way or practicing traditional ceremony. Attendees suffered multiple forms of abuse, were used as hard labourers and were often left cold and hungry" (NWAC, no date).

power, the government began a campaign of assimilation, or the process of absorbing the FN into the culture and customs of the European settlers.

> The intention… was to concentrate Indians in settled areas, or reserves; to subject them to as much proselytization [ie., religious conversion], [residential] schooling… and to do these things… with the Indians' own funds. The strategy was based on an assumption that complete assimilation was the only possible euthanasia of savage communities (Miller, 1989, p99-100).

What ensued from these policies has been two centuries of systematic institutionalized violence embedded within the governmental institutions and policies of the colonial Canadian state. The effects of this period can be seen today on the lower income inner city streets of Vancouver, Ottawa, Toronto and Montreal, among others. What is hidden is the very heterogeneous nature of the Aboriginal experience in Canadian cities, for example the fact that FPs university enrollment has steadily increased in the past few years (I-5, 2010). A movie was released recently with an apt title - *The Invisible Nation* (Loumede, Desjardins, & Monderie, 2007) – depicting First Nations populations on reserves in northern Quebec and the social struggles they face, likened to that of developing countries. The apt title, *The Invisible Nation*, is a testament to the success of assimilation policies. What I mean to say is that the average non-Aboriginal Canadian must go out of their way to meet an Aboriginal person, apart from the passing glimpse of an inner city dweller. The average non-Aboriginal Canadian must actively challenge the taken-for-grantedness of the 'typical' Aboriginal and go out of their way to step outside of the hegemonic discourse and meet/see/seek out an Aboriginal person of Turtle Island.

In summary, in the 19th Century, Britain no longer relied on Aboriginal peoples for a military alliance against the French in Canada, or for economic security

through the fur trade. As a result, abiding by the Royal Proclamation, a mutually created document of cooperation was no longer beneficial for the British colonial government. However, policy remnants in the government gave special status to 'Indians', ensuring that they were not to be exploited by Europeans. As the British no longer benefitted from the cooperation there was a complete change in mentality and policy. This gave way to the ideology of eradicating 'the Indian', their culture, values and way of life, thereby removing the special status given to them (Tobias, 1983, p39). If you destroyed 'the Indian' identity then the special status would also be destroyed. One question raised by this history is: Has the Canadian government moved beyond this ideology, or is this still actively at work? The section below begins to deal with this question.

Nation-to-Nation?: 1990's onward

> "Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country" -Prime Minister Stephen Harper, (GoC, 2008)

There are opposing views as to whether the Canadian government's policy of assimilation is truly being eradicated as it is so entrenched in the economic, political, social and cultural apparatuses[8] within Canada. There are events such as the shooting of Dudley George at Ipperwash in 1995;[9] the brutal rape and murder of

[8] Dominant knowledges have served to create apparatuses, which in turn have sustained power as domination, subjugated and exclusion through peaceful and violent means. The word 'institutions' does not capture the level of control of peoples hearts and minds, therefore the word and concept 'apparatus' is more apt (Agamben, 2009).

[9] Dudley George, a First Nations unarmed protestor, was shot and killed by an Ontario Provincial Police sniper during peaceful blockade to protect sacred burial grounds at Ipperwash Provincial Park (CBC News, 2007). This event resulted in the Ipperwash Inquiry.

Pamela George in 1995, and ensuing court case;[10] the imprisonment of the KI6 and Bob Lovelace in 2008;[11] and the ongoing struggle at Barrier Lake[12] all of which highlight ongoing domination and assimilation of First Peoples. However, there are also instances that may indicate the contrary. In this section, I investigate three significant events that can be interpreted as benchmarks demonstrating that Canada is moving out of the *Domination & Assimilation* period, and striving for a *Nation-to-Nation* relationship once more. The *Royal Commission on Aboriginal People*, the *Statement of Apology – to former students of Indian Residential Schools* and meaningful consultation are the three significant events I explore in this capacity.

The Royal Commission on Aboriginal People (RCAP) was initiated in 1991 and the final report was released in 1996. The mandate of the Commission was extremely broad (RCAP, 1996b, Appendix C):

> to look at virtually every aspect of the lives of the First Nations, Inuit and Métis peoples of Canada — their history, health and education; their aspirations for self-government and relations with Canadian governments; their land claims, treaties, economies and cultures; their living conditions in the North as well as in cities; their relationship with the justice system; the state of their languages; their spiritual well-being and, more generally, their situation in Canada relative to that of non-Aboriginal Canadians.

The main question was: "What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?" (RCAP,

[10] Pamela George, a woman of the Saulteaux (Ojibway) nation and a mother of two young children, was brutally raped and murdered by two white males in Regina on April 17, 1995. The case is well known for the extreme leniency with which the accused were treated based on the racialization and discrimination against Pamela as a non-citizen Other (Razack, 2002).

[11] In 2008 six leaders of the Kitchenuhmaykoosib Inninuwug (KI) First Nation's and Bob Lovelace of the Ardoch Algonquin First Nations (AAFN) were imprisoned for their peaceful protests of mining actions on their lands (Thompson, 2008).

[12] Based on a longstanding conflict over the management of traditional territories and forestry, "a massive Quebec police force pepper-sprayed and billy clubbed their way through… [the] small Algonquin community, enforcing the federal government's March 10 [2008] decision to oust the traditional Chief and Council and appoint a small faction as the leadership" (Lukacs, 2008).

1996a). The creation of the Commission demonstrated a recognition at that time of serious challenges surrounding Aboriginal existence in Canada. Two examples include the Oka Crisis[13] as well as media reports of high levels of poverty, ill health and suicide in Aboriginal communities. The result was a 20 year action plan for the federal government[14] and their central conclusion: "The main policy direction, pursued for more than 150 years, first by colonial then by Canadian governments, has been wrong" (RCAP, 1996a).

The second key event is the *Statement of Apology – to former students of Indian Residential Schools* on June 11, 2008 by Prime Minister Stephen Harper on behalf of the Government of Canada (GoC, 2008). While the Minister of Indian Affairs had acknowledged the abuses a decade earlier, this event marked the first time that the GoC and the Prime Minister formally apologized for the residential schools – a form of cultural decimation, including emotional, physical and sexual abuse – financed by the federal government (CBC News, 2008). Along with the *Apology*, the GoC has set up a process of compensating former students for their abuse as well as the *Indian Residential School Truth and Reconciliation Commission*. The intention is that this *Commission* "…will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians" (GoC, 2008). In response to the *Apology,* Inuit Tapiriit Kanatami (ITK), the national Inuit organization in Canada, had this to say (2008):

[13] What is now known as the 'Oka crisis' was a land dispute between the Kanesatake Mohawks and the town of Oka, Quebec from July to September of 1990. "Elijah Harper and Oka changed everything for us. The relationship between the First Nations and the rest of the people in what we now call Canada is no longer as it was before the summer of 1990" (Bird, 1992, pxvii). In 1990 a group of Mohawks set up a blockade to stop a golf course being built by the town of Oka, on their sacred lands. Lands, which had been chipped away, sold off, and granted to others since white settlers came to the area (Cape, 1992, p217).

[14] Which has not been implemented to date.

> Let us not be lulled into an impression that when the sun rises tomorrow morning the pain and scars will miraculously be gone. They won't. But a new day has dawned, a new day heralded by a commitment to reconciliation, and building a new relationship with Inuit, Métis, and First Nations.

As this quote highlights, the *Apology* is not a magic bullet, but many are seeing it as an important step. The third key process is that of meaningful consultation, on which this research is focused.

DEFINING MEANINGFUL CONSULTATION: THE CANADIAN CONTEXT AND BEYOND

> "Consultation means… I listen, we discus and we come to some kind of consensus… it is a sharing of power with Aboriginal people and a recognition of the historical rights" (I-7, 2010).

In this section, I define MC beginning with broad notions of MC then narrowing the scope to the Canadian context, picking up on the historical exploration above and bringing the discussion up to the present day.

Meaningful consultation theory – the broader context

MC has been developed in multiple domains in the context of groups who are affected by policies or initiatives and do not implicitly have a voice in the planning and implementation of such activities. For example, Status of Women Canada outline procedures of MC with minority groups "as part of developing a new program or new policy… to determine their concerns and needs" (Status of Women Canada, 2006, p15). Alternatively, in terms of good governance practices: "In the 1990s, consultation with business, stakeholders and the public has become a virtual prerequisite for any government proceeding with a major policy initiative" (Canada West Foundation, 1998, p1). Most often MC has occurred in development settings where affected groups of projects' who do not hold the power over the project or

are marginalized in some way, are looking for ways to have their voices heard and their well-being integrated into project planning. As the Inter-American Development Bank[15] explains, consultation should involve the "devolution of power and authority to local groups" (Schwartz & Deruyttere, 1996, p3). This is also true for environmental concerns, for example:

> the World Bank's[16] Operational Directive 4.01 on Environmental Assessments… calls for consulting the public on environmental impacts in Bank-financed projects… In order for 'meaningful consultation' to occur… [project implementers are required to provide] …'relevant information' to local NGOs and affected groups… in a timely manner and form that is meaningful and accessible to the groups being consulted (World Bank, 1998).

The idea of consultation morphed into *meaningful* consultation over time due to consistent challenges with the interaction being superficial. This change represents the core of the MC debate, which is the idea of consultation or a simple information dissemination from a group with more power to a group with less and a fixed outcome benefitting the powerful versus meaningful consultation involving two or more groups with equal power and weight in the final mutually beneficial outcome.

MC is a tool being developed concurrently in multiple domains by various groups and institutions. For the Canadian context, a series of landmark events have caused MC to be integrated at a federal scale, trickling down to the provincial level. I now turn the discussion to understand this process.

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[15] "The Inter-American Development Bank (IDB), established in 1959 to support the process of economic and social development in Latin America and the Caribbean, is the main source of multilateral financing in the region. The IDB Group provides solutions to development challenges by partnering with governments, companies and civil society organizations, thus reaching its clients ranging from central governments to city authorities and businesses" (Inter-American Development Bank, 2009).

[16] "The World Bank is a vital source of financial and technical assistance to developing countries around the world. Our mission is to fight poverty with passion and professionalism for lasting results and to help people help themselves and their environment by providing resources, sharing knowledge, building capacity and forging partnerships in the public and private sectors" (The World Bank, 2009).

Meaningful consultation in Canada

In Canada, the MC story begins in 1970s with the Calder decision (1973):

> The 1973 decision of the Supreme Court of Canada in *Calder et al.* v. *Attorney General of British Columbia* confirmed that Aboriginal peoples' historic occupation of the land gave rise to legal rights in the land that survived European settlement. The decision influenced the federal government to undertake not only first-time processes for the negotiation of comprehensive land claims, but also new processes for resolving specific claims. (Butt & Hurley, 2006)

This sets the stage for comprehensive and specific claims and the recognition of Aboriginal titles and rights. Next, the James Bay and Northern Quebec Agreement of 1975 "was really the first MC process" (I-5, 2010). Negotiations began in 1973 between the federal and provincial governments and the Cree and Inuit, resulting in agreements such as a joint wildlife management regime; special redefined status for Cree and Inuit; control over local and regional governments; and compensation of $225 million (The Canadian Encyclopedia, 2010b). The Mackenzie Valley Pipeline Inquiry, known as the *Berger Commission*, was also key to MC unfolding as it has. This federal royal commission involved extensive community hearings across the North from 1975 to 1977 concluding with a report in 1977 stipulating that the pipeline should only proceed after further study and settlement of native land claims (The Canadian Encyclopedia, 2010c). This report resulted in a 10-year moratorium on the pipeline and is seen as a major landmark on the road of MC.

Another key event occurred in 1982 with the s.35 constitutional recognition of treaty rights in the *Constitution Act, 1982* (GoC): "35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed… 'treaty rights' includes rights that now exist by way of land claims

agreements or may be so acquired." This constitutional protection means that there is a common law duty to consult, which is the obligation of the Crown (Ministry of Northern Development, Mines and Forestry (MNDMF), 2007).

These events beginning in the 1970s acted as catalysts paving the way for six key SCC cases dealing with the Crown's duty to consult[17]: Sparrow (S.C.C., 1990), Van der Peet (S.C.C., 1996), and Delgamuukw (S.C.C., 1997), Haida Nation (S.C.C., 2004), Taku River Tlingit First Nation (S.C.C., 2004) and Mikisew Cree First Nation (S.C.C., 2005). For example, "…In the *Haida* and *Taku River* decisions, the SCC held that the Crown has a legal duty to consult and, if appropriate, accommodate, when the Crown contemplates conduct that might adversely impact section 35 rights (established or potential)" (GoC, 2008, p6). As these cases are so fundamental to present-day MC in Canada, they are fleshed out and interrogated in Chapter 3.

The Calder decision of 1973, the James Bay and Northern Quebec Agreement of 1975, the Berger Report of 1977 and Section 35 of the *Constitution Act, 1982* along with the SCC cases institutionalized the obligation of the Crown to recognize and affirm Aboriginal treaty rights and the duty to consult. These actions articulated and embedded historical contracts within current Canadian law, thereby creating a system of accountability and enforceability. The GoC, at both the federal and provincial levels, has responded to the above actions through a multiplicity of efforts to define and implement mechanisms for MC. These will be explored in the

[17] Through the interviews I found that in the Canadian context the terms *Meaningful Consultation* and *Duty to Consult* are used interchangeably. Though this may not be agreed upon unilaterally, for the purposes of this project I use them as so. Specifically, MC is still a fresh concept and being constantly molded across Canada, therefore I choose to base this terminology choice on those practitioners I spoke with who use this language daily.

next section.

As the third example suggesting a possible shift towards Nation-to-Nation it has been shown here that MC groundwork shows promise for institutionally based change. Interviews showed mixed reviews about the praxis, or theory translating into practical changes. However, the Mackenzie Valley Pipeline 10-year moratorium is a solid example of the power of meaningful consultation. In that case the messages from extensive consultations with Northern peoples were implemented.

Summary

In concluding this initial discussion on MC, it is important to note that whether in the Canadian context or the broader environment, MC is a highly complex and challenging tool that is relatively new, cropping up in the 1970s through to 1990s. As explained by Whiteman & Mamen (2002, p51): "The concept of 'consultation' remains a contested arena." Furthermore, it is up for debate whether or not the Canadian government is entering into a new stage of relations with Aboriginal peoples. As discussed above, three key events: RCAP, the Statement of Apology and MC, can be looked at as benchmarks for a paradigm shift "back to *Nation-to-Nation*, or at least striving for it" (I-5, 2010). However, it is unclear as of yet whether this shift is taking place because these are relatively recent events, and counter-examples of continued *Domination & Assimilation* carry on concurrently. It is this contested arena of MC and the dynamic between the GoC and First Peoples that I continue to explore throughout this paper.

CHAPTER 3
FOUNDATIONS FOR CHANGE: SUPREME COURT CASES

> "The reason they are being consulted... is because there have been a number of court cases that have been brought and won. Really honestly, if you are talking about government, that seems to me to be the only thing that is influencing them these days. It's not Honour or Duty of the Crown. It seems to be what's our probability of being sued on this" (I-1, 2010).

In looking at my research question: can meaningful consultation provide a solution to the tensions between Aboriginal communities and the state on issues of resources management in Canada?, it is important to discus six key Supreme Court of Canada (SCC) cases. These six cases are well known by practitioners in the field (I-1, I-2, I-3, I-4, I-5, I-6, 2010) and provide a matrix of support for different communities by putting pressure on industry and the Crown to engage in MC. The implications of not appropriately consulting denote the possibility of legal action, a complication which is both costly and time consuming. In this section I explore these six cases and interrogate why they are important for MC in Canada. The first three: Sparrow (S.C.C., 1990), Van der Peet (S.C.C., 1996), and Delgamuukw (S.C.C., 1997) provide the theoretical basis for MC, stipulating the Crown's fiduciary duty to consult. The second set of three: Haida Nation (S.C.C., 2004), Taku River Tlingit First Nation (S.C.C., 2004) and Mikisew Cree First Nation (S.C.C., 2005) provide exemplars of praxis, or the process by which theory from the first set is put into practice or implemented in specific scenarios throughout the second set. All six SCC have served to strengthen Aboriginal position and power within the Canadian state.

The R. v. Sparrow (1990, 1 S.C.R. 1075) case had modest beginnings yet revolutionary results. It began in 1984 when Ronald Sparrow, of the BC Musqueam

band, was found fishing with a longer net than was permitted under the Band's Indian food fishing license. He was charged based on the Fisheries Act and his defense was that he was exercising his Aboriginal fishing rights protected under section 35 (Allain, 1996). The *Sparrow* (S.C.C., 1990) case in particular was the first time the scope of section 35 was considered (Allain, 1996) as well as the first time that the Crown's duty to consult Aboriginal people was enunciated (Isaac & Knox, 2003). It resulted in clarification by the court that the rights in section 35 are not absolute and therefore the "Sparrow test" was created in order to assess whether infringement of Aboriginal rights was occurring on a case-by-case basis. This notion of infringement is very important, as it is the trigger for duty to consult and became the key variable for MC. The "Sparrow Test" determines first if an Aboriginal right exists and second if the proposed activity would interfere with such a right. Another fundamental aspect highlighted by this case is that conservation is the only consideration that trumps Aboriginal rights (which are distinct from treaty rights). This is an important thread weaving it's way through all the SCC cases here.

Continuing the fishing and humble beginnings themes, the next significant case was R. v. Van der Peet (1996). This story began when Dorothy Van der Peet, of the Sto:lo in BC, was charged with violating *BC Fishery Regulations* by illegally selling fish caught under the Indian food fish license (Allain, 1996). She countered the charges with the defense that the regulations infringed upon her Aboriginal rights to sell fish. The resultant effect, following from *Sparrow*, was that *Van der Peet* further expanded upon what is considered an Aboriginal right. Adding to the "Sparrow Test", *Van der Peet*'s decision stated that in order "for an Aboriginal practice to be

considered an Aboriginal right it must have been an integral element in an Aboriginal culture prior to European contact" as a practice, custom or tradition, including hunting, fishing and gathering activities on the land (Natcher, 2001, p114). A double-edged sword is created here – the aspect of being 'integral to a distinct culture' puts the onus on Aboriginal peoples to prove that the Crown has a duty of consult but it also recognizes that Aboriginal peoples have special connections to the land and their territories that should not be disturbed by resource activities (I-5, 2010). Therefore, *Van der Peet* set precedence for Aboriginal land rights based on the principle that Aboriginal peoples are unlike other minority groups in Canada because they were already here when Europeans arrived, which, according to the Supreme Court Case, mandates special legal and constitutional status (Hurley, 2002). This precedence was further clarified in Delgamuukw (Natcher, 2001). However, it also set up an important discourse of power in that the burden of proof to instigate MC is on Aboriginal people.

The Delgamuukw v. British Columbia SCC case (S.C.C., 1997) was a result of the 1984 preceedings against the Province of BC by 35 Gitxsan and 13 Wet'suwet'en Hereditary Chiefs. They claimed ownership of 58,000 square kilometers of territory considered Crown land in northwest BC along with Aboriginal rights to use the territory and compensation for lost resources and lands (Isaac & Knox, 2003). The importance of this case is explained in a Library of Parliament document (Hurley, 2000):

> In December 1997, the Supreme Court of Canada issued a groundbreaking ruling containing its first definitive statement on the content of Aboriginal title in Canada. The decision… also describes the scope of protection afforded Aboriginal title under subsection 35(1) of the Constitution Act, 1982; defines

> how Aboriginal title may be proved; and outlines the justification test for infringements of Aboriginal title.

In the case where infringement is seen to occur, then the Crown's duty to consult mechanism is deemed necessary.

Sparrow, Van der Peet and *Delgamuuk* laid the legal foundations of the Crown's duty to consult based on cases where there was a failure to do so. The groundbreaking decisions of these three cases acted as seeds from which more momentous legal actions sprouted. The ones I delve into here include Haida Nation (S.C.C., 2004), Taku River Tlingit First Nation (S.C.C., 2004) and Mikisew Cree First Nation (S.C.C., 2005). The Haida and Taku cases were heard concurrently at the Supreme Court of Canada and the decisions were both released November 18, 2004.

Haida Nation v. British Columbia (Minister of Forests) and Weyerhaeuser (2004) began with BC giving logging permission to Weyerhaeuser Company Ltd. on lands that were in ongoing land claims process where the Haida people were claiming to hold Aboriginal title (in the area known as Queen Charlotte Islands or Haida Gwaii). As outlined in the Court of Appeal for British Columbia court document (2002, BCCA 147) the Haida people contended that there is a legal obligation of the Crown and Weyerhaeuser to consult prior to giving logging permission on lands where they have ongoing claims. The Crown and Weyerhaeuser, on the other hand, argued that there is no obligation until the Haida people are successful in obtaining declaration of Aboriginal title over the land in question. The Haida Nation won the decision. The court ruled that there is indeed a duty to consult by the Crown and company involved, even in the absence of a proven

Aboriginal title to land (Isaac & Knox, 2003). This is the case when a *prima facie*[18] Aboriginal right appears to exist, and even more broadly as act of the Crown's responsibility to treat its subjects fairly and to take Aboriginal rights seriously. This case applied *Delgamuukw* and referred to both *Van der Peet* and *Sparrow* (2004, S.C.R. 511). It expanded on the notion of what is infringement on Aboriginal title as laid out in *Delgamuukw* and broadened the basis for the Crown's duty to consult.

In the same vein, R. v. Taku River Tlingit First Nation (TRTFN)(2002) affirmed that the Crown has a duty to consult in the absence of a proven Aboriginal or treaty right (Isaac & Knox, 2003). The conflict began when a mining company called Redfern Resources Ltd. was given approval by the Province of BC to re-open a mine and construct roads. This approval was given in direct contradiction to an environmental assessment that concluded with an objection to the road being built through TRTFN's territory (Fraser Milner Casgrain LLP, 2004). The issue here is about the strength of the implementation stage of the duty of consult processes. Consultation was taking place, based on previous precedent that TRTFN had *prima facie* claim to the land in question, in the form of an environmental assessment, however the implementation was faulty in that the actions of BC overrode the findings of the consultation. As the SCC case document outlines (2004): the negative impacts on the TRTFN was high and therefore "…On the spectrum on consultation required by the honour of the Crown, the TRTFN was entitled to more than minimum consultation under the circumstances, and to a level of responsiveness to its concerns that can be characterized as accommodation." Therefore this case was

[18] A legal term denoting at first sight.

built upon the assumptions of previous cases that there was (i) a duty to consult even with (ii) absence of proven land claim, and the step beyond was the state that there was (iii) need to accommodate where consultation exposed negative impacts on the Aboriginal community in question.

The final case for examination is that of Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) (2005). This case illustrates how significant the foundational cases have been as the duty of the Crown to consult is a given and the argument is centered on higher-level issues of how this consultation and accommodation process is to be implemented. The following is based on the SCC document (2005) for the case: The contention began when the federal government approved a winter road that would run straight through the Mikisew Reserve without any consultation of the First Nation. After protests, the road was re-routed snuggly around the boundary of the reserve, again without any consultation. The Mikisew argued that this violated a previous treaty (Treaty 8) in which the Mikisew had given large tracts of land over to the Crown in exchange for continued hunting, trapping and fishing, which the road would negatively disrupt. The Federal Court found that the road's approval was a breach of the Crown's duty to consult. The Court further stipulated that the method of consultation, in this case standard public notices and open houses, were not sufficient and "the Mikisew were entitled to a distinct consultation process." The SCC decision outlines that correct duty to consult in this case would be as follows:

> The Crown is required to provide notice to the Mikisew and to engage directly with them. This engagement should include the provision of information about the project, addressing what the Crown knew to be the Mikisew's interests and what the Crown anticipated might be the potential adverse impact on those

> interests. The Crown must also solicit and listen carefully to the Mikisew's concerns, and attempt to minimize adverse impacts on its treaty rights. (64)

This outlines more in depth actions than the Crown originally carried out. However it does not hold the Crown responsible to accommodate, as has been seen throughout the review of government MC tools above.

Summary

There are clear incremental gains through each one of the six SCC cases explored here. They are the foundations of the sort of change talked about in the Royal Commission on Aboriginal Peoples (RCAP) and the Statement of Apology (as discussed in Chapter 2). These SCC cases have, for the first time, substantially integrated the idea of infringement of Aboriginal rights leading to the Crown's duty to consult into Canadian state institutions. I argue that this illustrates a fundamental fracture in the policies of assimilation and domination allowing space for a dialogue that has qualities akin to *Nation-to-Nation*.

Reviewing the six cases also revealed the evolution of the term MC. The first three cases discus duty to consult but MC is not mentioned. In Haida, Mikisew and Taku the word *meaningful* surfaces as an adjective to clarify what type of consultation must occur such as: "meaningful process of consultation" and then "meaningful consultation." It was shown in the second three cases that the Crown's duty to consult was triggered by infringement of Aboriginal rights and they clarity that this must be a meaningful process of consultation.

Overall, these cases come together to strengthen the power of Aboriginal peoples when faced with industry or provincial and federal government in conflicts over land and resources. These cases comprise the groundwork that allows more Aboriginal groups to enforce the Crown's duty to consult and unveil colonial power relations. On the other hand, with each successful SCC case, the impetus for the Canadian provincial and federal government to develop and implement meaningful consultation processes (appropriate theory and practice) grows heavier. In the following section I conduct a document review of just such tools that have surfaced in both provincial and federal level government as a result of the SCC judgments discussed here, as well as others[19].

[19] For example: R. v. Marshall II, [1999] 3 S.C.R. 533 at paras. 43-44; R. v. Nikal, [1996] 1 S.C.R. 1013 at para. 110; and Nunavik Inuit v. Canada (Minister of Canadian Heritage), [1998] 4 C.N.L.R. 68 at paras. 107-109 (F.C.T.D.).

CHAPTER 4
FEDERAL & PROVINCIAL PROCESSES: DEFINING AND IMPLEMENTING MC IN CANADA

With the introduction of s.35 of the *Constitution Act, 1982* followed by significant SCC cases recognizing and affirming Aboriginal treaty rights and the Crown's duty to consult, the Canadian government has been working to define and implement MC practices. In this section I outline the processes at the federal level, as well as in three provinces that have been particularly active: BC, Ontario, and Alberta. The importance of the information presented here is to build an understanding of the work that is being done by the colonial Canadian state to adhere to new constitutional protections of Aboriginal treaty rights. I intend to demonstrate that although the GoC is a colonial state, there are good people and there have been many efforts working to change oppressive power dynamics. I highlight that this is not a binary issue of good vs. evil or FN vs. GoC. Thus this fits into my overarching argument that MC is an effective initiative working within a larger colonial framework rendering it less effective.

At the federal level, the GoC implemented a three-pronged strategy starting in November of 2004, stemming from the SCC cases: 1. engaging APs in discussions to develop federal policy on MC; 2. educating federal employees of the situation; and 3. opening dialogue with provincial level officials (Indian and Northern Affairs Canada (INAC), 2007). This strategy grew because the legal duty to consult can be mandated to any project that could be seen as having an adverse affect on established or potential Aboriginal and Treaty rights (INAC, 2008c). In addition, all

departments and agencies of the government were made accountable and responsible for the legal duty to consult if they engaged in such a project. In light of this, the 2007 *Federal Action Plan on Consultation and Accommodation* (INAC) was initiated because: "no one department or agency… [had] been responsible for coordinating a federal approach, resulting in lack of coherence, consistency and coordination" (INAC, 2008a). This lack of a coordinated approach left the government vulnerable to further legal recourse by Aboriginal groups. A key document produced from this is: *Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult* (GoC, 2008), which states:

> In the coming months, work will be undertaken to develop a federal policy on consultation and accommodation that will address outstanding legal and policy matters including the scope of the duty, who is the Crown, the nature and scope of accommodation, capacity of government and Aboriginal groups to engage in consultation, and the reconciliation of the evolving legal duty with statutory and other legally based obligations to consult (e.g. comprehensive land claim agreements)(p6).

Therefore, though much work has been initiated, there is still far to go in the federal process to form a coordinated approach and develop policy. The provincial processes are in much the same state. They have been initiated but are in need of more coordination and implementation.

In 2004, the BC government, through the *Ministry of Sustainable Resource Management* (MSRM), created the *First Nations Consultation Guidelines* (MSRM, 2004), which were made consistent with the 2002 *Provincial Policy for Consultation with First Nations* (MSRM, 2002). Currently, BC Hydro and BC Transmission Corporation are putting into practice a First Nations consultation process for the

Long-Term Electricity Inquiry (BC Hydro, 2009). This includes three rounds of consultation workshops as well as capacity funding to cover travel expenses.

The Ontario government, through the *Ministry of Northern Development, Mines and Forestry*, has launched two initiatives. In February 2007, a discussion paper was released entitled: *Toward Developing An Aboriginal Consultation Approach for Mineral Sector Activities* (MNDMF, 2007). The goal was to create effective consultation guidelines through public consultations[20]. In addition, a newsletter – *Update on Aboriginal Engagement* – was created in order to share and disseminate information concerning the Aboriginal engagement process (MNDMF, 2009).

In Alberta, the *Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* ("Policy") was approved on May 16, 2005 (Government of Alberta, 2006). As a result of this policy the *Framework for Consultation Guidelines* was created on May 19, 2006. Specifically, this framework addresses how the duty to consult should occur alongside resource exploration, extraction and management (Government of Alberta, 2006).

Some of the principles included in the above guidelines and frameworks are very positive and have the potential to lay foundations for effective practice. For example: good faith, mutual respect, responsiveness, transparency, timeliness, accessibility and inclusiveness (GoC, 2008), the building of trust, respectful communication, and cross-cultural understanding (MSRM, 2004).

Through this section it can be seen that the GoC has been actively working towards putting in place a coordinated approach to MC including definitions and

[20] It will be interesting to watch this case to see if they are trying to put the chicken before the egg, or is it the egg before the chicken?

practices, at both the federal and provincial levels. They were faced with a situation with far reaching impacts on the way government agencies and ministries function. In light of this, resources and people have been mobilized to implement an appropriate new system of interaction with FPs over natural resource management and important principles are being used.

According to this research, the GoC mobilized resources given a very new and challenging situation. In the next section I explore Aboriginal voices in MC. Following from that I build upon the information presented here and engage a more critical lens to gain a deeper understanding of contradictory dynamics at work – both within the government and between the GoC and Aboriginal perspectives – including complex narratives of oppression and privilege.

ABORIGINAL VOICES: IDEAL SPEECH AND DELIBERATIVE DEMOCRACY

In this section I give voice to the Aboriginal peoples of Turtle Island through presenting some definitions and discussions of MC. In the process I will continue with discourse analysis. Also, in accordance with my methodology, I include more direct quotes more in this section rather than paraphrasing in order to create space for Aboriginal voices as they have spoken, rather than to translate words and ideas through my own identity and lens.

In terms of actions taking place, the National Chief of the Assembly of First Nations (AFN) launched a Task Force on Consultation and Accommodation in early 2009 with the goal to "gather existing protocols and facilitate information sharing with First Nations, and to develop a First Nations position" (AFN, 2009). In addition,

one of the implementation projects of the Ipperwash Inquiry[21] is a Sub Table working to "ensure the Crown recognizes that resource revenue sharing is a Treaty right and any initiatives developed are subject to First Nation jurisdiction which must respect the autonomy of First Nation governments" (Ipperwash Inquiry, 2009). Resource revenue sharing factors into MC because it fundamentally acknowledges Aboriginal communities' Treaty rights. Also, the Northern Secwepemc te Qelmucw (NStQ) of Williams Lake, BC released an in-depth document, the *2009 NStQ Consultation Guidelines: A Guide for Government and Third Parties* (NStQ, 2009). These *Guidelines* "are intended to provide guidance to governments and third parties who are considering activities that may affect the NStQ people, culture, relationship to their ancestral territory and their rights and interests and therefore come to the NStQ asking to consult about the proposals" (NStQ, 2009).

As for MC definitions, the Ottawa Algonquin First Nation (2007) released a statement on negotiation processes and what they asked for included: clear, open and mutually agreed upon understanding of the points of departure; space for all communities affected to take part in the consultation; equal representation, voice and power for each party; mutual respect; and the ability for each party to speak freely without fear of threats or repercussions.

[21] "The Ipperwash Inquiry was established by the Government of Ontario under the Public Inquiries Act. Its mandate was to inquire and report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations representatives at Ipperwash Provincial Park and later died. The Inquiry was also mandated to make recommendations that would avoid violence in similar circumstances in the future" (Ipperwash Inquiry, 2007).

A centre of concern in MC among Aboriginal peoples is the 'right to say no' in response to GoC sentiments such as: "Although Aboriginal communities have a right to be consulted in relation to Aboriginal or treaty rights that may be adversely affected by a government action, they generally have no veto over the Crown's decisions" (MNDMF, 2007, p7). The responses to this are very clear: Mireille Lapointe, Co-Chief of the Ardoch Algonquin First Nation, when discussing current discourse of MC said: "[It is] meant to placate and silence dissent. Consultation without the right to say NO is meaningless and a cynical exercise" (KI, Ardoch & Mushkegowuk, 2009). In accordance with this statement, Constance Lake Chief Arthur Moore of the Matawa First Nations said "…consultation is only as good as the accommodation that arises" (Indigenous Peoples Issues & Resources, 2009).

Tightly linked with 'the right to say no' is the issue of *Free, Prior and Informed Consent* which looms large in the MC debate, primarily talked about in terms of the *United Nations (UN) Declaration on the Rights of Indigenous Peoples* (UN, 2007). The GoC has not signed this declaration stating that problematic portions include those dealing with lands, territories and resources, as well as, free, prior and informed consent (INAC, 2008b). For example:

> Article 28 - Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (UN, 2007).

Overall, the understanding of MC coming from Aboriginal communities is mirrored by Habermas's notion of *the ideal speech situation* (1976, pxvii):

> The conditions of the ideal speech situation must insure not only unlimited discussion but also discussion which is free from all constraints of domination, whether their source be conscious strategic behavior or communication barriers secured in ideology and neurosis. Thus, the conditions for ideal discourse are connected with conditions for an ideal form of life; they include linguistic conceptualizations of the traditional ideas of freedom and justice.

It is the ideas of freedom and justice for Aboriginal populations in Canada that are not being met in the current GoC practices of MC.

Building upon *the ideal speech situation*, deliberative democracy sheds further light on the process of MC. Deliberative democratic theorists generally agree that "…the political process involves more than self-interested competition governed by bargaining and aggregative mechanisms… [the political process is] a public activity that cannot be reduced to the private choices of consumers in the 'market.'…political engagement requires… an orientation toward the common good" (Bohman & Rehg, 1997, pxiii). As Young (1996, p122) explains, each participant in the democratic process must be free and equal with the goal of arriving at a consensus based on the common good rather than market-based private interests. Further to this, as Hannah Arendt (Young, 1996, p127) contends, plurality of position in public debate is essential for democratic processes and indeed the process of debate has an intrinsic value in and of itself for a functioning society (Arendt, 1963).

The *ideal speech situation* and *deliberative democracy* clearly highlight the necessity of freedom and equality in order for a functioning MC process. This draws attention to the fact that MC does not exist in a vacuum. It is in the context of a broader oppressive and unequal society and colonial state framework. To illustrate this, feminist theorists (Frye, 1983, p4-5) have used a birdcage, made up of wires, to

represent a system of oppression. In this metaphor, MC is one wire, of this cage, that is being focused on as a solution to unequal power sharing over natural resources. However, there is a broader context, or cage, which keeps the inequality firmly in place, regardless of the one wire. The logic follows that if the bird cage is the colonial racist nation, then any wire of the cage, or aspect of the nation's infrastructure such as MC, comprises a part of the cage or system and is therefore a microcosm, implicitly colonial and racist as well. However, we must not forget to nuance this cage, as with any system, it is in constant flux. A cage, which was built by a society can be bent, re-shaped and molded in new ways. This debate continues below.

CONTRADICTIONS: GOOD FAITH OR GOOD CAPITALISM?

Thus far in this chapter I have contextualized MC efforts over the past two decades by both the Canadian government and the Aboriginal communities. This section engages with aspects of the white settler government's framework from a feminist post-colonial standpoint while employing a discourse analysis. Looking through a lens of exalted subjects and *Others*; matrices of oppression and privilege; and broader contexts of political repression and the state structure. First, I explore which ministries have been in charge of MC, drawing out implicit conflicts of interest. Second, I illuminate language used in current government MC that undermines the very principles they espouse. I summarize with an analysis of the contradictory messages and actions coming from the GoC.

In some cases the very ministry that is promoting MC is mandated to override it in the name of profit seeking economic development and capitalist accumulation.

For example, in Ontario the *Ministry of Northern Development, Mines and Forestry* is working on the MC file. The overarching role of the MNDMF (2008) is "to implement the government's Northern Prosperity Plan. The Northern Prosperity Plan is a range of targeted initiatives aimed at stimulating growth and job creation in Northern Ontario" (p2). BC even has a *Ministry of Aboriginal Relations and Reconciliation* whose mandate states: "We negotiate treaties and other agreements to create economic certainty over Crown land and resources." It then adds "and to improve the lives of Aboriginal people" (Government of BC, 2009, no page). These two ministries are mandated with mutually exclusive tasks that cannot adequately be tackled because they are often at direct odds with one another. For some Aboriginal groups in Canada the western practice of 'economic development' tears down their very life. How then can the BC Ministry "create economic certainty…" as well as "…improve the lives of Aboriginal people" (Government of BC, 2009, no page) in such situations? How can the Ontario Ministry "stimulate growth and job creation…" while "…meeting its constitutionally mandated duty to consult with Aboriginal communities" (MNDMF, 2008, p2). They cannot. The system is fundamentally flawed; the power imbalance between the GoC and FN tips the scales towards the capitalist economic development side. The very tool to carry out the duty to consult, MC, working towards a "devolution of power and authority to" (Schwartz & Deruyttere, 1996, p3) First People's of Canada, is being implemented in a faulty fashion through institutions that fundamentally undermine it. Made clear here is the discrepancy between MC as a Nation-to-Nation worldview, as espoused in the FNs documentation reviewed, rather than a Domination and Assimilation worldview, as

is becoming clear through analysis of GoC documentation and institutions.

The need for MC grew in the conflict zone where two worldviews collide. The western capitalist worldview, known for domination and exploitation of resources (human and nature) for profit accumulation versus the holistic well-being ideal where humans and nature are intricately linked, as one and the same in terms of survival. If MC is a tool to fill this gap then how could government ministries or departments be capable of effectively respecting both these worldviews in their work?[22]

My argument is that meaningful consultation is the site where two worldviews collide; otherwise a consultation process would not be necessary. There is a significant cultural layer to the MC debate. However it is not cultural alone. A feminist theoretical lens helps to understand this collision site by intersecting notions of nature, power, colonization and national identity. The interactions between the colonial state and Aboriginal groups in Canada, through defining and practicing MC, illuminates underlying themes of race, oppression and domination. As explained by Mackey (2000):

> …identity is formed through definitions of similarity, continuity, and difference and different versions of identity work to include and exclude populations in specific ways… Whites and males and the upper classes… [are] often seen as more developed and civilized, and therefore more distant from nature… the colonized, the racialized, and the working classes… [are] placed in the opposing position, and therefore seen as closer to nature, less developed, and therefore inferior (p125).

This passage clarifies the link between the domination of nature and Aboriginal populations by the patriarchal colonial state framework. Furthering this, Thobani

[22] It is important here to note that I do not mean to essentialize or romanticize the Aboriginal worldview, nor do I contend that all Aboriginal peoples disagree with economic development. This simply is not true.

(2007) states: "In the case of Canada, the historical exaltation of the national subject [i.e., white settler] has ennobled this subject's humanity and sanctioned the elevation of its rights over and above that of the Aboriginal" (p9). Therefore, if there is a governmental ministry mandated to implement the exalted subject's worldview of capitalism as well as the Aboriginal '*Other*' worldview, then capitalism will win every time because the scales of power are tipped. I state again here that Aboriginal interests are not always counter to capitalist economic growth, but the premise of this research is that often there are broader interests not encapsulated within the western colonial resource exploitation. I argue that consultation can only be meaningful if it allows for a multiplicity of perspectives, capitalist and otherwise. As soon as MC is corralled into being *just* a means for corporate resource extraction then it can never meet the ideal speech and deliberative democratic understandings heard in the voices of FPs, interviewees (I-1, I-2, I-3, I-6, I-7, 2010) and my own.

This debate is continued through dissecting the contradictions in language expounded in GoC literature on MC. The GoC document (2008): *Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult* contains language that exposes the dominant discourse clearly. Here, there are principles included such as:

> Good Faith–Consultation must be guided by genuine efforts. Such efforts require the disclosure of relevant factors and information, no predetermined outcome, no oblique motive, and the absence of any appearance of any sharp dealing (p10).

However, there are also statements such as: "the Court reiterated that consultation will not always lead to accommodation and accommodation may or may not result in an agreement" (p31). How can 'good faith' be a principle if they also state that

accommodation will not necessarily occur? This contradiction is also seen in a SCC document (Reid, 2008, no page) where one of "the main principles to be adhered to in the consultation process…" is that "…both parties must demonstrate good faith…" while another stipulates "…the Aboriginal claimants must not frustrate the Crown's reasonable good faith attempts, nor should they take unreasonable positions to thwart the Crown from acting in cases where, despite meaningful consultation, agreement is not reached." Can that be considered 'good faith'? I argue that this is not 'good faith'. The Crown will abide by 'good faith' guidelines up until the point where they get frustrated. This does not sound like a: "devolution of power and authority" (Schwartz & Deruyttere, 1996, p3).

This is echoed further in language such as (GoC, 2008): "consult and possibly accommodate" (p7), or "consult and, if appropriate, accommodate" (p5), or "ensure accommodation measures where appropriate" (p6). I argue that this process of consultation with only a *possibility* of accommodation is no different than previous cultures of FN governance, where government and industry got to tick off a box for giving an Aboriginal community a report telling them the decisions that have already been made about their land and their community. It seems that the GoC needs to go back to the basics: the New Oxford American Dictionary (2005) defines meaningful as a serious, important, or useful quality or purpose. The contradictions seen in the language as well as in the institutions charged with MC implementation do not instill one with good faith. Instead, the evidence here speaks to Thobani (2007) as she writes about "the colonial domination of Aboriginal peoples:"

> This racial domination lies at the very heart of Canadian nationhood, at the core of its identity and its social, juridical, and moral order… [With] the racial

> configurations of subject formation within settler societies… the national remains at the centre of the state's (stated) commitment to enhance national well being… and the Aboriginal continues to be marked for loss of sovereignty (p18).

Though GoC constructions of MC put forth many important principles, such as mutual respect and good faith, there are larger and very deeply rooted power structures providing the landscape of this method. Matrices of oppression and privilege are at play through underlying themes of race, oppression, colonization and domination, which complicate MC in the broader state structure of institutionalized repression of Aboriginal peoples.

Summary

This section was an important exercise of discourse analysis. As Foucault (1978) espouses, "discourse transmits and produces power; it reinforces it, but also undermines it and exposes it, it renders it fragile and makes it possible to thwart it" (p100-101). The discourse of the GoC, though it has nuanced layers, has overarching imprints of the exalted subject at the centre of a colonial state framework and power (Thobani, 2007, p18). Without making lofty conclusions outside of the bounds of the research gathered here it has been illustrated that the GoC interpretation of MC is not in line with the Nation-to-Nation paradigm, or ideal speech and deliberative democratic understandings heard in the voices of FPs and interviewees (I-1, I-2, I-3, I-6, I-7, 2010).

CHAPTER 5
CONCLUSION

My research question is: **Can *meaningful consultation* provide a solution to the tensions between Aboriginal communities and the state on issues of resources management in Canada?** My argument commencing this research was that meaningful consultation is not a solution in its current form. Because MC is a tool being defined and implemented within a wider capitalist and colonial framework it does not allow for "devolution of power and authority to local groups" (Schwartz & Deruyttere, 1996, p3). This devolution of power and authority is at the core of my understanding of the ideal form of MC and has developed as the underlying spirit and intent of MC through discussions with a variety of individuals working outside of the Canadian state from First Peoples to Non-Governmental Organizations (NGOs) to academics to consultants. My vision involves the devolution of power and authority from the Canadian state into the hands of Aboriginal Peoples for a more equal power sharing relationship (such as Nation to Nation). I contend that as long as no broader steps towards decolonization are taking place, MC will remain a superficial method of consulting without accommodating. MC is an effective initiative working within a larger colonial framework rendering it less effective. With the system as it is, where there is a conflict, the Canadian state's goal of capitalist economic growth more often overshadows Aboriginal communities' goals that do not fall within that paradigm.

After an extensive exploration of the issue I conclude that meaningful consultation is a solution on one hand because it is giving more power to Aboriginal

communities to determine what happens on their territories. This is based on the evidence of the SCC cases, which put pressure on industry and different levels of government to consult and accommodate appropriately or there may be costly and lengthy legal battles. “More and more companies are seeing the power of communities to stop projects... Communities can very much destroy company reputations if they don't do the right thing... there is a fear factor and it can be motivating this stuff...” (I-6, 2010).

On the other hand it is not a successful solution because it is one small tool working within a larger capitalist, colonial state framework. “It is better than it was, but not good yet” (I-3, 2010). This can be seen through the continued strength of the Indian Act, which is an example of the oppressive and assimilation-founded policies coming from the federal level. For example, the only Aboriginal communities that have access to the Crown’s Duty to Consult are those recognized as status Indians under the Indian Act. “It has to be much broader then ‘status’ under the Indian Act” (I-7, 2010). Therefore if the colonial state framework does not give an individual status as an Aboriginal person, then they are not entitled to any benefit or special treatment. Fundamentally this is an oppressive system where the state retains the power to legitimize identity or not. As is highlighted here:

> “It's great that we have a judicial system that works... I wouldn't say our policies work... you can take issues to the supreme court here and there have been some fairly good decisions and we are getting better definition on Aboriginal rights. The big gap that I see is governments actually stepping up to their fiduciary responsibility to protect and uphold indigenous right. We see more rhetoric of Corporate Social Responsibility [CSR]... and this is basically offloading responsibility onto companies. And we should be hearing more about human rights being recognized and upheld by governments.... Canada is certainly in the driver’s seat of CSR, which is all based on voluntary action... In Canada we are

> focusing on companies fulfilling roles that governments should really fill" (I-6, 2010).

In some successful cases where consultation is being implemented by companies there is still a long ways to go before communities actually have the right to say no. In addition, a shift needs to happen from consultation to meaningful consultation, which from a Nation-to-Nation standpoint includes Free Prior and Informed Consent.

Industry is one key aspect of the MC picture that I have not extensively addressed in this paper. Although the Duty to Consult falls upon the Crown it is industry that has been picking up the slack on this issue in order to preserve their reputation and avoid costly legal action (I-1, I-2, I-4, I-6, 2010). However, as one interviewee states: the industry is involved due to enlightened self-interest because they want their projects to go through (I-6, 2010). The level of consultation they engage in "…depends on what they can get away with. If a community group is not pushing for deep consultation to happen, the company will not do that. They will get away with the least amount of work they can do to ram something through" (I-6, 2010).

All research participants agreed that based on the SCC cases there are major and important steps forward giving Aboriginal peoples in Canada more power (I-1, I-2, I-3, I-4, I-5, I-6, I-7, 2010). The question remains whether we are moving back into a *Nation-to-Nation* scenario. Originally, when explorers first came to Canada the relationship was *Nation-to-Nation* based on military and economic alliances necessary to survive. Therefore, in the present day as population increases and resources continually deplete in conjunction with the power of Aboriginal

communities increasing – does this mean that the Canadian federal state will necessarily have to enter into a *Nation-to-Nation* arrangement in order to survive economically in the not-too-distant-future? This is a question that can only be speculated upon at this juncture.

One limitation in the scope of this research essay is that I critically analyze the GoC and their MC literature and practices for both strengths and weaknesses, presenting FN MC as a contrast with many strengths. What is missing is a critical engagement exploring weaknesses of FNs literature and practices of MC. One criticism that came out during interviews was the idealistic and even unrealistic notions of MC in line with ideal speech and deliberative democracy. This is not something that I dwelled upon in this work primarily because I am an optimist who believes that the system was built and therefore can be rebuilt. Ideals are important to stand as goals for a better world. Having said this, in further research I would endeavour to look at a broader scope of FPs literature with a critical lens in mind.

Another limitation is the absence of engagement with indigenous sovereignty and self-determination bodies of knowledge. These areas were duly brought to my attention nearing the end of the research process however they were not highlighted during interviews or primary research phases. After considerable thought I decided not to draw upon these weighted terms without due diligence to all of the textures that they have to offer. As with much of the material in this study there are an immense number of political, historical, cultural, economic, spiritual and emotional layers. I have done my best to deal with the material in a respectful manner and not bring in areas of study that I do not feel I could engage with

adequately. I look forward to further work at which time I can examine extensions of this study, such as debates of indigenous sovereignty and self-determination in Canada.

ALTERNATIVES: GREEN STATE & SURVIVANCE

In summation, in terms of the broader capitalist colonial state framework in which MC is working presently – what can be done in terms of the decolonizing project? One way to look at this is to move towards a *Green State* (Eckersly, 2004, p2): "[A] green state… [is] a democratic state whose regulatory ideals and democratic procedures are informed by ecological democracy rather than liberal democracy." It proposes a paradigm shift from the indiscriminant growth-dependent neoliberal market-focused state to a moral state, which recognizes humans' embeddedness in the environment and sets policy frameworks founded on this understanding. In this green state meaningful consultation would have a chance of being effective.

No matter the next steps towards a Nation-to-Nation paradigm, one thing is clear, and that is the need to recognize the continued resistance and power within Aboriginal communities no matter how often the Canadian state has put their communities 'through the gauntlet'. Gerald Vizenor, a Native American writer, coined the term Survivance and I would like to leave off with a passage describing this moving paradigm (Kroeber, 2008, p25):

> Vizenor "…uses survivance to subordinate survival's implications of escape from catastrophe and marginal preservation; survivance subtly reduces the power of the destroyer… orienting its connotations not toward loss but renewal and continuity into the future rather than memorializing the past."

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APPENDIX I: CARLETON UNIVERSITY ETHICS DOCUMENTS

LETTER OF INFORMATION

About the project

My name is Miranda Cobb, I am conducting a research project, which examines the practice of meaningful consultation in Canada. I am a master's student at Carleton University in the Institute of Political Economy and the project is supervised by Dr. Peter Andrée of the Department of Political Science. This letter is intended to inform you, the interviewee, about this project and how you can help in my research.

About the research

This project is centered on the process of meaningful consultation. This is the interaction between the Canadian government and Aboriginal groups over natural resource management. The purpose of the research project is to outline how the practice of meaningful consultation has been created and shaped in Canada over the past 3 decades as well as understand how it is currently practiced and how both the government and the Aboriginal groups would like to proceed with it in the future. This research is being undertaken because there is difference of opinion about the definition and practice of meaningful consultation, primarily between the government and Aboriginal groups. The goal is to understand why this is and how it can be resolved.

Invitation to participate

This research will benefit from your experience and expertise in this area and I would like to invite you to participate in an interview. The interview will take place at your convenience and will take 30 minutes to one hour depending on your time constraints. An audio recorder will tape the interview, if you consent, and a transcript will be typed from this recording. If you agree to the interview you will be asked about your experiences with meaningful consultation. If permitted I may contact you after the initial interview in order to schedule a follow-up or to clarify further questions that arise. When this research project is completed all research participants have the option to be notified as to where the research results can be found. There are no known or anticipated risks, discomforts or inconveniences associated with participating in this research project. Natural resources management can be a sensitive issue because it affects a lot of people. If there is a sensitive issue that arises we will deal with it on an individual basis and refer back to the ethics committee.

Confidentiality and interview information

You are free to choose not to answer questions put to you, and you are free to stop the interview at any time. If you choose to withdraw prior to the completion of the interview all of the information given to that point will be destroyed. Interview transcripts (raw data), including your name and position, will be seen only by me, the researcher. Interview material may be used for this research only. To ensure confidentiality, I will not be identifying you by name or by title in any reports

written using the information that you provide. Also, we will not disclose participants in the study to one another. Confidentiality will be assured by a procedure in which all identifying details are removed and the identity of participants disguised in any reports. Notes of your interview will be securely stored and only those listed here will have access to them; they will be physically destroyed upon completion of this research.

If you have any questions or would like further information, please contact me:

Miranda Cobb
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Carleton University
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Phone: (613) 520-2600 Ext. 8859
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This project is currently being reviewed for ethics clearance by the Carleton University Research Ethics Committee. Should you have any concerns or questions about my involvement in the study or any complaint concerning the manner this research is conducted, please do not hesitate to contact:

Antonio Gualtieri
Chair, Research Ethics Committee
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-2517
E-mail: ethics@carleton.ca

Thank you for your consideration.

_____ _____

Miranda Cobb, Researcher Dr. Peter Andrée, Supervisor

CONSENT FORM

This research project is centered on the process of meaningful consultation. This is a method used in the interaction between the Canadian government and Aboriginal groups over natural resource management. The purpose of the research project is to outline how the practice of meaningful consultation has been created and shaped in Canada over the past 3 decades, as well as to understand how it is currently practiced and how both the government and the Aboriginal groups would like to proceed with it in the future. This research is being undertaken because there is difference of opinion about the definition and practice of meaningful consultation, primarily between the government and Aboriginal groups. The goal is to understand why this is and how it can be resolved.

With your permission the interview will be electronically recorded. The record of this interview will be kept by the interviewer on a secure hard-drive solely for use in this research project. The electronically recorded interview will be used exclusively by the researcher. It will be destroyed when this research is complete.

No participants in this study will be identified. In the research report you will be paraphrased or quoted but you will not identified as the source.

There will be no direct benefit to you in participating in this study.

I,_____have read the letter of recruitment and this consent form and understand that I am participating in a research project and I voluntarily agree to participate.

□ I consent to an electronic audio recording of the interview.

□ I do not consent to an electronic audio recording of the interview.

Signature: _____

Location: _____ Date: _____