Cumulative effects, anthropogenic changes, and modern life paths in sub-Arctic contexts. Envisioning the future in Northeastern British Columbia: the case of the Doig and Blueberry River First Nations

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy

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Abstract

This work is an attempt to describe what is happening in North-eastern British Columbia, in an area where *extractivism* intertwined with the market-driven economy had been generating changes not always foreseen, understood, and mitigated. Drawing on my year of fieldwork (July 2019 - August 2020), I explore how the traditional lifestyle and socio-economic organization of the Doig and Blueberry River First Nations have been changed by the cumulative effects of industrial development. At first glance, resource extraction may be perceived as a solution to tackle the many problems of scattered and isolated Indigenous communities (i.e. unemployment, lack of opportunities for socio-cultural and economic continuity in the area). However, enjoying the benefits extractivism produces comes at a high price. It impacts Indigenous cosmovision and cultural heritage while shaping how community members envision the future and the kind of future(s) they perceive as possible.

The timeliness of this ethnographic work is also confirmed by the litigation BRFN v. BC (2015-2021). For the first time in Canadian legal history, a trial on cumulative effects intertwined with Treaty 8 infringements and the recognition of Constitutional rights was initiated by a First Nation Band in an attempt to stop development projects to which the Band did not give its consent. The litigation came to an end in June 2021, with a ground-breaking verdict in which it was judged that the BC province could not continue to authorize activities that breach Treaty 8 and its unwritten promises. As a result, on 7th October 2021, a preliminary agreement between BRFN and the BC Government was reached. The province has agreed to allocate a total amount of C$ 65 million to the BRFN for land restoration activities and cultural practices revitalization.

To explain the complex reality community members (and Fort St. John residents) meet in their everyday lives while facing extractivism, I introduce the concept of *'atemporal modernity'* as an (a)temporal status in continuous becoming. I argue that people are trapped in such a status, perpetually waiting for a better future yet to come, which can only be achieved through extractivism. By letting people talk, I try to describe their everyday challenges while exploring which kind of future(s) community members envision to keep living off the land as long as *'the sun shines, the rivers flow, and the grass grows'.*

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Statement of Copyright and data anonymization

As established in the Placement Scheme Form, the Parties agreed that the Intellectual Property, copyrights, and ownership over the work produced if the dissertation is published as a monograph would be recognised to the Doig River First Nation and the student in equal share.

As established in the *Ethics and Data Protection Form* and to comply with it, the identity of many people who have provided crucial information remains anonymous. In some cases, pseudonyms are used to protect their identities. Nevertheless, there are cases where real names are used. On many occasions, I was asked to use real names when specific issues were addressed by DRFN Chief, councillors, Band and Land Manager, and elders. Anonymizing members is perceived as a way to use valuable information without giving credit to the person. To avoid knowledge extraction and aware of the problems it had created in the past, I followed the will of many community members, Chiefs and councillors. Nevertheless, any misinterpretation of a member's idea is the author's sole responsibility.

List of Abbreviations

AAA	American Anthropological Association
ADR	Alternative Dispute Resolution
AGBC	Attorney General of British Columbia
ALP	Aboriginal Liaison Program
ATVs	All-terrain vehicles
BC	British Columbia
BC OGC	British Columbia Oil & Gas Commission
BCSC	British Columbia Supreme Court
BCTS	British Columbia Timber Sale
BCUC	British Columbia Utility Commission
BRFN	Blueberry River First Nation
BSA	Benefit Sharing Agreement
CAGP	Canadian Arctic Gas Pipelines
CAPP	Canadian Association of Petroleum Producers
CASCA	Canadian Anthropology Society – Société Canadienne d'Anthropologie
CBC	Canadian Broadcasting Corporation
CCP	Comprehensive Community Plan
CCR	Current Condition Report
CDI	Community Development Institute
CEA	Cumulative Effects Assessment
CEAA	Canadian Environmental Assessment Agency
CEAM	Cumulative Effects Assessment and Management Report
CEF	Cumulative Effects Framework
CEO	Chief Executive Officer
CERD	Convention on the Elimination of Racial Discrimination (UN)
CGL	Coastal Gas Link
COVID-19	Corona Virus Disease – 19
CSP	Council Strategic Plan
CSR	Corporate and Social Responsibility
DIA	Department of Indian Affairs
DRFN	Doig River First Nation
DVA	Department of Veteran Affairs

DRIPA	Declaration on the Rights of Indigenous Peoples Act (BC)
EAA	Environmental Assessment Act
EAO	Environmental Assessment Office
EBA	Economic Benefits Agreement
EIA	Environmental Impact Assessment
EIA	Economic Impact Analysis
ESI	Environmental Stewardship Initiative
FAO	Food and Agriculture Organization (UN Agency)
FID	Final Investment Decision
FN	First Nation
FNFN	Fort Nelson First Nation
FNHA	First Nations Health Authority
FNLMA	First Nations Lands Management Act
FLNRORD	Ministry of Forests, Lands, Natural Resource Operations and Rural Development
FNOGMNA	First Nation Oil, Gas and Moneys Management Act
FNPOA	First Nations Property Ownership Act
FOS	Forest Operations Schedule
FPIC	Free, Prior, and Informed Consent
FSJ	Fort St. John
G2G	Government to Government
GDP	Gross Domestic Product
HBC	Hudson’s Bay Company
HRC	Human Rights Committee (UN)
IAA	Impact Assessment Act
ICCPR	International Covenant on Civil and Political Rights (UN)
IK	Indigenous Knowledge
ILO	International Labour Organization
IR	Indian Reserve
KTP	K'ih tsaa?dze Tribal Park
LNG	Liquefied Natural Gas
LRMP	Land and Resource Management Plan
LRSWP	Lands and Resources Strategic and Work Plan
MNCs	Multi-National Corporations

MoU	Memorandum of Understanding
MP	Member of Parliament
NEB	National Energy Board
NGLs	Natural Gas Liquids
NGTL	Nova Gas Transmission Ltd.
NMML	North Montney Mainline Pipeline
NRPPP	Natural Resources Policy and Procedures Protocol
NRTA	Natural Resources Transfer Agreement
PBA	Pipeline Benefits Agreement
PRGT	Prince Rupert Gas Transmission
PRRD	Peace River Regional District
RCMP	Royal Canadian Mounted Police
RCAP	Royal Commission on Aboriginal Peoples
RSEA	Regional Strategic Environmental Assessment Initiative
SCC	Supreme Court of Canada
SCR	Supreme Court Reports
SEEMP	Socio-Economic Effects Management Plan
SFMP	Sustainable Forest Management Plan
SIA	Social Impact Assessment
SLO	Social License to Operate
SUV	Sports Utility Vehicle
T8	Treaty 8
TC	Trans Canada
TEK	Traditional Ecological Knowledge
TLA	Tripartite Land Agreement
TLE	Treaty Land Entitlement
TLUS	Traditional Land Use Studies
TK	Traditional Knowledge
TRC	Truth and Reconciliation Commission
TSLs	Timber Sale Licenses
TSA	Timber Supply Area
TUS	Traditional Use Studies
UDHR	Universal Declaration on Human Rights (UN)
UNBC	University of Northern British Columbia

UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDRIPA	United Nations Declaration on the Rights of Indigenous Peoples Act (BC)
UNGA	United Nations General Assembly
US/USA	United States of America
VCs	Valued Components
VECs	Valued Ecosystem Components
WWII	World War II

I use Province and BC Government interchangeably

I use Band, First Nation Government and Indigenous community interchangeably.

I use the word Indians and Indigenous people interchangeably. I am aware of its derogatory meaning and the use it has had in the past. I use it here with no negative meaning, as used in the relevant literature and case laws, and according to how community members intend it nowadays to identify themselves as First Nation people.

I use the word traditional lifestyle to refer to a specific mode of life ancestors used to have and that some community members believe is vanishing. I am well aware of the existing tension in the literature between the words *traditional* and *modern* when it comes to the Indigenous lifestyle. I do not use these words with any negative connotations but only to distinguish what existed before and after the massive industrialization experienced by First Nations living in Northeastern British Columbia. Thus, when I refer to the traditional lifestyle, I simply mean a way of life more connected to the land, less dependent on the oil and gas industry, and closer to the ancestors' practices.

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Introduction

Thinking about the future has always been a defining element of the Dane-zaa cosmovision; ancestors always considered future generations and their well-being when making decisions. Before entering Treaty 8 in 1900, they made sure that by taking the Treaty, future generations would still be able to use their land and practice their culture *'for so long as the sun shines, the river flows, and the grass grows*'. Nevertheless, the future the ancestors envisioned was somewhat different from the current reality. Whereas already at the beginning of the past century, it was clear that Northern British Columbia was rich in natural and subsoil resources (Madill, 1986, pp. 5–6); it was impossible to predict the extent of resource exploitation and the impact it would have on people's lives. The turning point was in the early fifties when large-scale oil and gas extraction began (A. J. Willow, 2019, pp. 239–240). Since then, the exploitation of natural resources has been praised as the only way to develop an underdeveloped region, create economic opportunities while ensuring high-paid jobs, build something new and modern, and leave the past behind. To paraphrase Anna Tsing: *'This is a story we know. It is the story of pioneers, progress, and the transformation of empty spaces into industrial resource fields'* (Tsing, 2015, p. 18).

The interest in studying and unpacking the concept of cumulative effects of industrial development in this doctoral work is rooted in the civil claim filed by BRFN against the Government of BC in March 2015. The BRFN v. BC litigation can be considered as the last step (at least, from a legal point of view) of a long journey that started in 1976 with the inception of the Montney case, initiated right before the split of the Fort St. John Indian Band into Blueberry River First Nation and Doig River First Nation. The BRFN v. BC litigation came to an end in June 2021, with a historic victory for the Blueberry River First Nation, as I will explain in chapter 5. One year later, on June 27th, 2022, Doig[1] and Blueberry signed the final agreement of the Treaty Land Entitlement (TLE)[2], ending a settlement claim launched in 1999 and that the two Nations have been negotiating with the Federal and Provincial Governments since 2004. The conclusion of the TLE process, together with the victory in the litigation, may well be regarded as the beginning of a more stable and prosperous era for the two

[1] Doig has also launched its Urban Reserve in June 2022. More information is available at: https://doigriverfn.com/our-lands/urban-reserve-plans/ https://energeticcity.ca/2022/06/21/doig-river-celebrates-new-urban-reserve-on-national-indigenous-day/ (last accessed on July 27th, 2022).

[2] The TLE negotiation was initiated to solve a misallocation of Reserve Land by the Federal Government. When the Indian Reserve 172 was established in 1916, as a consequence of the adhesion of the Fort St. John Indian Band to Treaty 8 (1900), the BC Government allocated less land than what the Band was entitled to receive due to a miscalculation of the population of the Band. More information is available at: https://doigriverfn.com/our-lands/treaty-land-entitlement-lands-urban-reserves/ (last accessed on July 27th, 2022).

Nations, that can now have a role in shaping the development path in their traditional territory while deciding the kind of development worth to be pursued. The conclusion of the TLE may serve as an example of how Reconciliation between First Nations and the Government (Federal and Provincial) can be advanced. Moreover, it may well be seen as a new beginning for the two Nations that can now leave behind the divisions of the past and work together in a more organic way, as remarked by the two Chiefs during the TLE signing agreement ceremony.[3]

Blueberry and Doig were one Band (the Fort St. John Indian Band) until 1977 when they split up. Although there are several reasons behind the division of the Band, many members consider the Government responsible for it. It all started with the sale of the Indian Reserve 172 (1948) and the creation of three different, much smaller, Indian Reserves: Beaton I.R. 204, Blueberry I.R. 205, and Doig I.R. 206 (Madill, 1986, p. 60). In addition, some BRFN members believe that the creation of three different Reserves was just the beginning of a process initiated by the Government to wipe away these people and their culture. Marvin Yahey, previous BRFN Chief, stated during the 2019 BRFN cultural camp that BRFN is dying slowly and that when they were relocated, the decision was made to eliminate them. *'Putting BRFN along the river, where they could not farm or ranch, was a way to eliminate them, to get rid of this group. They* (meaning the Government) *put people in those conditions to fail!'* Yahey was referring to the relocation that took place in 1979 after a sour gas leak that forced Blueberry members to leave their original Reserve (I.R. 205) and move to the banks of the Blueberry River (Ridington & Ridington, 2013, p. 346).

Officially, the Band separated due to the rising tensions between Beaver and Cree families (Leech et al., 2016, p. 10). The former formed the Blueberry River First Nation, and the latter Doig River First Nation. The two Bands got two English names, derived from the names colonizers gave to the rivers running through Dane-zaa territory. According to Tommy Attachie, a Doig member who passed away a few years ago, Doig comes from the name of a Scottish trapper, Fred Doig (Robin Ridington & Ridington, 2013, p. 3). Blueberry, instead, takes the name from the territory where the Indian Reserve 205 is located, rich in blueberry plants. Nevertheless, in recent years, some Blueberry members have started to define themselves as Dunne'za/Nehiyaw (Beaver/Cree) or *Creever*, a mix of Beaver and Cree. Cree are not natives of the area; they moved to the Peace River in the eighteenth century due to the white people entering the Prairies. According to Dane-zaa oral stories collected by Robin and Jillian Ridington, the arrival of Cree people into Dane-zaa territories brought tensions and conflicts. This is why the Cree had been perceived with negative connotations until recent years

[3] https://energeticcity.ca/2022/06/27/blueberry-river-and-doig-river-first-nations-sign-historic-tle-settlement/ (last accessed on August 1st 2022).

(Ridington & Ridington, 2013, pp. 75–80). Although Creever as a group does not officially exist, the fact that some members identify themselves as such is relevant and might be perceived as the first step to overcoming the divisions of the past within the two Bands.

In this context, the outcome of the litigation BRFN v. BC further strengthens Canadian First Nations while advancing the rights Treaty 8 signatory Bands are entitled to enjoy. This litigation has another significant meaning, as it can be seen as an attempt to fight back, to see recognized in Court that a different future is possible. As explained in this work, the ability to imagine something different, live differently in the modern world and envision a different future has almost been wiped out by *extractivism* and the cumulative effects of industrial development. A different future does not have to be without extractive activities, but it may be without *extractivism* driven exclusively by the rules of the market economy. As affirmed in the trial's opening statement, *'the Crown and the Province should be acting using higher standards and values than what current political life and market forces allowed'* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 333). The litigation and its verdict may mark a historical turning point for Canadian Indigenous peoples. The verdict certainly paves the way for relevant improvements in how industrial activities are authorized in traditional Indigenous territories. It gives hope to members that something different is possible and that a more balanced development can be achieved. It remains to be seen whether this verdict will be used to do things differently while operating a shift in the development paradigm or to promote the same type of development, just making it more inclusive for Indigenous peoples.

During a conversation I had with a colleague at the beginning of my doctoral research, he pointed out: *'It would be very interesting to understand how cumulative effects manifest themselves on people, on the environment, on everything that surrounds us!'* In chapter 4, I explain that cumulative effects have been defined as additive, synergistic, antagonistic/compensatory, and masking. This comprehensive definition gives an opportunity to start unpacking how cumulative effects manifest themselves. Nevertheless, based on my fieldwork experience and the outcomes of my doctoral research, I argue that cumulative effects do not change just the environment or the lifestyle of a group of people, only affecting their traditional practices while damaging the ecosystem. Cumulative effects are much more and have a detrimental impact on many different aspects of life. Quantifying the extension of the damage is perhaps impossible because, from a socio-cultural perspective, cumulative effects are subjective. Every community member perceives them differently, in relation to their background, age, and employment, for example. Measuring cumulative effects is not the objective of this qualitative ethnographic work, nor is it to propose new or original ways to mitigate cumulative effects, which has already been done (with different degrees of success or lack thereof). Instead, this

work is meant to explore and try to understand what is beyond the expression *'cumulative effects'* and their impact on people's lives and mindsets.

By unpacking the concept of cumulative effects and observing the socio-cultural-economic dynamics development has produced, I try to explain how cumulative effects have influenced and changed community members' lifestyles and perceptions about what is possible. As pointed out in this thesis, what struck me the most is that the current development path has changed how community members perceive the future, how they envision the future in their traditional territory, what it is possible to do and how. Whereas community members have shown remarkable resilience when it comes to the practice of traditional activities, keeping alive or revitalizing cultural activities such as drumming, hunting, and gathering, the effects produced by the development path that has been imposed on them should not be underestimated. In the specific context of North-eastern British Columbia, neoliberal globalization has impacted the economic focus of the Province, with *extractivism* that has been massively promoted by companies and fully supported by the provincial Government (Wilson & Bowles, 2016, pp. 9-11). However, instead of using the paternalistic and colonial approach of the past, in the past decade, a different strategy has been developed and implemented.

The change of approach is evident in the first Reconciliation Action Plan drafted by TC Energy in 2021, where it is affirmed that *'creating enduring relationships and expanding economic opportunities for Indigenous communities are part of the reconciliation that must occur between the Indigenous and non-Indigenous peoples of North America.'* (TC Energy, 2021, p. 2). The new strategy has been based on encouraging and supporting Indigenous entrepreneurship while offering education, training, and employment opportunities. It could be argued that *'assimilation through wage labour',* a key pillar of the colonial policy until recent decades, has been revisited and re-enacted in different ways. Indigenous businesses play an important role in the extractive sector nowadays; they work as contractors with external companies and offer expertise and knowledge while enjoying the benefits the sector generates. Instead of being subjugated, many Indigenous Bands in British Columbia are now seen as partners and enjoy the benefits of the extractive sectors by accepting its downsides (Wilson & Bowles, 2016, p. 284). As the President and CEO of TC Energy affirmed: *'Our commitment is to bring Indigenous communities into our business as partners […], so they benefit from our operations and economic opportunities.'* (TC Energy, 2021, p. 2). Bringing Indigenous communities into the business represents an important shift in the way business is done. For the Government, companies, and many Indigenous Bands, it represents a way towards Reconciliation.

Although this is undoubtedly true and represents what is currently happening in Northern British Columbia, I argue that this is only one side of the coin, the brighter one. The other side, the less bright, often hidden, might serve to show a more complex reality, where the recognition of Indigenous peoples' rights have been intertwined with the needs of the market economy and a different approach to business. Since the approval of the 1982 Canadian Constitution Act (with its Section 35), Indigenous rights have been asserted and recognized in the Canadian legal framework. In the following years, leading case law paved the way to fully recognising specific Indigenous rights, which until then were ignored and infringed. As I explain in chapter 7, cases such as Guerin (1984), Sparrow (1990), Delgamuukw (1997), Haida (2004), Mikisew (2005), and Tsilhqot'in (2014) have advanced the legislation while ensuring fundamental Indigenous rights. In this new context, companies could not do business as they did in the past, using a colonial and paternalistic approach. Legally that was not possible anymore. Therefore, a significant shift had been made by including Indigenous Bands in the business, making them partners. That was, perhaps, the only way to keep *extractivism* alive within a market-driven economy and in such a changing legal framework.

Based on my fieldwork experience, as I explain throughout this thesis, I argue that *cumulative effects ultimately trap people in a market-driven economy and society*, where doing or even envisioning something different is perceived as a threat to the status quo rather than an opportunity to make significant changes and improvements to everyday life. Community members (and other people, too) living in these contexts are trapped in what I call *'Atemporal Modernity',* continuously waiting for a better future yet to come, which can only be achieved through *extractivism*. *'Atemporal Modernity'* can be described as an atemporal status in continuous becoming, where there is always something new and better to be achieved to reach socio-economic well-being. This idea of modernity, always to be achieved through the next development project, constitutes a solid base to sustain *extractivism* for the time being and the foreseeable future. Moreover, it increases the possibility that people will accept new development projects on a continuous basis. As I explain in this work, reshaping the kind of development that drives socio-economic relationships in the current world is possible if the current meaning of the word development is challenged and unpacked.

In an attempt to shed light on such a complex issue while proposing a different approach to dealing with development, Blaser argues that development projects should be seen as life projects, as several Indigenous peoples perceive them (Blaser, Feit and McRae, 2004, p. 30). When setting up a life project, people are given the possibility to define which directions they want to go based on their awareness and knowledge of the world and the specific features of the place where they live. In the context of a life project, development is accepted as far as people can have a meaningful degree of

control over their lives in a specific world place (Blaser, Feit and McRae, 2004, pp. 34–35). As I explain in this work, the BRFN v BC litigation is extremely relevant in this sense. It tries to set a different direction for community members and BC First Nations, a direction that it does include the extractive sector, once members agree on which project must be approved and realized. Such an approach, which may well be perceived as an alternative to Western-style development, is intertwined with a specific cosmovision that can be explained with the concept of *Buen Vivir,* which firstly emerged in Southern America in the early twenty-first century as a result of the contestation of dominant development models (Artaraz et al., 2021, p. 6; Chassagne, 2021, pp. 29–30). As I explain in chapter 4, *Buen Vivir* offers a different approach to conceiving development, prioritizing the well-being of humans and their relationship with the surrounding environment.

The word development has a central role in this work. As it may be noticed throughout this thesis, when I unpack the concept of cumulative effects, I refer to industrial development and what it has generated. Nonetheless, as I show throughput the chapters, development has different dimensions and features, especially according to the Indigenous worldview. Economic development is one of these features, but it cannot be taken as the only indicator to measure the well-being of a community or a Band. Without social development, cultural continuity, mental and physical well-being, the word development is just empty. Thus, this work aims to challenge the definition of development and even the one of sustainable development. As defined by the Bruntland commission, which has provided the most accepted definition, sustainable development is all about *'meeting the needs of the present without compromising the ability of future generations to meet their own needs.'* (WCED, 1987, p. 16). It does not specify which kind of needs must be met. However, it is reasonable to believe that economic needs were among the priorities of the commission when the definition was elaborated. Nevertheless, the fact that no precise indication of the kind of needs that must be met is provided could also be perceived as a good sign. It may well mean that the definition of sustainable development is not set in stone and may change in the future. Therefore, I argue it is perhaps time to rethink the entire sustainable development paradigm, perhaps reframing the definition of sustainable development. Throughout this work, I try to challenge the concept of development and sustainability based on western perspectives by using a cumulative thinking approach.

Halseth suggests that to unpack the concept of cumulative effects, it is necessary to use a more integrative approach when evaluating cumulative impacts, which he calls *cumulative thinking* (Halseth, 2016, pp. 217–218). Thus, economic, environmental, and health effects should be assessed in combination with social aspects and considering past, present and foreseeable projects. Impacts are intertwined and manifest themselves in additive, synergistic, interactive, multiplicative, and non-

linear ways (C. Johnson et al., 2016, p. 223). Additionally, they are not only related to large development projects and are not easily identifiable and quantifiable (Halseth, 2016, p. 84). The concept of cumulative thinking proposed by Halseth is beneficial for unpacking the concept of cumulative effects of industrial development. It highlights how economic, environmental, and health issues are intertwined and must be assessed to understand how development impacts a specific area and group of people. Cumulative thinking contributes to defining and reshaping the theoretical framework when addressing cumulative effects while advancing the debate on sustainability issues. By considering environmental and health features next to the economic dimensions, cumulative thinking allows one to think differently about what is sustainable in people's everyday lives. This work may well be seen as an attempt to use cumulative thinking when defining, explaining and unpacking the concept of cumulative effects, its impact on people's lives and their ability to envision a different future.

Chapter 1 - A summer in Fort St. John. My first encounter with the Blueberry and Doig River First Nations

Chapter 1 introduces the beginning of my fieldwork, which I started in the summer of 2019. Here, I introduce the two First Nations, Blueberry River First Nation (BRFN) and Doig River First Nation (DRFN), and some of their members I encountered in the first weeks on the field. Throughout the chapter, I point out how my participation in the BRFN cultural camp helped me shape a first idea regarding development and its cumulative effects in the area. Moreover, I start describing First Nations' challenges when performing traditional activities (hunting and trapping) while living in extractive contexts.

The second half of the chapter addresses the practice of traditional activities nowadays, with DRFN Chief Trevor Makadahay explaining the importance of hunting and trapping for the Dane-zaa and the respect members must pay to animals when performing such activities. As for other traditional activities, drumming and dancing are mentioned in the second part of the chapter, with comprehensive explanations of their importance provided by Garry Oker, previous Chief and current councillor of the DRFN.

In the final part of the chapter, I start exploring the complex relations First Nations have with oil and gas companies and the Government, pointing out how intricate these relationships can be and the difficulties in finding a balance while keeping socio-economic independence. Towards the end of the chapter, I start questioning whether a compromise between traditional lifestyle and industrial development can be reached, also considering what Elina (a DRFN member) told me about the dependency on high-paid jobs provided by the oil/gas industry.

1.1 The beginning of my fieldwork with Robin and Jillian Ridington

Oil wells and gas compressor stations were scattered over the beautiful prairie of British Columbia, where the yellow fields of rapeseed beautifully contrasted with the sub-Arctic forest, depicting breathtaking scenery. That was the view I had from the plane while landing in Fort St. John on Friday, 28th June 2019. I took a taxi to town from the airport, where I reserved a room for a couple of nights in one of the many hostels built in the last decades to host transient workers. Motel 6 was advertised as the cheapest hostel in town, with prices starting from C$ 69.99. It goes without saying that the cheapest hostel in Fort St. John was the only affordable for me. My adventure in the traditional territory of the Dane-zaa people (as Blueberry -BRFN- and Doig River First Nation -DRFN- are also known) started thanks to the precious help of Robin and Jillian Ridington, two senior anthropologists and former professors at the UBC in Vancouver. They have done extensive work with the Dane-zaa people of the Fort St. John area in the last 50 years.

Robin and Jillian drove from Victoria over a couple of days, at an average of 700 km per day. They arrived in Fort St. John on Tuesday, 30th June 2019. That evening we met for dinner, and we had a long conversation about Fort St. John, the First Nations living in the area and how their lifestyle has changed in the last 50 years due to the expansion of the oil and gas industry. They shared with me stories of their fieldwork while sharing more about the friendship relationships they have built with many community members over a lifetime. We also spoke about my research, and I shared my willingness to move to the BRFN Reserve. Both were doubtful about this possibility. Robin immediately told me that entering a First Nation community requires time, as it is necessary to get to know members, the Chief, and the councillors and get along with them. He was right. Throughout my fieldwork, I discovered the importance of sticking around to enter and be accepted to stay within a community. Towards the end of the dinner, Robin told me that he wanted to drive to DOIG Reserve the following day before going to Pink Mountain, 10 miles southwest of Mile 147 of the Alaska Highway, where the BRFN Cultural Camp was going to be held. Thus, we decided to leave Fort St. John at 9,30 the following morning.

1.2 A visit to the Doig River First Nation Reserve

BRFN and DRFN are part of an Athabaskan-speaking group of First Nations called Dane-zaa, which means '*real people'* (Matthews & Hrychuk, 2012, p. 14). These two Bands were known as the Fort St. John Indian Band until 1977 when they split up into two different Bands. The division of the Band may be considered the final result of the loss of the Indian Reserve 172 (hereafter IR 172) at

the end of WWII (as I explain in chapter 5). Doig Reserve is located 60 km northeast of Fort St. John, while Blueberry Reserve is located 70 km northwest.

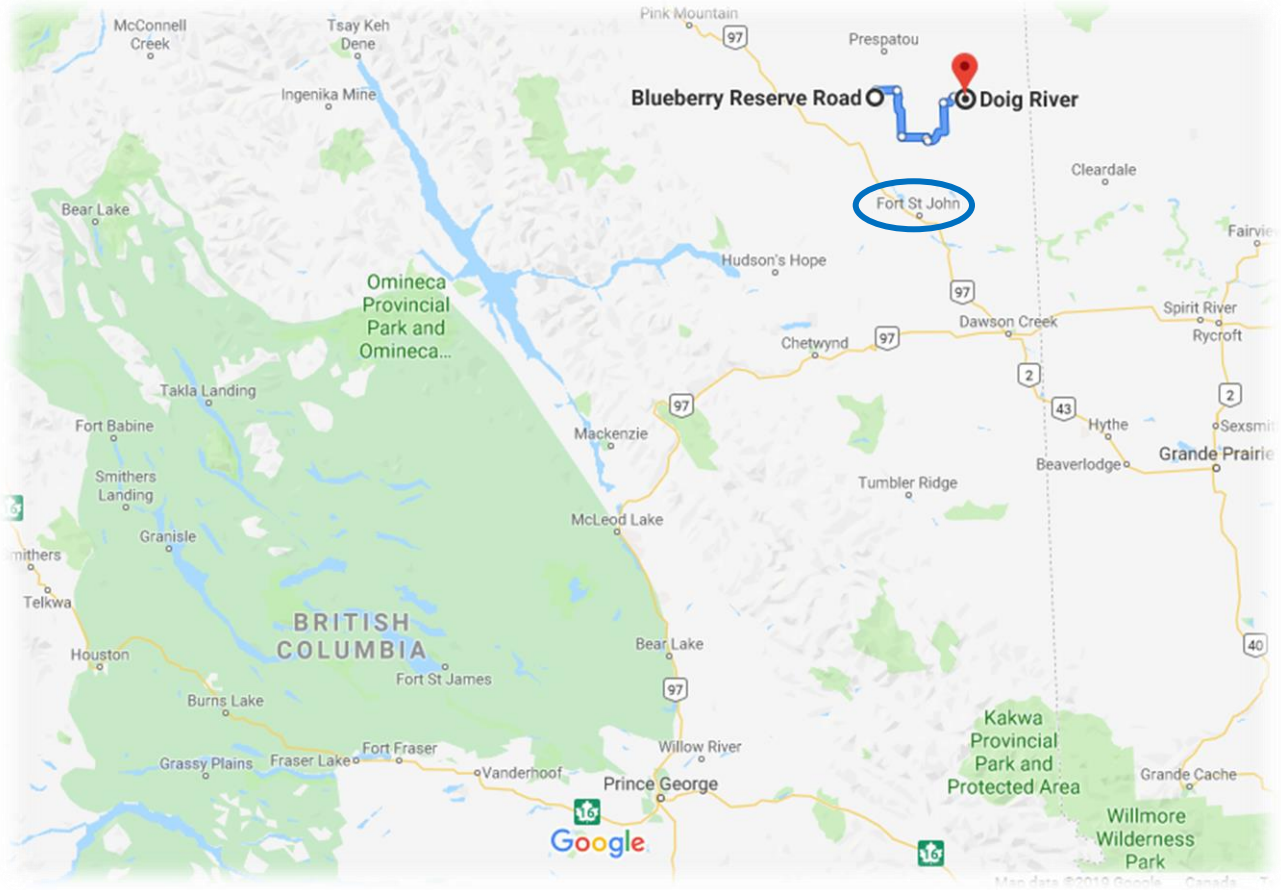


Figure 1 – Location of Doig and BRFN Reserve, Google Maps 2021.

The ride from Fort St. John to Doig lasted less than an hour. While driving on Rose Prairie Road, Robin explained the story of the IR 172, when it was sold, how and why. On that occasion, I heard for the first time the word *'Suu Na Chii K'Chige'*, the name of the IR 172 in the Beaver language, which means *'The Place Where Happiness Dwells'* (Ridington & Ridington, 2013, p. 1). The Beaver language is an endangered Indigenous language that belongs to a Northern branch of the Athapaskan language. It is closely related to the Sekani, Dene (Slavey), Chipewyan and Kaska languages. Until the building of the Alaska highway in 1942, it was the only language spoken by most of the members of the Fort St. John Indian Band (Ridington & Ridington, 2013, p. 6). According to the Database of Endangered Language, it is still spoken in six Indigenous Reserves of Northern British Columbia and Alberta by 150 speakers. [4]

[4] More detailed information on the different language groups is available at the following link: https://dobes.mpi.nl/projects/beaver/language/#:~:text=The%20Beaver%20language%20is%20an,those%20are%20in%20their%20thirties (last accessed on July 25th 2022).

Nevertheless, many more members can understand the language, although they cannot speak it. Called 'silent speakers', these members cannot speak in their native language due to the trauma caused by residential schools and the colonial educational system that was in place until a few decades ago. Since the nineties, revitalization programmes have been promoted by the First Peoples' Cultural Council (hereafter FPCC), a provincial Crown Corporation whose main aim is to assist BC First Nations in revitalising their cultures, arts, and languages. Particular attention is reserved for 'silent speakers', with tailormade programmes offered to community members trying to get their language back.[5] Throughout my year of fieldwork in Fort St. John and while working within the Land Office of DRFN, I better understood the issues related to the loss of IR 172 and how it has impaired members' ability to speak their language, to stay connected with their traditional territory and in terms of cultural continuity. However, while driving to Doig that day and listening to Robin's explanation, everything sounded distant to me, part of a time that I believed was over. As I later learnt, it was not.

Soon after we arrived at Doig Reserve, several members greeted Robin and Jillian. With some of them, Robin spent quite some time talking about Charlie Yahey, a drummer, singer and most importantly, the last Dreamer of the Fort St. John Indian Band, who died in 1976 (Robin Ridington & Ridington, 2013, p. 11). After a few minutes, another person approached and greeted Robin, Garry Oker, previous Chief and current counsellor of the DRFN. He was with Billy Attachie, a Beaver linguist with whom Robin had worked since the beginning of his fieldwork in Dane-zaa territory. They talked a lot about the project they were working on, the realization of a dictionary Beaver-English, with phonetic support. Soon, another person (Bob McKenna) joined the conversation, asking Robin to follow him into his office.

Meanwhile, I wandered around the band hall, taking pictures and having small talk with some members. At some point, I was approached by a man who wanted to show me some pictures he took with an anthropologist who did fieldwork in the area in the late '70s. The man was Gerry Attachie, the previous Chief of the Fort St. John Indian Band (elected in 1976), who started the Montney claim in 1978 (see chapter 6) (T R Berger, 2002, p. 271). He showed me the picture he took with Hugh Brody, another anthropologist I met in London while preparing my fieldwork, who has done extensive work with the Fort St. John Indian Band and other First Nations of the area. His book *'Maps and Dreams'* is a beautiful account of the traditional lifestyle of these people, besides giving a precise description of the Indian economy and the reasons it has been destroyed (Brody, 1988).

[5] https://fpcc.ca/stories/course-for-silent-speakers-now-open/ (last accessed on 25th July 2022).

Figure 2 – Doig River First Nation Band Hall. Picture taken by Giuseppe Amatulli on July 2nd, 2019.

1.3 The Blueberry River First Nation cultural camp at Pink Mountain

Pink Mountain, where the BRFN cultural camp usually takes place, is considered an important cultural and spiritual place. BRFN members refer to it as one of the best in the area for recreational and subsistence hunting, besides its importance for socio-cultural practices and community members' spiritual well-being (Martineau, 2013, p. 102). Pink Mountain is indeed known to be a relevant ecological corridor to many animals, such as moose, elk, deer, caribou, and furbearers, besides many species of fish and birds (McDonald; Candler, 2014, p. 30). In a study conducted in 2005 with 130 BRFN members, Pink Mountain was identified as a place where people could have a healthy lifestyle while practising traditional activities. Members highly value the undisturbed land at Pink Mountain, where there are no oil, gas, or farming activities (McDonald; Candler, 2014, pp. 30–31).

In addition to Pink Mountain, there is another untouched place where BRFN still practice their traditional activities: *The Dancing Grounds.* During the BRFN cultural camp, I heard several people mention that those are the only two places where they can practice their traditional activities nowadays. Located along with the Blueberry Reserve, the Dancing Grounds is one of the most relevant spiritual and cultural sites for BRFN members. In the past, it was the place where Dreamers

used to gather, besides being used as a base for going out on seasonal hunting and gathering rounds. In a study conducted by the Firelight Group in 2014, BRFN members highlighted that the Dancing Grounds is still used as a gathering place, where people drum, sing, and dance; as well as a camping place and as a base to go out hunting (Olson & Steager, 2014, p. 44). Chief Yahey underlined the importance of the Dancing Ground during the BRFN cultural camp by saying, *'I will fight for the Dancing Ground until my last breath. I will not allow any industrial development in that area.'*

Figure 3 - View of Pink Mountain while queueing for the helicopter.
Picture taken by Giuseppe Amatulli on July 3rd, 2019.

We arrived at Pink Mountain at 5.30 p.m. on Tuesday, 2nd July 2019. It rained for the whole journey, and it took us a bit longer to reach our destination due to road conditions. Indeed, once we exited the Alaska Highway and entered Mile 147 Road, we drove for 26 km on a dirt road that was quite muddy after a full day of rain. During the ride, Robin gave me an overview of the Blueberry and Doig River First Nations, pointing out how kinship still plays a vital role in defining the social structure of the two communities. He also explained how families might be divided due to the different views regarding development and the complex relationships First Nations have with the BC Government and with oil and gas companies regarding economic development in their traditional territory. From that conversation, I understood that there is no one-size-fits-all when it comes to economic development in the Nation's traditional territories. As I discovered throughout my fieldwork, members of the same community may have different opinions based on their personal

views and interests. Some members might feel detached from the community and are not interested in performing traditional activities due to intergenerational trauma. For others, getting a job in the oil and gas sector and enjoying the economic benefits the industry provides is the way to live a good life. All these factors must be considered to understand better the different views members of a community might have regarding development and the extractive industry.

Once parked, Robin started to greet community members while introducing me to them. Naively, I thought being with Robin was a plus in entering the community. Soon, I realized I was wrong. Thanks to Robin, I got to know people who had been extremely important during my fieldwork; however, his introduction was not enough for me to quickly enter the community. I struggled for months before being accepted. As I understood throughout my fieldwork, entering a First Nation community is a personal journey, and there is no 'recipe' for it. It depends on your motivations, the reasons why you are there, stubbornness and a good touch of serendipity. Being introduced by someone else does not give you the pass to enter the community; it does not give you any privilege. It is a good way to be 'noticed' and let people know you are there. Then, you need to navigate your path and find your way. I will elaborate more on this in the chapter on methods and methodology.

Figure 4 - Tepees at Pink Mountain, during the BRFN cultural camp (July 2019).
Picture taken by Giuseppe Amatulli on July 5th, 2019.

While talking with members, I was invited to queue for dinner. In front of me, there was a woman who noticed that I was new, and she introduced herself. She was a nurse from the Northwest Territories who had been working with BRFN since 2013. She told me she was pleased to work with Blueberry, despite the challenges she encounters in her job. Next to her was a man in a wheelchair, a civil engineer from Saskatchewan who moved to BC to work in the water sector. During that summer, he was responsible for implementing a project to provide drinking water to the BRFN community. As he explained, many communities in the Canadian north still do not have access to drinking water. That was also the case for the BRFN. According to him, the most challenging part of implementing the project was related to infrastructure. Old pipes must be changed to provide drinking water, and modern and better infrastructure is needed; this requires money and time.

It was getting dark, and while moving towards the Tepee where I was supposed to spend the night, I met two guys working as security guards. People were leaving, and they asked me if I needed a ride or if I would stay somewhere around. I told them I was going to sleep in one of the Tepees prepared for the cultural camp. They were surprised to hear that but also glad that someone was staying out there. We started speaking, and it turned out they were Cree from the Edmonton area (Alberta). Younger than me, one of them was a drummer and a firm believer in the Creator and its actions. Since that meeting, we spent a few hours together every evening, talking around the fire, listening to the guy drumming, and reflecting on current issues that Indigenous peoples must face. What struck me the most about them was their kindness and curiosity to know more about the world. They asked me plenty of questions about Europe; they wanted to know whether there were Indigenous peoples in the Old Continent and how they were treated. Based on my life experience in Northern Finland, I answered some of their questions. As they worked as Cree language coordinators, we spoke a lot about the school system, the kind of education that Indigenous people should receive in their language and why it is crucial to study in your language from the beginning of primary school.

The first evening we spent together, we talked until 10 p.m. before I headed to my Tepee. There was nothing inside but a sleeping mat someone had left for me. I still remember my excitement while opening my sleeping bag and the feelings I had when I closed the zip, looking at the ceiling of the Tepee. As I wrote in my fieldnotes, '*It was a baptism, a rite of passage, necessary for me to start fieldwork in Indian territories.*' I was the only one who spent the night in the Tepee. BRFN community members were scattered in their caravans around the area, while other guests from Fort St. John were hosted at the Royal Camp at mile 147 of the Alaska Highway.

Figure 5 - The Tepee where I spent my nights while attending the BRFN cultural camp.
Picture taken by Giuseppe Amatulli on July 2nd, 2019.

The first night in the Tepee was cold. It was only a few degrees above zero, and at some point, it started raining. It was a consistent drizzle, which made everything wet and humid. The tinkle of the rain woke me up at 5.50 in the morning. I touched the Tepee texture, which was perfectly dry, similar to my waterproof sleeping bag. I looked at the top, wondering how come only a few drops were dripping inside. As explained on another occasion, when I set up a Tepee during a cultural camp I attended in August 2019, there were no infiltrations due to the particular structure of the Tepee and how the poles were arranged.

1.3.1 In the Tepee with Chief Yahey, Jillian, and Robin Ridington

The following morning, Wednesday, July 3rd, 2019, Robin introduced me to the BRFN Chief, Marvin Yahey. The encounter happened in the Tepee, where we set up a photo exhibition in memory of Charlie and Randy Yahey. Charlie was the last BRFN Dreamer, who died in 1976, while Randy was Marvin's brother, a singer, drummer, and storyteller, who died in February 2019. Soon after he arrived in the Tepee, Chief Yahey started to talk about the litigation BRFN v. BC (S-151727) and why it was necessary to act.

Figure 6 - Interior of the Tepee where the photo exhibition was set up.
Picture taken by Giuseppe Amatulli on July 4th, 2019.

As well explained by him and according to the Notice of Civil Claim dated 3rd March 2015, BRFN acted intending to put a halt to the unprecedented industrial development that took place in the BRFN traditional territory and that had caused severe and accelerated degradation of the traditional territory of the Nation. In addition, such a development is the cause of multidimensional cumulative effects that have impacted the community in several ways and will heavily impact future generations if the situation does not change. By starting the litigation, BRFN sought protection and enforcement of Treaty rights, as established in Treaty 8 and Section 35 of the 1982 Constitutional Act (Yahey v. BC - Civil claim Notice S151727 - 3rd March 2015, p. 2).

According to BRFN, the Crown had continuously breached Treaty rights and the promises made when the Fort St. John Indian Band entered Treaty 8 by allowing industrial development without meaningful restrictions. Land alienation and resource exploitation in the BRFN traditional territory has resulted in damages to the forests, lands, waters and wildlife, seriously compromising the BRFN traditional lifestyle (Yahey v. BC - Civil claim Notice S151727 - 3rd March 2015, p. 2). As pointed out by Chief Yahey, on several occasions, he hunted moose whose organs were yellow. The meat was not good, the animal was sick, and he threw everything away without consuming any meat. The

BRFN v BC litigation is unique (as I explain in chapter 6), as for the first time in Canadian legal history, a case was brought before the Court for the infringement of a numbered Treaty (namely, Treaty No. 8) and to address the cumulative effects of industrial development.

During the discussion, I asked Chief Yahey if companies operating in the area are familiar with the concept of cumulative effects and if they understand its meaning. His answer was short, though effective: *'No, they do not, and they do not care.'* Continuing the conversation, Robin said: *'You cannot stop such development, but you can slow it down',* and Chief Yahey replied: *'Yes, that is what I want. I want to slow it down; I want to have a voice when it comes to development in our traditional territory!'* Then, he continued by saying that BRFN was slowly dying and that this process started with the relocation of the Fort St. John Indian Band after the sale of the IR 172 in 1948 (T R Berger, 2002, p. 249). According to Chief Yahey, when the Band was relocated, the new location was decided with a clear intention to eliminate those people. As he said: *'Putting BRFN along the river, where they could not farm, ranch, etc., was a way to eliminate them, to get rid of this group. They put people in those conditions to fail!'*

Towards the end of the conversation, Chief Yahey pointed out that one of his aims is to save something for tomorrow, for future generations. He mentioned that a few companies had approached him to discuss potential projects for the electrification of Pink Mountain.[6] He steadfastly refused to start any discussion on this issue, as he wanted to preserve the area and leave it uncontaminated. While explaining his position, he said: *'This is the first step for further development. That is why it is important to slow down the development to reduce the demand for further development…the world needs to know this!'* (Pink Mountain, BRFN cultural camp, July 3rd, 2019). Then, he added that other First Nations of the area do not understand his view, so BRFN is left alone in acting. This conversation made me aware that Bands are heterogeneous regarding development and economic opportunities. They may have different views on the same project, resulting in divisions among communities and within members/families of the same Band.

[6] Besides electrifying Pink Mountain, the company Aeolis Wind is developing a project with the aim to build a wind power plant in the area. More info at the following link: http://aeoliswind.ca/chapter-links/pink-mountain/ (last accessed on September 8th, 2021).

1.3.2 Queuing for the helicopter

After lunch, there was a lot of fuss beyond the car park. I noticed a long queue not far from a helicopter and walked towards it. A few members I saw in the morning were queuing, and I asked if people were waiting for a ride. I was informed that the ride was free and offered to members and guests attending the cultural camp. Although discouraged by the long queue and an estimated waiting time of a couple of hours, I was tempted to join them. After all, there were no activities scheduled for the afternoon; additionally, I had never been on a helicopter. I decided to wait, and while queuing, I noticed that Clare-Anne was there too. I quickly moved towards her.

Figure 7 – Queuing for the helicopter, Pink Mountain. Picture taken by Giuseppe Amatulli on July 3rd, 2019.

Clare-Anne Kindflower is a lawyer who lives and works in Fort St. John. Robin Ridington introduced her to me in the morning during the opening ceremony of the cultural camp. Since the beginning of our conversation, I noticed that she was extraordinarily knowledgeable, besides having a deep understanding of the situation BRFN is currently facing. During our chat, we had a chance to get to know each other better. I told her about my PhD research and noticed that she was genuinely curious to learn more about it. I mentioned the BRFN v. BC litigation, she was well aware of it, and she gave me some interesting insights as to why BRFN started the litigation. Thus, we discussed land ownership and rights over subsoil resources in Canada. She explained that in British Columbia, the

Province owns the rights over most subsoil resources, while surface land rights can be owned by privates or the Federal Government. This explanation made me wonder. Who decided that subsoil resources are owned by the Province, and on what basis? And what about surface land rights? While reflecting on these issues, the helicopter was being refilled.

I took the occasion to ask Clare-Anne why a ride on a helicopter was scheduled during the cultural camp. She answered: *'For BRFN members, seeing their land from the air expands their horizons. Some of them have never left the Reserve. So, raising awareness about traditional territories and the area ancestors used during their seasonal rounds is important, as it gives members the possibility to understand how vast their territory is.*' Such a consideration resonates with Alfred Gell's work regarding how people conceptualize landscapes and territories. Gell argues that some Indigenous peoples, like the Umeda in Papua New Guinea, conceptualize their landscape as a *'series of mappings between articulatory gestures shaped by the body and other natural forms, such as trees, and the whole physical environment'* (Gell, 2006, p. 240). However, whereas Umeda people living in dense and unbroken jungle tend to de-emphasize vision, as they may privilege audition and olfaction (Gell, 2006, p. 235); for BRFN members, the visual dimension is perhaps the most tangible one, as the others have been heavily compromised by industrial development.

After the helicopter ride, Clare-Anne invited me to join her at the camp, where BRFN women were skinning and cutting a moose hunted the day before. Several elders were involved in the process, together with two middle-aged women and a young girl. Part of the meat was cut and stored in plastic bags, ready to be frozen for the winter. Another part was cut differently and put on the traditional wooden rack to be smoked and dried. Since time immemorial, Dane-zaa people have made dry meat this way, and the same process is still used nowadays. While watching the elders cutting meat, I noticed that the slices supposed to be smoked and dried were cut in a specific way. It is a process that requires patience and knowledge, with traditional knowledge (TK) handed on from generation to generation. At some point, one of the elders started to talk to me. She noticed that I was observing what they were doing, and she showed me which part of the animal and which type of meat was suitable for drying. Then, she explained how to handle the meat and which fingers should be used and put above or below while cutting it.

Figure 8 - Elders cutting moose meat at Pink Mountain. Picture taken by Giuseppe Amatulli on July 4th, 2019.

After this explanation, the lady asked my name and how did I end up there. I introduced myself, and when I said that I was Italian, she got very interested in knowing more about me and the country where I was born. It was in this way that Regina started talking to me. A friendly lady in her forties, she soon asked me about Italy and its beauties, given that visiting Italy is on her bucket list. She was cutting meat with good technique and pace and kept talking to me while doing it. I noticed that she could cut the meat without looking at her fingers as if a mechanic machine was doing the work. After a while, she pointed out that cutting meat is an integral part of the BRFN culture and traditional way of life; however, many people do not want to do it nowadays. She proudly said that she is a BRFN member who lives at Blueberry Reserve, and she liked it there because that is Blueberry land, where her ancestors lived. Then, she added that many members have moved out from Reserve to live a different, more modern life, resulting in a loss of connection to their land and traditional lifestyle. She was very contrite while explaining this to me.

Figure 9 - The rack where meat was smoked and dried. Picture taken by Giuseppe Amatulli on July 4th, 2019.

1.4 Traditional practices in Dane-zaa culture

1.4.1 Hunting and trapping: between traditional activities and mobility challenges

The second night in the Tepee was colder than the first one. It rained overnight, and the temperature was barely above 0 degrees. I woke up at 5.30 a.m. and jotted down some reflections; by 7 a.m. I went out from my Tepee, hoping to find some hot coffee and something to eat. There were already people queuing for breakfast, and I had a quick conversation with a BRFN member whom I had met the day before. We started speaking about development, oil and gas, and money. She still would like to live according to the traditional lifestyle, to live off the land as her ancestors did. At some point, I asked her: *'So, what do you think about development? Are you happy with it? Do you want it?'* She replied:

'I do not want it. But what can we do? They do not listen to us; the Government does not listen to us. They decide what to do, even if we are against it. We do not decide anything.'

Living off the land and according to the traditional lifestyle means that people should be able to hunt, trap, and gather in their traditional territory, as their ancestors used to do. Such activities have always been of paramount importance for the Dane-zaa people, as illustrated in the ethnographic works of Robin Ridington and Hugh Brody (Brody, 1987, 1988; R Ridington, 1988; Robin Ridington, 1990; Robin Ridington & Ridington, 2013), and in several Traditional Land Use Studies (hereafter, TLU), such as the 2014 Firelight Report on The Proposed North Montney Mainline Pipeline Project (NMML) and the 2012 Landsong TLU study. BRFN members (like other Dane-zaa groups of the area, i.e. DRFN) still recognize and define themselves as hunters and gatherers (Matthews & Hrychuk, 2012, p. 15). Surely, they are part of the *'modern society'* and have a *'modern lifestyle'*, with snowmobiles and pickups used instead of snowshoes and dog teams and houses that have replaced tepees. However, members firmly believe that their modern lifestyle is connected to the lifestyle of their ancestors and to their land, which directly represents the foundation of their way of life, identity and culture (Ridington, 1988, p. 19; Bechtel and Richardson, 2010, p. 3). Thus, practising traditional activities in their traditional territory is crucial for them.

During a council meeting I was invited to attend some months later at Doig Reserve, DRFN Chief Trevor Makadahay referred to the need to respect traditional values to live in harmony with nature and other living beings. When hunting, it is important to be grateful for the flesh of the hunted animal and for the life sacrificed to feed the hunters and their families. This particular relation between humans-animals is well explained by Ridington, who did his first fieldwork with the Dane-zaa people in the '60s. At that time, hunting was practiced as a subsistence activity. Members explained to Ridington that the hunt could be successful only if the animal and the hunter had already known each other if they had previously met in a dream. People believed that animals were pleased by the respect hunters showed for their flesh. An animal concedes its body only when it perceives the generosity of the hunter, who is supposed to distribute the meat to everyone in need in the community, particularly those unable to hunt (Robin Ridington, 1990, pp. 88–89).

Ingold argues that this view is the result of the peculiar way Indigenous ontology conceives human-nature relations. According to the western perspective, there is a sharp division between the world of nature and humanity, with the former subordinated to the latter. Such a division is based on the idea that humans inhabiting a specific environment are supposed to dominate, transform, and change it. Contrariwise, for hunters and gatherers, the environment and the powers that animate it are supposed to provide what is needed for human survival (Ingold, 1994, p. 68). Thus, caring for a specific environment *'requires a deep, personal and affectionate involvement, an involvement not just of mind or body but one's entire, undivided being.'* (Ingold, 1994, pp. 68–69). This also explains why hunting

in many northern communities is conceived as a rite of regeneration: the consumption of the meat follows the killing of the animal in a process where humans are fed while the animal's soul is released (Ingold, 1994, p. 67). Chief Makadahay explained that when cutting the animal into different parts, it is important to honour its flesh by covering and protecting the organs that are not used. Once finished the job, it is necessary to bring back to the bush those bones and organs that have not been used. It is a way to show respect for the animal, nature and the Creator. If those procedures are not respected, and the meat is wasted, the relationship between humans and animals can be seriously compromised. Animals can be offended if the killing is not performed to satisfy consumption needs or if the meat is not shared with community members in need (Ingold, 1994, p. 67; Robin Ridington, 1990, p. 89).

In another one-to-one conversation I had with Chief Makadahay in January 2020, he gave me an insight into the traditional activities (such as trapping, hunting, and skinning) he still practices with his kids. While showing me the pictures stored on his phone, he started to tell me more about the meaning and the importance of carrying out traditional activities nowadays, especially for young generations. At some point, I asked him if his kids were comfortable in hunting or trapping and how they felt about practising those activities. He said they had asked him about the meaning of performing such activities. He normally replies:

'If you are in the bush, you need to know how to survive on the land. Which means that you need to know how to hunt, trap, and skin an animal.'

As for the skinning process, he told me that kids are very keen on learning how to skin an animal, and several skinning and tanning workshops have been organized at Doig Reserve in the last few years. While talking, he showed me a few pictures of his kids skinning rabbits. At that point, I asked if there was any concern about killing animals by trapping and hunting. I asked such a question for two reasons: on the one hand, I wanted to know how the act of killing animals is perceived, being them part of the ecosystem. On the other hand, I was going through an intense personal crisis about the ethic of eating meat. I had switched to a vegetarian/vegan diet for a few months, and I was desperately looking for answers. He answered my question in a simple though direct way by saying that hunting and trapping are traditional activities related to the traditional lifestyle and culture of the Dane-zaa people. Animals are respected, and you only kill an animal when you need it. He mentioned a situation where he was shooting a moose, but then he decided to let it go as it was too young and did not need its flesh. Then, Chief Makadahay pointed out that not every animal can be eaten, according to the Dane-zaa culture. For example, he does not eat the meat of a grizzly bear because it is a powerful animal and eating its flesh is not allowed in the Dane-zaa culture. Then, he showed me

the pictures of a wolf he hunted, explaining that he does not eat wolf meat either because it comes from a wild and ferocious animal, besides being quite smelly.

As it is easy to understand, meat is not just a commodity for the Dane-zaa people, as spending time in the bush for hunting purposes has never been considered a mere activity to get food. Chief Makadahay defines himself as a *'heavy-land user'*, as he spends an appropriate amount of time in the bush, doing traditional activities while transmitting traditional knowledge to his kids. When I asked him if he prefers to be in the bush during the winter or the summer, he replied that he just likes to be in the bush, no matter the season. When he is in the bush, he says that he forgets about all the bad stuff, the bad feelings. He does not feel stressed anymore; he just enjoys being out there while practising traditional activities. Towards the end of our conversation, Chief Trevor told me that it is important for him to give his kids the possibility to do plenty of things, have different experiences and learn about the world while getting familiar with the Dane-zaa culture and way of life. Only if you know the world can you live well while being part of it meaningfully.

During the months I spent working with the DRFN Land Office, I had several conversations with members about hunting and trapping. A fascinating one was with Justin Davis, a DRFN member and Land Office employee, during a lunch break. It was May 2020, and the Band Hall was just about to reopen after almost two months of total shutdown due to the outbreak of the COVID-19 pandemic. People were eager to talk, share things, to socialize again. I was in the kitchen, making my salad, when Justin entered the room and started talking to me. After a while that we were speaking about life in the Reserve, he said:

> *'I grew up in this Reserve and, when I was a child, everything was different. We used to hunt and trap. When I was 7, I started trapping. You know, we did not have that much money, so, you needed to find a way to make some money. At the age of 10, I got my first rifle, a .22 semi-automatic rifle. At that time, kids started to hunt when they were young; it was important to them. They were interested in it; they wanted to learn how to hunt and do it properly and successfully. Nowadays, kids are lost; they do not know what to do. They stick around without anything to do; they are bored. They are not interested in hunting; they are not interested in learning cultural practices like we were.'*
>
> (Doig Reserve, May 7th, 2020).

At this point, I asked him if the lack of interest in hunting, trapping, and performing traditional activities, in general, is due to the different times in which people live, combined with the fact that the vast majority of community members are involved in the wage economy nowadays. Trapping and hunting are carried out after work, during holidays (in August/beginning of September, during the summer camping), or at weekends. There are still members who define themselves as *'heavy land users'*, who hunt and trap to supplement their diet with bush meat. However, when it comes to making a living, hunting and trapping might not ensure a steady income adequate to meet the needs of living in a complex, modern, market-driven society.

As reported in the November 2020 DRFN newsletter, the 2020-2021 trapping season was not good. Factors like the oversupply of ranched fur, the slowing down of the Chinese and Russian economy, the drop in the oil price and, last but not least, the impact of COVID-19 hampered fur demand worldwide (DRFN newsletter, 2020, p. 10). As pointed out in the Report on the last Fur Harvesters Auction, held in Canada in August 2020, most of the items available were not bought, with coyote pelts and beaver castor that were the only items that experienced active bidding. Best western coyotes were sold at an average of $77, while the lower quality was bid for $30-40. A couple of years ago, the same item sold for more than double. Beaver castor ranged from $80-110/lb, as demand constantly increases outside the fur industry. Other pelts sold very poorly, with beaver averaging at $14, otter at $15, lynx at $42, while fox, raccoon and mink did not sell in any meaningful quantities (Jeremiah, 2020).[7] Continuing our conversation, Justin answered me:

> *'Today, it is quite easy to get a job, even for teenagers. So, you get a job, and you get your money. You do not need to go hunting; you do not need to do things our ancestors did. When youngsters come to Beaver camps, they are not very interested in learning how to hunt or skin an animal. They say it is cool; they watch for a few minutes, then move somewhere else. But that is why we organize Beaver camps because we want to make sure that they learn something about the traditional lifestyle. Nowadays, nobody is interested in it anymore. Too much TV and video games for kids; they do not want to go out in the bush.'*
>
> (Doig Reserve, May 7th, 2020).

Towards the end of the conversation, Justin mentioned one trip he did with his brothers and mum when he was a child. They went out to hunt a moose, but when his mum tried to shoot it, she missed it. So, he jumped out of the car, trying to follow the moose. The animal was too fast and, in a few seconds, it vanished into the forest. Justin's mother was in the kitchen while he told me this story,

[7] Detailed prices of different pelts can be found on the following webpage: https://trappingtoday.com/2020-2021-fur-prices-trapping-todays-fur-market-forecast/ (last accessed on December 14th, 2020).

and they started laughing together while remembering the episode. At that point, I realized that these are the good memories; these are the unmeasurable and priceless joyful moments these experiences gave to community members. These are part of the values that members relate to the traditional lifestyle, which keeps a family together, making it laugh 30 years later.

As I learned during my fieldwork, there are several reasons why members do not practice certain activities as often as before. Besides land disruption and ecosystem damages that directly affect the possibility of hunting, trapping, and gathering, members must address indirect, though interrelated, consequences of the development, namely, the amount of money and time needed to keep practising such traditional activities. As Van Lanen argues, the possibility of practising traditional activities like hunting and gathering in the North American context is intertwined with an increasingly accentuated dependency on the oil and gas industry. For some members, being employed in the oil and gas sector is not just a way to make a living; it is also a way to get enough money to perform traditional activities (Van Lanen, 2018, p. 254).

I first heard about this interrelation during a conversation I had at the first Northern Dene Gathering held at Doig Reserve on August 6th – 7th, 2019. During those days, I spent some time with Elina, a Doig member who defines herself as a *'bush woman'*, who likes spending time in the bush while practising traditional activities. In her forties, with a background in archaeology, Elina is a cheerful person with a sunny character who works for the Environmental Assessment Office. In her job, she monitors and inspects oil and gas wells and sites, informing the BC Oil & Gas Commission in case of leakages or other significant disruptions. During our conversation, she explained that they are losing the ***possibility*** to hunt because animals are retreating to the mountains, at a higher altitude, due to the increasing number of oil and gas sites. According to her, it is getting consistently more difficult to hunt any animal in the DRFN traditional territory; thus, members need to drive farther north if they want to hunt something. This translates into additional expenses for gasoline, besides spending more time travelling far from their Reserve/traditional hunting ground. She concluded that people are losing interest in hunting and trapping due to the cost (in terms of money and time) and because bushmeat is not as good as in the past. Animals are developing severe diseases (like cancer), and on several occasions, members had to throw everything away once they opened the animal.

What Elina told me about *having the possibility* to hunt due to time/money constraints struck me. Extractivism and logging activities have resulted in a significant loss of land for Indigenous people, with animals retreating from the traditional territories where people used to hunt and trap. This means that people need to travel further away from their community to perform traditional activities. For some members (i.e. youth and elders), this may be particularly challenging, as they may not have the

mean of transport to reach a specific location (Amnesty International, 2016, p. 35). As Van Lanen argues, most of the Indigenous Bands in the North American high north and Alaska totally rely on motorized means of transport. The change has been massive in the last fifty years, with snowmobiles introduced in the '70s that rapidly replaced dog sledges and became the primary mean of transport. In the same decade, pickup trucks and all-terrain vehicles (ATVs) were introduced into the Reserves and became essential tools to carry out subsistence activities. Nowadays, ATVs, snowmobiles, and pickup trucks are necessary to perform traditional activities (such as hunting and trapping), and only a few members have experienced trapping or hunting without using motorized means of transport (Van Lanen, 2018, p. 257). Such a fact resonates with what I have seen in the Fort St. John area, where there is at least a truck and an SUV/car per household and one or more ATVs or Skidoos; while non-mechanized means of transport, such as bicycles, were not so common and barely used.

Figure 10 - Quadding in the forest during the trail cutting experience.
Picture taken by Giuseppe Amatulli on September 26th, 2019.

1.4.2 Drumming, singing, and dancing around the fire

Among the traditional activities that define the identity of the Dane-zaa people, drumming, singing, and dancing around the fire are of paramount importance. I first listened to community members drumming during the BRFN cultural camp at Pink Mountain. On that occasion, I also learnt that drumming must be performed respecting the community's 'cultural protocol'. An experienced drummer must lead the group with youngsters who need to follow him. Young members must learn to drum from the elders; they cannot drum alone during cultural events. Drumming was performed only during the last evening of the BRFN cultural camp when enough drummers and experienced elders gathered. Until the very last moment, it was unclear whether the event would have happened as there were not enough drummers. A few members from Doig were invited to drum with their relatives from Blueberry to make the drumming ceremony happen. Once drumming is initiated and songs are sung, members gather and dance around the fire.

Figure 11 - Drumming and dancing during the BRFN cultural camp.
Picture taken by Giuseppe Amatulli on July 4th, 2019.

According to the traditional dance called *'iliwa'* (translated in English as *Tea Dance*), people dance and sing in a large circle around a central fire. People usually stand facing the fire while moving sideways around it, stamping their feet according to the rhythm of the songs. In the past, around the dancers' circle, other fires were used to roast meat and keep the tea warm throughout the whole event. Presumably, this is the reason why these events are called *'Tea Dance'* nowadays (Beaudry, 1992, p. 83). Another type of dance, called *'Drum Dance',* is still practised by several Dane-zaa people, including Blueberry and Doig River First Nation. When performing this dance, people line up behind each other; they form a circle and then start moving forward with short double or triple steps, following the rhythm of the drums (Beaudry, 1992, pp. 83–84). As Garry Oker explained during the Dene Gathering held in August 2019:

> *'When you hear drumming, and you start dancing, you keep moving; it is automatic. You cannot really stop, as you move together with other people who are dancing. You then feel connected to the people and the land. That is the meaning of being Dane-zaa, when you move in a good way, with good energy, all together, in a beautiful atmosphere of love. If you can dance freely, without any shame (as the youngsters were doing in the evening), then you can speak the language without any shame. You are then proud of being a Dane person, with no shame.'* (Doig Reserve, 6th – 7th August 2019).

Figure 12 – Elders starting to dance around the fire during the Dene Gathering.
Picture taken by Giuseppe Amatulli on August 7th, 2019.

The songs used in a Drum Dance ceremony come from *Dreamers*, who received them from the angels during their dreams or visions. Angels gave them songs for dancing and songs for praying; that is why drumming, singing, and dancing is equivalent to praying in the Dane-zaa culture (Beaudry, 1992, p. 82). Dreamers were people who went to heaven in their dreams, following *yaak'ihts'é? Atanii - the trail to heaven* (Ridington & Ridington, 2013, p. 1). They received a song from the angels and were sent back to earth to guide their people. Dreamers were fundamental in ancient times, as they functioned as hunt chiefs able to visualize communal hunts in their dreams, providing crucial information to community members so that the hunt could be successful. Dreamers were also able to envision the future; they predicted the coming of the white men and prophesied that oil and gas (they referred to it as the grease of the giant animals) was to be extracted to meet the white men's needs (Ridington and Ridington, 2013, pp. 142-143).

Dreamers were the ones able to teach band members how to live a happy life in harmony with each other and with other creatures of the world. However, Dreamers did not want to be regarded as leaders but as spiritual guides who were on Earth to show community members the way to follow (Ridington & Ridington, 2013, p. 157). As explained by Garry Oker, previous Chief of Doig, they dance to songs that were given to them by their *Nááchįį* (Dreamers). At Blueberry and Doig River First Nation, dances performed nowadays are called *Dahwawetsats*, a Beaver word for Dreamers' Dance, which means *'they dance'*. Several Dreamers' Dances are organized throughout the year, i.e. during the summer solstice, during cultural camps, and before the beginning of the Rodeo weekend (Virtual Museum of Canada, 2007).

During my fieldwork, I attended many events where drumming was performed, and during a cultural camp organized by DRFN, I was even invited to drum. It happened during the KEMA experience at Swan Lake while Garry Oker explained the importance of drumming in the Dane-zaa culture. Once he finished the explanation, he started drumming while inviting the males who were present (as only males can drum in the Dane-zaa culture) to take a drum and start drumming with him. Such a thing is somewhat unusual, as according to the Dane-zaa culture, only community members are allowed to drum. Garry allowed me to drum with him and Jack Askoty (one of the elders of the Doig River FN) to perform a significant activity in their culture, one of the most important ones. That was the first and only time I drummed, and I remember feeling so included, as I was a member of the Doig River FN.

There are other events where drumming, singing and dancing around the fire are fundamental for the success of the whole ceremony, such as a traditional funeral.[8] On such occasions, dancing and drumming are essential to help the person's spirit begin its journey through *'yaak'ihts'è? atanii'* - *the trail to Heaven* (Robin Ridington & Ridington, 2013, pp. 143, 157). Dancing and drumming are also essential cultural practices to renew the earth's cycle year after year. As Charlie Yahey, the last Dreamer of the Fort St. John Indian Band (who passed away in 1976, just one year before the Band split up), said to Robin Ridington in the summer of 1968:

> *'Not many people sing and pray in the evening. They have all gone the white men's way. They do not know anything. People who do not want to sing or dance are not going to live forever. This winter, it is going to be pretty hard where the Dane-zaa is living. That is why I was singing, even during the winter. I was singing to make the cold weather stop.'*
>
> (Robin Ridington & Jillian Ridington, 2013, pp. 168–169).

1.5 – Between industrial development and protection of traditional lifestyle – A possible compromise? A conversation on the way back to Fort St. John

We left Pink Mountain on Friday, 5th July 2019. Clare-Anne came to pick me up from the Tepee ground at 12,45 p.m. Before going back to Fort St. John, we stopped at the camp where women were still making dry meat. We spent around half an hour there, with Clare-Anne busy talking with some members. At some point, Chief Yahey gave to Clare-Anne's daughter a bag full of dry meat. The little girl was thrilled and smiled for the first time during the day; she was not in a good mood, and receiving such a gift cheered her up. He greeted the little girl; he also greeted me, adding, *'Now you need to be part of our Band for your lifetime'*. I nodded and then answered, *'Well, that is all right'*. After this exchange, we left for Fort St. John, located around 200km southeast of Pink Mountain. We drove for 26 km on a dirt road before entering the Alaska Highway and stopping at the Royal Lodge – Mile 147. Clare-Anne invited me to enter the camp as she needed to give back the keys of the room where she stayed for a couple of nights while attending the BRFN cultural camp.

Once entered, I noticed something on the wall next to the reception. It was a Partnership Agreement concluded between the BRFN and the Royal Camp Services Ltd.[9] According to its content, revenues and profit-sharing must be ensured for both parties, besides maximizing

[8] See my article on the importance of drumming, singing, and dancing around the fire during a traditional funeral. Amatulli, Giuseppe, *'Climbing the Trail to Heaven: Traditional Funerals and Burial Practices in Dane-zaa Territory - An Ethnographic account from North-eastern British Columbia'*, in Mortality, Routledge – Taylor and Francis Group, 2022 (forthcoming).

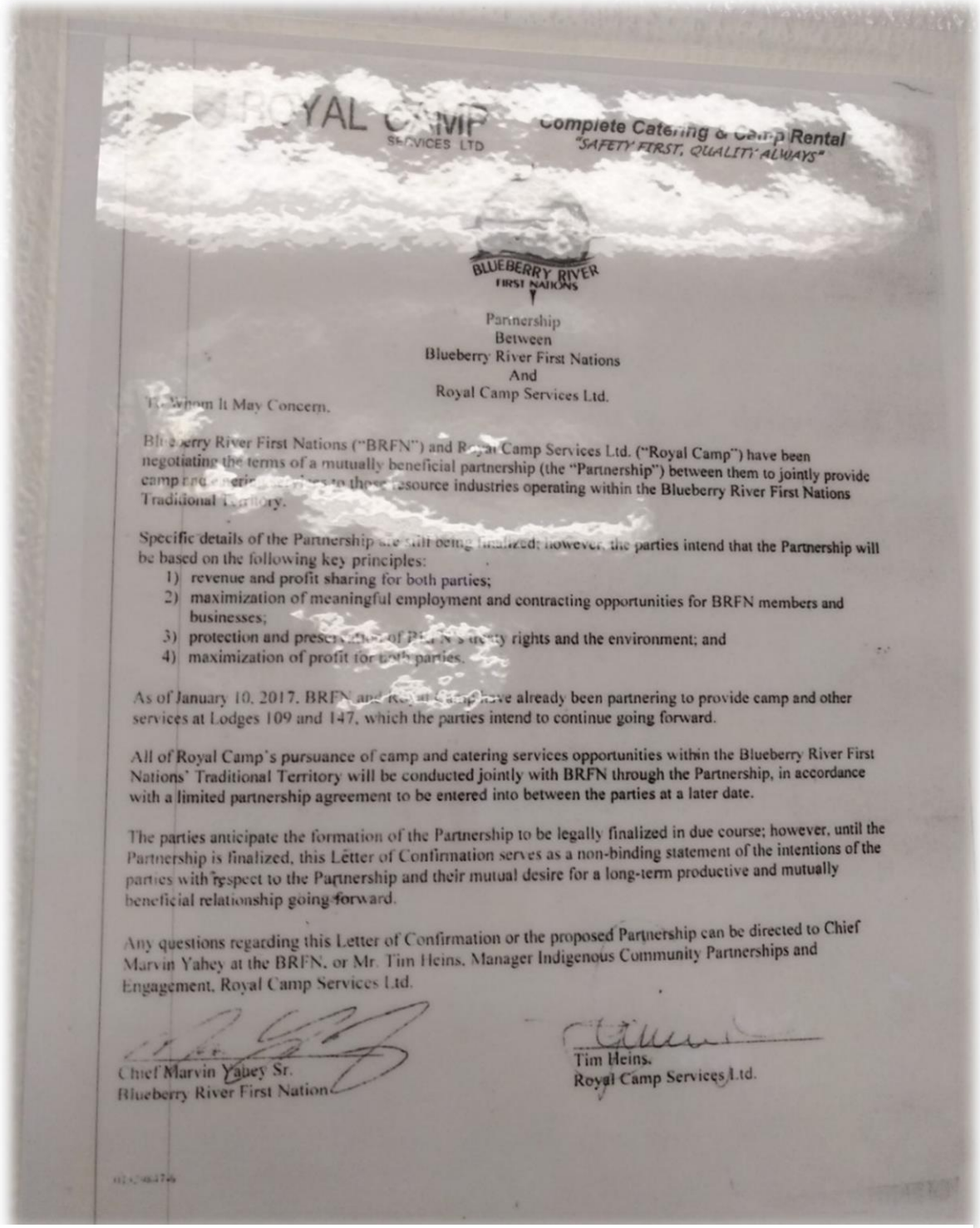
[9] Royal Camp Services Ltd offers accommodation solutions for fly-in-fly-out workers in the oil and gas sector. More information is available on the official website: https://www.royalcamp.com/ (last accessed on July 25th, 2022).

employment and contracting opportunities for BRFN businesses and members.[10] In addition, being the camp located within the BRFN's traditional territory, BRFN has the right to make use of it, for example, by hosting guests attending their cultural camp.

Figure 13 - The main entrance of the Royal Camp 147. Picture taken by Giuseppe Amatulli on July 5th, 2019.

We spent around half an hour talking with the porter, who informed us that the camp had 389 beds; however, it was half empty in that period (summer 2019). Workers in the oil and gas sector usually spend between two and three weeks working in a row, with shifts that could easily last 12 hours or more. During my fieldwork, I met several people who told me they were used to working between 12 and 16 hours per day. They usually get a week or ten days off after such a period. As the porter confirmed, life in the camp is challenging, and workers may be seriously impacted by this lifestyle in the mid-long term, mentally and physically.

[10] More information about the engagement with Indigenous people is available at the following link: https://www.royalcamp.com/indigenous-engagement (last accessed on November 20th, 2020).



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BLUEBERRY RIVER FIRST NATIONS

Partnership
Between
Blueberry River First Nations
And
Royal Camp Services Ltd.

To Whom It May Concern,

Blueberry River First Nations ("BRFN") and Royal Camp Services Ltd. ("Royal Camp") have been negotiating the terms of a mutually beneficial partnership (the "Partnership") between them to jointly provide camp and catering services to those resource industries operating within the Blueberry River First Nations Traditional Territory.

Specific details of the Partnership are still being finalized; however, the parties intend that the Partnership will be based on the following key principles:

1) revenue and profit sharing for both parties;
2) maximization of meaningful employment and contracting opportunities for BRFN members and businesses;
3) protection and preservation of BRFN's treaty rights and the environment; and
4) maximization of profit for both parties.

As of January 10, 2017, BRFN and Royal Camp have already been partnering to provide camp and other services at Lodges 109 and 147, which the parties intend to continue going forward.

All of Royal Camp's pursuance of camp and catering services opportunities within the Blueberry River First Nations' Traditional Territory will be conducted jointly with BRFN through the Partnership, in accordance with a limited partnership agreement to be entered into between the parties at a later date.

The parties anticipate the formation of the Partnership to be legally finalized in due course; however, until the Partnership is finalized, this Letter of Confirmation serves as a non-binding statement of the intentions of the parties with respect to the Partnership and their mutual desire for a long-term productive and mutually beneficial relationship going forward.

Any questions regarding this Letter of Confirmation or the proposed Partnership can be directed to Chief Marvin Yahey at the BRFN, or Mr. Tim Heins, Manager Indigenous Community Partnerships and Engagement, Royal Camp Services Ltd.

Chief Marvin Yahey Sr.
Blueberry River First Nation

Tim Heins.
Royal Camp Services Ltd.

Figure 14 - The Partnership agreement concluded between BRFN and Royal Camp Services Ltd. Picture taken by Giuseppe Amatulli on July 6th, 2019.

The Partnership Agreement between BRFN and the Royal Camp 147 emphasises the complex, intertwined, and sometimes contradictory relationships First Nations develop with companies operating in their traditional territory. As I learned throughout my fieldwork, companies are present in the community's everyday life, as they provide jobs and socio-economic opportunities by concluding benefit-sharing agreements (BSAs). Additionally, they directly fund cultural camps and events, as confirmed by the list of companies that sponsored the BRFN cultural camp.

Figure 15 - List of sponsors of the 2019 BRFN cultural camp. Picture taken by Giuseppe Amatulli on July 5th, 2019.

While driving back to Fort St. John, Clare-Anne informed me that BRFN bought a considerable amount of land at Pink Mountain; the Band is now the private owner of a certain amount of land, according to the BC legal framework. I found this information extremely interesting, as well as contradictory. An Indigenous group who has lived and used a specific territory (their traditional territory) since time immemorial needs to buy that piece of territory (according to the current legal framework) to keep using it according to their culture and traditional lifestyle. It all sounded extraordinarily intricate and with a diverted logic. Additionally, specific portions of land surrounding Pink Mountain have been included by the BRFN in the Site C Impact Benefit Agreement and the Treaty Land Entitlement that the Band is negotiating (PRRD; Government of British Columbia, 2014, pp. 1–2).

Precisely, BRFN is asking for the transfer in the form of fee simple parcels of selected areas of Crown Land. As illustrated in the map on page 30, these parcels are located at Pink Mountain (2171 hectares in total), and one parcel is situated in the Dancing Grounds (202 hectares) (PRRD; Government of British Columbia, 2014, pp. 8–9). After this explanation, Clare-Anne asked me: *'What would you like to understand during your time here?'* I replied: *'I am interested in understanding how people perceive development, how and to what extent they understand the concept of cumulative effects of industrial development and their outcomes in the medium and long term.'* She replied by saying that those are complex concepts and that only a few people may have an idea about their real meaning. We spoke for a while about the way people living and working in the Fort St. John area may perceive development and the different views that locals, Indigenous people, government

officials, multinational corporation CEOs and fly-in / fly-out workers may have about development in the area.

We arrived in Fort St. John at 4:30 p.m. After the long conversation I had with Clare-Anne while riding back, it was clear that I needed to unpack my research questions. To obtain specific answers from people and make sense of what was happening in a place like Fort St. John, the simple act of asking questions could not be sufficient. I quickly realized that I needed to listen to people, live with them, and do things with them. Building trust and relationships in everyday life was of paramount importance for the scope of my fieldwork. However, as the months passed by, I also realised that describing and properly articulating what I was experiencing (in terms of sensations and feelings) in everyday life of my fieldwork was not always easy and straightforward.

To overcome this issue, I rely on sensoriality as a fundamental feature of my ethnographic approach to understanding, representing, and learning about other people's life. Researching sensory perception and sensorial feelings demands methods that allow comprehension, not spoken knowledge, that would then be inaccessible through interviews or observation (Pink, 2015, pp. 7-8). Sensory ethnography stresses how our perception and senses can provide new ways to make sense of embodied interactional phenomena that are experienced while carrying out fieldwork. Sensoriality can help describe the *'seen but unnoticed'*, what may feel clear to the ethnographer who has lived the experience first-hand, but that is difficult to translate into written text (Allen-Collinson et al., 2021, p. 600).

I am well aware that making sense of specific situations or the reactions specific episodes generate among members is not always easy. It is even more challenging to communicate and translate into an academic work how specific interactions helped me start understanding important features of the community and issues members face in their everyday lives. What I felt and sensed while performing work with community members in the forest, the emotions perceived during the traditional funerals I attended, and the meaning of performing specific practices (such as drumming, dancing around the fire, and singing) during cultural camps have penetrated my mind, affected the way in which I perceived and made sense of the way Indigenous people relate and connect to their land and the ecosystem. The shared everyday life experiences allowed me to establish deep and meaningful connections, which is paramount to performing activities together to reach sensorially attuned interaction (Allen-Collinson et al., 2021, pp. 600–601).

That is one of the reasons why in this ethnography, in which I heavily rely on a qualitative approach combined with an informal ethnographic style, I believe sensoriality can have an essential role in making sense of many experiences to which I was exposed throughout my fieldwork. I invite the reader to try making sense of what I describe throughout this work, considering that I was experiencing a specific situation at a specific time and place in the context of a complex fieldwork in which many intertwined factors provided me with a specific understanding of certain situations. Explaining the spiritual meaning of an eagle flying over a funeral ceremony or the importance of encountering a moose while working in the forest is not easy. Perhaps, grasping the whole meaning of the episode is impossible if not experienced in the first person, in a specific context, time and space. Nevertheless, I believe sensoriality can help provide an explanation of what I confronted in the lived experiences of my fieldwork while practising everyday activities with community members.

Since the beginning of my fieldwork, I understood that I needed to put myself out there to get to know the complex reality of Fort St. John, the nuances of everyday life, and the untold truths of a complex and complicated oil and gas town. That is what I did by attending cultural camps and working with community members, volunteering with the CDI -Community Development Institute- and the North Peace Cultural Centre. Before being accepted within a First Nation community, I needed to 'enter' the city of Fort St. John to get to know the town and its people. Only after that was I ready to enter a First Nation community.

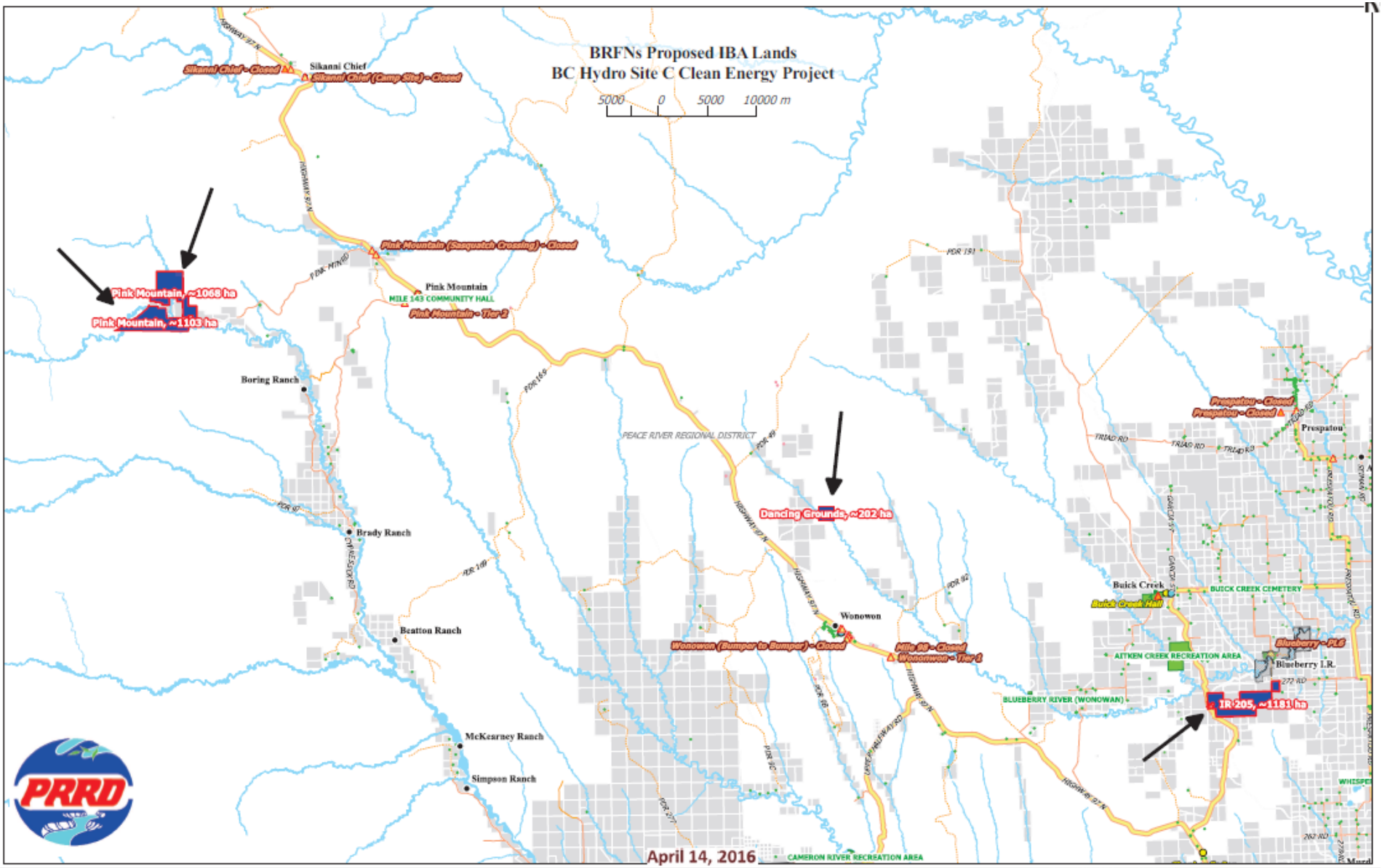

Figure 16 - The blue areas represent the parcels claimed by the BRFN. Map downloaded from the Report of the PRRD (Peace River Regional District) on November 18th, 2020.

Chapter 2 - Challenges and beauties in carrying out fieldwork with a First Nation community – Between academic rigour and the everyday life of the field

This chapter is dedicated to the memory of Margaret Fenton and Mark Apsassin, who passed away while I was in England working on this dissertation (Margaret in late November 2021, Mark in March 2022).

Mark was a Doig River First Nation member who worked as a receptionist when I was doing my placement with the Land Office. I remember him for his kindness and positive attitude; he always had a smile for everyone. Mark will be missed by community members, but his memory will stay with us for a long time.

Margaret was of Inuvialuit origins; she lived for more than twenty years in Fort St. John, where she worked at the BC Oil & Gas Commission and as an independent environmental consultant in the last years. I met Margaret a few weeks after my arrival in Fort St. John; her straightforwardness helped me navigate the first few months of fieldwork. As I explain in paragraph 2.2.2, thanks to her, I understood that there are no useless conversations in the field but plenty of bad or inappropriate interviews. During one of our conversations, she taught me the difference between doing interviews with an informant and having good conversations with someone you get to know while doing fieldwork. Her teachings made me aware of the importance of building relationships and trust before anything else to perform meaningful ethnographic fieldwork.

2.1 Entering the field

'So far, you have been doing research ON this community. Now, you have to find a way to do research WITH and FOR this community.'

In October 2019, four months after the beginning of my fieldwork, I was invited to give a talk at the UNBC in Prince George in the context of the Global Friday Seminar Series.[11] We had a full house; the audience was extremely interested in knowing more about the Bands' political, economic, and social struggles and how industrial development (with oil, gas, and forestry as main industries) had changed their traditional way of life. Eventually, the audience got interested in my struggles to enter these communities, what I had done so far, how I managed, and which kind of strategy I used. While people were enquiring about my struggles in performing fieldwork, Paul Bowles (Professor of Economics and International Studies at the UNBC) took the word, stating what I paraphrased above. He was right; the fieldwork I carried out until then was just exploratory. During the first months, I made contact while building trust and relationships with the community; however, I knew I needed to do more. I needed to find a way to work with the community based on their needs and visions.

As Linda Tuhiwai Smith argues: *'Research is probably one of the dirtiest words in the indigenous world's vocabulary. It is inextricably linked to European imperialism and colonialism'* (Tuhiwai Smith, 2012, p. 30). Indigenous communities have seen countless researchers arriving, carrying out their research, and exploiting Indigenous knowledge, resources, and culture before leaving without giving anything back. I did not want to replicate this model; instead, I wanted to work *with* and *for* the community. In this sense, the first thing I did was to adapt my research to the needs of the Band, and once I entered Doig, I was conscious that performing research was not supposed to be my main activity. I was there to work with the Land Office, putting my skills at the service of the community. As Tuhiwai Smith argues, *'research may be identified as a significant site of struggle between the interests and ways of knowing of the West and the interests and ways of resisting of the Other.'* (Tuhiwai Smith, 2012, p. 89).

[11]https://video.unbc.ca/media/Understanding+the+Cumulative+Impacts+of+Industrial+Development+in+Northern+BCA+The+Case+of+the+Doig+and+BlueBerry+River+First+Nation.+Some+Preliminary+Outcomes+from+the+Field+-+Giuseppe+Amatulli+-+Durham+Arctic+PhD+Programme+-+Department+of+Anthropology+-+/0_1478xbw5/23995 (last accessed on April 29th, 2022).

2.1.1 Planning my fieldwork, defining my research questions

Planning my fieldwork had been tortuous. I tried to reach out to the Land and Band managers of DRFN and BRFN, with few results. My emails went unanswered, and it required a lot of stubbornness and a touch of serendipity to come out with an initial fieldwork plan. While preparing for my fieldwork, I spent a lot of time defining my research questions while finding the gap to explain why my research was original and needed. While consulting all sorts of documents related to the BRFN v. British Columbia litigation, I spent a considerable amount of time reading the Atlas of Cumulative Landscape Disturbance in the Traditional Territory of the BRFN. The Atlas defines cumulative effects as *'changes to the environment that are caused by an action in combination with other past, present and future human actions'* (Macdonald, 2016, p. 73). Throughout the Atlas, it is highlighted how investigating cumulative effects on a specific landscape is a multi-layered task. It is impossible to get a sense of how life in Reserve is and how cumulative effects have changed it without spending time in Reserve and the surrounding territory.

In the past, Reserve land and the surrounding traditional territory were consistently used throughout the seasonal round for hunting, trapping, and other purposes related to a lifestyle more connected to the land. Nowadays, it is easy to see roads, pipelines, compressor stations, seismic lines, oil wells, and other oil and gas facilities (Macdonald, 2016, p. 8). As I learned throughout my fieldwork, the wealth generated by the oil and gas sector has been used to improve life and socio-cultural opportunities in Reserve. Although housing is a Federal matter, Doig has well-being and housing officers responsible for ensuring adequate housing solutions for those members who want to live in Reserve. Moreover, through its development corporation Uujo, DRFN has invested considerable money to ensure adequate housing for its members. Spacious and comfortable Band Halls have been built in many Reserves to offer a safe and comfortable gathering place to the members, youngsters, and elders in particular. Reserves are lively places where workshops are organized (i.e. beading and tunning workshops were organized during my time at Doig); sometimes, they even have schools and places of worship (at Blueberry Reserve, there is a primary school; at Doig Reserve, a multipurpose Church has recently been finalized). As it is easy to understand from this explanation, Reserves are not necessarily places where people live in despair, struggling with alcohol and drug addiction, as it has often been depicted (I expand more on this in chapter 3). Although these problems exist, they exist in and off Reserves and are generated by dynamics that may well be explored by addressing and unpacking the complex and multi-layered concept of cumulative effects of industrial development.

Figure 17 - A community meeting held at Doig Band Hall, February 18th, 2020. Pictures taken by Giuseppe Amatulli

Since the beginning of my doctoral research, I wanted to dig into the concept of cumulative effects and unpack it, as I believed there were many things to address from a socio, cultural and economic perspective. As argued by Willow, ecological degradation cannot be considered limited to the ecosystem, as it also results in social degradation. Thus, the word socio-ecological degradation should be used to describe such a phenomenon (Willow, 2019, p. 241). In fact, I found little research on the impact cumulative effects have on the mindset of community members and on their capacity to envision different future(s). I thought the issue was worth exploring. I believe the process of wiping out a culture and a way of living can have different stages while being more or less slow. Whereas people cannot envision a future where their traditional knowledge is worth using and their traditional activities performed, such a process is in progress.

From a theoretical perspective, this research finds its sources in the vast literature on the anthropology of development and anthropology of the future, intertwined with an even more extensive literature on sustainable development, living well and alternative development paths. The work of philosophers and anthropologists such as Abram, Asch, Blaser Bird-David, Brody, Geertz, Harvey, Ingold, Latour, Rabinow, Ridington, Sahlins, Sanjek, Stoller, and Usher have inspired me, and I use their work to frame the message I have tried to transmit in this thesis. In addition, it must be considered that in the past decade, there has been growing interest in the study of infrastructures from an anthropological perspective, with a focus on how they have been connected to state promises

of progress and modernity (Larkin, 2013, p. 328; Spice, 2018, p. 49). From a legal perspective, my doctoral research tries to provide new insights into the field of international public law in the sub-field of Human Rights Law – Indigenous peoples' rights. It proposes new ways to advance the current discussion on the rights Indigenous peoples are supposed to enjoy according to the many legal tools available, which have proven to be challenging to implement in everyday life. To do so, I took into consideration the work of Bankes, Berger, Borrows, Doyle, Napoleon, Tully, and Tuhiwai Smith.

Combining my ethnographic observations with empirical legal approaches besides the classical doctrinal legal analysis, I argue that the concept of Living Law can provide alternative ways to conceive and implement legal tools. In this sense, it is worth underlining how unpacking the concept of cumulative effects has allowed me to combine my socio-cultural and legal interests excellently. This is also why I believe this work can be of interest to other researchers, practitioners and scholars dealing with Indigenous-related issues in different areas of the world. Whereas every place has its own peculiarities and Indigenous communities' different approaches to dealing with development, it is undeniable that resource extraction in Indigenous territories has skyrocketed in the last decades. Throughout the Arctic and sub-Arctic region, many Indigenous groups (such as First Nations, Inuit, Metis, Sámi, and the many Indigenous peoples of the Russian Federation) share the same challenges regarding land use, resource exploitation and cultural continuity. Nevertheless, these challenges are also shared by other Indigenous peoples from other areas, such as Australia and New Zealand, Africa, Asia, etc. Therefore, although this work is restricted to a specific area, I believe it can provide valuable contributions beyond its geographical area.

To find proper answers to the issues mentioned above, I identified three main research questions.

- How do BRFN and DRFN members perceive and define the expansion of the oil and gas industry, the induced demand for further development it generates, and its cumulative effects in their traditional territory? How and to what extent are members involved in decision-making? How is the process of consultation and accommodation perceived by members?
- What is the interplay of factors that foster cumulative effects in the BRFN and DRFN traditional areas? How do cumulative effects manifest themselves on people, their everyday life, their lifestyle, and their ability to envision the future?
- Is the BRFN v. BC litigation a way to seek environmental, social, and constitutional justice in a way that had never been recognized before? To what extent can Treaty 8 signatories still claim their native title to land to protect their traditional territory from resource exploitation? Has the native title been extinguished? If yes, when and how?

With these research questions in mind, in December 2018, I attended an international conference at the Copenhagen Business School (CBS), where several Canadian scholars were invited.[12] After listening to my presentation, they suggested contacting Hugh Brody and Robin Ridington, who did extensive fieldwork in Northern BC from the late '60s till the '80s. In their opinion, that was my best option to connect with BRFN and DRFN. In the months to come, I got in touch with both.

I met Hugh Brody in a tearoom in London on a cold afternoon on February 25th, 2019. While sipping green tea, we talked about my research project. He was very supportive and genuinely interested to know how and why I got interested in that specific region and the First Nations of the area. I explained that I got interested in the litigation (BRFN v. BC – S151727) on Treaty rights infringements and cumulative effects of industrial development that was just about to start. He told me that my research interests were relevant, but I needed to find a way to enter the community. He pointed out that if I really wanted to get a feeling about how people perceive certain things related to industrial development and its cumulative effects, I needed to conduct fieldwork with people from BRFN or DRFN. To do so, I needed to gain the members' trust while building relationships to be accepted and enter the community. Towards the end of our conversation, while I was handing him my copy of *'Maps and Dreams'* to get his signature, he suggested that I get in touch with Robin Ridington, one of the few people he knew who was still in touch with the two Bands.

In the following days, I contacted Robin Ridington. We had a phone call at the end of March 2019, and he put me in touch with one of the lawyers who was assisting BRFN in the litigation. However, they did not provide any support regarding my PhD project and the research I wanted to perform. I had the feeling that they did not want to deal with a researcher. I felt stuck, a feeling that I would have encountered on several occasions throughout my fieldwork. Nevertheless, I kept in touch with Robin, who asked and eventually obtained from BRFN a formal invitation for me to attend their cultural camp in July 2019. While finalizing my fieldwork plans, Robin offered me a ride to Pink Mountain, where the cultural camp would be held. Everything was coming along nicely when I received the invitation letter to the cultural camp. While going through it, I noticed the request for C$ 5,000 to cover some of the costs of organizing the event. I remember asking Robin if that was the amount for companies, as it sounded expensive for a single person to pay such an amount of money. He confirmed that companies usually sponsor these events to build relationships while giving back. I was relieved, and at the same time, I started to think about the kind of conflicting relationships and interests that companies and First Nations might have.

[12] https://www.uarctic.org/news/2018/12/creating-connections-on-north2north-mobility-funding/ (last accessed on January 12th, 2022).

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Buick Creek BC V0C 2R0
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March 19, 2019,

RE: Invitation to Pink Mountain Cultural & Youth Camp 2019

We are hosting our Annual Blueberry River First Nations Cultural and Youth Camp from July 2nd to 5th, 2019 at Pink Mountain Ranch.

This event is very important to Blueberry River First Nations as it serves to share the Dane-zaa culture with our partners and supporters. It is a few days to step back, share and experience the beauty of our traditional territory. This is a wonderful opportunity for our community members to meet our partners and supporters. Last year's event was well attended with over 400 people. Once again companies are welcome to open an information booth. Please notify myself if you would like to participate in opening up an information booth and I can ensure space is saved as well.

We are requesting $5000.00 towards some of the costs of the event and wish to thank you in advance for your continued support and generous donation over the years. We hope to see you at Pink Mountain.

Should you have any questions please contact Darwin Stump, BRFN Cultural Coordinator dstump@blueberryfn.ca or 250.630.2307.

Yours truly,

Chief Marvin Yahey
Blueberry River First Nations

Figure 18 - The invitation I received to attend the BRFN cultural camp.

On June 28th, 2019, I left Durham with a sense of relief and self-confidence. I had a plan to start my fieldwork; I was going to Pink Mountain with Robin and his wife, Jillian. From there, I would find my way to connect with community members of BRFN and DRFN.

Robin and Jillian had decided to drive north from Victoria, covering more than km 1,300 in two days. They spent a couple of nights in Fort St. John before leaving for Pink Mountain. We left for the BRFN cultural camp on June 30th, 2019, at 9,30 in the morning. While driving, we spent hours chatting. They shared memories of Fort St. John, how it was in the past, and how much has changed in the last 25-30 years. We also talked about my research, why I was there, what I wanted to achieve, and my desire to live on a Reserve. To my surprise, both were doubtful about the possibility that such a thing could happen anytime soon. Robin told me that I needed time to get to know the community and its members and get along with them and the Chief. I was puzzled as I thought going there with Robin could have helped me enter the community. They told me that it was good I could be there for the cultural camp, as it was going to be a good experience for me. They were right; I could not imagine starting the fieldwork in a better way.

The following day, Robin introduced me to BRFN Chief Marvin Yahey. I remember thinking the most difficult part was over. I was terribly wrong. A lesson that I learnt from my fieldwork is that being introduced by someone does not provide any pass to enter a community, be accepted, or get connected. Trust must be earned, relations created and nourished; time and patience are the keys, together with a touch of serendipity. As an informant told me towards the end of my fieldwork a year later:

> '*When you want to work with a community, you need to find your way in…there is no other way; it is up to you! You need to navigate the situation and face the challenges, as nobody can get access for you…you need to gain the members' trust; they need to accept you; they must feel comfortable in having you around.'*
>
> (Charlie Oker Park, July 3rd, 2020).

2.1.2 Struggling to enter Blueberry River FN, building relationships with Doig River FN – Liminality as a state of being

Through the weeks and months I spent in Fort St. John, I came to realize how difficult it was to build trust and relationships with community members and Band Governments. To perform fieldwork with a First Nation Band, it is necessary to have the trust of both components. In this sense, it is worth mentioning that the current Governance system of a First Nation Band had been shaped according to the provisions established in the 1867 Indian Act, a colonial piece of legislation still in force designed

to eradicate pre-colonial Indigenous governance systems based on the Hereditary Chiefs system of Government (MacPhail & Bowles, 2021, p. 492).[13] The Indian Act provided that each Band (First Nation groups scattered throughout Canada were identified with the name Band at that time) was supposed to be assigned a certain amount of land (Reserve land) where to carry out their cultural activities while settling down and adopting a less nomadic lifestyle. Therefore, once Indian Reserves were established throughout the newly born Canadian confederation, it was decided that each Band was supposed to have a Chief and a Council, elected every two years, with the number of elected councillors that varies depending on the number of registered community members (one councillor is elected every one hundred members). Chief and Council are responsible for nominating a Band Manager and a Land Manager, with the former in charge of leading the Band (acting as the Band's CEO) and the latter in charge of leading the Land Office. Whereas having different views among community families should be expected, having elections every other year may result in unstable political situations, with Bands that might struggle to keep all their offices functional.[14] In such a context, entering a First Nation might be challenging, and I believe this is somehow what happened to me in my attempt to enter Blueberry River First Nation.

After the cultural camp, I tried several ways to connect with BRFN. Because of my research interests and the litigation BRFN v. BC, I thought BRFN could have been interested in having me around. At first, the management seemed open to the possibility of working together. Between July and November 2019, I had several contacts with BRFN staff, followed by weeks of silence. I had a meeting with the Land Manager in July 2019, followed by another meeting with the Band Manager during the BRFN Rodeo, held at the Reserve on the last weekend of July 2019. I was asked to provide an outline of my research; I was even invited to visit the BRFN Office in Fort St. John and was introduced to the team. Every step that seemed an advancement was followed by weeks of silence and waiting, with my hopes and fears blended in an unhelpful mix. To describe my feelings, I like to refer to a quote from Shakespeare's Merchant of Venice, *'Where every something, being blent together turns to a wild of nothing.'* (Shakespeare, 1994, p. 43). I spent the whole summer waiting

[13] In some cases, like the Wet'suwet'en one, Hereditary Chiefs strongly disagree with the decisions elected Chief and Council made regarding the CGL pipeline project (see pp. 76 and 207) often fighting to see their native title to land recognised. As it will be explained in chapter 7, important achievements in terms of recognition of Aboriginal rights and title have been achieved in the last fifty years through key court cases, such as Calder (1973), Delgamuukw (1997) and Tsilhqot;in (2014).

[14] As it happens in June 2020 with the Blueberry River First Nation, where a petition to remove the current Chief Marvin Yahey was initiated by some councillors and community members. Labelled as a coup d'etat organized by specific families that do not share the same development perspective of the Chief, the coup did not go through. However, it generated a lot of political tensions within the Band besides shutting down all the operations of the different Band offices for more than a month. https://www.alaskahighwaynews.ca/bc-news/blueberry-river-votes-to-remove-chief-3508255 (last accessed on December 2nd, 2021).

for an answer from BRFN while being involved with several activities organized by Doig and building relationships with Doig members.

I am grateful to Bob McKenna for his help in entering the DRFN community. He has been an exceptional gatekeeper and good friend with whom I shared a lot of time during the first half of my fieldwork. I met him for the first time when I visited Doig Reserve with Robin and Jillian Ridington on July 3rd, 2019. Then, I got a chance to talk more with him during the BRFN cultural camp at Pink Mountain, and right after the conclusion of the cultural camp, he drove me to the Tse'Kwa Heritage Site (also known as Charlie Lake Caves). We got to know each other; we got along and spent a lot of time together. I established connections and got to know DRFN members because he involved me in any activity he performed with the community. He invited me to join the trail cutting experience and the KEMA experience (Doig cultural camp) over the summer. For the first six months of my fieldwork, before COVID hit, he had been a fundamental figure.

Figure 19 - Charlie Lake Cave, cultural heritage of the Dane-zaa people. More information is available at: http://doigriverfn.com/cultural-heritage/tsekwa-charlie-lake-cave/ (last accessed on January 25th, 2022).

Towards the end of September 2019, I was invited to a communal BBQ. There were several people; most of them worked or had professional relationships with Blueberry and Doig River First Nation. Among others, Merli de Guzman, the BRFN Band Manager, was there. That evening, I spent a couple of hours talking to her about my research interests, my previous experience in Finland, and my general interests in Indigenous-related issues. She promised to call me back the week after, and I was sure something would finally happen. Nevertheless, I never received her call. I was being ignored and neglected, and I was unable to accept it. Being ignored became the normality during those months while waiting for a call or an email. Although I was able to keep up decently, the psychological downfalls I experienced during those months were massive as a PhD researcher and a person. I did not know why I was not getting answers; I thought it was because of me, what I did, and who I was. I thought there was something wrong with my research and what I was doing. Eventually, during my visit to the UNBC in Prince George in October 2019, UNBC prof. Annie Booth warned me that it could have been difficult to enter Blueberry due to the current litigation.

With this in mind, once I returned to Fort St. John, I sent a straightforward email to Marvin Yahey (BRFN Chief), Jane Calvert (Land Manager) and Merli de Guzman (Band Manager). I asked for a clear answer regarding the possibility of entering the community and carrying out work together. I remember concluding my message with *'please, do not ignore my request this time'*. I felt it was time to get an answer, as my level of frustration and anxiety was growing to a level that I had barely experienced before. On Monday, 4th November 2019, I received a short answer from the BRFN Band Manager. An unequivocal message. *'The litigation ends around the end of January/early February. We are not allowed to discuss anything around litigation until the case is closed.'* Very naively and still hoping to find a way to work together, I asked her if that meant that we were not supposed to talk at all. She replied that we were supposed to arrange a meeting with the Land Manager to talk about the possibility of doing any work together. The meeting was scheduled for Friday, 15th November 2019, and I hoped that everything could work out nicely in the end.

It was 7 p.m. on Thursday, 14th November 2019, when I received a text message on my phone. Two sentences from the Land Manager. It said: *'I'm so sorry, but I have news that Merli won't be able to meet. I will get a new day and time for our meeting.'* I was having dinner, and after reading the text, I just thought, *'I knew it!'* A couple of hours before, I went to the gym, and while doing my workout, I thought: '*What if I receive a last-minute message informing me that the meeting is cancelled?'*. I was right; I felt something like that was going to happen. I was not angry; instead, quite disappointed and shocked. Since July 2019, I had tried to reach out to BRFN management; they had always found a way to avoid speaking to me. I thought there was something wrong with them, me,

everything, and everyone! That was the last straw; it was clear that it would have been impossible to do any work with the BRFN. A sense of impotence pervaded me, and I felt hopeless and lonely.

Thinking about the struggle to enter Blueberry two years later, I reckon my stubbornness was not always helpful. I decided that ***I wanted*** to work with Blueberry, and I could not understand and accept that they were not interested in it. For me, it was difficult to accept that dedicating time and attention to a group of people, wanting to know what they have to say and working to vehiculate their message was not of interest to them. Carrithers argues that: *'We conceive, and many of us have experienced, fieldwork as being constituted as much by its labours and its rigours, its embarrassments and adjustments, as by its discoveries, so that one's commitment to the new is written not only in fieldnotes but also in—well, for some of us, anyway—our blood, or at least our blushes. Taken from this viewpoint, it is the openness to others and the establishment of fruitful and enlightening relationships that not only make fieldwork possible but also constitute much of both its pith and its pain.'* (Carrithers, 2005, p. 437).

During those months, I had no idea what would happen to me. I was in a liminal state, *'betwixt and between'* two communities, in transition, without a status with any of the two Nations I wanted to perform my fieldwork with (Popper, 2016, p. 129). In a liminal situation, such as the reality of fieldwork, the researcher may be in a (semi)perpetual ambiguous state, where *'the undoing, dissolution, decomposition are accompanied by process of growth, transformation, and reformulation.'* (Turner, 1967, p. 99). Fieldwork, in and of itself, can be described as a liminal period, *'where the answers to the challenges one needs to face are simply not offered by any predefined structure.'* (Thomassen, 2009, p. 18). According to Johnson, ethnographic research itself can be seen as *'a series of rite of passage transitions. Existing in a liminal state while being in a liminal space, separated from its own culture and setting while not yet part of the new host community, the ethnographer is a proper stranger in a foreign setting.'* (N. Johnson, 1984, p. 108). Such an account perfectly resonates with what I experienced, as once I arrived in the field, I stopped in Fort St. John and waited for a long time. I went through a challenging transitional period, where there was no certainty or a clear path to follow before being accepted or entering DRFN. As argued by Johnson, *'an ethnographer's degree of access to another culture often is associated with his degree of incorporation into the group. Until being granted appropriate rite of passage experiences, the field researcher might remain in that terrible liminal stranger state with which most ethnographers are familiar.'* (N. Johnson, 1984, p. 108).

I now reckon that many experiences I had throughout my fieldwork were rites of passage. I still remember the first night I slept in a Tepee at Pink Mountain during the BRFN cultural camp. I clearly recall when Gary Oker (previous Chief and current councillor of DRFN) asked me to help Jack Askoty set up a tepee for the KEMA experience - Doig cultural camp. Or when he asked me to start a fire, as he needed to warm his drum before a public meeting held at Doig Reserve. During one of these events, he invited me to drum with them, a privilege and a gift (to use the word of Marshall Sahlins) I received. I cannot forget his invitation to the funeral of Janice Askoty (Jack's wife) when I was asked to write an account on 'traditional Indian funerals' that were still taking place in 2019. I remember with joy the time I spent in the bush with the members, the work we did together, the talks we had while collecting herbal plants to make bush tea. Those moments were rite of passage experiences; *'sequence of events one experiences in the process of status/role transformation […] as part of the required passage into anthropologydom.'* (N. Johnson, 1984, p. 108). Only after them, a long wait, and several unsuccessful attempts to cooperate with Blueberry, I was finally able to enter Doig River First Nation.

Between fall and winter 2019, I continued nourishing the relationship established with Doig members in the summer. I believed what was going on in the area with oil and gas extraction and the litigation BRFN v. BC deserved to be told. According to Carrithers, while performing fieldwork, the researcher takes a moral position, recognising the worth of others, their stories, and their struggles (Carrithers, 2005, pp. 437-438). I am grateful to Doig River First Nation for the work we carried together, as it allowed me to tell the story, although in a different way than what I planned. Although I met Shona (DRFN Band Manager) several times over the summer (2019), we never had the occasion to say more than a few words until we met in the cultural centre one evening in early October 2019. The first concert of the season was being performed in the renewed theatre, and that evening, I volunteered as an usher. Before the beginning of the concert, there was a small inaugural celebration for the new theatre, accompanied by the ribbon cutting and some drinks. During that occasion, Shona walked towards me, asking: *'How is the work going? Are you working with the Blueberry, right?'* I answered: *'No, I am trying to figure out whether I can do some work with Blueberry! However, I am also open to other possibilities, i.e., doing some work with Doig!'* The conversation went on as she was interested and willing to involve me in some of Doig's work. That encounter was fundamental to building trust and relationships with Shona, and it was so crucial for the success of my fieldwork. These meetings are impossible to plan; besides, they only happen when the time comes and with a touch of serendipity. As Simpson argues, *'operationalising plans and intentions for fieldwork are almost impossible.'* (Simpson, 2015, p. 5).

Shona invited me to present my ideas and research interests to the Council the same day they were having the Christmas dinner, to which I was invited as well. She sent me an email on Monday, 2nd December 2019, in which she said: *'I had a meeting with Council, and we would like to invite you out to DRFN to present to Chief and Council. Would you be available to do a presentation to our Council on December 12th before our Christmas Party? You would be welcome to have dinner with us that day as well.'* (Shona's email, December 2nd, 2019). I was overexcited; I had been waiting for that moment for such a long time. That day, I went to the Reserve with the certainty that I would present my research ideas to the Council. Sadly, it did not happen. The day was packed with meetings the Council had planned with different companies before the Christmas break. I was probably the last concern of the Council. I remember being extremely upset because that was supposed to be my day. I now reckon that my disappointment was also related to how I perceived performing research with a community. As I learnt during the months I worked with the land office, informal conversations and impromptu meetings are regular, sometimes even better than formal meetings and organized events. Talking to people is valuable on any occasion, whether it is a formal event or during a break. I eventually had a chance to present my ideas a week later, when I went to the Reserve with Bob McKenna to help to install the Treaty 8 medallion. Unexpectedly, I ended up giving a presentation to Shona and Gary, talking them through my slides that I only downloaded last-minute and that were not even appropriately projected due to some compatibility issue. As Rabinow affirms in his *'Reflections on Fieldwork in Morocco'*: *'After all, now that I was in the field, everything was fieldwork.'* (Rabinow, 2007, p. 11). I now believe this is something endemic to the very experience of being on the field.

Every experience I did over the 2019 summer helped me enter Doig. However, I genuinely believe that I could not work with the Land Office without the support of Shona and Cec. The former is the current Band Manager of Doig, who 'sponsored' me. She asked the permission of the Chief and Council to get me there; she introduced me to the elders during one of their meetings; she felt I could do some meaningful work with Cec, the previous Land Manager. The work I did with Cec from February to August 2020 (I will talk about it in my last chapter) was invaluable, and I am grateful I got to know and work with her before her retirement (her last day at Doig was on April 23rd, 2021, while I was writing this chapter). If I entered Doig and I was able to work with the Land Office, it was because they really wanted me there. We commuted every day from Fort St. John to Doig Reserve, we had wonderful conversations in the Red Rocket (Shona's red truck), and if I was able to learn so much in such a short period, it was because of them. We were a team; I felt part of it. This brings me to a critical reflection: determination and stubbornness are important while performing fieldwork, but they are not enough without a touch of serendipity and the help of internal people. To

get to know and enter the community, I needed a gatekeeper; to work together, I needed to win the trust of the management. I also know that if I want to continue my cooperation with Doig, I need to go back to spend more time with members. Keeping the relationship with a First Nation community is a lifetime commitment; it does not end with the end of the fieldwork.

Figure 20 - The farewell picture (August 17th, 2021) with Shona, Cec, and Lorraine in the 'Red Rocket'.

2.2 Ethics, Research Methods, Methodology

2.2.1 Between informal interviews and ethical compliance

In November 2019, I attended the annual meeting of the American Anthropological Association (AAA) held in Vancouver. One of the panels I participated in was called *'Decolonial methods: changing anthropological climates through methodological disruptions.'* At the beginning of the conversation, an Indigenous panellist pointed out that decolonization must occur in the research and writing phases. She argued that it is essential to find a way to cooperate with people while performing research and thinking about what that research will become. As she said:

> *'At its best, the ethnographic method is the most genuine one. If you respect and listen to the persons you are talking with, you will be able to have a massive amount of information about the world, on how they see and perceive it.'* (AAA meeting, November 22nd, 2019).

My fieldwork experience has confirmed the truthfulness of such an account. When I got back to Doig Reserve in May 2020, after the first wave of COVID-19, I jotted down this reflection after a conversation I had with a member I had not seen for almost three months:

'These people have been asked too many times. They have given answers, but their voices have remained unheard. I have decided to listen to them, spend time with them, and talk to them without asking too much, without pushing, without perpetuating the academic resource extraction strategy that has often been applied. They share with me what they want, what they feel is important for them. And in this way, we have built a wonderful relationship based on trust, based on friendship.'

As I already mentioned in the previous chapter, I conducted my research relying on a qualitative approach combined with an informal ethnographic style. I found informal, semi-structured and unstructured conversations as the best tools to talk to people, to connect with them while getting to know their everyday struggles, their views, and expectations. I started analysing my data when I was still performing my fieldwork. I considered using specific software for qualitative data analysis; thus, I tried NVivo, which I believe is one of the most comprehensive software for qualitative data analysis.

Nevertheless, I decided to rely on something simpler, quicker, and, most important, that could allow me to carry out analysis while performing fieldwork and without having all the data available. Therefore, I decided to use my Word processing programme to perform iterative thematic analysis by looking up for specific codes (single words or a set of two, maximum three words) to understand how many times, by whom, why, where, in which place and at what time specific concepts of keywords were mentioned. This process of coding allowed me to categorize my data so as to derive specific patterns and themes. I then organized my finding in a data table, specifying all the information I had to answer in the most detailed way to the 5Ws and 1H questions I used to gather information. I found the iterative thematic approach the most appropriate for analysing my data as it gives the possibility to the researcher to develop patterns and themes during data analysis. These patterns can then be communicated to a specific audience, so allowing the researcher to explore further themes and new patterns while performing the research (Morgan & Nica, 2020, p. 2). I believe this approach allowed me to detect specific patterns and themes well before the end of my fieldwork, thus giving me the possibility to continuously develop my research throughout my fieldwork.

Moreover, using an iterative thematic approach to analyse my data allowed me to engage comprehensively with reflexivity throughout my research. Reflexivity in social qualitative research is commonly referred to the role and positionality of the researcher and how prior experiences, beliefs,

and assumptions can influence the research process (Haynes, 2012, pp. 1–2). Notwithstanding being reflexive is considered as one of the most important features when performing qualitative analysis (and when carrying out ethnographic fieldwork), keeping journals, personal diaries and writing up fieldnotes might not be enough to engage with reflexivity in the most appropriate way. Using an iterative thematic approach allows the detection of a set of preliminary themes which can be expanded or modified while performing data analysis and defining new patterns to continue the research (Morgan & Nica, 2020, p. 4).

Furthermore, using an iterative thematic approach allowed me to understand the importance of small talks and informal conversations, next to formal, semi-structured interviews. Throughout my fieldwork, I noticed that formal interviews were better suited to a portion of my sample, i.e. government officials, company managers, politicians, and consultants; less appropriate for community members and Fort St. John residents, with whom I engaged in spontaneous conversations while performing all kinds of activities. As for the former, their positionality was highly influenced (and sometimes defined) by their job. On some occasions, I noticed that personal beliefs and biases were blended with the profession, creating different ways to understand and make sense of complex issues First Nation members face in everyday life. This may be problematic and create tensions between Government/companies and First Nations in those cases where government or companies' officials who are regarded as authorities on First Nation issues not only are not indigenous, but they lack the tools to understand and address indigenous issues. An excellent example is provided in chapter 8, paragraph 8.2.3, during the conversation between the BRFN's previous Chief Marvin Yahey and OGC officer Dean Zimmer.

Throughout my fieldwork, I conducted more than one hundred fifty semi-structured informal interviews, and twenty semi-structured formal interviews. As I explain in this chapter, conducting semi-structured formal interviews was an obsession during the first months of my fieldwork. However, I quickly noticed that kind of approach was not working for me, besides not being appropriate to the scope of my research. On several occasions, I thought about a sentence that is quite famous in the Department of Anthropology at Durham University: *'You do not do fieldwork, fieldwork does you.'* (Simpson, 2015, p. 3). As Simpson argues, *'once we step into the complex flow of other people's social experience we are novices, and bumbling incompetents […] Ethnographic fieldwork is a messy business, which requires us to relinquish expert status and embark on the uncomfortable process of learning about persons and power from scratch and often through mistakes and manifest ignorance.'* (Simpson, 2015, p. 3). This resonates with what Trevor Makadahay (DRFN Chief) told me during a conversation we had in his office:

'When you do an interview, you do not quite catch the whole picture. It is better to go into the bush, be there, and listen to the elders when they have something to say when they want to share something. So, I think it is important to mention these things; it is important to mention that there is a need to use a decolonised approach to do research.'

(Doig Reserve, June 16th, 2020).

Tuhiwai Smith affirms that *'decolonization does not mean and has not meant a total rejection of all theory or research or Western knowledge. Rather, it is about centering our concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes.'* (Tuhiwai Smith, 2012, p. 89). As Hockey et al. argue, *'doing research requires much more than using a set of techniques to gather data about the world. It is a creative process that involves not only forms of apprenticeship but also the development of particular embodied skills that can only become finely honed through practice.'* (Smart et al., 2014, p. 2).

What Trevor mentioned resonates with the definition of *'speech in action'*, a concept elaborated in 1939 by Audrey Richards, one of Malinowski's students. As she explained, *'Besides questioning his informants, the anthropologist listens to speech between natives in the natural context of daily life. This provides information unlikely to be given in direct answer to a question, but sometimes vouchsafed during the performance of an associated act, or overheard in casual conversation.'* (Richards, 2015, p. 302). And yet, during the first months of fieldwork, I was obsessed with the idea of interviewing people; I kept repeating to myself that I needed to start doing semi-structured interviews as soon as possible. As Abram argues, such an obsession with gathering data is the result of a new approach to doing research that had been emerged in the last decades. Thus, applying innovative research methods and implementing them has gained more importance than answering substantive intellectual questions (Abram, 2014a, p. 22).

Likewise, it has become increasingly important to follow specific ethical rules without considering what people who spend time with the researcher really want. As established in my *Ethics and Data Protection Form* and to comply with it, I ensured anonymity to many people who have provided crucial information. In some cases, pseudonyms are used to protect their identities; on other occasions, I do not specify who provided me with specific information. Whereas such an approach can be contested, I used it when I felt it was important to ensure full anonymity. Knowing that a piece of specific information was provided by a BRFN or DRFN member may be an easy way to point out who said what; this is especially true among community members. Thus, when I believed this was the case, I preferred not to provide too much information on who shared what with me. However, there are cases where real names are used. On some occasions, I was asked to use real names when

specific issues were addressed by DRFN Chief, councillors, Band and Land Manager, and elders. On these occasions, anonymizing members may be perceived as a way to use valuable information without giving credit to the person. To avoid knowledge extraction and aware of the problems it had created in the past, I followed the will of many community members, Chiefs, and councillors. Nevertheless, any misinterpretation of a member's idea is the author's sole responsibility.

Based on my fieldwork experience and drawing on Abram's reflections on data collection, I believe that there is a common attitude among young researchers to learn how to do research 'correctly' and collect and analyse data properly instead of spending time and learning by being in the field. However, performing qualitative research and making sense of the data collected in the field is not a mechanical process and cannot be done by applying a specific formula. Much of the data remains embodied within the researchers and their experience in the field (Abram, 2014a, p. 26). Sooner than later, I realised that pretending to gather relevant information by setting up interviews would not work. I learned this after almost ruining a nice dinner I was invited to by an Indigenous resident of Fort St. John.

2.2.2 Bad interviews, good conversations: between ethics and reality of the field

It was 7 p.m. on a cold and rainy September evening when I arrived at Margaret's place. An Inuit lady in her fifties, an independent environmental consultant with more than ten years of work experience at the BC Oil & Gas Commission. I was introduced to her by Clare-Anne, during one of the cultural events I attended over the 2019 summer. I got in touch with her because I thought she could have been a good person to interview. When I arrived at her place, she was making pizza dough. Argon, a giant and hairy half-wolf half-dog, was very happy to have a new person around, and he was trying to play and interact with me every moment. Soon after I made myself comfortable, Margaret started to ask me about my research, what I wanted to achieve, and why I was doing it. I answered her questions, and while replying, I thought it was the right moment to ask her if I could record our conversation. I had my voice recorder in the pocket of my jacket, and I already took it into my hand while I asked her if it was ok to record the conversation. She suspiciously looked at me and then she said: *'oh, you want to interview me! NO!'*. So, I just put my recorder back into the pocket of my jacket, and our conversation continued.

That mistake I made was the result of my anxiety to get things done, to tick the box at the voice *'semi-structured interviews started'* in my mind. Abram defines the data obtained in such a way as free-floating, *'quick and clean'*, as it is generated without any relations of trust or reciprocity, and it can easily be used to create outputs and fill reports (Abram, 2014, pp. 28–30). It was too soon to

record the conversation, considering it was the second time we had met. As Davies argues, interviewing is a complex process which requires a certain degree of acquaintance between the interviewee and the interviewer (Davies, 2008, p. 105-110). From that experience, I learnt that being hasty could have been counter-productive besides compromising relationships. Fortunately, my mistake did not change our evening; perhaps, the fact that I did not insist was appreciated, and it contributed to making our time together enjoyable. Towards the end of the dinner, Margaret asked me which questions I had for her. I thanked her, but I replied that we would have had time for that. The evening was going so well, just speaking about different things freely. I think she sincerely appreciated my answer and approach to the issue.

Since then, I have learnt that every conversation, formal or informal, was an interview. I did not have to record, follow a specific schedule, and ask specific questions to say I was doing interviews. As Liisa Malkki wrote in an email to her PhD student Allaine Cerwonka when she was performing her fieldwork: *'Don't be afraid of having exchanges that look more like rambling, long, multifaceted conversations and chats than formal, structured interviews […] Anthropological fieldwork does not look like that – or not only. Often the best material comes in strange forms – chance bits, like object trouvés.'* (Cerwonka and Malkki, 2007, p. 24). I used the word 'conversations' on my fieldnotes when referring to any kind of dialogue or unstructured interview I had with community members and other FSJ residents. As Jillian Ridington said during the opening of the Wild Words North Event, organized by the Fort St. John Literacy Society:

> *'You do not really interview people. You just talk; you hear people's stories.'*
> (Fort St. John, September 28th, 2019).

Throughout my year of fieldwork, I was able to have dozens and dozens of conversations while also doing some semi-structured interviews (around 15). I learnt from my fieldwork experience that there is no right or wrong type of interview; instead, depending on the context, one type is more appropriate than another one. I did meaningful semi-structured interviews with BC Parks rangers, environmental consultants, OGC public officials, former Government officials, and some members. I got a lot of meaningful information in a small amount of time (usually, an interview lasts between an hour and an hour and a half). Although valuable, the information gathered following a specific structure felt somehow limited, as it describes and explains things without performing any other activity that could complement or better explain them.

This also resonates with what Stoller said about his first month of fieldwork in Niger (1976-1977), when he interviewed 180 people in just a month before discovering that they all lied to him. He then

found out that people lied because they were not comfortable in taking interviews or just because they did not know him well enough, or simply because, in their view, there was no difference in answering x or z (Stoller, 1989, pp. 125–128). As an informant replied when Stoller asked why he lied to him: *'What difference does it make?'* (Stoller, 1989, p. 127). Later, a Songhay elder told him that getting to know people cannot happen by visiting the community and asking questions. *'You will never learn about us if you only go into people's compounds, ask personal questions and write down the answers. Even if you remain here one year or two years and ask us questions in this manner, we would still lie to you. You must learn to sit with people…You must learn to sit and listen.'* (Stoller, 1989, p. 128). As Stoller argues, *'what we see is shaped by our experiences, and our gaze has a direct bearing on what we think […] During fieldwork, we talk to ethnographic others, and we attempt to make sense of what they say and do […] We tend to allow our senses to penetrate the other's world rather than letting our senses be penetrated by the world of the other. The result of this tendency is that we represent the other's world in a generally turgid discourse which often bears little resemblance to the world we are attempting to describe.'* (Stoller, 1989, p. 39). I hope I have been able to '*be penetrated by the world of the others',* as Stoller would say. Only in this way could the others' world I have attempted to describe in this ethnographic work resemble (at least a bit) the real world and how people perceive and make sense of it.

2.2.3 Positionality and ethical issues

My fieldwork had been extremely challenging from the beginning till the very end. I had to build my relations from scratch, building a social network that could support me personally and professionally while overcoming suspects and stereotypes. On several occasions, I was asked if I was a spy or if companies or some Government agency were paying me to do some study on the community. On some occasions, someone tried to downplay my role and what I was doing. In a town like Fort St. John, mistrust towards researchers and scholars is rather spread, as higher education is perceived to be of secondary importance to meet the needs of the city and its industrial sector. Many people asked me why I was there, and I know from my gatekeepers and close friends that someone asked why there was a researcher in town, how I got to know about Fort St. John, and what I was doing there. I do not think people were necessarily malevolent, but some did not fully trust me. I know this is part of the fieldwork experience. After all, I was a researcher who appeared suddenly, a potential threat for some, as my research topic is very sensitive. After a few weeks in the field, I started to present myself as a student, as I noticed that presenting myself as a PhD researcher was sometimes counterproductive. Contrariwise, nobody was intimidated by a student who was supposed

to do research for a short period while learning about the place he was visiting. Many people thought I would be there for a few weeks, and many of them were genuinely surprised when they kept seeing me around in September, October, and December 2019, then in January, March, and June 2020. After the first lockdown, a person I met during a cultural event asked me:

'Are you still here? Did you get stuck because of COVID, or did you really want to stay put?'

I stayed in the field for about 14 months, with a 3-week break over Christmas 2019. Nevertheless, throughout my fieldwork, I was able to 'escape' Fort St. John on a few occasions (in October 2019 and in February 2020) when I was invited to spend some time at the UNBC in Prince George. Being able to change place while meeting other people was extremely important personally and professionally, given the lengthy and demanding fieldwork I was performing. Those breaks allowed me to reflect on my own work while exchanging ideas with other colleagues and friends about my experience, besides listening to precious opinions and suggestions. Most importantly, taking a break from the field reminded me that my fieldwork did not define me as a person; the success or failure to perform specific work with a First Nation was related to many variables out of my control. In a sentence, spending time far from my field site reminded me that there was life beyond my fieldwork, something I kept forgetting while being immersed in the reality of Fort St. John.

Unexpectedly, something that helped was my nationality. As an Italian, people looked at me with curiosity instead of hostility. Many of them asked me about my country, and some exciting conversations started in this way. I remember an occasion when I was asked if I had ever hunted. Members were astonished and incredulous to hear that not only I had never hunted, but I did not even know how to handle a rifle! Instead of hunting, I told them that as a child, I used to catch octopuses on the rocks of the southeast coast of Italy. One member was so curious to know more about my experience in catching octopuses that we ended up speaking for more than an hour, with him sharing his memories as a young hunter. Such a conversation made me think. Perhaps, most of the members did not grasp what I was doing there; the words fieldwork and doctoral research were unknown to most of them. It may well be that they were not even interested in knowing more about my research. Perhaps, I was not even sure about the boundaries and the exact topic of my own work with the Land Office as I realized that the work I was doing was only a tool for me as well. A powerful tool to get to know people, establish genuine relationships, and share stories, times, memories, and life experiences in a way that interviews, focus groups, and workshops would have never allowed me to do.

This brings me to reflect on the profound disconnection that still exists between how I was supposed to carry out fieldwork based on the ethics approved by the Department of Anthropology and the reality of everyday life on the field. Atkinson argues that the ones who carry out ethnographic work spend a relevant amount of time to gain the trust of their hosts and informants. Promoting and developing such a deep *'interpersonal working relationship might provide a more anthropologically informed basis for proper conduct than the jejune notion of informed consent.'* (Atkinson, 2009, p. 25). Ethical approval may well be described as the representation of the disconnection that still exists between research conceived in Academic terms and ethnographic fieldwork research based on mutual respect, trust, and genuine relationships. Before leaving for the field, I submitted a long *Ethics and Data Protection Form* (see Appendix D), where I explained my research project, methodology, and methods I was supposed to use. I mentioned that I was supposed to carry out semi-structured interviews once relationships with community members were established. At that time, I did not know that spontaneous conversations are way better than planned interviews, especially when talking with the elders. When conducting interviews, I was supposed to provide members with the *'Participant Information Sheet'* and the *'Consent Form'* that they were supposed to read and sign before the beginning of the interview. It goes without saying that members and even the Council were not interested in these documents. Those forms did not mean anything to them; members did not see the point in signing anything before talking to me. Instead, asking to sign a consent form might be interpreted as rude and inappropriate (Tuhiwai Smith, 2012, p. 207-208).

To overcome the problem, I asked the Chief and the Band Manager if it was fine for people to have me around, talk to them, and use the information provided during our conversations in my research. They informed the members, asking if there was any objection. Fortunately, nobody disagreed. The only condition that I was asked to respect was not to disappear, give something back at the end of my research, present my findings to the community. Such a request resonates with what is established in several codes of Ethics for anthropologists. The Canadian Anthropology Society refers to the guidelines established in chapter 9 of the Canadian Tri-Council Policy Statement *'Ethical Conduct for Research Involving Humans'* regarding research that implies cooperating with First Nations, Inuit, and Metis. As provided in Chapter 9, A:

> *'Community engagement is a process that establishes an interaction between a researcher (or a research team) and the Indigenous community relevant to the research project. It signifies the intent of forming a collaborative relationship between researchers and communities, although the degree of collaboration may vary depending on the community context and the nature of the research. The engagement may take many forms, including review and approval*

from formal leadership to conduct research in the community, joint planning with a responsible agency, commitment to a partnership formalized in a research agreement, or dialogue with an advisory group expert in the customs governing the knowledge being sought. The engagement may range from information sharing to active participation and collaboration, to empowerment and shared leadership of the research project. Communities may also choose not to engage actively in a research project, but simply to acknowledge it and register no objection to it. (TCPS2, 2018, p. 110).[15]

As I understood throughout my fieldwork, the willingness of community members to cooperate does not depend on the project or a specific set of questions; it depends on the researcher's personality and credibility. For Indigenous communities, collaborating in a research project indicates trust, which is not something static but dynamic and constantly negotiated (Tuhiwai Smith, 2012, p. 223). As Dingwall argues, observing people and asking them questions is part of everyday life: *'Human and Social Science Researchers are guests in their lives and, like any guest, are likely to be asked to leave if their behaviour is inappropriate.'* (Dingwall, 2008, p. 3). The best conversations I had with members took place freely while working in the forest, sharing a meal, or during the several cultural camps and meetings I attended. In those contexts, it was just impossible to ask people to read and sign the form before talking to me. As argued by Cerwonka and Malkki, *'ethnographic knowledge production involves strategic and ethical choices that are entwined with the mundane details of the researcher's daily existence in the field.'* (Cerwonka & Malkki, 2007, p. 6). Most of the time, what had been approved by University Departments does not necessarily satisfy Indigenous standards of conduct. For Indigenous peoples, there are several ways of conceiving and naming research. In many cases, projects are not called 'research', as this word is linked to experts with advanced education skills and who often use a specialised language. Moreover, many Indigenous groups have argued that ethics are framed in ways that make sense according to western approaches (i.e., a person's right to share knowledge or give informed consent). (Tuhiwai Smith, 2012, pp. 207–214).[16]

Nevertheless, before starting my work with the Land Office, I needed to sign a Memorandum of Understanding (MoU)/Placement Form with the Band (see Appendix B and C). According to my PhD programme, I was required to do a placement within the 3-year of my doctoral research. I decided to

[15] Full text of the Tri-Council Policy Statement is available at: https://ethics.gc.ca/eng/documents/tcps2-2018-en-interactive-final.pdf (last accessed on October 14th, 2021).

[16] The Brazilian Anthropological Association (BAA) had made an important contribution to the advancement of such a discussion by issuing a new Declaration on research practice (November 2020). In it, an important stance had been taken to avoid cognitive extractivism and the reproduction of hegemonic paradigms. Declaration on Diversify Information and Education about the Global Anthropologies of Foreign Researchers and Anthropology Students https://www.at-commons.com/2021/05/25/motion-of-the-32nd-rba-diversify-information-and-education-about-the-global-anthropologies-of-foreign-researchers-and-anthropology-students/ (last accessed on October 14th, 2021).

perform it with the Land Office of Doig. In this way, I could keep conducting fieldwork with the community while working on specific issues the Band needed to address but where they lacked expertise (see chapter 8). I remember being a bit worried about asking the management to sign the documents Durham University requested, as I did not know how they could have reacted. Fortunately, the Band Manager was comfortable with the idea of having a document signed by the parties where specific ethical and IP issues were addressed. I know this document might have legal value in the Western legal system, should I screw up and provoke damage to the community. The community might rely on it to see its rights recognised and protected. Nonetheless, that document did not certify my relationship with members and their trust in me. That depends on how I nourish my relationships with the community, my actions, and what I will do in the years to come. This document did not provide me with the exact steps to follow to meet community needs. I am aware that it will be up to me to stay engaged with the community while building trust and relationships. It is a matter of respect for people whom I consider friends and with whom I spent an important year of my life.

2.3 Performing fieldwork during COVID-19

Just six weeks after starting my work with the Land Office of Doig, another layer of complexity was added to my fieldwork and the work I was attempting to do with the community. Slowly but unrelenting, COVID-19 reached North-eastern British Columbia in March 2020. The Band shut down the second week of March to reopen to the public only the first week of June. For a few weeks, there were checkpoints at the entrance of the Reserve, as only residents were allowed in. For ten weeks, I could not visit the Reserve; I could not meet and spend time with members nor work side-by-side with the Band and Land Manager. My plan to move and live at Doig Reserve over the spring/summer months was irremediably hampered. Once again, I needed to rethink my fieldwork and adapt my plans to the new situation. To some extent, I needed to improvise to keep going with my fieldwork.

Malkki has argued that ethnography relies on improvisation; it requires flexibility and improvised strategies that must be adopted in everyday life while on the field, where continuous adjustments are needed, based on changing contexts (Cerwonka & Malkki, 2007, p. 20). According to Geertz, ethnography is not a methodological doctrine but a process. As he said: *'From one point of view, that of the textbook, doing ethnography is establishing rapport, selecting informants, transcribing texts, taking genealogies, mapping fields, keeping a diary, and so on. But it is not these things, techniques and received procedures that define the enterprise.'* (Geertz, 1973, pp. 5–6). Malkki affirms that *'Improvisation in fieldwork suggests how ethnography entails constantly adjusting one's tactics and*

making judgements based on particular contexts that one can never fully anticipate.' (Cerwonka & Malkki, 2007, p. 20).

The COVID-19 pandemic was something nobody would have been able to predict; it has changed our lives, how we live, how we relate with people, and how we build and nourish our social relationships. Like everything else, my fieldwork experience was seriously affected by the pandemic, and I could clearly perceive the difference in carrying out fieldwork before and after it. Because of it, I realized how important it was to be with people while performing fieldwork. After the first wave of COVID-19, when it was possible to go back to the Reserve, my engagement with the community was successful not despite but also because of this lesson I learnt during the first lockdown (March-April 2019). Also for these reasons, I think ethnography cannot be described as a standard methodology, as it cannot be broken up into a set of different techniques that any researcher could implement in a certain way while performing fieldwork. Moreover, ethnographic work is carried out in a context that is heavily influenced by external variables that define our everyday life. As Malkki argues, *'anthropological fieldwork is not usually a straightforward matter of working. It is also a matter of living. Ethnographic research practice is a way of being in the world. All this engages the senses and emotions, and it takes time. It is in this mundane, day to day way that the question of ethics emerges in ethnographic research.'* (Cerwonka & Malkki, 2007, p. 178).

Before COVID, the plan we were developing with Cec was to organize a series of workshops (ideally five) with community members. Our main goal was to discuss how specific community values should be included in the BC legal framework, considering the adoption of Bill-41, which would harmonize the provincial legislation with the content of UNDRIP. During the first wave of COVID-19, we put this idea aside. Together with Cec, we developed a framework using secondary data sources (previous interviews, land use studies and surveys) that could have helped us identify key community values that should be considered when harmonizing UNDRIP. We considered the feasibility of using online tools to engage with community members and gather data. However, we soon realized that it was not a feasible option for us. We needed to talk to people face to face to grasp the meaning of specific concepts without forgetting that many elders cannot handle a smartphone/tablet/pc. Technology was not an option for us due to our needs and specific audience. Therefore, working with secondary data sources has been fundamental, given the impossibility of collecting new raw data. I also used secondary sources for my legal chapters, given the impossibility of talking to any BRFN member or staff about the litigation BRFN v. BC. In addition to analysing the legislation, the opening statements of the case, the notice of civil claims and responses, I consulted the affidavits accessible for download from the website of the BC Supreme Court. It was not like

having real conversations with members; however, that was the only way to 'hear' members' views regarding the litigation.

We were able to go back to Doig Reserve in May, with meetings allowed in June. At that point, we decided to host a unique workshop to discuss how specific community values and principles enshrined in the UNDRIP (such as the FPIC, with the word Consent being our main target) should be included and implemented in the BC legal framework. The final workshop (I extensively talk about it in chapter 8) was supposed to be held on June 29th, 2020. However, a member passed away on Saturday, 27th June 2020, and the Band shut down for the following week to mourn and prepare for the funeral. The workshop got postponed to July, and it was finally held on Tuesday, July 21st, 2019. We ran it in the form of a free and open discussion; we explained the reasons for the gathering and the importance of hearing people's opinions on the topics we were going to discuss (FPIC and the implementation of UNDRIP in the BC legal framework following the approval of Bill-41).

According to the engagement protocol of Doig, participants were to receive an honorarium (C$ 100 per person) for the time they spent taking part in the workshop. I was able to get C$ 5000 of funding through my funding body (Leverhulme Trust through Durham ARCTIC) to run the workshop and pay the participants. Community members were informed that they were free to leave anytime and decide what to share with us. We were there to listen to them without imposing a specific agenda, running semi-structured, closed-ended interviews, or collecting data through surveys. We decided to adopt such a different approach not because semi-structured interviews and surveys are not valuable tools for data collection; contrariwise, they can be helpful in certain contexts and with specific groups of people. However, we felt those methods did not meet our needs. Instead, we decided to use a Narrative Inquiry approach to understand how members create meaning and make sense of specific concepts through narratives (Clandinin & Connelly, 2001, p. 108). We needed to hear people's opinions while catching the nuances people could express about the same concept. This could have been possible only through open conversations and free interactions. As Tuhiwai Smith argues: *'Indigenous elders can do wonderful things with an 'interview'. They tell stories, tease, question, think, observe, tell riddles, test and give trick answers […] The quality of the interaction is more important than ticking boxes or answering closed questions.'* (Tuhiwai Smith, 2012, p. 229).

Towards the end of the workshop, while having lunch with some elders, I asked more specific questions and got unexpected answers. These exchanges were similar to what we would call semi-structured interviews, apart from the fact that they were not planned and the questions improvised. Still, the information I was able to gather was extremely relevant, as by discussing with members, I got a chance to dig into the nuances of the stories they were sharing with me. This is also the reason

why I decided to adopt a qualitative approach throughout my fieldwork. I believe that a quantitative approach would have provided me with lots of data for my research, but that might have been quite superficial in the end. I soon realised that submitting surveys could have been counterproductive, as members were not interested in ticking boxes. Besides, they could have answered in different ways, based on their different perceptions of a specific issue at that moment. I was struck when I read about Stoller's experience with surveys and data collection during his first fieldwork in Niger, and I tried not to replicate the same thing. As argued by Harding: *'A research methodology is a theory and analysis of how research does or should proceed. A research method is a technique for (or way of proceeding in) gathering evidence.'* (Harding, 1987, pp. 2–3). There was a need to use a different method and research approach with community members, as I was talking to people who trusted me from a personal point of view, first and foremost. My relationship with them was at stake; thus, I needed to find a way to carry out what I was supposed to do without compromising our relationship. As Tuhiwai-Smith points out, *'from indigenous perspectives, ethical codes of conduct serve partly the same purpose as the protocols which govern our relationships with each other and with the environment. The term 'respect' is consistently used by indigenous peoples to underscore the significance of our relationship and humanity […]. Respect is a reciprocal, shared, constantly interchanging principle which is expressed through all aspects of social conduct.'* (Tuhiwai Smith, 2012, p. 211).

2.4 The end of my fieldwork: Exiting the field

Fieldwork shapes you; it changes you. Feelings, perceptions, thoughts, and the everyday life of the field made me question everything, to the point that everything became relative. As an intern at ADA[17], a Development NGO based in Luxembourg, I was often told that *'There is no black or white…there is no one size fits all.*' On several occasions during my fieldwork, this sentence popped into my mind to make sense of the field, what I was experiencing, and the contradictions I came across. I truly believe my fieldwork had been unique and extremely valuable, both personally and professionally, not despite all the challenges I had faced, but because of them. I learned so many precious lessons that I could not have learned in a different context. I met many kind people who became close friends. Many of them helped me shape and reshape my research and thoughts while adapting to new situations without losing the hope that the work I carried out was somehow valuable, my research interests important, and my presence there welcome. After all, feeling welcome is the key to performing meaningful fieldwork and living a meaningful period of life. It should not be

[17] https://www.ada-microfinance.org/en (last accessed on July 25th, 2022).

forgotten that one year of fieldwork represents an important year of life you spend in a very different setting and state of mind.

Towards the end of my fieldwork, I noticed that people were very attached to me in a way that I had not noticed before. Members of Doig and friends in Fort St. John did not want me to leave. Several people tried to make me stay without imposing anything on me, sometimes saying something serious while laughing. One day, while driving to Doig Reserve, the Band Manager told me: *'Pause your PhD. Stay here and work with us! I'm looking for a Band Manager assistant!'* Someone even offered to find me a wife when they knew I was single, and many members listed the many benefits I could have from getting married to an *'Indian woman'*. After all, marriage is still very effective in making people part of the community! On several occasions, Chief Trevor told me that I was always welcome to Doig, to work with and for them. I was delighted to know that people appreciated me and that he wanted me to stay. During the farewell lunch organized by the Band Manager, I received several gifts from the community, invaluable treasures I jealously keep. I felt appreciated; it was a good feeling after the struggles to enter the community, after more than a year I spent in Fort St. John. Most importantly, these were more than gifts, as they made me realize the deep relationships I had been able to build with the community. I knew they were gifts community members gave me as an act of friendship to send me off on my journey back to Europe. As Weiner argues in her theory of the inalienability of the gift, *'In linking persons with things, the things are made into more than their own materiality.'* (Weiner, 1992, p. 499). As the *hau* for the Maori, for the Dane-zaa people too, gifts have a value that goes further beyond their own material value. They create bonds between people, nourish relationships, and show appreciation for a person while creating an enduring link to bring the person back.

Nevertheless, I wanted, and I needed to leave. Towards the end of my fieldwork, I fully realized that I had been in a cultural shock for most of the time I spent on the field. I desperately needed to exit. It was necessary for me to go through what I lived over more than a year of fieldwork, process what I experienced, reflect and make sense of things. Exiting the field is an important step, and more discussion should be reserved for it. As argued by Iversen, the focus had always been on entering the field and performing fieldwork, with little attention reserved for the process of getting out and disengaging from the field (Iversen, 2009, p. 10). Perhaps, this is because it is indeed difficult to put a real end to ethnographic research. According to Delamont, *'some ethnographers never, certainly mentally and emotionally, and by frequent return visits even physically, actually leave their field.'* (Delamont, 2016, p. 123). In this sense, Jeffrey and Troman argue: *'Ethnographic projects are never finished, only left, with their accounts considered provisional and tentative. The total length of a*

research project may be defined by the researcher/s themselves indicating its closure. Alternatively, some projects are developed throughout the whole of a researcher's life; an ethnography may become a long, episodic narrative.' (Jeffrey & Troman, 2004, p. 538). As Hockey, James and Smart affirm, *'research and the craft of knowledge, are lived experiences.'* (Hockey, James and Smart, 2014, p. x). While writing my dissertation, I have kept in touch with the Chief and Band Manager. I got in touch with the new Land code coordinator to explore the possibility of doing some work together, and I contributed to writing something about UNDRIP for the new DRFN website. It is not much, but I think it is a way to acknowledge that I have not forgotten about the community and have not disappeared. This is particularly important given the time we are all living, with the COVID-19 pandemic still on. Because of the pandemic, I was unable to travel to British Columbia over the summer of 2021 to present the first draft of my thesis as I intended to do. That is something I will likely do at some point in 2022. Meanwhile, I have kept in touch with many people I met on the field, and by doing so, as Delamont would argue, perhaps I have never completely left.

Figure 21 - Gifts from Doig: a pair of traditional moccasins, a mug and a metal bottle, an agenda with a cover beaded by Cec, some beading works and a painting made by Gary Oker.

Chapter 3 - Between traditional lifestyle and economic development in Northeastern British Columbia

I open chapter 3 by asking whether the *'Indian way of life'* has ever been compatible with the *'modern world'* and the wealth it generates. I develop my argument by referring to the relevant literature (Rich Indians by A. Harmon, Maps and Dreams & Living Arctic by H. Brody, Stone Age Economics by M. Sahlins, Beyond The Original Affluent Society by Bird-David and The perception of the Environment by T. Ingold) and to the conversations I had with Garry Oker (DRFN councillor and previous Chief), Trevor Makadahay (DRFN Chief) and Sharleen Gale (FNFN Chief).

Development and oil and gas exploitation are at the core of the chapter. While mentioning the trail clearing work I did with DRFN members at the beginning of my fieldwork (July-August 2019), I describe how members perceive development. I explain how industrialization has changed their lifestyle (with many members being wage labourers nowadays) while impacting the practice of certain activities (i.e., hunting and trapping). I refer to several conversations I had with DRFN elders to depict how they perceive the oil and gas sector, wage labour, and the disappearance of certain activities. Past pipelines and current projects are then addressed in the final paragraphs of the chapter. Starting with the Mackenzie Valley Pipeline Inquiry (1974-1977), I underline why the findings of Justice Berger are still significant nowadays. Then, I describe the LNG and CGL pipeline projects, highlighting how they are tied to economic interests that First Nations, nor the Canadian Government, cannot control.

This brings me to the political rally I attended in October 2019 and how a specific narrative based on resource extraction, economic opportunities and job creation is used by some politicians to gain consensus and voters. Linked to this is the final topic of the chapter, the need to find a balance to face the growing polarization that I have experienced in the political and economic discourse that affects people's everyday lives. In the last paragraph, I question if a just energy transition could unleash Indigenous potentialities while promoting the achievement of a new balance where the market is not the main force.

3.1 Is the 'Indian way of life' compatible with the modern world and the wealth it generates?

'What if the oil and gas industry is bringing us good things? To make things happen, to run cultural and social programmes, we need resources; we need money. What if the oil and gas industry is allowing us to make all these things? What if this sector is having a positive impact on us?' (Rose Prairie Road, July 15th, 2019).

I was on a Jeep Wrangler JK8, riding back to Fort St. John with Gary Oker after the first edition of the KEMA experience -Doig cultural camp- at Beatton Park. Gary is a current councillor of Doig River First Nation and served as a Chief from 2001 to 2005. During his mandate, he strengthened the relations with oil and gas companies while establishing elders care programmes, developing cultural/educational materials and language revitalization programmes, and implementing effective financial management (Virtual Museum of Canada, 2007).[18] In his view, Doig can be a socially and culturally lively Band if the opportunities provided by industrial development are adequately used. The economic benefits the oil and gas industry generates should be invested to meet the socio-cultural and economic needs of the community.

Understanding how industrial development, modernization, and the Indian lifestyle could coexist in the 'modern world' was one of the most difficult challenges throughout my fieldwork. On several occasions, I struggled with the general assumption that making money and being rich is not consistent with the *'Indian way of life'*. As Alexandra Harmon pointed out in *'Rich Indians'*, in North America, there is the idea that *'Indians must be poor and helpless in order to be Indian.'* (Harmon, 2010a, p. 3). Such an assumption echoes what Brody underlined in *'Maps and Dreams'* when he explained that the white man had always perceived Indians of the Canadian North as poor people, with very poor-looking houses, in bad repair and without proper and sufficient furniture. Reserves had always been perceived as destitute places where economic problems were intertwined with social issues (Brody, 1988, p. 212). It is undeniable that poverty and social problems have afflicted many communities; nevertheless, wealth and well-being have always been measured using tools and indicators that failed to properly depict the Indian economy, people's perception, and the socio-economic organization of a community. As Peter Usher has stated regarding the Inuit living in the Canadian high North: *'They are poor people, whose tables are always laden with meat'* (Usher, 1976, p. 119). Here is the thing about the Indian economy, based on hunting and gathering. Besides a shelter and those tools necessary to hunt, trap and gather, few things were necessary to the ancestors. Echoing Sahlins' explanation,

[18]http://www.virtualmuseum.ca/sgc-cms/expositions-exhibitions/danewajich/english/project/projectteam.php?action=projectteam/gary_oker (last accessed on September 22nd, 2021).

according to which *'affluent society is one in which all the people's material wants are easily satisfied'* (Sahlins, 1972, p. 1), Gowdy argued that hunter-gatherers had limited needs. They could be considered affluent as they could achieve a balance by desiring a few basic things (Gowdy, 1998, p. xxi). However, Bird David argued that as much as they were not interested in possession and accumulation, they did enjoy the abundance when circumstances permitted, besides greedily consuming what they had available (Bird-David, 1992, p. 31). Brody argued that the developed/industrialized world had always associated the Indian lifestyle with poverty because the Indian economy was not based on cash and wealth accumulation. Notably, the Indigenous peoples of Northern British Columbia had relied upon a mixed economy based on hunting and subsistence harvesting, fur trading, and occasional wage labour until the end of World War II (Coates & Young, 2016, p. 62).

Nevertheless, based on members' perceptions, they have never been poor until they entered a different socio-economic system. Since such a shift was operated, conditions for poverty were created as people were unable to adapt to the *changes* that were happening to their socio-economic organization, land and traditional lifestyle (Brody, 1988, pp. 212–213). Such an account is relevant to shed light on specific features of hunter-gatherers' societies. As Sahlins argued, needs are limited in those societies, and sharing is the rule; there is no space for accumulation, as it would be incompatible with the nomadic lifestyle. Scarcity is not conceived because food is always available as the environment itself is a storehouse. That is why there is no need to ration food; instead, food is distributed, shared and consumed on the same day it is obtained (Sahlins, 1972, p.p 1-5). In this sense, Ingold argued that going out in the bush to get food is not perceived as disconnected from ordinary life activities (Ingold, 1994, pp. 65–66). Such an account well describes the situation of the Fort St. John Indian Band until the '60s/'70s, with every male member who used to define himself as a *'traditional Indian man'*. This meant being able to hunt and trap, having a preference for consuming bush food, being able to find one's way in the bush and being willing to share what one person has (Brody, 1988, p. 210). In a series of interviews conducted by Amnesty International for a Report on cumulative effects in British Columbia, an elder from Saulteau River First Nation affirmed:

> *'When I say rich, I don't mean money. I mean that we had everything we needed. We always had plenty of food, plenty of moose meat.'* (Amnesty International, 2016, p. 33).

A similar feeling was remarked by Tommy Attachie, a DRFN elder, who died in 2017. As he said:

> *'Money sometimes it's good, but it spoils a lot of things. Me, I'd rather have an empty wallet and be able to live off the land. Us Native peoples, our culture and our stories are all out there in the bush.'* (Amnesty International, 2016, p. 34).

So, what is *'Indian wealth',* and why is this debate so relevant nowadays? Answering this question requires unpacking the concept of wealth, considering that wealth is conceived as a human invention, constantly redefined, and its meaning varies based on a particular culture and historical context (Harmon, 2010b). A first answer to the above question could be found in the Declaration proposed by Sharleen Gale (Fort Nelson First Nation Chief) during the closing ceremony of the Dene Gathering held in August 2019 at Doig River Reserve. As she read:

> *'We, as Northern Dane, plan to work together. We share a common history; we honour our ancestors, keep our traditional culture, language, and economic system, and incorporate the Dane system into modern society. We aim to do this in a respectful and collaborative way, respecting each other. We are stronger together, and we need to bring our ways to do things. We will move together towards prosperity, health, stronger people, stronger municipalities, and stronger communities. MASI!'*

Working together and being economically self-sufficient while defining social programmes for the community (as she said continuing her speech, mentioned later in this chapter) are key issues for Chief Gale to have a wealthy and prosperous community. Garry Oker shares the same thoughts, according to what he told me during the KEMA experience held at Swan Lake from August 9th till 11th, 2019. Drawing an interesting comparison between ancestors and the Dane-zaa people who currently live in the area, he explained how the land (with its resources) is the common thread between the past and the present. He said:

> *'Our ancestors were able to live during the giant animals' era, to find a way to survive notwithstanding the presence of such animals. Now, we must survive industrial development; we have to find a way to cope with it. Giant animals were put beneath the soils by Tsayaa, the hero in the Danne-zaa creation story. So, nowadays, white men exploit natural resources by extracting the grease of giant animals. It is then necessary that we learn how to use that kind of resources and do good things for us, our culture, and future generations.'*

I found this comparison fascinating, as it helps understand the essence of the Dane-zaa ontology and worldview, besides explaining how everything is connected through the land in the Dane-zaa world. The relationship with their land connects people through centuries; it is a medium that has always been present for the Dane-zaa. This relationship shaped the past, structures the present while defining the future. In the past, there were giant animals; now, there is oil and gas, and perhaps something else will show up in the future. The common thread between past and present, between ancestors and present Dane-zaa people, is the land and its content: the grease of the giant animals, the oil and gas.

This was already prophesied by Charlie Yehey[19] (the last Dreamer) and can be seen as a legacy that can benefit the Dane-zaa if used in a good way.

Figure 22 - One of the first derricks in the Fort St. John area (1952). Courtesy of the Fort St. John North Peace Museum downloaded on November 5th, 2020, from https://tourismfortstjohn.ca/what-to-do/history-heritage/history-of-the-area/

Maintaining the connection to the land while transmitting the culture to future generations and using the resources it offers is a way for the Dane-zaa to survive. As DRFN Chief Trevor Makadahay said during a Council meeting I attended:

[19] This is a recurrent topic that Charlie Yahey addresses in many stories regarding Tsaayaa, the Dane-zaa cultural hero. See chapters 2 of Where Happiness Dwells, Robin and Jillian Ridington, 2013.

'I am not going to beg; I am not that kind of an Indian! Our people have always worked since oil and gas started in the Region and before in the fur trade sector…and when the fur trade was going bad, our people worked in farms. For me, the road to prosperity is through economic development. We need to (re)build our own way of life, and there are different ways of doing it… and Treaty 8 is a tool for us to develop our Nation. We need to build a sustainable community towards economic development. We will never get enough funding for education, health, etc.…so, we need to create our own way, to be self-sufficient! So, when you get money, let's say you get a claim, and you have got C$ 100 mln; you are not going to distribute everything to community members without having a balance, a vision for the future…for future generations. You have to think about the future, and just distribution is not the way. It must be a three pillars process: ***distribution*** *(you need to give some money to the people);* ***preservation*** *(through a trust);* ***economic development*** *for the future.'*

(Doig Reserve, February 24th, 2020).

Chief Makadahay moves the discourse on Indian wealth quite far, expanding it into a new dimension. Its statement points out that it is necessary to think differently about wealth and accumulation, based on the fact that future needs must be considered. Differently from the past, having a large amount of money poses different challenges than getting a good catch or hunt. Ancestors who used to hunt and trap could distribute and consume everything in a relatively short amount of time (and they would stop hunting and trapping before taking too much to use). This is not the case with money, as the considerable amounts Bands receive from oil and gas companies must be invested to meet future needs while providing members' social, cultural and health services. That is a significant shift compared to the past, a change that Bands like Doig River and Fort Nelson First Nations are making. Thinking about the future while planning it by using the economic benefits generated by the oil and gas sector is the new challenge First Nations are facing nowadays.

Such a way of thinking counteracts the general stereotype according to which Indians are improvident and unable to plan. At the same time, it also clashes with the romanticized idea that Indians are not interested in material goods and wealth. This was clear already in the 1920s when a Chief of an Osage community in the US used this sentence to explain how Osage people used the wealth produced from oil exploitation: *'Any nationality of people would do the same thing the Osages are doing if they had the opportunity.'* (Harmon, 2010b). One hundred years later, the question remains the same: is wealth and development part of the *'Indian way'* or not?

3.2 The trail cutting experience – Between old trails and abandoned gas sites

'It is good to be out in the bush, for the body and the mind…going to a place out there gives us good feelings and every time we come back, we are happy about the experience, and we feel good with ourselves. We just like over there; we are happy to be there.'

(Doig Reserve, February 25th, 2020).

During the first summer (2019) I spent in Fort St. John carrying out my fieldwork, I got involved in the trail-cutting project that Doig River First Nation was implementing in collaboration with the BC Province. Between July and September 2019, we spent three weeks working in the forest, clearing old trails while rediscovering paths that ancestors used in the past for trading purposes, to hunt and trap. As was explained to me, the trail cutting was a pilot project aiming to understand the cultural and social importance going out and working in the bush has for members. Its final goal was to understand people's connection with their traditional land. During those weeks, I spoke with several elders and teenagers who gave me a better insight into the meaning of such an experience. Three teenagers told me that what they liked the most about the experience was being outside, doing physical exercise while working in the bush, learning traditional stories, and getting to know the land where ancestors performed their traditional activities. A girl told me that she wanted to come to be involved in something, get out of home, and do something in the bush. The same day, one of my informants told me that it is common for youngsters to go into the bush to organize bush parties as they enjoy being in the bush and are interested in spending more time out there.

The trail cutting was a unique learning experience for me. I got familiar with the meaning of using traditional knowledge while learning how to build fences and bridges from scratch, without any tool but an axe and only using the resources provided by the forest. I was struck by the fact that members did not use any ruler to check the length of the trunk, just their knowledge and experience. What I observed while working in the forest with community members resonates with what Brody and Ridington had already pointed out in their works. Technology for the Dane-zaa people represents the entire set of knowledge that can be carried with them to face everyday life issues. Technology translates into the ability to build what is needed by using the resources provided by the forest while being able to survive in the bush (Brody, 1988, pp. 190–192; Robin Ridington, 1990, pp. 67–68).

As Sam pointed out during several conversations over the three weeks of trail cutting, being in the bush and using what was available out there had always been part of the Dane-zaa lifestyle. One day we found a tree with a traditional mark, a *'culturally modified tree'* as Sam suggested. He explained that ancestors used to mark the trail in that way so as not to get lost while hunting and trapping and to know which path to use when they needed to move with horses and wagons for trading purposes. Towards the end of the day, Sam added that he had known the trail we had just cleaned since he was 10, as it was one of the trails where he learned how to hunt and trap. I asked him if there are still people making a living by practising traditional activities, and he replied that it is disappearing. He said that people are lazy; they do not want to go to the bush because of the oil and gas, as they want to work for big salaries.

Figure 23 - One of the fences we built during the trail cutting. Picture taken by Giuseppe Amatulli on August 15th, 2019.

Figure 24 - The bridge built with Jack and Sam pointing at the cultural mark on the tree. Pictures taken by Giuseppe Amatulli on August 15th, 2019.

Many elders blame laziness and the economic opportunities industrialization has brought. It is a complex issue, intertwined with a romanticized view of the old days when everyone was involved in hunting-gathering activities. I assume in that conversation Sam wanted to highlight the fact that nowadays people prefer to have a *'proper job'* and to be part of the wage economy, as in this way they get a salary, and they can buy whatever meat/food they want from the shop (and other goods and services). For this reason, he defined people as lazy because they do not want to practice traditional activities, and hunting is no longer a big part of their lives. Such a reflection deserves to be further unpacked, as I think it underlines another critical issue. Based on what I learned in the field, there are people who still hunt; they enjoy doing it. However, the main reason they perform this activity has changed: hunting does not provide the main source of food; instead, it is performed to complement people's diet while keeping the culture alive. People hunt because, by doing it, they feel connected to their ancestors, who were hunters. Food is not the main reason why they perform this activity; identity is. The very meaning of hunting as a practice has changed through the decades. It is undeniable that

it is related to the fact that getting a wage has given people the option to get food differently. In a sense, their traditional diet was also heavily influenced and shaped by the new economic opportunities. Nevertheless, it should not be forgotten that hunting has become consistently more difficult due to the industrial development of Northeastern British Columbia.

In several conversations I had during the trail cutting, members repeatedly mentioned the impacts of oil, gas, and forestry on the traditional lifestyle and, specifically, on the ability of members to enjoy hunting and being in the bush. In this regard, during the last day of trail cutting in September 2019, I had an interesting conversation with Elina, the lady from Doig I had been in touch with since the Dene Gathering in August 2019. While looking at the river, she said:

'The first effect of industrialization is on water. Water is contaminated, as well as the soil. Animals move because of the development; they have changed areas. When I was young, even the weather was different; seasons were way more regular. You know, the way in which elders were educated is the Dane way, and young people need to rediscover the traditional way of living. One day, the oil and gas industry will disappear, and people must be able to make a living in another way; they must be able to go back and live according to the ancestors' teachings.'

Figure 25 – A leaking gas well. Picture taken by Giuseppe Amatulli on September 26th, 2019.

The very same day, we found an abandoned gas compressor station and a leaking well. Elina, whose job is to monitor oil and gas wells throughout the traditional territory, reported it to the BC Oil and Gas Commission, the Government agency in charge of dealing with these issues. She told me that it is not unusual to find wells leaking, especially near abandoned compressor stations. I was surprised that she seemed at ease with the issue, as it has become customary in these areas. Pipelines and oil and gas wells are typical disturbances in these areas, and people have gotten used to them. However, only a few decades ago, the situation was totally different.

Figure 26 - An abandoned compressor station. Picture taken by Giuseppe Amatulli on September 26th, 2019.

3.3 Pipelines in the Canadian North: The Mackenzie Pipeline Inquiry, 1974-1977

Pipeline construction boomed in British Columbia after World War II. In 1957, the first gas pipeline was built in the Peace Region to carry natural gas to the US (Janicki, 2106, p. 56). Around ten years later, large oil and gas reservoirs were discovered in the Beaufort Sea and the Mackenzie Delta in the Canadian high North (Northwest Territories and Yukon). A few years later, the idea of realizing a pipeline to transport gas from the far North to the south was proposed. To better understand the impact of such a pipeline, Justice Berger carried out an inquiry from 1974 until 1977.

The Berger inquiry was the first comprehensive social, economic, and environmental impact assessment of a pipeline in Canadian history, aiming to determine the impact of the proposed Arctic Gas Pipeline to transport gas from the Canadian Arctic to Southern Canada and the US (T R Berger, 2002, p. 143; Thomas R Berger, 1977, p. 1). Two different company consortiums proposed two different routes. The Canadian Arctic Gas Pipelines (CAGP), a consortium of 80 Canadian and US companies, proposed to build a 2,400-mile-long pipeline (the longest in the world at that time) from Prudhoe Bay in Alaska across the north slope of the Yukon and along the Mackenzie Valley to Alberta and Lower 48 in the USA (Thomas R Berger, 1977, p. 15). The other route, called the "Maple Leaf", was proposed by Foothills Pipelines, a group of British Columbia and Alberta based companies. They intended to pipe natural gas from the Mackenzie Delta to British Columbia, Alberta, and the US market (Thomas R Berger, 1977, pp. ix–x, 15).

Hearings in 35 different locations (city, town, village, fishing and hunting camps) of the Mackenzie Valley and the Western Arctic were held by Justice Berger to assess the potential impact the realization of such a pipeline could have on the lifestyle of the Dene, Inuit, and Metis people living in the area (Thomas R Berger, 1977, p. vii). As underlined in the final Report, the Canadian North was a place of conflicting goals, preferences, and aspirations. His inquiry was not a simple assessment of a gas pipeline and an energy corridor; it was a debate about the future of the North and the people who lived there (Thomas R Berger, 1977, p. 1). It also defined the difference in perception that business people and locals had about the North; a frontier for the former, a homeland for the latter (Berger, 1977, pp. 1, vii-viii). In his Report, he pointed out that the construction of such a pipeline was not to be considered in isolation, as it would have fostered further industrial development. Therefore, he affirmed that in assessing the impact the pipeline could have on the region, its people and its ecosystem, its cumulative impact and the immense changes that it could provoke were to be considered (Berger, 1977, pp. viii-ix, 9). In his assessment, Mr Justice Berger considered the Pipeline Guidelines, according to which, whereas a gas pipeline is built, an oil pipeline may follow. Thus, a possible transportation corridor for two different energy systems was to be considered (Thomas R Berger, 1977, pp. 9–10). Furthermore, the gas pipeline was most likely to be looped, meaning that the amount of gas transported by the pipeline system was supposed to be increased over the years. Therefore, a second or third pipeline was expected to be built beside the first in sections or loops from one compressor station to another (Thomas R Berger, 1977, pp. 9–16).

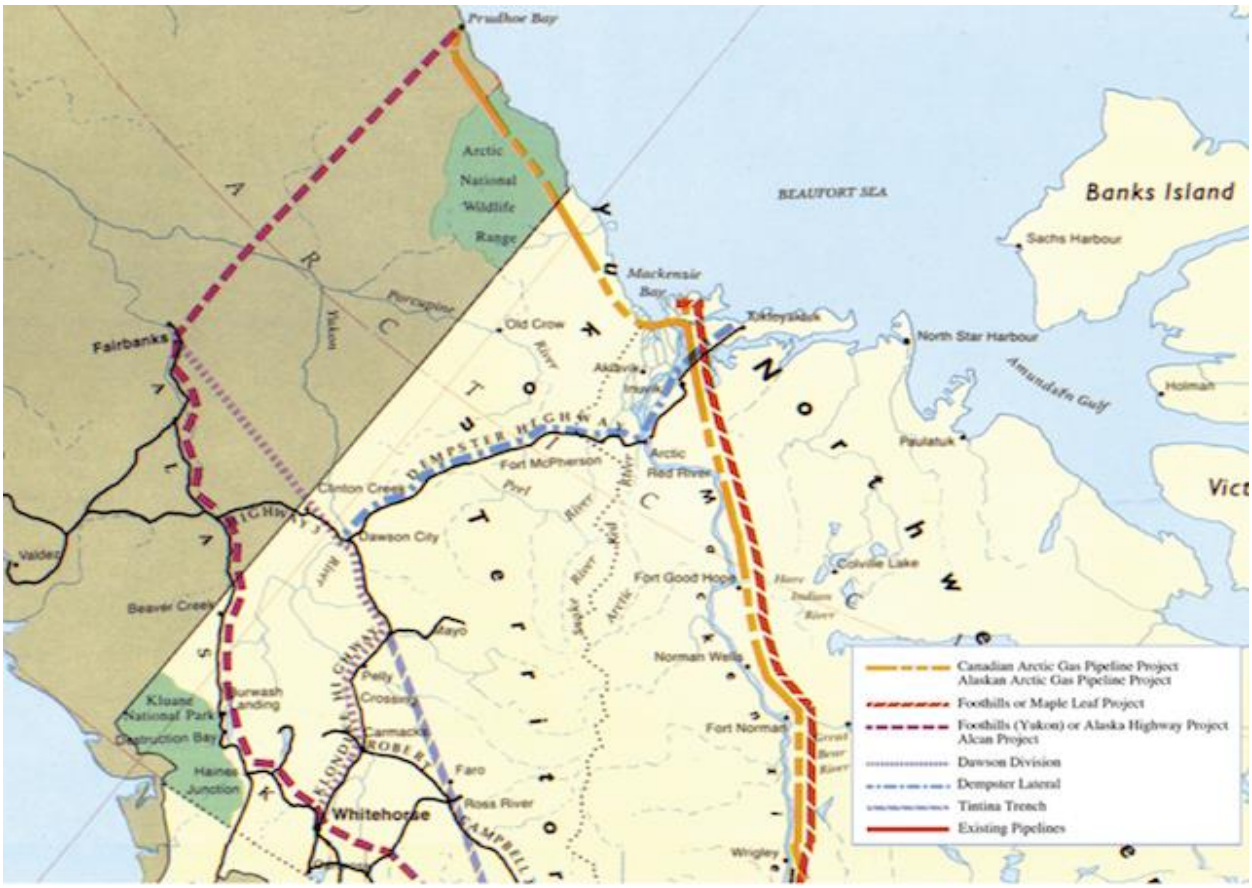


Figure 27 - The CAGP Project (yellow dashed line) and the Maple Leaf Project (red dashed line). Map downloaded from https://indigenousfoundations.arts.ubc.ca/berger_inquiry/ (accessed on January 8th, 2021).

Specific challenges and potential adverse impacts the pipeline could have had on the ecosystem were related to the fact that it was supposed to be buried in an ice-rich, permanently frozen soil (Thomas R Berger, 1977, pp. 15–16). Justice Berger strongly recommended not building a pipeline or establishing an energy corridor along the Coastal Route across the Northern Yukon or the Interior Route. The environmental damage and massive changes to the socio-economic organization of the many First Nations and Inuit communities living in the High North would have been incommensurable. The economic benefits provided by the pipeline were insignificant compared to the losses (Berger, 1977, p. xx). As Justice Berger argued, once built, the pipeline only required a few hundred people to operate it, so a minimal number of jobs (around 250) were supposed to be created in the long term. The realization of such a pipeline would not provide jobs for hundreds, even thousands, of natives of the Canadian North, as was depicted (Berger, 1977, p. xx-xxi).

The Berger inquiry provides a comprehensive view of the pros and cons of industrial development. As pointed out in the Report, on the one hand, industrialization creates employment while ensuring good salaries for those who are able and have the skills to work in the sector; however, it also creates unemployment. In fact, those unable (or unwilling) to work in the industrial sector end up being unemployed and then dependent on the welfare state, as industrial development undermines the

possibility of making a living by practising traditional activities (i.e., trapping and hunting). (Thomas R Berger, 1977, p. xx). As Berger underlined in his inquiry, native people may want to participate and benefit from the advantages of the wage economy that industrial development creates. However, that should not be the only option left for native people. As Berger argued:

> *'When the native people are made to feel they have no choice other than the industrial system, when they have no control over entering it or leaving it, when wage labour becomes the strongest, and finally the only option, then the disruptive effects of large-scale, rapid development can only proliferate.'* (Thomas R Berger, 1977, p. xxi).

Berger concluded his Report by saying that the pipeline could not solve the economic problems of the North. Those problems could be addressed comprehensively only by strengthening the native economy. He strongly advocated for an economy based on small-scale and local enterprises, modernization of traditional activities (such as trapping, hunting, and fishing), and efficient fishery management. Alongside all these things, an orderly exploitation of oil and gas could take place over the years. In his view, such a balanced program for northern development was compatible with the view and aspirations of northern native peoples (Thomas R Berger, 1977, p. xxvi).

3.4 The current situation in British Columbia: The LNG and the CGL pipeline project

The Berger inquiry was extremely relevant and timely. It was instrumental in halting the construction of the Mackenzie Pipeline while fostering the debate about the type of development needed in the Canadian North. Nevertheless, pipelines continue to be at the core of the development discourse in British Columbia, with First Nations that are considered relevant stakeholders and important partners nowadays. Pipelines are defined by the Government as *'critical infrastructure'*, a concept used to refer to *'processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government.'*[20] By using such a strong definition, the Government has shaped a powerful narrative around oil and gas infrastructure, transforming industrial projects into crucial matters of national interest (Spice, 2018, p. 42). In such a context, in October 2018, the Coastal Gas Link (CGL) pipeline was approved. Its construction depended on the approval of a major liquefied natural gas (LNG) project in Kitimat (MacPhail & Bowles, 2021, p. 489).

I had a chance to visit the LNG facility in Kitimat in September 2018, thanks to a grant from the UArctic Thematic Network on Arctic Sustainable Resources and Social Responsibility. During the

[20] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/crtcl-nfrstrctr/cci-iec-en.aspx (last accessed on September 13th, 2022).

time we spent in Northern British Columbia, we visited key infrastructure sites, such as the dock of Prince Rupert and the LNG facility in Kitimat, located a bit more than 200km southeast inland. Kitimat is famous for its Rio Tinto Alcan aluminium smelter, of which we got a glimpse while driving to the LNG facility. Our visit to the LNG facility lasted a bit more than an hour. We spent most of our time with the communication officer, who gave us an overview of the project, listing the endless benefits for Indigenous peoples of the area. When I asked whether the project could adversely impact the local community, for example, due to fly-in/fly-out workers, I was told that it is normal to have some adverse effects. Nevertheless, LNG Canada was doing its best to accommodate the needs of different stakeholders (Notes, 28th September 2018). Although the meeting was relaxed and our questions were answered comprehensively, I sensed some tension. Towards the end of the meeting, we were told that the project had not received the final approval yet, so everything was a bit on hold.

On October 2nd, 2018, the joint venture formed by Korea Gas, Mitsubishi, Shall Canada, Petronas, and PetroChina issued a positive final investment decision (FID) regarding LNG Canada.[21] As a direct consequence, the CGL pipeline was also finally approved for construction. This pipeline serves to transport natural gas from North-eastern British Columbia to Kitimat, where it will be liquefied and shipped to Asia. As explained in a press release by Mitsubishi: *'With the shift to a low-carbon society, global demand for natural gas as a major energy source suitable for coexistence with renewable energy and with relatively low environmental impact, is expected to grow steadily, mainly in Asia.'* (Mitsubishi, Press Release, 2nd October 2018).[22] The total cost of the gas liquefaction plant under construction in Kitimat is estimated to be around US$30 billion, with operations planned to commence in the mid-2020s. The plant will have a combined capacity of 14 million tons per annum and two processing units, possibly expanding to four trains in the future (Mitsubishi, Press Release, 2nd October 2018). As for the CGL pipeline, it is supposed to move 2.1 billion cubic feet of natural gas per day, and the total cost was estimated to be US$6.6 billion.[23] Among the money invested, a certain amount goes to First Nations in the form of Benefit Sharing Agreements (BSAs). In the context of the LNG/CGL project, over twenty agreements were signed with different First Nations. Although the exact amount of economic benefits is unknown, due to the fact that most of the benefit

[21]https://www.shell.com/media/news-and-media-releases/2018/shell-gives-green-light-to-invest-in-lng-canada.html (last accessed on March 24th, 2021).
[22] Full text available at: https://www.mitsubishicorp.com/jp/en/pr/archive/2018/html/0000035820.html (last accessed on March 24th, 2021).
[23] https://www.tcenergy.com/operations/natural-gas/coastal-gaslink/ (last accessed on March 14th, 2022).

agreements are not publicly disclosed, at least C$ 620 million had been allocated to Indigenous businesses in terms of contract work (MacPhail & Bowles, 2021, p. 500).

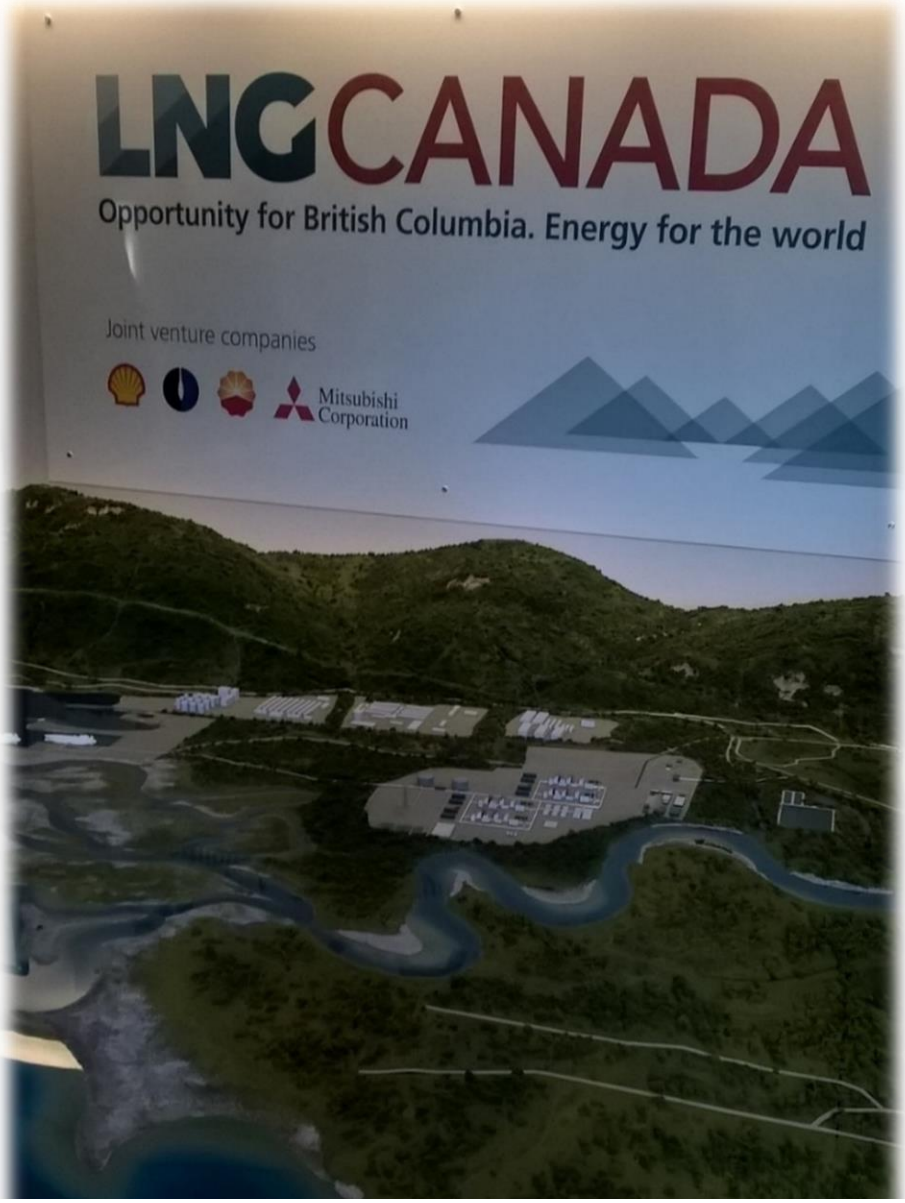


Figure 28 - A reproduction of the LNG facilities in Kitimat. Picture taken by Giuseppe Amatulli on September 28th, 2018, at the LNG headquarter, Kitimat, BC.

Whereas the conclusion of BSAs is not legally binding, more and more companies perceive them as an integral part of their Corporate and Social Responsibility policy (CSR) and a way to treat First Nation Bands as partners.[24] BSAs are proper contracts in which the benefits the community is going to enjoy are listed. According to Wilson, *'Benefit-sharing differs from the unidirectional (top-down) flows of benefits and, rather, aims at developing a common understanding of what the benefits at*

[24] In this sense, the current Deputy Chief Councillor of the Haisla Nation stated: *'When LNG Canada first engaged with us, it was the first time ever that we were seen as partners, that we were treated as partners. And we are now participants in our own economy. It means a lot.'* Full interview at: https://vancouversun.com/news/local-news/lng-canada-set-new-standard-for-first-nations-consultation (last accessed on December 6th, 2021).

stake are and how they should be shared. In this connection, it has been argued that benefit sharing is geared towards consensus building. It entails an iterative process, rather than a one-off exercise, of good-faith engagement among different actors that lays the foundation for a partnership among them.' (Wilson, 2019, p. 3). For example, Doig River First Nation signed a Pipeline Benefits Agreement (PBA) in April 2015. According to its content[25], Doig will receive a Project Payment for a total amount of C$ 1,170,000.00 (half of which had already been paid) and an additional payment of C$ 175,500.00, ninety days after notifying the Province about the conclusion of the agreement with LNG Canada for the proposed pipeline. Finally, the Province ensured to provide ongoing benefits of C$ 10,000,000.00 per year for the CGL pipeline to Doig and other eligible First Nations of the area, starting from the first anniversary of the In-Service Date of the pipeline (CGL PBA Doig, 2015, pp. 3-4).

Nonetheless, some Bands were divided regarding support for the CGL project.[26] For example, the Hereditary Chief of the Wet'suwet'en First Nation started a massive protest against the CGL pipeline between January and March 2020 while I carried out fieldwork in Fort St. John. Consisting of railway blockages and denying to enter worksites, protesters claimed that the Pipeline was approved without their consent, besides being constructed on unceded lands (MacPhail & Bowles, 2021, p. 501). The CGL pipeline horizontally cuts the Province of British Columbia and the traditional territories of the many First Nations inhabiting the area (map on the next page). Its construction could be seen as the final implementation of a new policy on infrastructure, intertwined with a new globalizing phase initiated in the early 2000s by the newly elected BC Government led by the centre-right BC Liberal Party (Bowles, 2016, p. 31). Bowles argues that energy pipelines are *'an integral part of globalizing Northern British Columbia.'* They are a relevant part of those infrastructures used to move resources from BC to Asia (Bowles, 2016, p. 256). In this sense, Coates and Young argued that the shift made by the BC Liberal Government to share government resource revenues with impacted First Nations could be seen as a way to facilitate resource exploitation in the northernmost part of the Province. It can be perceived as a strategy according to which Indigenous people's rights have been recognized without undermining the interest of BC for resource exploitation and the economic development it can ensure (Coates & Young, 2016, p. 73).

[25] Full text available at: https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-a-z-listing/doig-river-first-nation (last accessed on October 11th, 2021).
[26] More info at: https://thenarwhal.ca/tag/wetsuweten/ (last accessed on April 1st, 2021).

Figure 29 - The 670km CGL pipeline, consisting of 8 sections, is currently under construction. Map downloaded from https://www.coastalgaslink.com/ on March 24th, 2021.

Section 1 of the CGL pipeline is located within the traditional Blueberry and Doig River First Nations territory. The CGL pipeline is only one of the several pipelines built in the area in recent years. Between 2018 and 2020, the North Montney Mainline (NMML) was built to transport natural gas from Northern BC to Southern Canada and the US. Although not yet connected to the CGL pipeline, the NMML may well serve the need of the CGL and the LNG facility in Kitimat; thus, a future connection has not been excluded (NEB - National Energy Board, 2019, p. 10).

Figure 30 - Construction works of a gas pipeline section in Northeastern BC. Picture taken by Giuseppe Amatulli on October 16th, 2019.

The NMML is a 206 km, 42-inch pipeline, realized in the core of the BRFN traditional territory (Figure 31). It consists of two sections, the Kahta section (24km) and the Aitken Creek section (182km), in which two compressor stations and 11-meter stations have been built. According to Candler & McDonald, the NMML pipeline project had been defined without considering any BRFN Traditional Land Use Studies (TLUS) or Traditional Knowledge (TK) data, which would have helped understand potential clashes with current and historical land use.

There has been a general lack of consideration of the cumulative effects of such a project on the BRFN, combined with an inadequate assessment of possible future industrial development with possible project-induced demand (McDonald, Alistair; Candler, 2014, pp. 7–8). This is why the approval of the North Montney Mainline Project (NMML) could be considered the last straw, prompting the BRFN to sue the Government of British Columbia for Treaty 8 infringements and the cumulative effects of industrial development.

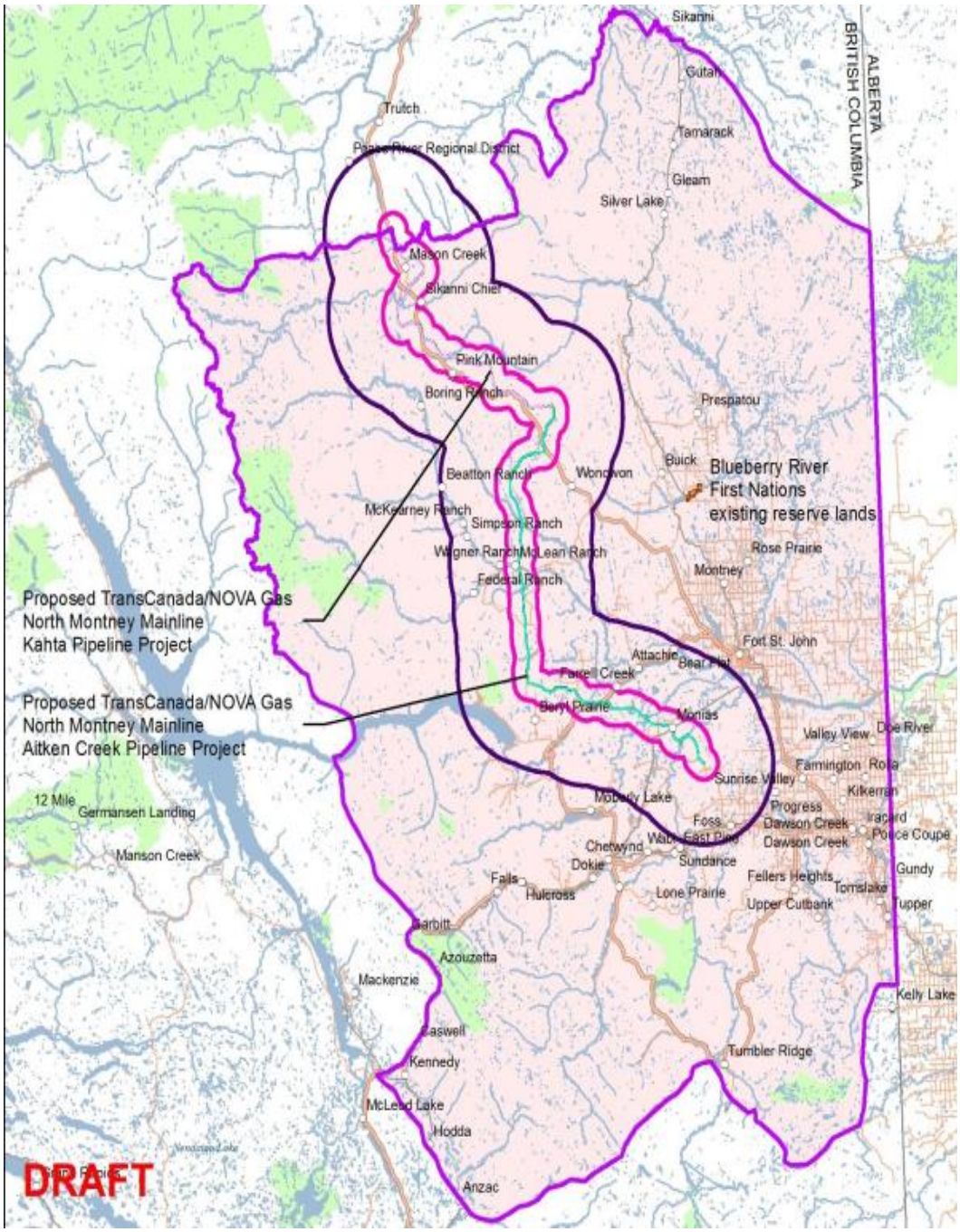


Figure 31 - The NMML pipeline. Source: Firelight Group, 2014.

As highlighted in many TLUS and Technical Reports, since the beginning of the twenty-first century, the number of oil and gas wells in the BRFN traditional territory skyrocketed, with 4340 wells opened between 2009 and 2015 (Figures 32 and 33). This trend is likely to continue with the introduction of fracking for oil and gas extraction (A. Booth, 2017, p. 8). Currently, there are 19,974 wells on the BRFN traditional territory, and more than one-third of these are active, with 74% of them being gas wells (McDonald, 2016, pp. 25–26). Undeniably, the presence of oil and gas wells requires specific infrastructures. Hence, it should not come as a surprise that in the BRFN territory, there are nearly 9,500 gas and oil facilities, meaning that their traditional area hosts 46% of the pipeline tenures present in British Columbia (McDonald, 2016, pp. 41–48).

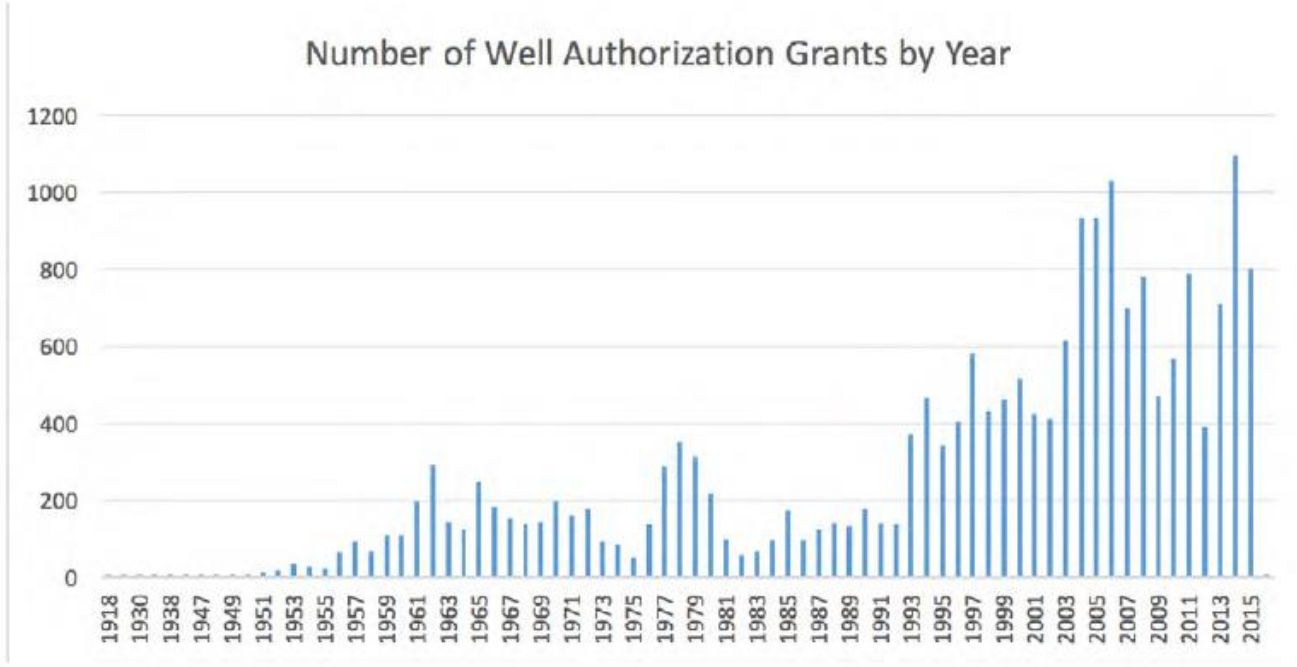


Figure 32 – Source: 2016 Atlas on Cumulative Landscape Disturbances in the Traditional Territory of BRFN.

Date	New Well Authorization Grants (#)	Total Wells (#)	% change	average annual rate of growth
Dec. 31, 1949	26	21		
Dec. 31, 1969	2195	2221		
1949-1969			10476.19%	523.81%
Dec. 31, 1989	3068	5289		
1969-1989			138.14%	6.91%
Dec. 31, 2009	10335	15624		
1989-2009			195.41%	9.77%
Dec. 31, 2015	4340	19964		
2009 - 2015			27.78%	4.63%

Figure 33 – Source: 2016 Atlas on Cumulative Landscape Disturbances in the Traditional Territory of BRFN.

As documented in the 2016 Atlas of Cumulative Landscape Disturbance, the recent authorization to open more than 2,600 oil and gas wells has resulted in the development of further infrastructures, such as 1.884 km of petroleum access and permanent roads, 740 km of petroleum development roads, 1,500 km of new pipelines and 9,400 km of seismic lines (McDonald, 2016, p. 6). A recent report issued by the Canadian National Energy Board (NEB) suggests that development may continue in the future as the area hosts the Montney Formation (Figure 35). This geological unit is estimated to contain 12,719 billion m^3 of marketable natural gas, 2,308 million m^3 (approximately 14,500 million barrels) of marketable natural gas liquids (NGLs) and 179 million m^3 (1,125 million barrels) of marketable oil (McDonald, 2016, p. 58; NEB, 2018). In such a context, the NMML has been described as a 'can opener' project, as it can pave the way to further development activities. As McDonald argued, *'the NMML cannot be considered by itself a culture killer; the expansion of the oil and gas industry may well be.'* (McDonald, Candler, 2014, p. 55). This explanation resonates with the theory of the *'death by a thousand cuts'*[27], according to which a project, in and of itself, cannot wipe off traditional practices, lifestyle, and culture of a group of people. However, many minor projects that are accumulated in time may well be.

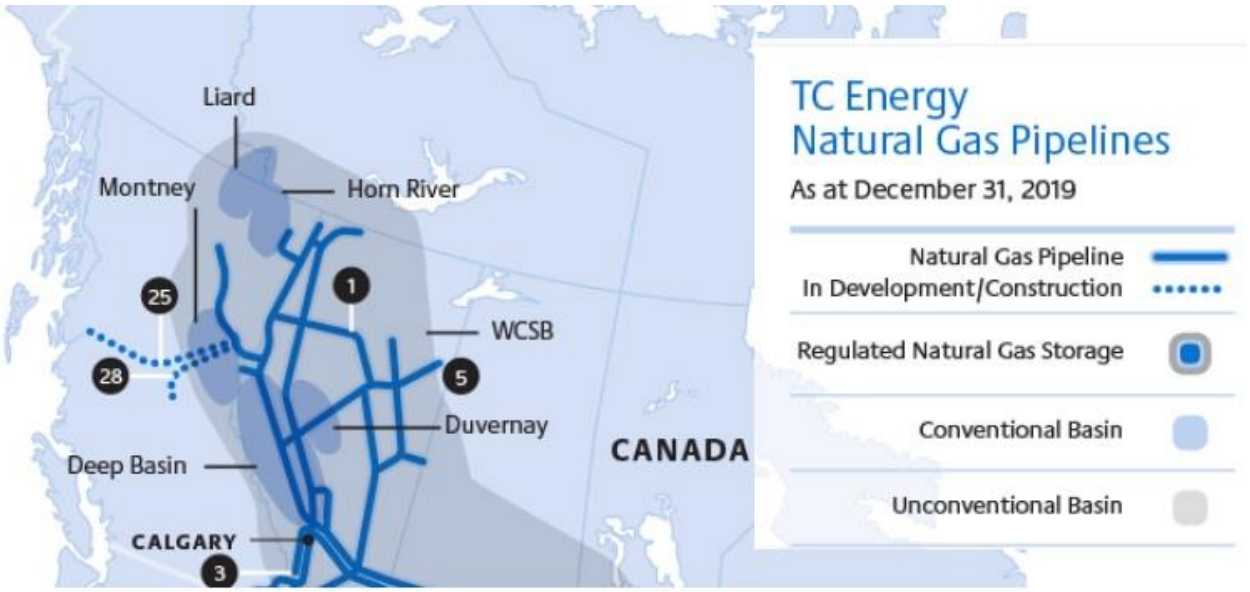


Figure 34 - The current TC system of gas pipelines in British Columbia and Alberta. Map downloaded from https://www.tcenergy.com/operations/maps/natural-gas/ (last accessed on March 24th, 2021).

[27] On the concept of 'death by a thousand cuts': https://thenarwhal.ca/blueberry-river-death-by-thousand-cuts/ (last accessed on March 24th, 2021), and https://thenarwhal.ca/death-by-thousand-cuts-comic/ (last accessed on March 25th, 2021).

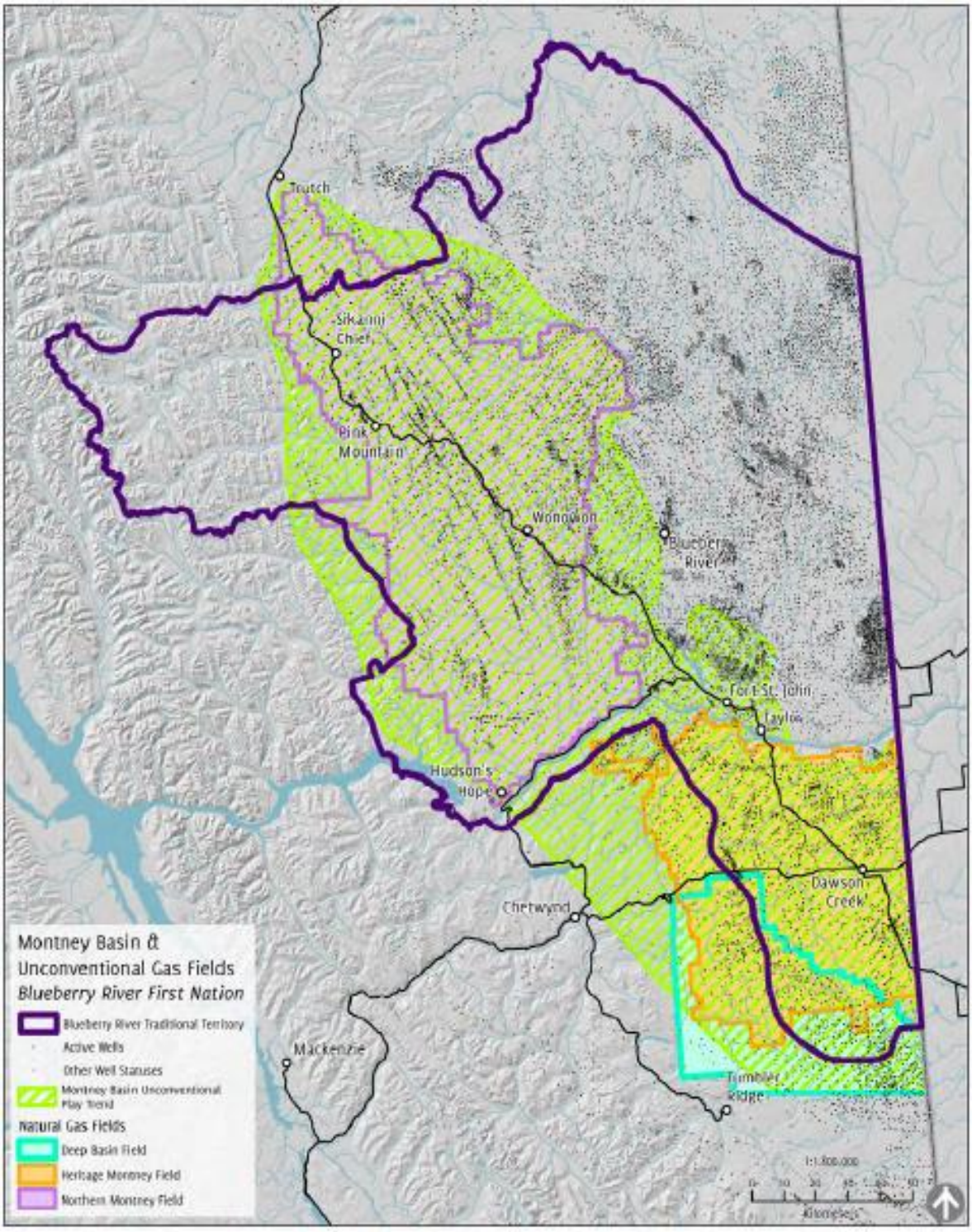


Figure 35 – Source: 2016 Atlas on Cumulative Landscape Disturbances in the Traditional Territory of BRFN.

3.5 Development at all costs – The case of the Site C dam in British Columbia

For a comprehensive overview of development projects in Northeastern British Columbia, it is worth mentioning the BC Hydro Site C Dam. This project, heavily opposed by the vast majority of the Peace River residents, has been imposed by the Government in the name of the national interest, and it embodies, perhaps as few other development projects, the *'development at all costs policy'* that has been promoted in British Columbia in the last fifty years.

Approved in 2017, under the Horgan Government, the Site C dam has a long and controversial story. Feasibility studies to build a third dam in the Peace River area started in 1971. In 1980 BC Hydro released the first environmental impact statement, in which it was reported that the project could not be completed before 1987 at the earliest. However, in 1983, the BC Utilities Commission (BCUC) issued a 315-page report recommending against the construction of such an infrastructure. As stated in the Conclusions of the Report: *'BC Hydro has failed to meet the three most fundamental and essential requirements for approval of an Energy Project Certificate […] The rejection of an Application is the only appropriate result where crucial evidence is missing.'*(BCUC, 1983, p. 308).

For more than 25 years, the project was set aside; however, it was never forgotten. It was revived in 2010 when the former BC Premier Gordon Campbell announced that the Government instructed BC Hydro to proceed with Site C. Since then, the debate around the usefulness of the dam, its economic feasibility and socio-economic impact has been revamped. A Joint Review Panel (JRP) was established in 2011 to assess Site C for federal and provincial Governments. The JRP issued its assessment in 2014, stating that Site C was not needed in the timeframe showed by BC Hydro, and it recommended the BCUC to review costs and alternatives. However, the Government of BC ignored JRP's recommendations and approved the construction of the 1100-megawatt hydro dam in December 2014. Construction work began in July 2015, amidst many court cases launched by several First Nations and the valley's landowners. Two years later, in November 2017, the BCUC issued a new report, stating that Site C was unnecessary, its power likely not to be needed, and already over budgeted (with an estimated cost exceeding $ 10 billion). It has been estimated that at least 128 kilometres of the Peace River and its tributaries will be flooded, putting farmland under up to 50 metres of water while submerging Indigenous burial grounds, traditional hunting and fishing areas, as well as habitat for more than 100 species vulnerable to extinction (Ridington & Ridington, 2013, pp. 346–350). [28]

[28] https://thenarwhal.ca/topics/site-c-dam-bc/ (last accessed on September 25th, 2022).

Figure 26 - The Peace valley that will be flooded by the Site C dam.
Picture taken by Giuseppe Amatulli on July 6th, 2019

On several occasions, Shona Nelson, DRFN Band Manager, told me that the Site C dam demonstrates what the Government should not do in terms of planning, consultation, and decision making. In a conversation we had in September 2022, Shona told me that Site C is the demonstration that the Government still applies the Two River Policy in the context of an approach to development that must be promoted *'at all costs.'* The Two River Policy was at the core of the electricity strategy elaborated in the sixties by the then premier WAC Bennet, who believed that inexpensive electricity could foster development in British Columbia. According to the Government, promoting large hydroelectric development on the Peace and Columbia River system was instrumental in creating a surplus of electricity that could power industrial development and exploit the vast amount of natural resources the Province could offer. Transforming BC into a modern and industrialized Province was the main objective of such a policy, with little concern as regards the socio-environmental impact of such a development (Govern. of BC, 2018, pp. 1–2).

Site C is currently under construction, with the flooding of the Peace valley expected to happen in 2023. Citizens' protests and environmental alliances did not succeed in stopping the project, many civil claims filed by First Nations of the area were dismissed, and even the COVID-19 pandemic did not pose a halt to the construction works that continued throughout the health emergency. Residents of the Peace Region have accepted that the dam will be realized, although they have never consented to it. Community members are grieving; grief is what is left to face such a socio-environmental disaster. On Monday, September 26th, 2022, some DRFN members met at Mile 54 gas station to travel to the Cache Creek burial site to have a short ceremony in advance of the work that BC Hydro will do to prepare for the relocation of the graves over the next summer.

In Dane-zaa culture, burial places are sacred and should not be touched. When someone is buried in a specific place, it is not allowed to move the person or to alter the burial site, as from there starts the trail to heaven. If the location is altered, the trail is broken; thus compromising the ability of the dead person to climb the trail to Heaven (Robin Ridington & Ridington, 2013, pp. 157–161). Many DRFN ancestors are buried in the valley that will be flooded by Site C. At the time I was performing fieldwork, several options were proposed by BC Hydro to address the problem. Among them, there were discussions on the possibility of installing big capsules to protect the burial sites so that they do not come into contact with the water. These capsules (or tanks) could be higher than the flow of the water, so it would be possible to realize some artwork on them; thus creating a kind of cultural sacred site, to remember that the Dane-zaa people are buried there. The other option, which seems to be the one that will be adopted in most cases, was to move the ashes to a safer place, although such a procedure goes against the Dane-zaa culture.

As Shona Nelson told me, ecological grief is something community members are going through. It will affect their mental health in the coming years when the valley will not exist anymore. In the last few years, there has been growing attention around the concept of ecological grief. From a developmental perspective, grief has been identified as the *'internal physiological and emotional responses to loss, and mourning is the period of mental, emotional and personal transition as people learn to live again in the context of loss.'* (Cunsolo & Ellis, 2018, p. 275). Ecological grief experienced as a consequence of ecological losses is then associated with the degradation of a specific site and the disappearances of species, ecosystems and landscapes. In such a context, losses in the physical environment can provoke complex grief responses due to the meaning a place has for a person, from an individual as well as communal perspective (Cunsolo & Ellis, 2018, p. 277). Many DRFN members are going through this process, aware that they did not give their consent to the realization of Site C. As Shona remarked on several occasions, *'Band members never consented to*

it; however, when it was clear that it was going to happen, we simply did not oppose it anymore.' It resonates with what Roland Willson, West Moberly First Nations Chief, said after signing a partial settlement agreement in June 2022:

'We're never going to be in agreement with Site C. That's never going to happen. And every time we drive by that development, it's going to be a constant reminder of what's been done to us.'[29]

3.6 'The world needs more Canadian gas!' – Between current development and future opportunities

'The world needs more Canada; the world needs more Canadian gas!'

That is how Bob Zimmer, MP from the Conservative party, answered a question during a political rally held at the Lido Theatre of Fort St. John on Thursday, 10th October 2019. The discourse around how oil and gas exploitation shapes the town's political life, besides affecting its socio-economic structure and defining mainstream cultural values, is very much alive in a city like Fort St. John. As argued by Wilson and Bowles, such a narrative has been used to reposition British Columbia within the bounds of the new global economy while promoting liquefied natural gas (LNG) as clean energy that can help face climate change. Thus, supporting the construction of large infrastructures, such as the LNG liquefaction facility and the CGL pipeline, has been used to shape a new narrative around the path BC should follow to be green while fostering economic development (Wilson & Bowles, 2016, pp. 15–16). For its part, LNG Canada advertises this project to promote the transition to a greener economy. LNG is portrayed as a clean energy source that can help reduce global greenhouse emissions as it would replace coal use in China. According to the company's estimations, replacing coal use in China, LNG would reduce emissions comparable to the emissions produced by 80% of the cars on the road in Canada every year or 100% of BC emissions per year (MacPhail & Bowles, 2021, p. 502).

The first question directed to Bob Zimmer was about business and local economy, on how to build a more robust economy while creating new jobs and looking after the environment. He answered:

'We can have all of them. With our natural gas, we can help China lower its emissions (by half in some cases) while fostering economic development in the North.'

The debate got very interesting a few minutes later when the vice-president of the Fort St. John Chamber of Commerce asked a specific question on LNG and renewable resources. She inquired:

[29] https://thenarwhal.ca/site-c-dam-settlement/ (last accessed on September 25th, 2022).

'Fort St. John is a community built around resource development while benefitting from projects like the LNG one. If elected, will you continue to support this sector, or would you move to sustainable renewable resources? If your party will move towards a sustainable direction, will you support the development of local natural resources industries?'

Zimmer replied:

'We all know that LNG is a great thing for the world, and I think this community here understands this! Just a small number: our yearly emissions contribute to 1.6% of the total emissions in the world. China can emit the same amount in 21 days! So, our approach is that we need more Canada in the world, not less! Providing natural gas to Japan and China is a great thing; we should do more. We need more Canada in the world!'

Answering the same question, Ron Vaillant, candidate of the far-right People's Party of Canada, said:

'We are pro-energy sector. We do not agree with the Paris Agreement; we do not believe in climate change! We will use our Constitution to approve pipelines; we need to declare pipelines as a national interest. As regards the environment, we have high standards already; we are doing very well!'

Figure 37 - The political rally at the Lido Theatre - Picture taken by Giuseppe Amatulli on October 10th, 2019.

Those answers made me think of what Hannah Appel defined as *'cyclical oil-time'*, which in this case could be renamed *'cyclical gas-time'.* As she argued, the intensity of infrastructure approval and construction is sustained by an incredible influx of external capital and investments, in which boom, futurity, and deferral are intertwined (Appel, 2016, pp. 45-46). A more balanced answer came from Mavis Erickson, the candidate from the Liberal Party and previous Chief of the Carrier Sekani Tribal Council. She said:

> *'This Government has approved the LNG and TransMountain Pipeline. We are using the money generated by these pipelines to diversify our economy in the North while fostering the green economy and creating a balance between economic development and the environment. I would like to see more benefits for the North from these initiatives.'*

Balance is a word I have heard on very different occasions and from different people throughout my fieldwork. During the BRFN cultural camp, Chief Marvin Yahey mentioned that the Balance had been lost when explaining cumulative effects and how companies and the Government addressed them. In the opening of the litigation Yahey v. BC, the Plaintiffs (BRFN) affirm: *'What has been lost, especially due to the relentless development of the last twenty years, is the balance.'* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 306-307). During a conversation I had with DRFN Chief Trevor Makadahay, I asked if he wanted to see something specific highlighted in my doctoral research. He said: '*Balance. We need balance. We need to find a balance between the environment and industrial development.'* (Doig Reserve, June 17th, 2020).

Reaching a balance when it comes to extractivism and industrial development is challenging, and it implies avoiding polarisation, which is precisely what I experienced throughout my fieldwork. Polarisation and stereotypes are still very much alive, and they are used to explain complex things in the easiest way possible. What I am trying to say is better explained by the pictures below. Since the beginning of my fieldwork, I felt that there was an expectation of picking a side, of being for or against the oil and gas industry. Such polarization is exacerbated to the point that people may feel the need to show their support for the sector by having stickers on their SUVs or pickups. This resonates with what several members told me during our many conversations. In some cases, members were very keen on expressing their support for the oil and gas sector. As an informant told me

> *'I used to work in the oil and gas sector; I LOVE oil and gas. You can make a good living out of oil and gas. I used to do environmental monitoring for pipeline companies, and it was a good job. You know, that is what we can do, where we can get involved. We can monitor our land using our Traditional Knowledge.'* (Fort St. John, September 5th, 2019).

Figure 38 - Picture taken by Giuseppe Amatulli during the West Moberly cultural camp on July 26th, 2019

On other occasions, people were less enthusiastic about the oil and gas sector, although they were conscious of its benefits. As an elder of Doig told me:

> *'When you think about it, about all these big industries…they are establishing a new development path…the Government wants to do so! I believe what is happening is that the land is contaminated because of the chemical things used by those industries. But then, if you ask me if I want the oil and gas industry…it is hard, it is hard to say. It is a hard decision to make; how can we live without it? How can we get along without it?'*
>
> (Swan Lake, August 10th, 2019).

As these accounts show, members may have different opinions about the oil and gas sector. However, they share the idea that the jobs the sector provides are fundamental to making a living and that it is tough to imagine a life without oil and gas. Nobody seems to think that there may be a different path to follow. Such polarization, intertwined with a lack of options for future perspectives, has been actively supported by the province. Since the early 2010s, the BC Government has adopted a clear development path whose main aim is to make BC an 'LNG province', justifying this with the creation of thousands of new jobs and the massive economic growth the sector can bring (MacPhail & Bowles, 2021, pp. 498-499). To facilitate the acceptance of the LNG/CGL project, the provincial government adopted a specific strategy to increase the economic benefits granted to First Nations,

providing that Bands accepted the project. As a result, in the last fifteen years, the BC Government had signed more than sixty agreements with First Nation Bands, promising the transfer of a relevant amount of money to each Nation, on the condition that they would not oppose the project or bring it to Court[30] (MacPhail & Bowles, 2021, pp. 499). Whereas many residents and First Nation members might not see a future without pipelines and gas extraction, they are interrogating themselves about what is next and what to do to reduce the current energy consumption path.

Figure 39 - Riding to Fort St. John. Pictures taken by Giuseppe Amatulli on June 9th, 2020.

[30] At the same time, the provincial Government ensured economic benefits to LNG Canada, in terms of tax reductions and subsidies. For example, a tax credit for LNG was set up, allowing the company to reduce its corporate income tax. In addition, an agreement was concluded to provide electricity at a subsidized rate, together with other exemptions and deferred payments on the provincial sales tax. According to the latest estimation, these subsidies will ensure savings to the company for C$ 110-130 per year for 20 years.

This desire had been confirmed in a very casual conversation I had during a bicycle ride with a friend from Fort St. John. While telling me about her new house, she said: *'You know, I do not want a conventional heating system in my next house!'* I was intrigued by this assertion, so I asked her opinion about the gas industry and related pipelines. She gave me a very detailed answer, arguing that the discourse should not be about being in favour or against pipelines as, for the time being, we are dependent on fossils, even if we integrate them with renewable sources. Instead, we should question ourselves about the huge amount of energy we spend and the increasing energy demand we have year by year. As she said:

'We need to rethink our growth, we need to question where we are going, and we need to use our technology to develop better ways to save and consume less energy. We also need to diversify our economy, to have a better balance to not depend on just one sector.'
(Fort St. John, June 10th, 2020).

3.7 Could energy transition unleash Indigenous potentialities while fostering a new balance?

The conversation I had with my informant made me think about the entire energy sector. She pointed out that the real issue is not about being in favour of pipelines or not; instead, it is vital to understand how to use resources more effectively. This resonates with what the Shell Operation Manager in Fort St. John told me during a conversation, as he pointed out:

'It is important to discover new and better ways to use energy, to make things work better and in a more efficient way. That is how we can reach a balance. To do so, it is fundamental to make people understand how important it is to use the resources present in this area.'
(Fort St. John, July 3rd, 2020).

After this conversation, I started thinking that reaching a balance is a complex process related to the extraction, transport, storage and distribution, consumption, and usage of a specific resource (oil, gas, timber, or something else). At the same time, a balance must be reached regarding political and economic aspects, from the consultation process to the construction stage of a pipeline, from getting access to a specific resource to marketing and profiting from it. Perhaps, finding a balance is about understanding how to do things differently, in a better and more inclusive way, taking into account the socio-economic, cultural and political dimensions while respecting how local people envision their future. As Sharleen Gale, Fort Nelson First Nation Chief, said during the Dene Gathering:

'I do not have anything against industries or the oil and gas sector, but we need to understand how to do things in a good and better way. Sometimes it happens so fast that it is difficult.

So, when the CGL pipeline was proposed, a few Nations came together, and they wanted to have a proper role in that project…and that is why the coalition wants to buy the pipeline. It is important to be self-sustainable, to own the company! If you are the owner, you can decide how to do things. You can incorporate Indigenous values and knowledge to the development and really make a difference within the community by building infrastructure, developing social programs, etc.'

(Doig Reserve, August 6th – 7th, 2019).

In her reflection, Sharleen was referring to two different initiatives led by First Nations. The First Nations Major Project Coalition was founded in 2015 to invest in significant infrastructure projects on First Nations' lands while preserving the environment, ecosystem, culture and traditional practices of communities by enhancing economic well-being and cultural revitalization.[31] The other one is the First Nations LNG Alliance, created to provide information about the LNG project in British Columbia, discuss environmental concerns related to the project, bolster its promotion and the benefits it can ensure to First Nations.[32] Based on Sharleen's view, would it be possible to say that development and wealth accumulation is compatible with the *'Indian way of life?'* To answer this question, it might be necessary to interrogate members on the significance a project such as the LNG or CGL has for their community. Many community members in favour of such projects perceive them as a possibility of addressing climate change pragmatically while fostering local economic development and advancing reconciliation (Chen, 2020, p. 9). According to Karen Ogen-Toews, CEO of the First Nation LNG Alliance:

'There are very many views of what reconciliation means. Here at the Alliance, we tend to focus on the economic aspects – but many reconciliation outcomes are connected. In fact, I think reconciliation goals such as individual and community sustainability and wellness are linked to economic development and governance. And not everyone is ready to move forward at the same pace. We see several setbacks every day to lofty goals of reconciliation -but, in my opinion- the LNG Canada Final Investment Decision is a key indicator of progress on reconciliation. I do not mean to oversimplify this – to say that reconciliation comes down to an LNG project or that there is unanimity on the support of the project at the grassroots level. However, I do think it shows that complicated projects can proceed in BC if the ingredients are right.' (Karen Ogen-Toews, October 20th, 2018).[33]

[31] More info on https://www.fnmpc.ca/ (last accessed on April 1st, 2021).
[32] More info at https://www.fnlngalliance.com/ (last accessed on April 1st, 2021).
[33] Economic Reconciliation in Canada: a series - First Nations LNG Alliance (fnlngalliance.com) (last accessed on April 6th, 2021).

For the Alliance, economic development must be understood in the context of reconciliation, but not everyone shares this view. Many anti-LNG and anti-CGL groups refused those projects as the only way to foster development in rural and Indigenous communities, pointing out the need to develop a real alternative to the extractive industry and the socio-political and economic dependence it produces. For LNG's opponents, the project has substantial socio-environmental impacts associated with the production, transportation, liquefaction and exportation of shale gas extracted by hydraulic fracking techniques (Chen, 2020, p. 11). Research has shown that LNG is a particular form of gas that requires a lot of energy (around 20% of the gas generated) in the process of liquefaction, transport, and regasification. This means that the environmental benefits associated with it are lower than what the Government of BC has advertised to promote the project to the public (Hughes, 2015, p. 46). From an economic perspective, those two projects do not seem to make a substantial difference in the long term. It has been calculated that once the CGL pipeline is completed, only 250-300 people will be needed to operate such infrastructure. Simultaneously, the oil and gas price volatility could seriously undermine the profits that the two projects should generate in the medium-long term. Finally, it has been pointed out that exporting gas today will oblige Canada to become a net importer of natural gas in the foreseeable future (Hughes, 2015, pp. 43–44).

Hughes argued that oil and gas resources must be managed with balance, using them appropriately and based on actual needs. In his view, these resources have often been used in the name of economic development, ensuring considerable economic gain to a strict number of investors while damaging the ecosystem. In addition, their exploitation had not ensured local communities' real and long-lasting socio-economic development (Hughes, 2015, p. 46). So, why are those types of projects proposed and supported by policymakers? How do they gain public support? According to Coates and Young, these projects are linked to the ambitions of gaining substantial and long-term economic benefits. This is intertwined with the general idea that has gained support in Canada in recent decades, according to which the development of the North is only possible if natural resources are exploited according to market demand. This has meant that the economic trajectory of the BC Province has been determined by external factors (the expanding Japanese economy first and the Chinese one lately), with little or no control exercised by local communities (Coates and Young, 2016, p. 57, 66-68; Wilson and Bowles, 2016, p. 8). In such a context, where does the balance stand? What does balance mean? Perhaps, finding a balance between development, use of resources, and traditional lifestyle means finding a new and different direction.

Coates and Young argue that during the major economic boom Northern BC experienced in the 1950s and 1960s, little control was exercised over the pace and direction of development (Coates & Young, 2016, p. 64). Perhaps it is now time to shift the paradigm when talking about development and growth. A different path can be followed besides resource-based forms of mass production, which have shaped economic development in past centuries (Jacobs & Mazzucato, 2016, p. 205). As Bowles pointed out, the debate around economic growth and the form the development will take in the following decades shapes the discussions about the future. In this context, finding a balance between environmental stewardship and economic growth will only be possible through economic diversification. For a long time Northern British Columbia has relied on natural resource exports to ensure economic development and employment (Wilson & Bowles, 2016, pp. 10–11). It is now time to reflect on how resources are used, perhaps to challenge the resource-based economy that has shaped and defined British Columbia in the last decades. Such a need is strictly intertwined with the necessity to ensure a just transition, not just a transition, to a post-carbon, green economy (Mertins-Kirkwood & Deshpande, 2019, p. 17). As Abram et al. had pointed out, *'the decarbonization imperative presents an opportunity to decisively steer societies towards an ecologically and socially more inclusive path, reflecting a decision to live in a different type of society, not simply a low-carbon version of the current one.'* (Abram et al., 2020, p. 2). This is especially true for First Nations, given that in their view, development has never exclusively been about economic growth. It has always been about reaching a balance between economic opportunities and socio-cultural continuity while ensuring better living conditions for members and future generations.

Nevertheless, reaching a balance is not easy due to the different meanings such a word can have for different people, Band members and not. Within a Band, elders may have very different opinions compared to what youngsters intend with the word balance (as was the case with hunting and young people being lazy, according to Sam). In this context, some people may perceive reaching a balance as a way to 'depolarize' the discourse around oil and gas, as a way to defect the opposition between pro or anti-oil & gas. In some cases, the word balance was used to manage conflicts within groups and find a way to navigate the arduous path of development and environmental protection. Therefore, a balance may well be a means to deflect conflict, a form of compromise. In this sense, new climate policies represent an opportunity to ensure balanced and sustainable development for First Nations. Northern communities favour development, whereas they are appropriately included in the decision-making process, and when they can decide to invest in alternative industries, not exclusively driven by market demand, and that can ensure a just transition to a post-carbon economy. In this sense, the recent decision of the Federal Government to invest a sum of more than C$ 40 million into the Fort

Nelson First Nation (FNFN) project to build a geothermal power plant goes in the right direction. As affirmed by Sharleen Gale, FNFN Chief:

> *'Our Elders constantly remind us that our future is directly tied to our land and the ability to sustain future generations depends on how we manage the land and our resources today. The Clarke Lake geothermal project puts us on a path that we can feel confident in.'* [34]

Fort Nelson has greatly been affected by the boom-and-bust cycle (Stephenson et al., 2012, pp. 49–51). As Gale pointed out in an interview released to 'The Narwhal', the recent downturn in forestry and natural gas, together with the COVID-19 pandemic, has triggered the need to look for something different, sustainable in the long-term, and that can solve long-lasting problems. The Clarke Lake project will use existing infrastructure (well pads and roads) and is expected to generate 15MW of electricity, enough to provide clean energy to 14.000 homes. Moreover, there are plans to use geothermal energy for greenhouses to produce food locally. This will also address another compelling issue that northern Indigenous communities must face: food security in the Canadian North. Producing food locally will cut prices and carbon emissions, as the amount of food to be flown to the North is expected to decrease considerably.[35] Perhaps, this is the 'new balance' that must be achieved, which is intertwined with the need to find new and better ways to use natural resources while discovering new lifestyles and reconciling them with traditional practices and culture. A balance that does not exclusively depend on the market, a different model in which economic growth has a limit, and it is not the mantra to be followed.

[34] https://thenarwhal.ca/geothermal-energy-fort-nelson-fn-ottawa/ (last accessed on April 7th, 2021).
[35] https://www.cbc.ca/news/canada/british-columbia/fort-nelson-first-nation-geothermal-project-funding-1.5955903 (last accessed on April 7th, 2021).

Chapter 4 - A first glance at the concept of cumulative effects of industrial development in Northeastern British Columbia

I open this chapter with a poem written by Seanah Roper, the President of the Fort Nelson Literacy Society. I met Seanah in September 2019 during the Wild Words Event organized in Fort St. John (27th – 29th September 2019). During the opening evening, she read some of her poems on the effects the ups and downs of the oil and gas industry generate in places like Fort St. John and Fort Nelson. I believe her poem *Home Again* is perfect to open the chapter on cumulative effects, as it wonderfully describes the impact extractivism has on people's lives.

Home Again, Seanah Roper, 2019

It's been a long time since he's been home for any length of time.
Kind of nice...having the bed to myself,
House tidy, everything in its place, no beard trimmings to wipe up
That kind of thing.

We went to the rallies, signed the petitions, all that,
But it didn't bring back the jobs.
It didn't bring back the big diesel with its crackling radio,
The only thing it brought back was him.

Kind of nice to have the third chair filled at dinner,
To wake up at night without emptiness, the missing feeling.
I don't know when we forgot…
When we forgot how to talk to each other.
There were quick calls from camp, the two weeks in, filled with fixing, repairs, yard work.
We barely had to talk.
It's not a bad thing, that we forgot,
The silence is not bad.
We can learn how to, again.

He's wearing those coveralls every day, like a skin that won't shed.
He's quiet.
She looks at him, curious, so curious about him. He's here now, suddenly.
Our lives are uncertain now,
But I look at them together and feel whole.

4.1 What are cumulative effects? An Indigenous and institutional perspective

"The impact of industrial development has been massive on us. For me, industrialization started with the fur trade and then with agriculture and farming. We were displaced from our land, and you know, when we were displaced, we were not able to cope with that, we were not able to accept the ***change,*** *and we found comfort in any sort of addictions (alcohol, drugs, etc.). Every time there is a* ***change****, there is a need to cope with it. There is a necessity to learn to deal with it, to mitigate it… You need to accept* ***changes****; you need to cope with* ***changes;*** *you need to be able to* ***change****! Otherwise, you end up in addiction. It is important to adapt our way of life to the present, to this world. You know, our way of life was beaten by* ***routine****; our way of life was* ***routine****…the seasonal round, the different activities we used to do during different seasons. But then, when things started to* ***change****, and something disrupted it… that was a problem. We lost our* ***routine****, and we were not able to cope with it and adapt to the* ***change****. It hit us hard; it hit our spirituality… that is the spiritual trauma we are still suffering nowadays."*

(Trevor Makadahay, DRFN Chief, Doig Reserve, June 17th, 2020).

As argued by Anna L. Tsing, *'changing with circumstances is the stuff of survival.'* (Tsing, 2015, p. 27). If asked to define cumulative effects with just a word, Chief Makadahay would likely use the word ***changes***. Changes to the land, the environment, the lifestyle, and the socio-economic organization of the community. Changes that people could not understand, to which they could not adapt, disrupted their routine, the life they used to live since time immemorial.

The word c***hanges*** is at the core of the definition of cumulative effects elaborated by Hegmann, according to which *'cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions.'* (Hegmann et al., 1999, p. 3). The Canadian Environmental Assessment Agency (CEAA) defines cumulative effects as *'any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out.'* (Section 19, Canadian Environmental Assessment Act, 2012). For the CEAA, a Cumulative Effects Assessment (CEA) is an Environmental Impact Assessment (EIA) done well (Hegmann et al., 1999, p. 3). Indeed, the CEA is an important EIA component nowadays (Duinker & Greig, 2006, p. 153).

Nonetheless, some scholars argue that these definitions oversimplify the concept of cumulative effects, providing a limited description of how changes occur and accumulate (C. J. Johnson, 2016, pp. 24–25). Johnson suggests a more inclusive definition of cumulative effects that considers the full range of changes and their consequences. According to his definition, *'cumulative effects should refer*

to the synergistic, interactive, or unpredictable outcomes of multiple land-use practices or development projects that aggregate over time and space and that result in significant consequences for people and the environment.' (C. J. Johnson, 2016, p. 25).

Willow argues that cumulative effects manifest themselves in different ways. They can be:

- **additive**, when their impact can be measured by summing multiple separate effects of several physical activities;
- **synergistic**, when the combined effect of two or more activities is bigger than the simple sum of the parts;
- **antagonistic/compensatory**, when the combined effect is smaller than the sum of the parts or offsets each other (CEAA, 2018, pp. 42–43; A. Willow, 2017, p. 23).

Additionally, the CEAA has identified another type of cumulative effect, the **masking** one. It manifests itself when the effects of a specific project mask the effects of another one in the same field, i.e. when the effects of a project are bigger and hide the effects of a smaller project (CEAA, 2018, p. 44). In most cases, cumulative effects manifest themselves as a combination of additive and synergistic effects (Seitz et al., 2011, p. 173; A. Willow, 2017, p. 23).

UNBC Professor Annie Booth, who has done extensive research on the concept of cumulative effects, has elaborated another definition, using a more ontological approach. According to her, to know what cumulative effects are, it is necessary to '*understand what it must be like to have your entire culture and sense of self-destroyed, inch by inch. It is not simply a loss of a species, a single cultural practice, or a right. It is multiple, uncoordinated assaults on multiple species, entire ecosystems, and human lives that are made up of interconnections among daily practices, sights, spirituality, cultural realities, meanings of particular landscapes, and when and how you act in all these landscapes, which is connected back to all the species and ecosystems that interact with one's life.'* (Booth, 2016, p. 70).

Attempting to provide a definition that considers several areas impacted by industrial development, the Government of the Northwest Territories has defined cumulative impacts as *'changes to the biophysical, social, economic, and cultural environments caused by the combination of past, present and reasonably foreseeable future actions. Cumulative impacts can be positive or negative.'* (Government of Northwest Territories, 2017, p. 2).

4.2 'You cannot buy happiness!' - Cumulative effects explained by Fort St. John residents: an introduction to the oil patch culture

'The oil and gas sector has ruined, and it keeps ruining this city. From a socio-cultural point of view, it gives young people a wrong perception of money while discouraging them from getting a degree. Youngsters that can earn C$ 50-60 per hour do not have any motivation to finish high school or to get enrolled at any University, because they will never be able to earn that amount of money in another sector, even with a degree. So, they drop out of school to work in the oil and gas sector. They earn lots of money; they spend a lot, take out loans…and fall into the consumer/debt trap. Then, when the sector crashes, they become unemployed, with no education and economic problems because they do not know how to pay their debts back. The point is that when they earn such a huge amount of money, they buy expensive pick-up trucks, houses, quads, etc. ***It seems they want to buy happiness****. This is a social issue that the oil and gas industry has produced. There is no cohesion within society; everyone comes here to work in the oil and gas sector, and many of those involved in that sector think they can reach happiness by buying all the things they can afford. There is no value for the family; there is no time for the kids. Families are disconnected, kids do not spend time with their parents, and everyone is stressed and unhappy at the end of the day.* (James, FSJ resident, DRFN Rodeo, August 3rd, 2019).

Figure 40 – A picture of the area where I used to live in Fort St. John.
Picture taken by Giuseppe Amatulli on September 15th, 2019.

What emerged from this conversation is that the oil and gas industry has produced a materialistic society in which everything has a price, meaning that everything can be bought. What I found fascinating is that instead of pointing to the market economy for producing such a society, the sector that allows the exploitation and the marketing of subsoil resources is held responsible. At its peak, the extractive sector offers incomparable opportunities (in terms of earnings and wealth accumulation) to those who embrace its values. However, it also poses a significant burden on the psychological well-being of the people living in those areas (Wright & Griep, 2019, p. 77). In fact, not everyone may want to live according to these values. A Filipino family with whom I spent a considerable amount of my free time during my fieldwork is the perfect example. They moved to Northern British Columbia around ten years ago, and after starting in the oil sector, Charles quickly moved away from it, finding a better job.

'It was too much. I worked at least 10-12 hours per day, sometimes for 21 days in a row. It was good to start off, as I just moved here. But I didn't have time for my family; it is not a job you want to do if you have a family. But I know people, single men, who worked up to 16 hours per day, and in a few years, they had their house and pick-up paid back. But I don't need a C$ 100.000 brand new track to be happy; my second-hand car is enough.'

(Charles, FSJ resident, Fort St. John, July 25th, 2020).

Figure 41 – Walking in Fort St. John. A typical house with a motorhome and a couple of pick-ups parked outside. Picture taken by Giuseppe Amatulli on September 1st, 2019.

The dichotomy between workers in the extractive/energy sector and people working in other sectors was also highlighted in a conversation I had with the director of the FSJ cultural centre. It was a cold, though sunny, Monday morning when I entered the cultural centre, and my view was captured by the potteries exposed in the art gallery. A few minutes later, I heard someone saying: *'Not bad for a small art shop, eh? Do you want to have a look at the theatre that we are renovating?'* Seb gave me a tour of the theatre; then he showed me the rest of the cultural centre, the community library, the big conference room, and a daycare for children. While visiting the daycare, he started speaking about the socio-cultural situation of the town. He informed me about a significant division among residents, as not everyone shares the *'oil patch values'*. Many residents prefer to be employed in other sectors, earning considerably less though having a different lifestyle. In his view, workers in the oil and gas sector are easily caught in the debt trap. It becomes a lifestyle, and people are unable or simply do not know how to stop buying stuff and taking out loans. A household can earn up to C$ 200,000 – 250,000 a year and still be one step away from bankruptcy.

> *'Teenagers drop out of school as they are not motivated to pursue a degree because family members or relatives working in the oil and gas sector make big money. The situation is even worst for girls, as the sector is predominantly dominated by men. So, most of them end up being at home; they get married, and they take care of the family. Obviously, this is a big problem as it affects women's well-being, their perception of themselves and their own self-realization. Without mentioning the worst-case scenario, where women end up suffering all sorts of violence and abuse within the household…'*
>
> (Conversation with Seb, Fort St. John, July 15th, 2019).

In the 2016 Amnesty International Report *'Out of sight, out of mind',* many residents of the area offered their witnesses on these issues.

> *'I don't get hit, though I get a lot of emotional abuse. But some women get hit because their men hit the bar first. They come home, they come through the door, and they explode. How hard you work, how much you party, and how many toys you have…that's oil patch culture.'*
>
> (Amnesty International, 2016, pp. 43–44).

Such a toxic environment boosts domestic and sexual violence and emotional abuse. Many women witness their male partners exert pressure or control them, as they are the breadwinners. As Helen Knott[36] said to Amnesty International:

[36] Helen Knott is a member of the Prophet River First Nation, author of the book *'In my own moccasins'*, where she tells her personal story of violence, abuse and intergenerational trauma. She now advocates for Indigenous girls and women.

'Violence has been my life. I did not even realize that this was not normal. When you experience a lot of violence in your life, it becomes part of the norm.'
(Amnesty International, 2016, p. 51).

In most cases, women cannot leave the household, as they would not qualify for any social services before obtaining a divorce; women in this situation are defined as *'economic hostages'*. In Fort St. John, there is only one shelter for women fleeing abuse, operated by Community Bridge. As a poverty law advocate of the Fort St. John Women's Resource Society stated, *'economic insecurity leads women to stay or enter a relationship to meet their own survival needs.'* (Amnesty International, 2016, pp. 43; 60–61). In exchange for housing or even drugs and alcohol, some women engage in housekeeping and sexual relationships. Some consider it prostitution or sex work; others accept this situation as how things are (Amnesty International, 2016, pp. 48–49). Alcohol and drug addiction seem to be the norm for many workers in the sector, as it becomes a coping mechanism. A young worker who struggled with drug addiction stated:

'There are people who put money away, have a nice house, and stick with it. But there are too few of them. I did not do drugs at first, but I bought a lot of nice stuff. You start drinking and this and that. It all gets out of hand very fast. That's oil patch money for you.'
(Amnesty International, 2016, p. 39).

During my fieldwork, I met several people who are now clean after years of struggle and advocate for a healthy lifestyle (mentally and physically). Still, drinking to death and doing drugs are somehow considered endemic features of an oil and gas town. In a conversation I had with an informant who lived in Fort St. John for a few years, she told me:

'You know, the point is that it becomes normal. You need to cope with a 21-day working shift, and you work for 12 hours or more per day, making a ridiculous amount of money that you do not know how to spend. Doing cocaine becomes a normal thing for oilers and pipeliners…it's a way to escape!' (Conversation with a Fort St. John former resident, May 23rd, 2019).

Marie-Eve Mallet, a former female patch worker, has written in a blog piece:

'I don't blame the men in the industry because they are not immune to the effects of toxic masculinity. The guys are expected to be invincible. The long shifts isolate them from their families, they are often forced to live in prison-like camps, and the only acceptable way to deal with their emotions is to escape through drugs and alcohol. Sobriety issues cost oil companies hundreds of thousands of dollars with incidents causing equipment damage or, worse for the contractor, being kicked off a job. Word went around that our company had to

refuse all the jobs that required drug testing because no one would pass. We were kicked off my first job because we had gone past the completion deadline by a few months, our supervisor walked off the job without warning, the superintendent was on a drug binge and unreachable, and the lead hand was on meth. I was eventually sent to the hamlet of Red Earth, AB, where my supervisor (or spread boss) kept a case of whiskey in the back of his truck and drank one 40oz bottle every day—at work.' (Marie-Eve Mallet, *'Boys will be boys': Alberta's Toxic Oil Culture*, accessed on 16th February 2021).[37]

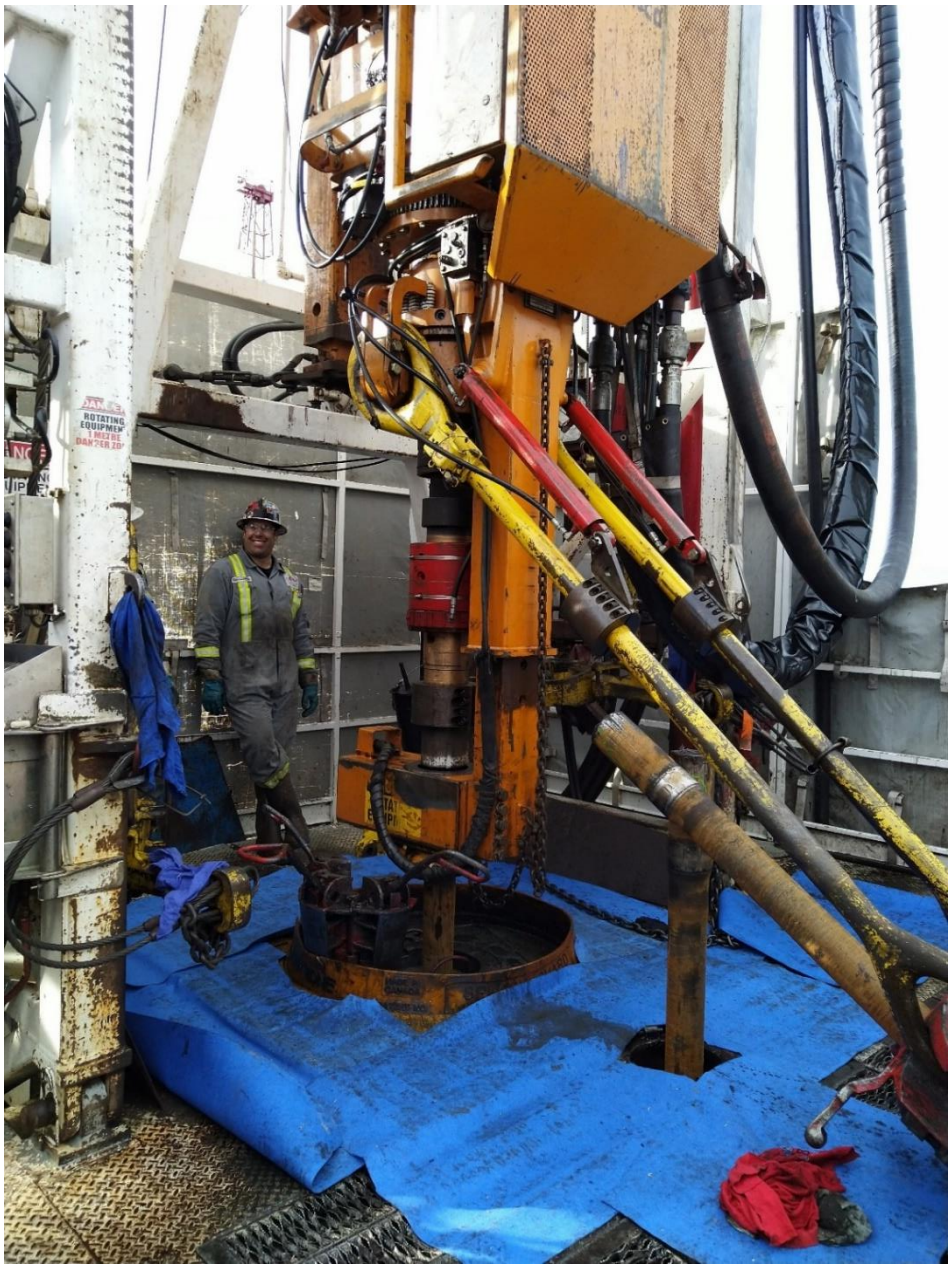


Figure 42 - Visiting an oil rig with the BC Oil and Gas Commission.
Picture taken by Giuseppe Amatulli on October 16th, 2019.

[37] The full piece is available at: https://www.pyriscence.ca/home/2017/9/30/boys-will-be-boys-albertas-toxic-oil-culture

The so-called *'Boys don't cry'* attitude has produced a work environment where workers are expected to find a way to cope with their issues instead of talking and addressing the problem at its core. In a recent documentary realized by the CBC (*'Digging in the Dirt')*[38], previous patch workers offered their views on that world and how it broke them in a way that they did not recognize for a long time.

> *'I had had a relationship fall apart and had gone into work because, you know, that's what you do, as you're expected to do in the trades —you go to work, and whatever you've got going on outside kind of takes a backburner to your job. I went in, and the contractor called my supervisor because I was sitting in the crane, kind of hiding in the back of the yard, and I was crying. They were like, 'we can't have this guy crying in the crane. We just can't have that. These guys don't feel safe working with him. It's still very much 'boys don't cry' and 'leave your struggles at home', 'we don't want to hear about it.' Oil comes first.'*
>
> (Chris Johnson interviewed by Sharon Riley, The Narwhal, 12th September 2019).[39]

It is then evident that the economic benefits generated by the oil and gas sector come at a high price in terms of mental and physical well-being, and some of these costs are not adequately taken into account when evaluating projects. In recent decades, the BC Health Authority (Northern Health) and the First Nations Health Authority (FNHA) have reported an increase in demand for health services during intensive resource extraction periods and when the oil and gas sector declines. In the former case, the increase is due to fly-in/fly-out workers lodged in temporary work camps. In the latter, social and health issues arise due to the turmoil provoked by the decline of the extractive industry, when people face economic instability that can seriously impact their mental health and ability to keep a healthy lifestyle (Halseth, 2016, p. 97). It is then evident that health aspects are intertwined with elements of social justice, given that people do not have any control over economic activities dominated by the logic of the capitalistic, market-driven economy. DRFN Chief Trevor Makadahay told me during a conversation that community members are among the most vulnerable ones as they might be unable to cope with the fast changes that the modern economy and lifestyle pose on them, which can lead to addictions and social issues (Conversation with DRFN Chief, Doig Reserve, June 17th, 2020).

Nonetheless, the lure of development, with its promises of high-paid jobs, revenues, and benefit-sharing agreements, brings politicians, citizens, and First Nations to accept the downsides of many projects (being them related to extractivism, forestry operations or mega-dams). Hoping to reduce

[38] The documentary is available at: https://www.cbc.ca/news/canada/calgary/mental-oil-alberta-oil-patch-1.5277079
[39] Full interview is available on the Narwhal at this link: https://thenarwhal.ca/boys-dont-cry-qa-with-alberta-oilpatch-worker-on-industrys-mental-health-crisis/ (last accessed on February 16th, 2021).

inequalities while solving pressing economic issues (we all need to pay our bills and get food, most people say), such a way of acting only exacerbated conflicts and divisions. Thus, socio-economic inequalities have been boosted while many people have been dragged into the debt trap, an endemic problem in resource-rich areas. There is a massive conflict here, with many layers of complexity building upon an already established imbalance. To understand and address cumulative effects, it is necessary to unpack them.

4.3 New approaches to define cumulative effects: the need for a cumulative thinking

Identifying and quantifying cumulative effects while addressing the entire set of changes a development project might have on a community is one of the most challenging goals of a CEA. Some scholars have proposed integrating features of a Social Impact Assessment (SIA) and Economic Impact Analysis (EIA) within a CEA to assess the impacts of a project *as if people mattered*. It has been suggested that in a CEA, there is a need to assess the social consequences of a project as they are often intertwined with environmental and economic effects (Hegmann et al., 1999, p. vi). Whereas a purely economic assessment looks at the number of new jobs created by a development project and the revenues it generates, an economic assessment that takes into account social aspects would consider the quality of the jobs created and their impact on people's livelihoods and their families.

Performing a CEA by considering socio-economic features also means evaluating whether new socio-economic inequalities emerge directly from the project (Halseth, 2016, p. 84). As for environmental aspects, when intertwined with social elements, it is crucial to assess the impact a project might have on the accessibility of traditional spots for recreation, traditional practices and lifestyle (Halseth, 2016, pp. 84–85). A comprehensive CEA should also consider the health dimension, thus evaluating the physical and mental health of people living in a specific area affected by a development project; whether or not new diseases arise as a direct consequence of a project (i.e. respiratory issues in areas where gas is extracted) or how and to what extent people's mental health is affected by a project should be duly assessed (Gislason & Andersen, 2016, p. 85).

Gislason and Anderson argue that in defining cumulative effects, the concept of healthy communities should be considered, besides a healthy environment. In their view, three different dimensions should be considered: environmental, health, and social justice (Gislason & Andersen, 2016, p. 1). This position is backed by Parlee, who argues that the discussion about cumulative effects and industrial development mainly considered economic and ecological effects; without adequately considering the long-term effects on communities, human health, and well-being (Parlee, 2015, p. 426). Wright and Griep argue that it is necessary to consider social vulnerability when assessing the

well-being of workers of the sector and the communities where they live (Wright & Griep, 2019, p. 83). Features like human health and the social well-being of a community are shaped by the surrounding ecological system and the socio-economic context within which people live, work, learn, and develop complex social interactions (Gislason & Andersen, 2016, pp. 1–2).

A different and innovative approach is then required when addressing cumulative effects and their intertwined impacts in the long term. Halseth proposes to rethink the concept by distinguishing between the word *effects* and *impacts*. In his view, *effects* are immediate, being observable changes to the current situation provoked by resource development; *impacts* are related to the consequences those changes are going to have in the long term (M. P. Gillingham et al., 2016, pp. 3–4; Halseth, 2016, pp. 88–89; C. J. Johnson, 2016, p. 26). Impacts are complex and often intertwined with socio, economic, environmental, and health issues a community may face in the long term. Additionally, they might manifest themselves by interacting with effects from other past and present projects. This is one of the reasons why it is difficult to identify and find proper solutions to address the changes provoked by long-term impacts (M. P. Gillingham et al., 2016, pp. 13–14).

Evaluation and approval processes are still conducted project-by-project, considering limited geographic and temporal parameters. Most of the time, they are focused on assessing the cumulative impacts associated with a particular set of effects to meet the request of the regulatory body to approve the project (Amnesty International, 2016, p. 71; M. P. Gillingham et al., 2016, p. 16; C. J. Johnson, 2016, p. 33). As argued by Gillingham et al., short, medium, and long-term implications should be duly considered when assessing cumulative impacts. This means that cumulative impacts assessments should be conducted and managed by using a timescale that may range from hours, days, and weeks, through to months, years, and decades (within some cases, the appropriate scale being a century or more) (M. P. Gillingham et al., 2016, pp. 6–7).

During a conversation with Jaqueline, a local environmental consultant, we addressed the time scale issue regarding cumulative effects and project assessments.

> *'It is important to make a distinction between the short and long-term effects a project can have on the socio-economic organization, culture, and lifestyle of a community. Most of the time, when a socio-economic assessment is performed, the evaluation is made by considering the short-term local effects, without considering the outcomes the project is likely to have in the long term and on other dimensions.'* (Fort St. John, June 13th, 2020).

Considering the time frame around which cumulative effects build up and manifest themselves is extremely relevant. At the same time, it is essential also to consider the time the system needs to

absorb the shock and recover from it. The increasing amount of activities carried out during an expansion phase is likely to provoke a change to the lifestyle of a community, which may need a certain amount of time to adjust to the new pace (Halseth, 2016, p. 100).

Halseth suggests using a more integrative approach, which he calls *cumulative thinking,* when evaluating cumulative impacts (C. Johnson et al., 2016, pp. 217–218). Thus, economic, environmental, and health effects should be assessed in combination with social aspects and considering past, present and foreseeable projects. Impacts are intertwined and manifest themselves in additive, synergistic, interactive, multiplicative, and non-linear ways (C. Johnson et al., 2016, p. 223). Additionally, they are not only related to large development projects and are not easily identifiable and quantifiable (Halseth, 2016, p. 84). The distinction proposed by Halseth is valuable as it contributes to defining the theoretical framework when addressing cumulative effects/impacts. However, those terms are often used interchangeably by practitioners, band members, staff, and governmental officers. In my work, I have also used them in interchangeable ways.

Nevertheless, identifying, assessing, and mitigating cumulative effects is challenging, as highlighted in a conversation I had with a former fish biologist with more than forty years of work experience in the sector. Nick has been a stunning friend throughout my fieldwork, and we spent tens of hours together, sipping coffee in his garden while talking about First Nations-related issues and challenges. During one of these conversations, he said:

> '*When we talk about parameters to identify and perhaps quantify cumulative effects…you know, everything responds in a different way. And when you are talking about systems like nature and the environment, it gets even worse in terms of complications because it is not a controlled environment where you can do an experiment in a certain amount of time, and that is it. It can be very variable, and you have got many variations in it. And that is why it makes it very difficult to quantify cumulative impacts in a natural environment.'*

We continued the discussion by addressing the meaning of cumulative effects, and he stated:

> *'You know, when you talk about cumulative effects, it means that impacts are additive, on top of the other, and the problem is that there is no linear relation…it can be kind of exponential, right? I think we all understand cumulative impacts to mean something that is sort of an additive thing, and when you put things together, they go to trigger, right? With one impact, you may not get a response on what you are measuring, neither with two…perhaps with three, all of a sudden, you may get something. And it is not just because of the third factor; it is a combination of the other two.'* (Fort St. John, June 22nd, 2020).

In his explanation, Nick referred to the synergistic, multiplicative, and interactive nature of the cumulative effects, as stated by Halseth when defining cumulative thinking (C. Johnson et al., 2016, p. 223).

4.3.1 Public interests and the promise of a better future: when development becomes an atemporal tool to reach a utopian modernity

Development projects, especially large-scale extraction projects, are usually planned and proposed by industries (Multi-National Corporations, sometimes in joint ventures with small local companies) and approved by the Government with the firm belief that they will benefit people in terms of socio-economic benefits and job opportunities. Negative impacts due to cumulative effects are not adequately considered, as the hope is that people will cope with them. Jaqueline, a local environmental consultant, highlighted this aspect concerning her work experience with the BC Government. As she affirmed, they were continuously reminded that the approval of a project was beneficial for the whole country in terms of revenues and taxes. As she told me: *'Most projects were deemed to be important in the name of the public interest.'* Then, she mentioned her experience as a consultant in a private consulting firm. She said that a few years ago, they filled 300 assessments in about a year (Conversation with Jaqueline, Fort St. John, June 13th, 2020). It means more than an assessment per day, considering a typical working week of 5 days and that in a year, there are fifty-two weekends and ten days of statutory holidays in BC. Clearly, an assessment filled in such a short amount of time is nothing more than a checklist, as assessing something so complex in a day is rather difficult, to say the least.

The public interest has been used to justify development projects since colonization started, with traditional Indigenous territories and resources 'seized' in the name of a common good (Blaser, Feit and McRae, 2004, p. 3). Oil and gas infrastructures may well be considered as eventful, as they are well rooted in a settler future; they enable a material transit to a better future that is considered inevitable and necessary to achieve an idea of progress that is nevertheless feeble and not clearly defined (Spice, 2018, p. 44). Therefore, Governments and companies plan and realize projects on Indigenous territories without their prior consent; however, acknowledging their rights to enjoy the economic benefits generated by exploiting natural resources found in their traditional territory (Parlee, 2015, p. 430). As argued by Parlee and Willow, multi-national corporations (hereafter MNCs) often venture into places where people have little money, with the promise to bring jobs and prosperity (Amnesty International, 2016, p. 5; Parlee, 2015, pp. 428–429; A. J. Willow, 2019, p. 195). In such a way, jobs are created, unemployment in Indigenous communities is tackled, while Bands

get money through benefit-sharing agreements. At the same time, companies make huge profits, and the Government receives revenues to be used for the whole country's needs. Projects meeting these requirements are deemed useful in the name of the public interest; however, they often collide with Indigenous peoples' vision of the future and their cosmovision (Parlee, 2015, p. 430). In the end, locals and especially Indigenous communities, receive peanuts and are left with an unbearable socio-economic and health burden once a company ends its activities in the area.

During the first week of trail cutting in July 2019, I discussed these issues extensively with a DRFN member, Elina. While working in the forest, we reached an abandoned gas rig, and she said:

> *'This well was active until three years ago when it was stopped as it was not profitable anymore to extract gas and sell it to the US. Everything is market-driven; for sure, the company will come back when it is profitable to sell this gas again.'*
>
> (Conversation with Elina, July 23rd, 2019).

Figure 43 - An abandoned gas rig. Picture taken by Giuseppe Amatulli on July 23rd, 2019.

Abandoned gas rigs, compressor stations, and dismissed oil wells could be seen as objects evoking anticipation of possible future(s) and future profits. At the same time, they perfectly describe the entrapment people inhabiting these areas experience. When functioning, those infrastructures generate wealth and economic well-being; when not in service, they are maintained in the hope of a

future reopening with the anticipated revival of an industrial economy following a new global demand driven by the market. In this context, where future expectations and possibilities are intertwined with the reality of everyday life, First Nations have found their way to enjoy the advantages of the present while developing strategies to cope with future downsides. As highlighted by Amnesty International, in recent decades, Doig and Blueberry River First Nation members have gotten high-paying jobs in the oil and gas sector, besides receiving significant monetary compensations following the Montney case verdict (Amnesty International, 2016, p. 55).[40] However, the influx of such a significant amount of cash has created new inequalities and social problems among community members. Norma Pyle, previous BRFN Land Manager, affirms that the issue is not money but the pace of change. As she says:

> *"There's no getting away from money, especially not where we are. We all need to work. We all need to provide for our families. There's a way to do that responsibly. But the Government can't wait. They want everything right now."* (Amnesty International, 2016, p. 56).

Such a statement expresses the feelings of many BRFN members and many other First Nations members living in the Fort St. John area. However, it might oversimplify things without addressing the core issue. The final sentence *'the Government can't wait. They want everything right now',* contains two elements worth unpacking: time and money. Those two elements are intertwined with how infrastructures generate profits while shaping the type of future(s) the Government and companies envision. In such situations, people are often left behind, their future visions not adequately considered, and their life plans adapted to the needs and demands of the market economy. As BRFN affirmed in the opening statement of the trial Yahey v. BC, *'the Crown and the Province should be acting using higher standards and values than what current political life and market forces allowed'* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 333). Thus, it might be argued that the impatience to get things done derives from the relentless force of the market-driven economy, with the Government and companies being just actors, trapped in the capitalistic loop and unable to find a way out of it.

An alternative to this kind of development and lifestyle, with different aims in the medium and long term, could be provided by *Buen Vivir*, which also implies framing development projects as life projects to achieve a balance between development and human needs without forgetting the surrounding environment and the living beings part of it. Named in different ways, *To live well – Buen Vivir or To live pleasurably – Vivir Sabroso,* many Indigenous communities understand it as a

[40] An extensive explanation of the Montney case is provided in chapter 6.

combination of good health, meaningful proper relationships among community members and an abundance of food/ritual substances (Overing & Passes, 2002, p. 170). Although it is difficult to define *Buen Vivir* univocally, it is accepted that it has four key features. Namely, the specific view of nature and the relationship humans have with it, the role of the community in caring for nature and the ecosystem as a whole, the principle of interdependence humans have with nature and the necessity to shape an economic system based on solidarity and community life. Finally, the respect for ancestral knowledge of nature, health and life on earth (Artaraz et al., 2021, pp. 7–8). Thus, it can be said that *Living well* is based on the Indigenous philosophy that nature, community, and people share material and spiritual dimensions, with the community being more important than individuals. In such a context, human beings are perceived as part of nature, which life quality depends on the living being and non-living elements they share the planet with (Guardiola & García-Quero, 2014, p. 177). This also explains why in certain societies (such as the Huni Kuin people), the relationship between people and their surroundings (land, lakes, hunting grounds) is explained in terms of responsibility (McCallum, 2020, pp. 168–169). On other occasions, as is the case of the Airo-Pai people, *Living Well* has been described as a way to avoid anger in everyday life, as a form of *Conviviality* (Belaunde, 2002, pp. 210-211).

Based on this explanation, it can be said that the concept of *Living Well* is connected to well-being and Indigenous aesthetics. The way in which Indigenous peoples conceive life, the relationship they have with nature, and the sentient beings part of it is related to a specific perception of the surrounding environment. Aesthetic experiences are the result of the interaction between an individual and a specific environment; they can be considered as embodied phenomena, where there is a strong emphasis on the need for beauty in everyday life, which ultimately expresses the myriad of interconnections within an animated universe (Overing & Passes, 2002, p. 12; Yang et al., 2019, p. 2). A specific environment defines perceptual features for a particular human culture at a specific time and space, which ultimately results in aesthetic appreciation. Such features and perceptions are sustained only if a balance can be reached between the environment and the activities performed on it by humans (Yang et al., 2019, p. 8). Aesthetic perception can be a powerful way to reappraise cultural experiences with the surrounding environment, integrating individual and collective perspectives and reckoning with the passage of time while going well beyond meanings exclusively mediated by cognitive habits (Berleant et al., 2002, p. 20; Fortis, 2019, p. 449).

Humans and the environment are strictly interconnected through the physical interaction of the body and the psychological interconnection of the mind with the surrounding environment (Berleant et al., 2002, pp. 21–22). Such a connection is based on a delicate balance; the progressive

commodification of nature and its resources poses a risk to the enjoyment of the aesthetic perception of the environment and cultural continuity. For the Canadian state, oil and gas pipelines count as *'critical infrastructure'*; while the relations community members have with their environment and ecosystem (comprising rivers, lakes, mountains, plants, and animals) are the natural resources that must be modernized as commodities (Spice, 2018, p. 48). Whereas the flow of oil and gas from traditional Indigenous territories sustains a social-economic system that is environmentally and socially devastating; Indigenous resistance to oil and gas *'critical infrastructures'* can provide valuable alternatives to development based on *extractivism* and the needs of the market-driven economy (Spice, 2018, pp. 44–45).

Environmental aesthetics and cultural aesthetics become then strictly interrelated. In fact, the study of the perceptual features of the environment can well be interconnected with understanding how social institutions, belief systems and patterns of action shape everyday life in a given space and time. Human beings are then implicated in a continuous process of action and response, shaping the surrounding environment and being influenced by the features of such an environment. Cultural aesthetics can then be regarded as a sensory, conceptual and ideational matrix that defines the perceptual environment of a specific culture (Berleant et al., 2002, p. 22). Thus, the Indigenous aesthetic can provide different ways of perceiving the environment, perhaps suggesting different development paths that can ensure the achievement of a balance while avoiding the total commodification of nature. It is then evident that *Living Well/Buen Vivir* can be achieved only by implementing what a community needs and based on its perception of socio-cultural and environmental well-being. Communities and states that embrace *Buen Vivir* (Bolivia and Ecuador have introduced this concept in their Constitutions) may want to pursue an alternative development model different from the Western-style development path (Chassagne, 2021, pp. 22-23).

Development, as conceived by modernity, and life projects as conceived by Indigenous peoples, are based on a different ontology, with the former standing in the way of the latter when it hampers the goal of Indigenous peoples to live a good and meaningful life in a given place and moment. Development projects and planning systems are ahistorical as they never look back; they only look to the future, with each new project perceived as the first one (Blaser, Feit and McRae, 2004, p. 38-40). With a political horizon situated in the future, the very idea of development is endemically related to the Western notion of modernity and intertwined with the promise of a better time yet to come. As Abram affirms, *'the idea of improved futures to be achieved by the rational application of policy and the hygienic distribution of development is emblematic of a modern worldview.'* (Abram, 2014b, p. 129). In *'Getting to know Waiwai',* Campbell argues that only vulnerable and oppressed groups

'get tagged superstitious and unreasonable.' Thus, *'credulous savages and peasants are mired in superstition since their beliefs are a form of mystification that stands between them and reality. Development and Progress allow us to stand with our feet firmly on a rock-bed of Reality and Truth.'* (A. Campbell, 1995, p. 188). In this regard, Latour argues: *'This is the line drawn by the injunction to modernize, an injunction that prepared us for every sacrifice: for leaving our native province, abandoning our traditions, breaking with our habits, if we wanted to 'get ahead', to participate in the general movement of development, and, finally, to profit from the world.'* (Latour, 2018, p. 27).

4.4 Defining Valued Ecosystem Components (VECs) when addressing cumulative effects

> *"Mitigating cumulative effects is about a value judgement. It is important to have, in every community, a proper dialogue about various perspectives, to understand what people value and how to preserve those values."* (James O'Hanley, former Deputy Comm. BC Oil & Gas Commission, August 22nd, 2019).

Since the beginning of the '80s, more and more attention has been posed to Valued Ecosystem Components (VECs) when assessing the environmental effects of a specific project (Duinker & Greig, 2006, p. 153). VECs are defined as *'Environmental elements of an ecosystem that are identified as having scientific, social, cultural, economic, historical, archaeological or aesthetic importance. The value of an ecosystem component may be determined based on cultural ideals or scientific concerns. Valued ecosystem components that have the potential to interact with project components should be included in the assessment of environmental effects.'* (M. P. Gillingham et al., 2016, pp. 26–27; Transportation Agency, 2012, p. 7). The BC Cumulative Effects Framework (CEF) Interim Policy Document defines values as '*The things that the people and government of British Columbia care about and see as important for assuring the integrity and well-being of the province's people and communities, economies and ecological systems, defined in policy, legislation or agreements with First Nations.'* (Government of British Columbia FLNRORD, 2016, p. 8).

Several studies have shown that the most common VECs are considered to be fish and fish habitats, vegetation, wildlife (moose, caribou, ungulates, and furbearer) and wildlife habitat, species at risk and water quality, wetlands, and current use of land and natural resources by Indigenous peoples (Olagunju & Gunn, 2015, p. 211). A Cumulative Effects Assessment (CEA) should be conducted using a VEC-centered approach. However, there are occasions where VECs identified in an impact assessment are only a small part of the measurable components valuable to a specific community that might be affected by a particular project. This is especially true when referring to broad VECs (such as wildlife), which are composed of several attributes and, in most cases, have competing values (M.

Gillingham & Johnson, 2016, p. 58). As argued by Duinker and Greig, instead of focusing on those impacts that a single project might have on specific VECs, it is more beneficial to examine the whole range that human-generated stresses have on VECs. Thus, it is necessary to analyse project-VECs interactions, considering the interplay between VECs and human-generated stresses (Duinker & Greig, 2006, pp. 154–155). Besides, Traditional Ecological Knowledge (hereafter TEK) should be integrated into the impact assessment process, as it can provide relevant information that could be otherwise difficult to obtain (M. Gillingham & Johnson, 2016, p. 69).

4.4.1 Relevant VECs for Blueberry and Doig River First Nation

In several Traditional Use Studies (hereafter TUS) conducted in recent years to assess the impact of proposed pipeline projects (such as the TransCanada Coastal GasLink -CGL- and the TransCanada Prince Rupert Gas Transmission -PRGT-), specific Valued Components (VCs) had been identified by BRFN and DRFN members. These components are cultural heritage and continuity, access and use of lands and waters, and subsistence harvesting (i.e. hunting, trapping, and gathering of traditional plants) (Olson & Steager, 2014, p. 8). These projects are most likely to have potential adverse interactions with these VCs, which could seriously compromise the aforementioned traditional activities besides permanently damaging the ecosystem. In particular, the construction of such pipelines can cause severe disturbances leading to habitat fragmentation, resulting in animals moving away from their grazing area. Additionally, the loss of valuable habitat can result in a decreasing number of healthy animals to be hunted in a specific area, meaning that community members might need to travel further to practice their traditional activities. Last but not least, construction works are likely to bring more people and traffic to the area, which may well put the wildlife population under further pressure due to hunting and roadkill (Olson & Steager, 2014, pp. 8–9).

Olson argues that another ecosystem component seriously affected by development projects is the flora of a specific area. Construction works pose a relevant risk due to deforestation and clearance activities, with potential floods of important sites and the loss of small creeks and watercourses in other areas. Additionally, they may also affect the access to specific sites where members used to harvest and practise their traditional activities and ceremonies (Olson & Steager, 2014, pp. 9–10). This might be true even if the specific place is spared from exploitation, as the surrounding landscape is irremediably affected due to aesthetic changes and the pressure of other surrounding linear disturbances (such as the new roads created to serve the scope of the construction works). Besides, construction works may destroy unknown or unmarked gravesites and, altogether, those stressors

could accelerate the loss of relationships community members have with their land and traditional territory (Olson & Steager, 2014, p. 10).

Construction works may also provoke the removal of specific plants harvested by community members and used for food or traditional medical practices. In some cases, those plants may be replaced with non-native species, even after the reclamation process. Such loss is relevant to the ecosystem, as well as to the culture of a specific community. Even if removal does not happen outright, flora can be heavily contaminated by construction activities, resulting in community members stopping harvesting plants and berries in a specific area (Olson & Steager, 2014, p. 9). Contamination is a big issue when it comes to water. During the 2018 BRFN cultural camp, Randy Yahey (singer and storyteller of Blueberry River First Nation, who died in February 2019) was asked to list the most significant impact of oil and gas exploitation in the BRFN traditional territory. He just replied '*water'*, explaining that animals are attracted to bathe and drink the water they find in the ponds, which is contaminated with oil and other subsoil substances. As a result, moose get sick, and hunters do not rely on eating that meat because of the fear of eating contaminated meat (Pollon, 2018). In addition to animals, contaminated water affects the aquatic ecosystem, with severe consequences on fishing activities and plants growing in and around watercourses (Lee & Hanneman, 2012, pp. 35, 40; Olson & Steager, 2014, pp. 9–10).

In two relevant Knowledge and Use Studies conducted by the BRFN and DRFN, hundreds of site-specific values were individuated. For BRFN and DRFN, preserving valued components is essential to protect the very foundation of their traditional culture and lifestyle while keeping the connection to their traditional territory (Olson & Steager, 2014, p. 51). As for the BRFN, 115 members identified 1250 site-specific values in the area where the proposed North Montney Pipeline was supposed to be constructed. Those values were distributed as follows: 898 for the Subsistence Harvesting Activity Class and 352 for the Environmental Feature Activity Class (Olson & Steager, 2014, pp. 27–28; 47–48). Among the site-specific values, it is worth mentioning animal habitats, fishing sites, plant habitat areas and several mineral licks (environmental features); berry picking areas, plant collecting sites and firewood collecting sites as subsistence features. Important subsistence features are wild game kill sites for rabbits, sheep, squirrels, moose, deer and other ungulates and furbearers; and fish catch sites for jackfish, bull trout, salmon, rainbow trout and whitefish. According to some members, those areas have been used at least since the nineteenth century to the present day (Olson & Steager, 2014, pp. 33; 50–51).

Regarding DRFN, 49 members identified 289 site-specific use-values concerning the area impacted by the NGTL (Nova Gas Transmission Ltd.) System Expansion Project. Among them, 184

are related to hunting and trapping sites, 48 to traditional habitat, 31 to harvesting plants, 16 to cultural continuity and 10 to water access (Firelight Group, 2018, p. 38). Besides being an area of significant value for moose mineral licks and moose hunting, with several kill sites identified by DRFN members, other animals are hunted in the same area, such as whitetail deer, rabbit, beaver, and grouse. These are the environmental and subsistence values that go side by side with cultural and spiritual values. As several members reported, this area has long been used as a campsite for extended periods over the summer. Those campsites are important locations for inter-generational transfer of traditional skills, i.e. hunting, making dry meat, and tanning hides (Firelight Group, 2018, pp. 43–49).

4.5 A brief overview of the Cumulative Effect Assessment legislation at the Federal and Provincial level

The discourse around assessing cumulative effects in the Canadian legal framework was initiated in the '90s when the Canadian Environmental Assessment Act was passed (1992). According to its content, an EIA was to be conducted for projects proposed by the Federal Government or projects that involved the use of federal funding or the obtainment of permits and licenses (CEAA, 1992, para. 5). In the Act, cumulative environmental effects are mentioned regarding the need to conduct meaningful impact assessment when evaluating a project (CEAA, 1992, at para. 16, 16.2, 19(7)). In 1994, the Canadian Environmental Assessment Agency (CEAA) published the *Reference Guide for the Canadian Environmental Assessment Act: Addressing Cumulative Environmental Effects.* Two years later (1996), the *Practitioners Guide* was released to provide practical solutions for practitioners conducting Cumulative Effects Assessments (CEAs) (Hegmann et al., 1999, p. i). Since then, assessing cumulative effects has been included in federal legislation (such as the 2012 Canadian Environmental Assessment Act and the new 2019 Impact Assessment Act - IAA) and in provincial one (the 2018 BC Environment Assessment Act).

The Impact Assessment Agency defines the 2019 IAA as a planning and decision-making tool to be used to assess *'positive and negative environmental, economic, health, and social effects of proposed projects, as well as impacts to Indigenous groups and rights of Indigenous peoples.'* (IAA, 2020, p. 4). In addition, among the purposes of the Act, it is established that an impact assessment should consider positive and adverse effects and assess cumulative effects within a region. Moreover, the promotion of Nation-to-Nation and Government-to-Government partnerships with Indigenous peoples is regarded as an aim, together with the inclusion of Indigenous knowledge in decision-

making (IAA, 2020, p. 5). The new Impact Assessment process is divided into five parts: planning, impact statement, impact assessment, decision-making, and post-decision (IAA, 2020, p. 19).[41]

Whereas in the past cumulative effects were addressed in the context of an Environmental Assessment Act, also because a CEA was often modelled and built upon approaches and methods used to perform an EIA (Hegmann et al., 1999, p. 1); a significant shift has been made in recent years. Nowadays, a CEA is performed considering elements that are not necessarily taken into account in an EIA, such as health and social effects. Moreover, effects on VECs resulting from the interaction with other actions, not only the effects of the single action under assessment, should be considered. This means including past, present and foreseeable future actions and evaluating effects over a long period and a large area (Hegmann et al., 1999, p. 3). When conducting a CEA, indicators (that sometimes are VECs themselves) are important, as they might give a precise measure of the effects on a VEC while providing measures of human-caused disturbances (i.e. the density of linear disturbances in a specific area) or attributes of the surrounding environment (i.e. biodiversity indices) (Hegmann et al., 1999, p. 35). Biodiversity indicators are used by community members to assess changes over time. As Sam, a Doig member commented during the trail cutting experience:

> *'I grew up in the bush. But you know, certain animals (like frogs and some birds) have disappeared. I do not know why; perhaps it is because of the oil and gas…I do not know. I cannot hear them anymore; it was not like that in the past.'*
>
> (Doig Reserve, September 23rd, 2019).

4.6 Addressing cumulative effects in BC: the current situation

According to the 2018 Environmental Assessment Act, whenever a project is proposed in BC, an environmental assessment must be performed by the Environmental Assessment Office (hereafter EAO).[42] As provided by Section 25(2) of the Act, every assessment must consider a) *'positive and negative direct and indirect effects of the reviewable project, including environmental, economic, social, cultural and health effects and adverse cumulative effects'* and b) *'risks and uncertainties associated with those effects, including the results of any interaction between effects.'* Compared to the 2002 Act, the 2018 Environmental Assessment Act expands on the concept of cumulative effects.

[41] An simplified overview of the 2019 Impact Assessment Act is available at: https://www.canada.ca/content/dam/iaac-acei/documents/mandate/president-transition-book-2019/overview-impact-assessment-act.pdf (last accessed on November 4th, 2021).

[42] https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments (last accessed on November 3rd, 2021).

However, it does not establish to what extent they can be tolerated (in terms of threshold) and what should be done to mitigate them.

Notwithstanding the latest advancements, cumulative effects are still far from being addressed adequately. As highlighted in the 2015 Report of the BC Auditor General, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) had not yet been able to adequately address cumulative effects in relation to recent natural resource use decisions (Bellringer, 2015, pp. 3–5, 25). The BC Government has developed a Cumulative Effects Framework (CEF) that was supposed to be fully operational by the end of 2021; however, it has not yet been determined how such a framework will be used in decision-making and regarding the approval of future projects. Already in 2015, the Auditor-General had highlighted the lack of proper legislation or directives that oblige FLNRORD to effectively manage cumulative effects when authorizing development projects (Bellringer, 2015, p. 26). This is because government directives, laws, and regulations are natural resource sector-specific (i.e., oil and gas, mining, forestry), carried out by ministries with different mandates. It means that ministry activities may be carried out within one sector without considering the impacts on other sectors (Bellringer, 2015, p. 27).

To address and better manage cumulative effects, the Auditor General made nine recommendations to the BC Government (Bellringer, 2015, p. 8). Among those, recommendation n. 2 suggests that the BC Government introduce specific tools, such as legislation and policy, enabling all the ministries dealing with natural resources to coordinate cumulative effects management (Bellringer, 2015, p. 28). Recommendation n. 5 suggests that the BC Government establishes values important for the province to sustain. This recommendation goes alongside recommendation 6, which requires the BC Government to monitor the condition of values and make information available to decision-makers (Bellringer, 2015, p. 31).[43]

Defining values is a fundamental step when managing cumulative effects. It allows the identification of what it is essential to protect while determining the level of change (the value's acceptable condition) that can be tolerated for each value, considering the existing state (current condition) of each value (Bellringer, 2015, pp. 20–21). I.e., if fish is a value, the acceptable condition may be a certain concentration of pollutants in the water, beyond which fish habitat could be seriously compromised. Thus, the Government has to establish acceptable conditions, which can be done through policies, regulations, legislation or plans (Bellringer, 2015, p. 21). Monitoring and measuring

[43] The final Report is available at: https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Cumulative%20Effects%20FINAL.pdf (last accessed on November 4th, 2021).

value's acceptable conditions is challenging and expensive, and for this reason, components and indicators are used to assess the condition of a specific value. In the case of fish, its value can be described using two components: water quality and quantity. An indicator of water quality is sediment discharge; so, when current sediment concentration (current condition) exceeds the specified threshold (acceptable condition), water quality is considered to be at risk (Bellringer, 2015, p. 21).

Nonetheless, when assessing specific values in the project's approval phase, proponents want to have their projects approved with minimal costs related to EIA, SIA, CEA, and VECs. Conducting meaningful CEA (including EIA and SIA in it), considering all human stresses on specific VECs, is costly in terms of money and time. In addition, such a procedure might highlight how in many situations, a specific threshold (also called value's acceptable condition) has been crossed, which means that a certain ecosystem has already been compromised in a serious, perhaps irreversible way (Duinker & Greig, 2006, p. 156; M. Gillingham & Johnson, 2016, p. 64). It has been suggested that establishing thresholds can be useful to quantify and restrict the cumulative impacts of resource development. They can define a halting point when approving additional projects or indicate when a relevant VEC is reaching the tipping point (M. Gillingham & Johnson, 2016, pp. 65–66).

While carrying out fieldwork, I discussed cumulative effects thresholds on just one occasion. While attending a music event during the 2019 Thanksgiving weekend, I ended up having a conversation about my research with a former government official. He told me that on several occasions, they had been trying to assess the cumulative effects of industrial development in the Fort St. John area. However, several companies and the Government itself were not supportive. In his opinion, the threshold had already been reached twenty years ago. As reported by Annie Booth, this feeling is shared by the Chiefs and some counsellors of Halfway River and West Moberly First Nation. In one of her interviews, they said: *'We have gone beyond a threshold where the Treaty says our way of life will be protected'* (A. L. Booth & Skelton, 2011, p. 691). Nonetheless, the term threshold is not included in the CEF. As clearly stated by the BC Government in response to the General Auditor Report on cumulative effects, such a term *'is subjective and indicates a false precision that is not achievable on a land base as ecologically diverse as BC'* (Bellringer, 2015, pp. 9–10). During my fieldwork, a few people warned me that my topic was interesting and deserved to be studied; however, they had serious doubts that anyone would seriously be available to help me carry out my research. Those words struck me as, in that period, I was seriously struggling to get connected with the BRFN.

I find it fascinating that throughout my fieldwork, I only had a conversation in which someone mentioned the word threshold. I had worked with the DRFN Land Office for six months; I talked and

spent time with many people; I spoke with Chief and Councillors, Land and Band Managers, politicians, and consultants. Nobody mentioned that word on any other occasion. If I go through my fieldnotes, I only have one result for that word, which was only mentioned during the conversation on that Thanksgiving weekend. Perhaps, it is because the threshold had been crossed, and nobody wants to admit it.

4.6.1 The BC Cumulative Effects Framework (CEF)

To better assess and mitigate cumulative effects, the BC Government has set up a Cumulative Effects Framework (hereafter CEF), conceived as a decision-support tool with a set of policies, procedures, and best practices to be followed (Government of British Columbia FLNRORD, 2016, p. 1). It has been created by considering values important for First Nations; such as aquatic ecosystems (watershed conditions, water quality, and low flow/in streamflow needs), forest biodiversity (old-growth forest and intermediate stage conditions), grizzly bear, moose and caribou (Bellringer, 2015, pp. 11, 32). According to what has been established in the Cumulative Effects Policy Framework, the BC Government is required to assess the effects on specific values in the short, medium, and long term. The outcomes of such assessment are published in two different reports: the Current Condition Report (CCR) and the Cumulative Effects Assessment and Management Report (CEAM) (Government of British Columbia FLNRORD, 2016, pp. 17–19).

As explained by the BC Province, *'The cumulative effects framework does not create new legislative requirements; rather it informs and guides cumulative effects considerations through existing natural resource sector legislation, policies, programs and initiatives. Integrating the cumulative effects framework into existing natural resource decision-making processes and enabling cross-sector governance will ensure cumulative effects are identified, considered and managed consistently.'* (BC Government, 2015). As confirmed by the director of the Office of Forest, Land and Natural Resources of Fort St. John, cumulative effects in BC are supposed to be addressed within the existing provincial plans, which are: the Regional Strategic Environmental Assessment Initiative (RSEA) as part of the Environmental Stewardship Initiative (ESI), the Fort St. John Land and Resource Management Plan (FSJ LRMP) and the Caribou Program.

The Environmental Stewardship Initiative (ESI) is currently the main cumulative effects project active in Northeastern British Columbia within the context of the CEF. As stated in the 2018 RSEA Renewal Agreement, its objectives are to assess the effects of natural resource development in

Northeastern BC and minimize, mitigate and respond adequately to those effects (2018 Regional Strategic Environmental Assessment Renewal Agreement, 2018, p. 2). The signatory parties (DRFN and BRFN are among them) have agreed to incorporate specific valued components into the RSEA, particularly those useful in assessing the effects of natural resource development activities and appropriate spatial and temporal scales for the assessment of VCs in a specific study area. The RSEA also includes a detailed description of the current conditions of VCs, taking into account the effects of previous development on those components and how they will be impacted by further development (2018 Regional Strategic Environmental Assessment Renewal Agreement, 2018, pp. 2–3). Finally, the Parties agreed to cooperate regarding the need for new legislative, policy and regulatory mechanisms that may be deemed necessary to address specific risks on VCs (2018 Regional Strategic Environmental Assessment Renewal Agreement, 2018, p. 3).

The RSEA is implemented through the ESI, created in 2014 to develop new environmental stewardship projects to respond to the expansion of the gas industry in Northeastern British Columbia. Notably, those measures are separate and additional to the regulatory requirements already in place for natural resource development. By establishing the ESI, the BC Government, together with First Nations of Northeastern BC and industries, want to ensure ecosystem assessment, monitoring, restoration, stewardship education and training, ecosystem research, and knowledge exchange (BC Government, 2018, p. 3).

Another initiative established alongside ESI is the Aboriginal Liaison Program (hereafter ALP), launched in 2014 as a partnership between Doig River First Nation and the BC Oil and Gas Commission (BC OGC). To date, the program includes fifteen First Nations (BRFN is also part of the programme) and government natural resource agencies, such as the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, the Ministry of Energy, Mines & Petroleum Resources, the Ministry of Environment and Climate Change (BC OGC, 2020). According to the Program, each Nation hires one or two members as liaison officers, whose duty is to observe and report to the Band about resource development activities in their traditional territories. The ALP provides training for liaison officers to make them aware of development activities and their impacts. At the same time, liaisons may engage with natural resource agencies and enhance their understanding of traditional knowledge and resource development's impacts on their traditional lifestyle and territories (BC OGC, 2020).[44]

[44] More information on the ALP Program is available at the following link https://www.bcogc.ca/how-we-regulate/engage-with-indigenous-communities/natural-resource-aboriginal-liaison-program/ (last accessed on December 23rd, 2020).

In February 2020, I was invited to attend a meeting the two DRFN liaison officers had with the BC OGC. They explained that their job is crucial, as they are responsible for raising the Government's awareness about those areas that must not be disturbed by development activities. ALP is raising awareness about the risk of oil spills and gas leaks, as in the past, people were unaware of the risks posed by such incidents. The ALP liaisons are very proud of what they do, acting as stewards of the land. They want to make sure that Government and companies understand why community members value spending time in the bush and the special relationship they have with their land. As one liaison said:

> *'One day, kids will ask me about a spot where there will be a facility. And I will be able to explain that before that facility, it was a beautiful spot. At least, I will keep the memories and transmit them to future generations. We need to transmit the reasons why young generations must protect the land.'* (Conversation with Elina, Doig Reserve, February 11th, 2020).

The Fort St. John Land and Resources Management Plan (LRMP) is the other tool used by the Province of BC to sustainably manage natural resources, land, water, and the ecosystem. The first LRMP was initiated in 1993 by private citizens, government representatives and other stakeholders (industry, environmental groups, etc.). However, First Nations decided not to participate in this programme (BC Government, 2019a). Notably, the BC Government approved the plan recommendations in 1997; as a result, the Muskwa-Kechika Management Area was created. Covering a vast area of approximately 6,4 million hectares, the Muskwa-Kechika[45] was established with a separate jurisdiction to protect its wilderness characteristics, flora, and fauna. At the same time, people can use the area for recreational activities, hunting, and timber harvesting (BC Government, 2019b). In 2018, 25 years after the first LRMP was started, the Government of British Columbia decided to update it to realize a more comprehensive Land Use Plan. Besides collaborating with interested stakeholders and industry, the Government is keen on developing partnerships with interested First Nations. Covering an area of approximately 4,6 million hectares, the new LRMP aims to set better policies and objectives to manage provincial public lands and resources that can be found on those lands through resource management zones and protected areas. In developing the new LRMP, the BC Government is required to comply with the content of UNDRIP, as required by Bill-

[45] Detailed information on the Muskwa-Kechika Management Area can be found at the following link https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/northeast/muskwa-kechika (last accessed on December 28th, 2020).

41 as regards the provincial legal framework and Bill C-15 concerning the federal level (BC Government, 2020b).[46]

Figure 44 - The Muskwa-Kechika Management Area. Downloaded from Times Colonist on December 29th, 2020.

4.7 Experience from the field - The Trans-Canada Socio-Economic Effects Management Plan (SEEMP): a missed opportunity to perform a meaningful Cumulative Effects Assessment?

While carrying out my placement with the DRFN Land Office, one of my tasks was to analyse and write a commentary on the Trans Canada Socio-Economic Effects Management Plan (SEEMP), Report No. 2, July-November 2019.[47] The Report mainly focuses on infrastructure and services (firstly regional and then community-based), with little mention of the adverse socio-economic effects on people's lifestyles. The executive summary states *that 'there have been no detectable adverse effects that would change the predictions of the economy and social assessment presented in the Application.'* (Gaslink, 2019, p. i). The Report mainly assesses impacts caused by clearings and construction works, with barely any reference to communities living in these areas, the challenges they have been facing because of pipeline construction works and how their lifestyle has been impacted. No reference is made to culture, traditional lifestyle, practices, or sacred places affected by construction works. Contrariwise, it is stated that *'only preliminary construction activities have been*

[46] More information on the new LRMP is available at the following link https://landuseplanning.gov.bc.ca/p/5deeb36ce7c4150024a5ac33/background-info (last accessed on December 28th, 2020).
[47] The full Report is available at the following link https://www.coastalgaslink.com/siteassets/pdfs/about/regulatory/coastal-gaslink-seemp-status-report-2---july-to-november-2019.pdf (last accessed on January 6th, 2021).

carried out. As a result, many communities have not experienced any noticeable effects of the Project.' (Gaslink, 2019, p. 17). It continues by saying that *'No issues have been identified with regards to the effectiveness of the mitigation for potential impacts to emergency and non-emergency healthcare services other than the potential for local paramedical and health administration personnel to leave their current role for a position with the Project.'* (Gaslink, 2019, p. 30). Those are only a few examples that underline a general lack of interest in addressing specific problems and social issues that might arise during construction work.

More than a management plan that adequately addresses socio-economic effects, this kind of SEEMP may be perceived as a checklist periodically filled to meet legislation requirements. In addition, it addresses more economical than social issues that may arise during the project lifespan. This is confirmed in the closing remarks, where it is affirmed that *'there have been no detectable adverse effects that would change the predictions of the economy and social assessment. Significant adaptive management strategies have not been required to correct for unanticipated potential adverse effects on the economy, regional and community infrastructure and services and transportation infrastructure and services.*' (Gaslink, 2019, p. 41). This statement highlights how this Report only addresses adverse situations concerning infrastructure and services. Its tone and content would be different if community members' needs and other social issues related to everyday life were considered. As provided by the Mitigation Status Table (Appendix A), most mitigation measures have been implemented considering key indicators, such as contracts, economic resilience, employment, and training opportunities (Gaslink, 2019, pp. 43–55). In conclusion, such a SEEMP looks like an economic effects management plan, with the social dimension left behind. Even when social aspects are taken into account, they are addressed by considering the needs of the CGL Project and its workers. The Report proposes mitigation measures only if directly related to the measurable impact of the CGL Project or if there is a clear connection to CGL workers, with significant long-term adverse effects the pipeline's construction can have on communities not adequately addressed.

From what I experienced during my fieldwork, cumulative impacts are not perceived until they manifest themselves in a community through the challenges people and households may experience. Communities are impacted by changes produced by development projects in many ways and at several levels (individually, familiarly, locally, and regionally). The individual level is the smallest and most intimate one that can be hit. A person may be impacted by upcoming changes from a psychological/emotional, physical, and financial point of view (Halseth, 2016, p. 96). Likewise, households may experience similar challenges related to job loss or change in job responsibilities, which may lead to financial struggles and emotional distress. Such issues may ultimately affect and

compromise relationships among individuals and family members (Halseth, 2016, p. 97). Whereas the ability of a community to cope with cumulative impacts depends on its members' capacity to be resilient and adapt to changes (Halseth, 2016, p. 98); it should not be forgotten that cumulative impacts manifesting within a single community will also affect neighbouring communities within the same regional area. As argued by Krzyzanowski and Almuedo, cumulative impact is a term used to *'describe spatially or temporally accumulated changes that result from the perturbations of one or more resource sector activities'* (Kryzanowski & Lara Almuedo, 2010, p. 1).

This is what is happening in the Fort St. John area, where dozens of development projects have resulted in accumulated changes impacting the lifestyle of several First Nation communities on an individual, familial, and community level (Lee & Hanneman, 2012, p. 12). In this context, BRFN sued the Government of British Columbia to tackle Treaty 8 rights infringements and the cumulative effects of industrial development on the traditional lifestyle of BRFN members. As explained in the next chapter, the litigation started in 2015 and ended in June 2021, with a ground-breaking verdict that could significantly contribute to facing cumulative effects while developing mitigation and restoration strategies. According to the BC Supreme Court (29th June 2021), the province had been unable to adequately consider the cumulative effects of industrial development when authorizing new projects, so breaching the Treaty 8 rights of the BRFN. Therefore, further development projects cannot be authorized until a new approach to address and mitigate cumulative effects, together with the BRFN, is developed.

Chapter 5 - Cumulative effects and Treaty 8 infringements in Court - The litigation Yahey v. British Columbia, S-151727 (2015-2021)

'The current litigation BRFN v. BC is somehow necessary… to draw a line, to establish who is entitled to what. In a sense, there will not be a winner or a loser; this litigation serves to set a precedent, an important one.'

(Conversation with a Fort St. John resident, November 16th, 2019).

In several conversations I had with band members and employees, public servants, politicians, and residents of Fort St. John, this was the overarching feeling. People had different views about this trial, its meaning, and the reasons why BRFN brought this case to Court. Not everyone agreed with the Band's claim and the relief sought, how the litigation was started and its nature. Someone even speculated that BRFN initiated the litigation for money, as it was rumoured that the Band was in bad financial shape. I remember an informant telling me, *'going to Court is something serious, and it should be done only when something serious happens.'* (December 6th, 2019). This chapter will recount the litigation process in the form of a legal comment and analysis; the subsequent chapters will then consider the broader implications produced by this litigation.

The notice of civil claim is dated March 3rd, 2015, with the trial not starting until May 27th, 2019. The proceeding lasted for almost six years, with more than 160 days of trials, dozens of hours of affidavits sworn, and a considerable number of witnesses. By bringing the case to Court, BRFN sued the BC Province for not addressing the cumulative effects of industrial development adequately, thus seeking recognition and enforcement of their Treaty 8 and Constitutional rights. Throughout the trial, claims evolved as they embraced broader issues related to environmental, social, and constitutional justice. As a result, some relevant and unique issues were addressed, paving the way to a different interpretation of certain provisions established in Section 35(1) of the 1982 Canadian Constitution Act. The litigation came to an end in June 2021, with a ground-breaking verdict in which it was stated that the BC province could not continue to authorize activities that breach Treaty 8 and its unwritten promises. The trial had set an important precedent that will change the legal framework in a way that litigants could not imagine when the litigation was initiated.

5.1 The Notice of Civil Claim No. S151727, 3rd March 2015

In the Notice of Civil Claim, BRFN affirmed that the litigation was started to *'stop the consistent and accelerated degradation of the Nations' traditional territory, and to protect and enforce the Nations' constitutionally protected rights under Treaty 8 against the cumulative impacts of Crown authorized activities on their traditional territory.'* (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at para. 1). According to BRFN, Treaty 8 created reciprocal rights and obligations. When ancestors took it in 1900, they were promised that *'they would be as free to hunt, trap, and fish throughout their traditional territory as they had been before entering Treaty 8.'* (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at para. 20). Besides, BRFN ancestors were ensured the right to access their trap lines, trails, and cabins and to keep practising their spiritual activities in their traditional territory. Only under these conditions did they agree to open their traditional territory to new settlers and authorize future development projects (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at paras 5-22).

BRFN argued that these promises had been infringed, as the Crown in Right of the Province of British Columbia (hereafter the Province) had allowed land alienation, resource extraction, and other types of industrial development within the BRFN traditional territory. Among those, it is worth mentioning oil and gas extraction, logging, mining, hydroelectric and wind power plants construction, roads and pipelines construction, together with other linear disturbances (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at paras 29-31). Thus, instead of protecting and ensuring the traditional way of life, the Province had significantly contributed to its impoverishment and extinction. In fact, in authorizing any type of industrial development, the Province had not considered that the resulting cumulative effects could seriously compromise lands, forests, waters, and wildlife; thus preventing community members from meaningfully practising their traditional activities according to their traditional lifestyle and as assured by Treaty 8 (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at paras 32-35; Macdonald, 2016, p. 6).

Key hunting, trapping, and gathering areas had been made unusable, while access to traditional teaching and spiritual sites had been seriously compromised. Furthermore, linear disturbances and landscape fragmentation reduce the ability of community members to navigate their traditional territory (by land and water), besides destroying traditional travel ways, including old trails. Last but not least, there has been a substantial impact on the ability of members to harvest traditional food (berries and plants), which is relevant to sustain their culture, health, and traditional lifestyle; as well as to transmit such knowledge to future generations (this aspect also includes the transmission of the

Dane-zaa language while practising traditional activities) (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at paras 33-35).

BRFN wanted to see its Treaty and Constitutional rights recognised. By filing this application, the Band sought declaratory and adjudicative relief against the Province, intending to prevent further cumulative effects produced by development projects (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, at para. 7). An interim injunction was sought to restrain the Province from undertaking, causing or permitting further activities that could breach its obligations under Treaty 8. Additionally, a permanent injunction was sought to restrain the Crown from breaching its Treaty 8 obligations and its unwritten promises, as well as its honour and fiduciary obligations (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, pp. 9–10). Such remedies had been sought according to what was established in Treaty 8, in Section 35 of the 1982 Constitution, and based on the legal doctrine of the honour of the Crown, according to which the Crown must act in the interest of the Band while seeking to ensure the meaningful exercise of their Treaty rights (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, pp. 10–11). By authorizing industrial development and the taking up of land, the Crown put its interests before those of the Band. This had resulted in Treaty and Constitutional infringements, as well as breaching the fiduciary duty the Crown has towards Canadian Indigenous peoples while not meeting the minimum standards required by the legal doctrine of the honour of the Crown (Yahey v. BC - Notice of civil claim S151727 - 3rd March 2015, p. 11).

5.1.1 The Defendant's Response to Civil Claim, 24th April 2015

In its response, the Province justified its actions by referring to the *'cede and surrender clause'* included in Treaty 8. According to such a clause, by taking the Treaty:

> *'the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and her successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits…'* (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at para. 6).

In exchange for the surrender, the Crown ensured the Indians the right to:

> *'pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered […] and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes'* (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at para. 7).

The Province denied any consistent or increasingly accelerated degradation of the Plaintiffs' traditional territory, arguing that Treaty 8 does not give the Plaintiffs any rights against the cumulative impacts of authorized industrial development activities on their traditional territory (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at para. 9). The Province argued that Treaty 8 is not a Treaty that protects a mode of life; instead, it is a Treaty that *provides the means to transition into a modern mode of life*, based on a modern economy, and according to the directions that the Province decides to follow (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at para. 40). In supporting its reasoning, the Province relied upon what was established in Mikisew Cree v. Canada, according to which:

> *'Treaty 8 did not promise continuity of nineteenth-century patterns of land use. This is made clear both by the historical context in which Treaty 8 was concluded and the period of transition it foreshadowed.'* (Mikisew Cree v. Canada, 2005 SCC 69, at para. 32).

> '*[…] the most important contextual factor is that Treaty 8 provides a framework within which to manage the continuing changes in land use already foreseen in 1899 and expected, even now, to continue well into the future.'* (Mikisew Cree v. Canada, 2005 SCC 69, at para. 63).

As regards the Plaintiffs' assertion that it had been left with almost no traditional lands where meaningfully exercise its Treaty rights so that the very meaning of such rights has been eroded, the Province referred to Mikisew once again:

> *'In the case of Treaty 8, it was contemplated by all parties that "from time to time" portions of the surrendered land would be "taken up" and transferred from the inventory of lands over which the First Nations had treaty rights to hunt, fish and trap, and placed in the inventory of lands where they did not.'* (Mikisew Cree v. Canada, 2005 SCC 69, at para. 30). *'With the exceptions of cases where the Crown has taken up land in bad faith or has taken up so much land that no meaningful right to hunt remains, taking up land for a purpose express or necessarily implied in the treaty itself cannot be considered an infringement of the treaty right to hunt.'* (Mikisew Cree v. Canada, 2005 SCC 69, at para. 48).

Nevertheless, the Province acknowledged that industrial activities in the BRFN traditional territory had some *temporary and minor* impacts on the land, wildlife, and the ecosystem. However, it denied that those impacts had significantly or adversely impacted the Plaintiffs' ability to exercise their Treaty rights meaningfully. The Province argued that natural systems are resilient and significant changes may happen without compromising their integrity; this is demonstrated by the fact that wildlife in the traditional territory is still abundant, and it includes ungulates, furbearer animals, and

fish. In the Province's view, this meant that the Plaintiffs' ability to meaningful exercise their Treaty rights within their traditional territory had not been compromised (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at paras 26-28). In this sense, the Province did not accept that maps provided by the Band (Figure 44) represent the BRFN's traditional territory, as BRFN members keep hunting, trapping, and fishing on land situated throughout the whole of British Columbia. Thus, also due to the difficulty in defining what traditional territory is, the Defendant argued that the Crown had not breached any of the provisions established in Treaty 8. This is particularly true regarding the use of traditional territory and the 'taking up' of land within it (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at para. 20). Regarding consultation, the Defendant claimed that it had always acted honourably, respecting its fiduciary obligations and according to the duty to consult and, where possible, to accommodate that the Crown has towards Indigenous people. As stated in Mikisew, '*consultation will not always lead to accommodation, and accommodation may or may not result in an agreement.'* (Mikisew Cree v. Canada, 2005 SCC 69, at para. 66).

Such a statement originates from a reasoning that the Supreme Court of Canada adopted in Haida Nation v. BC when describing the consultation process:

> '*At all stages, good faith on both sides is required. The common thread on the Crown's part must be "the intention of substantially addressing [Aboriginal] concerns" as they are raised through a meaningful process of consultation. Sharp dealing is not permitted. However, there is no duty to agree; rather, the commitment is to a meaningful process of consultation. As for Aboriginal claimants, they must not frustrate the Crown's reasonable good faith attempts, nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached. Mere hard bargaining, however, will not offend an Aboriginal people's right to be consulted.'* (Haida Nation v. BC, 2004 SCC 73, at para. 42).

As argued by the Defendant, accommodation is an exercise of *'balance and compromises'* between societal and Aboriginal interests that often compete. The Province had always engaged in consultation with the Plaintiffs as regards industrial development in the claimed traditional territory. Where it was possible and appropriate, the Province had been able to accommodate any concerns the Plaintiffs expressed. The Plaintiffs have had, and will always have, the opportunity to express concerns about possible adverse effects industrial development may produce on their territory or the meaningful enjoyment of their Treaty rights. However, the Plaintiffs failed to challenge the decisions in a timely way and in the appropriate forum, as confirmed by the fact that the BRFN participated in and benefitted from the industrial development taking place in their territory before starting the litigation.

For all these reasons, the Defendant considered the Plaintiffs' claims illegitimate, opposing the granting of the relief sought (Yahey v. BC - Response to civil claim S151727 - 24th April 2015, at paras 49-56).

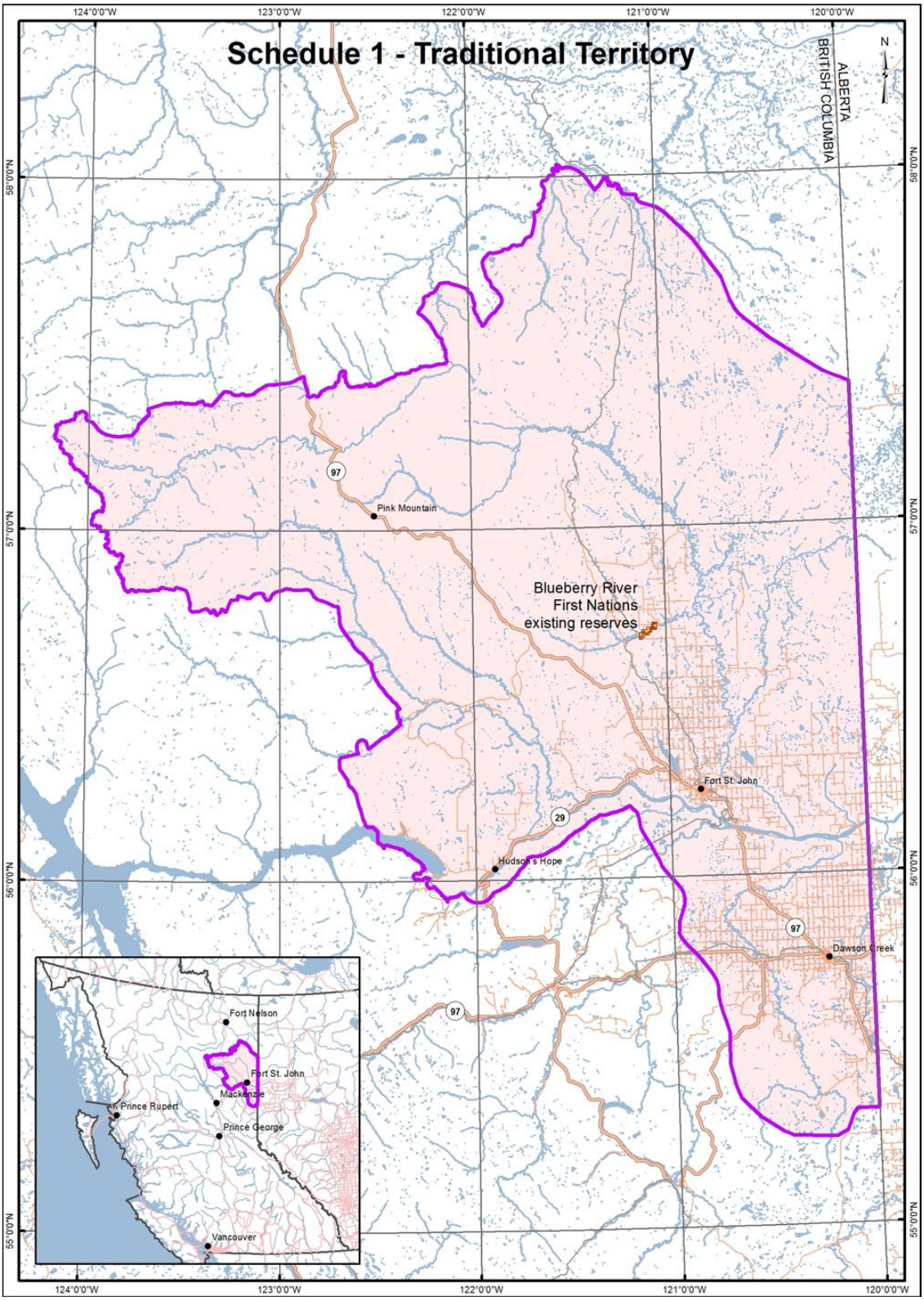


Figure 45 - The traditional territory of BRFN. Map attached to the Notice of Civil Claim (No. S-151727, 3rd March 2015).

5.2 The Plaintiffs' Notice of Application to seek an injunction, 19th June 2015

In the context of the litigation, several injunctions were sought by the Plaintiff before starting the trial. For example, in June 2015, the Plaintiffs filed a notice of application to seek an *interlocutory injunction* with the aim of preventing the Defendant from disposing of Timber Sale Licenses (TSLs) or from authorizing the harvest of timber within the 2015 TSL areas, pending the determination of Action No. S151727 on the merits (Yahey v. BC - Plaintiffs' notice of application S151727 - 19th June 2015, at para. 1). Alternatively, an *interim injunction* was sought to prevent the Defendant from selling or disposing of the 2015 TSL areas until it was determined that the timber harvest within the 2015 TSL areas would not be the cause of further cumulative impacts in the Plaintiffs' traditional territory (Yahey v. BC - Plaintiffs' notice of application S151727 - 19th June 2015, at para. 2). BRFN was aware that in the notice of civil claim, there was no specific reference to the cut-block considered in the request for the injunction mentioned above. However, the Plaintiffs believed that the planned forestry activities could boost cumulative effects in their traditional territory; therefore, any operation should be halted until the main trial (Yahey v. BC, 2015 BCSC 1302, at para. 3). The relevance of this application relied on the Plaintiffs' request for the *test for an interlocutory injunction*, based on *the principle of the balance of convenience,* as a tool to determine whether BCTS (British Columbia Timber Sale, a provincial agency) should be allowed to sell the TSLs or not and, more importantly, to establish if the Plaintiffs' rights have been infringed.

A previous case, RJR-MacDonald, established that three conditions must be met for an interlocutory injunction to be issued. First and foremost, a preliminary assessment of the case's merits must be made to ensure that there is a *serious question to be tried*. Secondly, it must be determined whether the applicant would suffer *irreparable harm* if the application were rejected. Finally, an assessment (using the principle of the balance of convenience) must be made to determine which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits (RJR – MacDonald Inc. v. Canada, [1994] 1 SCR 331, at para. VI, Analysis). In British Columbia, the test to obtain an interlocutory injunction is recognized as a two-part test, as established in AG British Columbia v. Wale (1986) and explained in Canadian Broadcasting Corp (CBC) v. CKPG Television Ltd (1992). *'First, the applicant must satisfy the court that there is a fair question to be tried as to the existence of the right which he alleges and a breach thereof, actual or reasonably apprehended. Second, he [sic] must establish that the balance of convenience favours the granting of an injunction.'* (CBC v CKPG, [1992] 64 BCLR, at para. 101). The threshold to establish if there is a fair question to be tried is relatively low, as the applicant is not required to prove a *strong prima facie* case (RJR-Macdonald, [1994] 1 SCR 331, at para. 49). According to the Plaintiffs, the balance

of convenience favoured granting the injunction to prevent the selling of the 2015 TSLs. Between the parties, the Plaintiffs would have suffered greater harm if such an injunction were not granted, besides the fact that such harm would have been irreparable. Contrariwise, the value of the 2015 TSLs would have been preserved, also considering that there was no third-party investment in any of the 2015 TSLs; therefore, the Defendant was not going to suffer any irreparable harm as a result of the injunction (Yahey v. BC - Plaintiffs' notice of application S151727 - 19th June 2015, at paras 12-14). Whereas the relief was granted, the Plaintiffs would have had enough time to cooperate with the Defendant, adopt adequate measures to assess cumulative impacts and ensure the Plaintiffs' ability to exercise their Treaty rights (Yahey v. BC - Plaintiffs' notice of application S151727 - 19th June 2015, at para. 25).

5.2.1 The Defendant's Response, 6th July 2015 and the order of Justice Smith, 27th July 2015

In its response, the Defendant explained that the 15 TSLs at stake were located within the Fort St. John Timber Supply Area (TSA) in northeast British Columbia, with timber harvesting in the area regulated by the Fort St. John Pilot Project Regulation, BC Reg 278/2001. According to this Regulation, a strategic plan for the pilot project area (called 'Sustainable Forest Management Plan' - SFMP) was established, together with the development of a further plan in which detailed operational planning was addressed (Forest Operations Schedule - FOS). (Yahey v. BC - Defendant's application response S-151727 - 6th July 2015, at paras 1-4). The consultation process with the BRFN on the SFMP and the FOS was carried out according to the terms of the 2007 Forestry Agreement between BRFN and the Province (Yahey v. BC - Defendant's application response S-151727 - 6th July 2015, at paras 12-15). The Defendant prompted that from May 29th, 2006, to September 29th, 2008, BRFN signed several benefit agreements with the Province (Economic Benefits Agreements - EBAs).[48] As a result, from 2006 to 2014, BRFN received the amount of C$ 15 million. The EBAs and other associated resource management agreements were terminated by BRFN on April 1st, 2014 (Yahey v. BC - Defendant's application response S-151727 - 6th July 2015, at para. 28). As Chief Marvin Yahey swore in an affidavit in June 2016:

> *'On April 1st, 2014, Blueberry terminated the Economic Benefits Agreement with the Province of British Columbia (the "EBA") for the reasons set out in a letter of March 5th, 2013. Blueberry terminated the EBA due to the Province's failure to address or take seriously Blueberry's concerns in relation to the cumulative impacts of the industrial developments on the Territory,*

[48] Among them: Long Term Oil and Gas Agreement, Forestry Agreement, Wildlife Consultation and Collaboration Agreement, Crown Land Consultation and Collaboration Agreement, Strategic Land Use Planning Agreement.

and because the EBA and the agreements under it were no longer working to protect Blueberry's Treaty Rights.' (Yahey v. BC, 2017 BCSC 899 at para. 69).

Notwithstanding the sudden decision to terminate the above-mentioned agreements, the Province was open to negotiating with the BRFN to address their interests regarding resource management and land use. In fact, it had offered economic benefits in the form of revenues sharing (i.e. forestry and pipeline revenue sharing) from those economic activities taking place in Treaty 8 territories; besides trying to engage in consultation processes, to develop a collaborative plan for wildlife management and areas protection (Yahey v. BC - Defendant's application response S-151727 - 6th July 2015, at paras 16-23). In the Defendant's view, the public interest played a significant role in such a case and granting the injunction would have negatively impacted third parties and employees who work in the sector. Moreover, by seeking an injunction, the Plaintiffs interfered with the activities of BCTS, a body that carries out a public duty. All things considered, the Defendant opposed the granting of the injunction sought (Yahey v. BC - Defendant's application response S-151727 - 6th July 2015, at paras 24-26).

On July 27th, 2015, Justice Smith issued his order, according to which the balance of convenience did not support granting the injunction and dismissed the application. As explained in his reasoning:

'BFRN may be able to persuade the court that a more general and wide-ranging hold on industrial activity is needed to protect its treaty rights until trial. However, if the court is to consider such a far-reaching order, it should be on an application that frankly seeks that result and allows the court to fully appreciate the implications and effects of what it is being asked to do. The public interest will not be served by dealing with the matter on a piecemeal, project-by-project basis.' (Yahey v. BC, 2015 BCSC 1302, at para 64).

This order paved the way for a new notice of application filed by the Plaintiffs, besides being relevant for some ground-breaking decisions issued in the context of the trial.

BRITISH COLUMBIA

COMMEMORATION DOCUMENT

Blueberry River First Nations Economic Benefits Agreement

On this day, June 2, 2006, in Vancouver, British Columbia, the Province of British Columbia and Blueberry River First Nations commemorate entering into the Blueberry River First Nations Economic Benefits Agreement.

The Province and the Blueberry River First Nations have signed this agreement to share in the benefits of resource development in Northeast British Columbia. This Agreement reflects the Province's commitment to the New Relationship by improving opportunities for First Nations and contributing to an environment of certainty in the management and development of natural resources in Northeast British Columbia.

BLUEBERRY RIVER FIRST NATIONS

MINISTER OF ABORIGINAL RELATIONS AND RECONCILIATION

MINISTER OF ENERGY, MINES AND PETROLEUM RESOURCES

Figure 46 - The Commemoration Document of the BSA signed by BRFN on June 2nd, 2006.

5.3 Yahey v. British Columbia, 2017 BCSC 899

5.3.1 The Plaintiffs' Notice of Application, 8th August 2016

As suggested by Justice Smith, the issue at stake was to be dealt with more comprehensively, meaning that only through a proper trial aiming to define the damages provoked by industrial development could BRFN have received the relief they were seeking. However, before starting the trial, the Plaintiffs filed a new notice of application and sought a new, broader injunction (Yahey v. BC - Plaintiffs' notice of application S151727 - 8th August 2016). This time, the Plaintiffs sought an ***interlocutory injunction*** to restrain the Defendant from permitting oil and gas activities, water use or its withdrawals for purposes related to oil and gas activities and granting rights to harvest Crown timber. Besides, the Plaintiffs wanted to halt the Defendant from making any dispositions of interests in land for purposes related to oil and gas activities, timber cutting or harvesting, as well as aggregate extraction (Yahey v. BC - Plaintiffs' notice of application S151727 - 8th August 2016, at para. 1). Alternatively, in the event that the first broader injunction was not granted, the Plaintiffs sought an ***interlocutory injunction*** preventing the Defendant from authorizing further industrial activities within specific areas *('critical areas'*) of BRFN traditional territory. In a further alternative, the Plaintiffs sought an ***interlocutory or interim injunction*** preventing the Defendant from carrying out industrial activities in the critical areas until an agreement with the Plaintiffs was reached. Such an agreement would have served to determine that the planned industrial activities were not going to cause or contribute to compromising further the meaningful exercise of the Plaintiffs' Treaty rights (Yahey v. BC - Plaintiffs' notice of application S151727 - 8th August 2016, at paras 2-3).

Like the previous injunction application (Yahey v. BC, 2015 BCSC 1302), there was a serious question to be tried. This time the issue at stake was whether the cumulative effects of industrial development in the BRFN traditional territory had become so extensive that Treaty rights had been infringed. According to the Plaintiff, also on this occasion, the balance of convenience favoured granting the relief sought, allowing members to exercise their rights of hunting and trapping in the critical areas, so protecting the Plaintiffs' Treaty and Constitutional rights. Moreover, such a decision would have allowed the Crown to meet its duties and obligations, as established in Section 35 of the Constitution and according to Treaty 8. The Plaintiffs claimed that any potential adverse effect on the Defendant was outweighed by the adverse impact that further industrial development could have had on the Plaintiffs' ability to exercise their Treaty rights (Yahey v. BC - Plaintiffs' notice of application S151727 - 8th August 2016, at paras 25-27).

5.3.2 The Defendant's Application Response, 14th October 2016

Similarly to the previous response, the Defendant opposed granting any injunction order requested by the Plaintiffs. In their reasoning, the Defendant argued that the Plaintiffs' Treaty rights had not been breached and that members were still able to meaningfully exercise their Treaty rights in their traditional territory. Furthermore, the Province fully met its duty to consult and, where possible, accommodate the Plaintiffs' needs regarding the approval and authorization of industrial activities that could potentially impact the meaningful exercise of the Plaintiffs' Treaty rights in the traditional territory. Additionally, for those industrial activities that had impacted the Plaintiffs' ability to exercise their Treaty Rights, adequate financial compensation had been provided and accepted to accommodate the Plaintiffs' needs. Thus, the Defendant argued that the Plaintiffs insisted on stopping present and future development in Treaty areas unilaterally defined by them as critical to exercise their Treaty rights in the exact place and way they prefer. However, Treaty 8 does not give any right to obtain such a relief. It does not confer the Plaintiffs a **veto** right over the 'taking up' of lands or the authorization of industrial development in their traditional territory. Such a substantive right is not present in the Treaty or the Constitution (Yahey v. BC - Defendant's application response S151727 - 14th October 2016, at paras 14-16).

In the Defendant's view, the Plaintiffs could not prove that they would have suffered irreparable harm if the injunction was not granted. Instead, their request for an injunction was based on pure speculation that irreparable harm was likely to be suffered. The Defendant defined this as a ***quia timet injunction***, which can be granted only if the high probability of suffering specific harm can be demonstrated (Yahey v. BC - Defendant's application response S151727 - 14th October 2016, at paras 23-24). Additionally, the assumption of irreparable harm for the purpose of the prior injunction did not apply to this case, as significant and broader relief was sought. The previous application was limited to the auction of 15 specific Timber Sale Licenses; the new one sought relief to stop any industrial activities taking place in the Plaintiffs' traditional territory. In the Defendant's view, there was a lack of clarity in the proposed term of the injunction as regards projects that should be halted. As established in previous cases, applications for injunctions that are not clear and specific regarding the activities that will be halted should not be granted (Yahey v. BC - Defendant's application response S151727 - 14th October 2016, at paras 10, 22, 25).

In conclusion, the Defendant argued that the balance of convenience did not favour the granting of the injunction. The Plaintiffs had provided speculative and minimal evidence of generalized impacts that they may suffer in terms of practising their Treaty rights; meanwhile, the harm that the Province (and the public interest) was supposed to suffer from the injunction would have been

significant. In fact, the proposed injunction would have negatively affected the local economy, which was already suffering the downturn of the oil and gas sector, and third parties who had already planned their business activities around the TSLs. Moreover, the injunction could have resulted in halting activities necessary for protecting public safety and the environment, such as maintenance work on oil and gas infrastructure and activities that reduce the risk of forest fires. Therefore, considering the public interest at stake, the balance of convenience favoured the refusal of the injunction (Yahey v. BC - Defendant's application response S151727 - 14th October 2016, at paras 29-32).

5.3.3 The reasons for judgement by Honourable Justice Burke, 31st May 2017

Madam Justice Burke was designated as the judicial management and trial judge on December 4th, 2015; thus, she was also in charge of dealing with the new injunction request. In Justice Burke's view, with the new application, the relief sought was related to two main breaches. Firstly, it was necessary to establish whether and to what extent the Crown, by authorizing industrial development in the traditional territory, had compromised the ability of BRFN to meaningfully enjoy their substantive Treaty rights. Therefore, it was necessary to assess whether the Crown's fiduciary duty towards BRFN had been breached (Yahey v. BC, 2017 BCSC 899, at paras 20-21).

Justice Burke acknowledged that by filing the application, the Plaintiffs sought an interlocutory injunction aiming to stop the Province from ***further*** permitting oil and gas activities, water use or withdrawal for purposes related to oil and gas activities, granting rights to harvest Crown timber, disposing of interests in land, and engaging in further industrial activities. As specified by the Plaintiffs, by limiting the sought injunction to ***further*** activities, projects that had already obtained Crown permits or authorizations to operate would be spared. Thus, if granted, the injunction was not supposed to affect third parties already operating in their traditional territory (Yahey v. British Columbia BCSC 899, 2017, at paras 25-26). As already established by Justice Smith in 2015, Justice Burke agreed that the question raised was whether the cumulative effects of all the industrial development in the Plaintiffs' traditional territory had expanded to the point that Treaty rights had been breached (Yahey v. BC, 2017 BCSC 899, at para. 42). There was a serious question to be tried, which brought Justice Burke to examine whether the balance of convenience favoured an injunction.

In her judgement, Justice Burke considered the *RJR – MacDonald Inc. v. Canada* case, according to which *'irreparable'* must refer to the nature of the harm that a party will be suffering, not to the magnitude of it. Furthermore, such harm must not be quantifiable in monetary terms or be cured because one party would be unable to collect the damages from the other party (RJR – MacDonald Inc. v. Canada, [1994] 1 SCR 331, at para. 341). The Plaintiffs claimed that irreparable harm had

already been determined by Justice Smith in the previous application, besides the fact that any alleged breach of a Constitutional right was to be presumed as irreparable harm. Contrariwise, the Defendant claimed that Justice Smith did not find any irreparable harm, but only that '*the harm must be assumed, for the purpose of the application, to be irreparable.'* (Yahey v. BC, 2017 BCSC 899, at paras 54-55). The Defendant argued that in several instances, case law had established that irreparable harm must be proved with evidence, even when the alleged harm is a breach of Constitutional rights (including Section 35.1). In the Defendant's view, the Plaintiffs could not produce such evidence (Yahey v. BC, 2017 BCSC 899, at paras 57-59).

To determine whether the Plaintiffs had suffered irreparable harm, Justice Burke took into account the affidavit sworn by community members. As members affirmed, hunting on Reserve land or nearby had become unsuccessful, and even when successful, elders are reluctant to eat the meat of the hunted animal, as they perceive it to be contaminated. Thus, members had been forced to move to different locations to hunt, trap, and practice their Treaty rights. Pink Mountain, Lily Lake, Tommy Lakes, and the Dancing Grounds are still good locations to carry out traditional activities (Yahey v. BC, 2017 BCSC 899, at paras 66-67). In the affidavit sworn on June 28th, 2016, BRFN Chief Marvin Yahey stated:

> *'The Dancing Grounds are also an area that we have traditionally used to hunt moose and elk, and other game. My family built a cabin at the Dancing Grounds around 1998, as a base for hunting in the surrounding area. The cabin still stands today. However, the Dancing Grounds have been heavily impacted by forestry activity in recent years, and many of the animals have moved out. I have not caught a moose in this area in many years.'*
>
> *'Pink Mountain is one of the last places in our Territory that you can reliably find moose. When we go up to the Pink Mountain and Lily Lake area each year in the summer, I can almost always find a moose. […] Pink Mountain is an important gathering place for Blueberry for social and cultural events. We host cultural camps every year in the summer in this area in order to teach our youth the hunting and trapping skills they need to maintain our way of life.'* (Affidavit #3, 28th June 2016, para. 98-106).

Other affidavits given by community members confirmed what was stated by Chief Yahey. As affirmed by Wayne Yahey, at that time councillor of BRFN:

> *'Before the oil and gas development, I used to be able to hunt all over the territory. Not anymore. Last summer, I spent 18 days in the bush. I travelled 98 miles on horseback. I did not*

see a single moose -- and I travelled to all the best moose spots I know. Where they've gone, I don't know.' (Affidavit #1, 28th June 2016, para. 46).

In Justice Burke's opinion, this evidence highlighted the cultural importance of the critical areas at stake, besides being sufficient to establish that industrial activities had had a detrimental effect on the BRFN ability to meaningfully exercise their Treaty rights. Justice Burke rejected the Defendant's position, according to which the Plaintiffs were required to establish what, in effect, was the real harm that such activities could have caused in their traditional territory. Such a requirement was too broad, as an appropriate assessment of harm can be only based on the evidence that can be used to predict a likely outcome, not a guaranteed future outcome of harm (Yahey v. BC, 2017 BCSC 899, at paras 86-87). Taking up on this, Justice Burke disagreed with the Defendant's view, according to which the Plaintiffs had an inconsistent and delayed approach in this and other proceedings when claiming that irreparable harm had been suffered. In fact, those actions require persistent effort that a small Band cannot always make, given that they have to deal with dozens of applications for industrial activities (Yahey v. BC, 2017 BCSC 899, at paras 91-92).

Nevertheless, Justice Burke concluded that the balance of convenience weighed in favour of the Province. In her view, the evidence established that economic harm was to be suffered by the Province (in terms of royalties, annual rent, etc.) should the injunction be granted. Third-party affidavits highlighted that an injunction would have resulted in the loss of a considerable number of jobs and business activities in a region that had already been severely impacted by the 2015 downturn of the oil and gas sector. As affirmed by the CEO of the Ministry of Natural Gas Development:

'Oil and gas sector provincial revenue has historically been a large portion of natural resource revenue realized by the Province. The inability to drill additional wells (due to the injunction) would result in a significant loss of petroleum and natural gas royalties if the injunction were put in place over the critical areas or critical area portions as identified.' (Affidavit #1, 11th October 2016).

Given that the injunction was sought for all further industrial activities that could take place in the Plaintiffs' traditional territory, companies feared that this would have resulted in their inability to continue certain operations and, ultimately, in their shutdown. It is important to mention that some of the third-party companies were Indigenous owned and run; thus, also Indigenous businesses would have suffered if the injunction was granted (Yahey v. BC, 2017 BCSC 899, at paras 103-104). Considering that the trial was due to commence in March 2018, the balance of convenience did not support granting such a wide-ranging injunction. Nevertheless, Justice Burke noted that BRFN could have renewed their application for an injunction if the trial had been delayed. As a final remark,

Justice Burke encouraged the parties to pursue a collaborative path until the trial, considering the different interests at stake (Yahey v. BC, 2017 BCSC 899, at paras 121-127).

BRFN and the Province of British Columbia had tried to negotiate an agreement to avoid commencing the trial (which started on May 27th, 2019). The litigation was adjourned for several years to build stronger relationships by implementing several agreements the parties were negotiating. In this sense, an important component of the agreement was to update and amend the Fort St. John Land and Resource Management Plan (to be started in October 2018). Other issues that were supposed to be addressed included restoration activities on selected inactive oil and gas sites (especially regarding so-called orphan wells)[49], roads, and seismic lines, as well as new wildlife protection measures (Plank, 2019, p. 1). However, the negotiation process proved to be ineffective, as the parties had different views on many important issues at stake, as demonstrated by the diverse type of Applications (to seek injunctions, the stay of the payment of hearing fees, etc.) that they submitted to Madame Justice Burke over the years.

5.4 Yahey v. British Columbia, 2018 BCSC 278 – Seeking Constitutional Justice

5.4.1 The notice of application for a stay to pay the hearing fees, 1st December 2017

On December 1st, 2017, BRFN filed a notice of application seeking an order to refrain from the obligation to pay the Court hearing fees. The Band sought the waiver of hearing fees when Indigenous people bring a case before a Court, seeking protection and enforcement of their Treaty and Constitutional rights. According to the BC Supreme Court Civil Rules, the Plaintiffs who file the trial notice have to pay the daily court hearing fees. Costs are relevant and increasing in proportion to the time the parties spend in Court. Setting up a trial costs C$ 200; from the 4th to 10th-day, fees amount to C$ 500 per day; after the 10th day, the cost rockets to C$ 800 per day. In November 2017, BRFN Chief Marvin Yahey estimated that the hearing fees amounted to C$ 67.000, based on a schedule that set the trial for 100 days (Yahey v. BC, 2018 BCSC 278, at paras 3-4). However, in February 2020, the trial was set for 160 days, and the hearing fees that BRFN was supposed to pay had almost doubled to C$ 120.000 (Yahey v. BC, 2020 BCSC 278, 2020, at para 4).

Defining whether BRFN was supposed to pay such high hearing fees was fundamental in the context of the current trial and beyond it; as with this case, BRFN raised an important matter of

[49] Orphan sites are wells, facilities, pipelines, and associated areas abandoned after an oil and gas company is declared bankrupt or cannot be located. In BC, the Oil and Gas Commission is in charge to design them and then proceeding with decommissioning and site restoration, using the money available through the Orphan Site Reclamation Fund. More information is available at: https://www.bcogc.ca/what-we-regulate/oil-gas/orphan-sites/ (last accessed on March 18th, 2021).

constitutional justice. Taking as a reference a pending decision on a similar matter (the appeal of the judgement in *Cambie Surgeries Corp. v. British Columbia*, 2017), BRFN asked the Court to determine if Court hearing fees should be paid by the Band. In this context, on November 24th, 2017, BRFN Chief Marvin Yahey wrote to the Attorney General of British Columbia (hereafter AGBC), asking for the waiver of the court hearing fees, asserting that they were contrary to the honour of the Crown and the process of reconciliation. According to the Plaintiffs, it was neither constitutional nor honourable for the Crown to charge a Band with daily fees to access the Court when seeking justice for the breaches of Treaty and Constitutional rights (Yahey v. BC - Plaintiffs' notice of application S151727 - 1st December 2017, at paras 18-28).

To waive the hearing fees, the Court needed to conduct a *'Test for a Stay'* to determine whether there was a serious question to be tried and if irreparable harm would have been caused if the stay had not been granted. Furthermore, it was necessary to evaluate whether the balance of convenience favoured granting the stay. Based on the *Cambie Surgeries* appeal, the Plaintiffs argued that three issues were at stake. Firstly, whether the court hearing fees were applicable to *meritorious constitutional cases*; secondly, whether the concept of 'undue hardship' was to be interpreted more broadly. Finally, it was necessary to clarify whether the payment of court hearing fees, as established in the Supreme Court Civil Rules, was constitutional in cases where Aboriginal peoples seek justice to see their rights recognised and enforced (Yahey v. BC - Plaintiffs' notice of application S151727 - 1st December 2017, at paras 35-36).

The Plaintiffs acknowledged that reconciliation between the Crown and Indigenous people is best achieved through negotiations. Nevertheless, in specific situations, litigation may be necessary to advance reconciliation. Having access to the Court may then be essential, and charging substantial fees to Indigenous people to access the Court to enforce their Treaty and Constitutional rights would therefore be contrary to the spirit of Section 35(1) and the honour of the Crown. For these reasons, the Plaintiffs argued that Indigenous people should be constitutionally exempt from paying court fees when they need to access the Court to see their rights recognised (Yahey v. BC - Plaintiffs' notice of application S151727 - 1st December 2017, at paras 47-53). All things considered, the balance of convenience favoured the granting of the stay of the Court hearing fees in order for the Band not to suffer an undue burden produced by a potentially unconstitutional hearing fee scheme, while the law was settled in the trial Cambie v. BC (Yahey v. BC - Plaintiffs' notice of application S151727 - 1st December 2017, at paras 55-57).

5.4.2 The Defendant's response, 8th December 2017 and the decision of Justice Burke, 26th February 2018

In its Response, the Defendant argued that Court hearing fees must be paid by the party who filed the Notice of Civil Claim, as established in the Supreme Court Civil Rules, BC Reg. 168/2009. The Court may order a fee waiver if a party cannot afford to pay them without undue hardship. Moreover, court hearing fees are calculated, invoiced and payable at the end of a proceeding; therefore, the application for a stay was premature. The Defendant based its Response on the verdict of *Cambie Surgeries v. BC*, where the Court rejected the application for a waiver of the hearing fees (Yahey v. BC - Defendant's application response S151727 - 8th December 2017, at paras 1-9). To support its position, the Province referred to the case law *British Columbia (Minister of Forests) v. Okanagan Indian Band (2003, SCC 71)*, in which the BC Court of Appeal established that Section 35 of the 1982 Constitution did not place an affirmative obligation on the government to provide funding for fees for those cases where a claim involved Section 35 (Yahey v. BC - Defendant's application response S151727 - 8th December 2017, at para. 10). Additionally, the Defendant argued that the Plaintiffs had failed to demonstrate that irreparable harm would have been suffered if the waiver of hearing fees was not granted. If the Plaintiffs had paid the court hearing fees and then succeeded on the merits or in case of a change in the law following the appeal of the Cambie case, hearing fees could have been recovered or refunded. Thus, the Defendant argued that the balance of convenience favoured the refusal of a stay of proceedings and the dismissal of the application (Yahey v. BC - Defendant's application response S151727 - 8th December 2017, at paras 14-22).

On February 26th, 2018, Madame Justice Burke issued her judgement. The Court considered the Plaintiffs' request for the stay of the hearing fees in the context of a lengthy trial. Thus, if the stay was not granted, BRFN was required to allocate a considerable amount of its resources to pay the fees or bring an application for relief from paying the fees (while waiting for the pending *Cambie Surgeries* appeal). BRFN had raised a serious issue regarding the constitutional applicability of the hearing fees based on what is enshrined in Section 35 of the 1982 Constitution. According to Justice Burke, a perception of unfairness could arise from the fact that an Indigenous Band protected by Section 35 must pay fees to the Crown to access the Court and advance its case against the Crown. This was to be seen as irreparable harm, with the loss that could not be recovered at the time of the decision on its merits (Yahey v. BC, 2018 BCSC 278, at paras 39-42). On its part, the Province was unable to demonstrate that harm or prejudice would have been suffered if the Court granted a temporary stay of the obligation to pay the hearing fees, pending the Cambie appeal. Moreover, once the appeal was settled, BRFN was required to file an application for relief from the fees to obtain a

legal exemption from paying the hearing fees. Thus, the delay in the payment of the fees could not affect the Province. Therefore, Justice Burke sentenced that the balance of convenience favoured granting the stay of the obligation to pay the hearing fees, pending the appeal in Cambie Surgeries (Yahey v. BC, 2018 BCSC 278, at paras 43-46).

5.4.3 The Application to seek exemption from paying the Court hearing fees, 18th July 2019

On October 19th, 2018, the Court of Appeal issued the decision on the *Cambie Surgeries* case, dismissing the appeal. The Court found that the hearing fees regime was constitutional; thus, the Plaintiffs had to pay such fees. In the Cambie case (which was about the Medicare Protection Act), the Plaintiffs sought an exemption from paying statutory court fees. Its argument was that it was unconstitutional to require a party with a *prima facie meritorious* constitutional challenge to pay court fees since court fees are a deterrent to the assertion of Charter rights (Cambie Surgeries Corporation v. British Columbia, 2020 BCSC 1310, at para. 145). However, in the Cambie case, other rights enshrined in the 1982 Constitution (i.e., Section 35) were not considered.

In light of this judgement, on July 18th, 2019, BRFN filed a new notice of application, seeking an order to be exempted from paying the court hearing fees. This time, the Plaintiffs sought an order requiring the Defendant to pay the hearing fees, as established in the Rule of the BC Supreme Court, based on the discretion of the Court and in the unique circumstances where Section 35 is at stake. Alternatively, the Plaintiffs sought the granting of a constitutional exemption from paying the court hearing fees, always based on Section 35 and, if necessary, the declaration of constitutional inapplicability of the court hearing fees, based on Section 52 of the 1982 Constitution (Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July 2019, at paras 1-5, 29-30). For the first time in Canadian legal history, an application was filed to consider whether charging court hearing fees to aboriginal people was constitutionally acceptable, based on Section 35 of the 1982 Constitution. The Plaintiffs argued the unconstitutionality of hearing fees, especially in cases where the Defendant is the Crown itself (Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July 2019, at para. 21). In seeking such a unique relief, besides Section 35, the Plaintiffs relied on the content of Treaty 8, the honour of the Crown and what the Supreme Court has described as the '*promise or national commitment to indigenous people*', to recognize and affirm Treaty and Constitutional rights (Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July 2019, at paras 30-35). Aboriginal rights are unique, different in nature and serve a different purpose. They must be considered detached from the rights established in Part I of the Constitution Act (Charter of Rights and Freedoms). As established in R. v. Van der Peet:

'*Those rights are held only by aboriginal members and they arise from the fact that aboriginal people are aboriginal. In my view, the doctrine of aboriginal rights exists, and is recognized and affirmed by Section 35(1), because of one simple fact: when European arrived in North America, aboriginal people were already here, living in communities on the land and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.'* (R. v. Van der Peet, 1996, 2 S.C.R. 507, at paras 19, 30).

The Plaintiffs argued that, based on Section 35(1) and the above-mentioned case law, the reasoning used by the Court in *Cambie Surgeries* could not be applied to the claim brought by BRFN (Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July 2019, at paras 38-39). In its application, the Plaintiffs underlined that having access to the Court is essential to advance reconciliation when negotiation is not sufficient to ensure the enjoyment of Treaty rights. Thus, Indigenous people must be able to challenge government actions that may breach their rights. In this sense, BRFN argued that being charged substantial hearing fees to access the Court to enforce constitutionally protected Treaty rights is antithetical to the purpose of Section 35(1), the promise of the Treaty, the honour of the Crown, and the objective of reconciliation (Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July 2019, at paras 40-46).

5.4.4 The Defendant's response, 24th September 2019 and the decision of Justice Burke, 27th February 2020

In its answer, the Defendant stated its contrariety to the grant of the relief sought by BRFN. In its view, the Plaintiffs had not produced any evidence that the payment of fees hearing would have caused hardship to the Band. Hearing fees should be waived only when the party genuinely cannot afford to pay for the litigation, and there are no other realistic options for bringing the issue to trial, meaning that the litigation would be unable to proceed. (Yahey v. BC - Plaintiffs' notice of application S151727 - 24th September 2019, at paras 19, 27). Moreover, there should be a *prima facie meritorious* claim such that it is against the interests of justice to lose the case because one party lacks financial means. In addition, the issues at stake must be of public importance and have not already been addressed and resolved in previous cases (Yahey v. BC - Plaintiffs' notice of application S151727 - 24th September 2019, at para. 30). Such statements may be perceived as confirming that the Province did not believe that the litigation was relevant. As argued by the Attorney General, Section 35(1) does not establish absolute rights; therefore, they cannot be considered more important than other sets of

rights established in the 1982 Constitution. Taking up this reasoning, it stated that there is no basis to assert that if a claim is brought to Court based on the breach of Section 35(1), there should be preferential access to justice by conceding an exemption of the payment of the hearing fees (as addressed in *Okanagan Indian Band v. BC*) (Yahey v. BC, 2020 BCSC 278, at para. 33). In the final section of the response, the Defendant asserted:

> *'to the extent that the plaintiffs are in effect alleging that the payment of daily court fees conflict with Section 35(1), they bear the onus of establishing that the payment of daily court fees touches on the* ***core of Indianness****. They have not done so: preferential access to the civil justice system was not and is not an integral part of the Plaintiffs' treaty rights or rights established under Section 35(1).'* (Yahey v. BC - Plaintiffs' notice of application S151727 - 24th September 2019, at para. 43).

Considering the verdict of the Court of Appeal in *Cambie Surgeries,* Justice Burke stated that there were two main issues to be addressed. First, it was necessary to clarify whether the hearing fees that BRFN were supposed to pay were inconsistent with Section 35(1) of the 1982 Constitution, with the honour of the Crown and with the objective of reconciliation. Moreover, if that was the case, an appropriate remedy was to be proposed (i.e., a constitutional exemption from the payment of court hearing fees, based on Section 35(1), a declaration of inapplicability, or an order requiring the Defendant to pay the daily hearing fees) (Yahey v. BC, 2020 BCSC 278, at para. 24). As affirmed in leading case laws, Section 35(1) must be interpreted taking into account the principle of the honour of the Crown, whose ultimate goal is the reconciliation of pre-existing Indigenous societies with the assertion of Crown sovereignty (Mikisew Cree v. Canada, 2018 SCC 40, at para. 58).

Justice Burke noted that reconciliation is a process that takes place both inside and outside the courtroom. Consultation and negotiation are the primary methods that should be used to achieve reconciliation; however, they may not always work. In those cases, Courts are called to play an important role. Justice Burke opposed the Defendant's position, according to which Section 35(1) and Charter rights are of equal importance and significance and that litigants are equally entitled to access the Courts. She argued that *Cambie Surgeries* did not deal with claims related to Section 35(1) or Indigenous-related issues. In fact, BRFN was denied leave to intervene in the appeal because it had a different interest in the context of Section 35(1), and the intervention could have brought a new issue to the appeal. Thus, the position upheld by the Crown was weak, as *Cambie Surgeries* did not deal with Section 35(1), nor did it have to consider important elements such as the honour of the Crown, Crown-Indigenous relations, or reconciliation. The process of reconciliation is ingrained in the scope of Section 35(1), but it is not required by other provisions established in the Constitution. Therefore,

charging a substantial fee to Indigenous Plaintiffs to access the Court and seek justice should be seen as antithetical to the purpose of Section 35(1) and the objective of reconciliation (Yahey v. BC, 2020 BCSC 278, at paras 53-54). For the first time in Canadian legal history, the constitutionality of hearing fees was taken into account from such a perspective (Yahey v. BC, 2020 BCSC 278, at paras 46-48).

BRFN was not seeking privileged treatment or the recognition of a hierarchical view of rights. Instead, the Band just wanted to see recognised the uniqueness of the rights protected under Section 35(1), which also meant recognizing their substantial difference in terms of source and purpose compared to other Charter rights. Recognizing such uniqueness was not to be seen (as the Crown argued) as a way to establish a preferential system of access to justice (Yahey v. BC, 2020 BCSC 278, at paras 51-52). Indeed, considering the spirit of Section 35(1), the specific circumstances of the case, as well as the constitutional principles engaged and the burden that hearing fees may pose on Indigenous Plaintiffs, it was in the interests of justice for the Court to exercise its discretion. Therefore, the Defendant (the Crown), not the Indigenous Plaintiffs, should pay the hearing fees. This position was further upheld by the fact that BRFN did not have other ways to seek to enforce and protect their Treaty rights from cumulative impacts. Indeed, when they had sought injunctions, the same Court denied them the relief sought, arguing that the whole matter was supposed to be adjudicated at a trial (Yahey v. BC, 2020 BCSC 278, at paras 89-90). Justice Burke affirmed that charging hearing fees to Indigenous Plaintiffs starting a trial to seek their Constitutional and Treaty rights recognised was inconsistent, in and of itself, with the spirit of Section 35, the principle of the honour of the Crown, and the ultimate goal of reconciliation (Yahey v. BC, 2020 BCSC 278, at para. 38-43).

5.5 The Plaintiffs' Opening Statement, 27th May 2019

The Yahey v. BC trial started on 29th May 2019, four years after BRFN filed the civil claim. After a few years spent negotiating a possible agreement to avoid commencing the trial, BRFN felt that the only way to see their rights recognised was to go back to litigation. In the opening, the Plaintiffs claimed that the Province had gone far beyond what was agreed in Treaty 8 due to the continuous authorization of industrial development that had limited the exercise of the Plaintiffs' rights. By doing so, the Province had failed to monitor cumulative impacts in the Plaintiffs' traditional territory, which is now within a few hundred meters of industrial development and linear disturbances. This had been translated into a curtailment of Treaty rights, with significant diminution of the possibility to exercise traditional activities within the traditional territory (Yahey v. BC S151727 - Plaintiffs' opening, 27th May 2019, at paras 15-20). When the Plaintiffs' ancestors entered Treaty 8, they were convinced that

enough land would remain available to carry on with their traditional lifestyle. This is not the case nowadays due to the cumulative impact of oil and gas extraction, forestry operations, and construction works (including roads and seismic lines) taking place in the traditional territory of the Plaintiff. Such development has left the Plaintiffs with little land to carry out their traditional activities, besides compromising the wildlife and the broader ecosystem of the Plaintiffs' traditional territory (Yahey v. BC S151727 - Plaintiffs' opening, 27th May 2019, at paras 55-57).

The Plaintiffs argued that the promise that their traditional and semi-nomadic lifestyle based on hunting, trapping, and fishing would be preserved by taking Treaty 8 was the *conditio sine qua non* that convinced the ancestors to take the Treaty (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, pp. 21–23). This does not mean that changes are not accepted or permitted (as argued by the Province); however, there should be a limit to them, a threshold that should not be crossed (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 60-65). Based on what has been stated in the Civil Claim Response, the Province's interpretation of Treaty 8 and the rights enshrined in it differs from how the Plaintiffs perceive the Treaty. BRFN argued that the interpretation of the Province is against the law and does not honour the promises made to the Plaintiffs' ancestors when they entered Treaty 8 (Yahey v. BC S151727 - Plaintiffs' opening, 27th May 2019, at para. 81). Whereas Treaty 8 signatories may have the right to exercise their Treaty rights anywhere within the Treaty 8 boundaries, the law protects the meaningful exercise of the rights in their traditional territories. It was in this sense that, in 2004, the Supreme Court of BC refused an injunction to a company that asked for the removal of a hunting and trapping campsite set up by BRFN. As affirmed by the Court:

> '*The evidence discloses that the deprivation of the band's hunting and trapping land through development has been steadily growing over the years, as has the deprivation of traditional lands of other bands covered by Treaty #8. It is no longer realistic to simply tell the defendants to go elsewhere under Treaty #8 to exercise their rights.'* (Relentless Energy Corp v. Davis, 2004 BCSC 1492, at paras 21-25).

Picking up on this, the Plaintiffs argued that the Province's approach to defining the extension of the BRFN traditional territory has always been controversial. On the one hand, where the duty to consult must be ensured, the Province and the BC Oil & Gas Commission (OGC) have considered the traditional territory of the Plaintiff to be as small as possible. On the other hand, as regards the Plaintiffs' ability to exercise Treaty rights, the Province has used a broader approach to define the extent of traditional territory, suggesting that members could always go somewhere else to carry out their traditional activities (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 230).

In the Plaintiffs' view, the continuous approval of projects in the traditional territory has not taken into consideration the minimal impairment of Treaty rights (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 280-282). Notwithstanding several consultations, the OGC had never refused the approval of any application based on the concerns raised by BRFN regarding their inability to enjoy their Treaty rights (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 291-294). Additionally, the Plaintiffs argued that there has never been a consultation process that has addressed whether the Plaintiffs' traditional territory could sustain further development, considering the existing disturbances on the landscape. Consequently, the Crown never addressed whether Treaty rights have been impaired or significantly diminished due to industrial development, nor if the Plaintiffs were able to access another portion of traditional territory to meaningfully exercise their rights (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 296-298).

In conclusion, the Plaintiffs asked the Court to enforce the Treaty's terms and identify whether and to what extent the spirit of the Treaty had been breached. On the one hand, the Crown has the right to make regulations while allowing industrial development and the taking up of land; on the other hand, BRFN is entitled to meaningfully enjoy the Treaty rights established in Treaty 8. The Treaty represents the promise that the foundational rights related to the traditional lifestyle would always be protected and ensured (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 303-305). Once Treaty 8 was taken, the ancestors found a way to carry out their Treaty rights in a mixed economy. What has been lost, especially due to the relentless development of the last twenty years, is the *balance* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at paras 306-307). The Plaintiffs believed that solutions were available and measures could be taken to slow down the development while protecting the ecosystem and important traditional sites. To do so, the Crown was required to adopt higher standards and values than *current political life and market forces allowed* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 333).

5.6 The Defendant's Opening Statement, 28th May 2019

In its opening, the Defendant argued that the Crown could not be accused of taking up so much land that no meaningful right to exercise Treaty rights remains, as confirmed by several affidavits sworn by community members during the trial. In fact, if on the one hand, members cannot hunt on Reserve or the traditional territory located nearby the Reserve (so being obliged to travel to selected locations, spending a considerable amount of time and money); on the other hand, in places like Pink Mountain, Lily Lake, and the Dancing Ground, they can still hunt and perform their cultural practices (Yahey v. BC, 2017 BCSC 899, at para 67). Based on this evidence, the Defendant argued that there

has not been any infringement of Treaty rights and that the test for Treaty infringement established in Mikisew has not been met (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at paras 5-8). In the Defendant's view, Treaty interpretation is a key issue in ascertaining the infringement of certain Treaty rights. As stated in several case laws, Treaty rights should not be interpreted in a static or rigid way; instead, the Court should interpret and update the meaning of Treaty rights so to make sure they can be exercised in the modern world. This means that there is a need to determine what modern practices are reasonably incidental to core Treaty rights in a modern context.

The Defendant argued that there is a relevant *difference between Treaty rights and Aboriginal rights*. The former is enshrined in official agreements that the Crown signed with native people; they have the same meaning of contracts and create enforceable obligations based on the mutual consent of the parties. The latter originates from the customs and traditions of native people, and they embody native people's rights to live according to their traditional lifestyle as their ancestors lived (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at paras 17-21). The Defendant argued that when Treaty 8 was concluded, not the Government nor the Indians who took it perceived it as a finished and static agreement. As established in Badger:

> '*The words in the treaty must not be interpreted in their strict technical sense nor subjected to rigid modern rules of construction. Rather, they must be interpreted in the sense that they would naturally have been understood by the Indians at the time of the signing. This applies, as well, to those words in a treaty which impose a limitation on the right which has been granted.'* (R. v. Badger [1996] 1 SCR 771, at para. 52).

Treaty 8 provided that some portion of land would have been taken up from the Crown for development purposes from time to time. Thus, not every subsequent 'taking up' of land can be seen as an infringement of Treaty 8 (as established in Mikisew). There are two reasons why the Defendant makes such a claim. First, the Defendant argues that Treaty 8 rights are limited to those portions of land that are not required or taken up from time to time for settlement and development purposes. The Treaty considered future changes, and the Crown should manage such changes honourably. Thus, the taken up of lands does not need to be justified, as prescribed in Sparrow. However, unlike Sparrow, where the Province breached aboriginal fishing rights that still existed and were not extinguished, in the case of Treaty 8 territory, aboriginal rights were surrendered and extinguished (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at paras 27-31). Being Treaty rights not frozen in time, a Nation can earn a livelihood by taking advantage of the new opportunities provided by modernization. In this sense, Reserve lands may provide a livelihood in modern times through agriculture, ranching, and the exploitation of subsoil resources and forestry operations. In the

Defendant's view, the interests of the BRFN in earning a livelihood go beyond traditional activities (such as hunting and trapping) and must include the broader interests of the Band (and its members) to support itself by using the resources available on their reserve lands (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at paras 28-30). Thus, the clause regulating hunting, trapping, and fishing is limited by the 'taking up' right that the Crown has.

Second, Treaty 8 did not promise continuity with the ancestors' way of life or use of land. When Treaty 8 was signed, the Crown wanted to give First Nations the possibility to make a living by practising their traditional activities until the transition period was over. In the Crown's view, Treaty 8 was a *tool* to negotiate and to help those Indians transition from a nomadic lifestyle based on hunting and gathering to a sedentary one based on agriculture and farming (Yahey v. BC S151727 - Defendant's opening 28th May 2019, pp. 9-15). According to the Defendant, negotiating Treaty 8 served as an anticipation of the Crown's duty to consult, based on what was affirmed in Mikisew:

> *'Thus, none of the parties in 1899 expected that Treaty 8 constituted a finished land-use blueprint. Treaty 8 signalled the advancing dawn of a period of transition. The key, as the Commissioners pointed out, was to "explain the relations" that would govern future interaction "and thus prevent any trouble.'* (Mikisew v. Canada, 2005 SCC 69, at para. 27).

Thus, the duty to consult in advance to justify future taking up of lands gives the Crown the opportunity to explain its action and to avoid any future trouble by minimizing and accommodating the adverse impacts on established Treaty rights (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at para. 106). The Defendant argued that BRFN had been consulted in the past and their needs accommodated, as demonstrated by the negotiation and the signing of the Economic Benefits Agreements with the Province (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at para. 111-115). Moreover, and according to the benefit agreements, BRFN agreed that:

> *'with respect to any Crown Authorization occurring anywhere in Treaty 8 Territory, British Columbia [had] fulfilled any duties it [had] to consult and, as appropriate, to avoid any potential infringement of, or to impair only minimally, any Section 35(1) Rights affected by those activities.'* (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 112).

Furthermore, BRFN agreed to indemnify the Province of BC for any costs arising by any claim or proceeding brought against BC by a member of the BRFN asserting the infringements of Section 35 of the Constitution (Yahey v. BC S151727 - Plaintiffs' opening 27th May 2019, at para. 114). Nevertheless, BRFN ended the Agreements and, one year later (3rd March 2015), initiated the litigation against the Province. Hence, the Defendant argued that the position of the BRFN as regards

the industrial development that took place between 2006 and 2014 is unclear, and it does not seem compatible with what the Band asserted by suing the Province of BC (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at para 117).

In conclusion, the Defendant asserted the importance of traditional practices, lifestyle, and connection with the traditional lands for BRFN. The Province argued that sufficient land is available for the BRFN to exercise their Treaty rights. In fact, BRFN members had been hunting, trapping, and fishing within and outside their traditional territory. In this sense, the Defendant affirmed a need to identify what constitutes traditional territory for the BRFN. In the Notice of Civil Claim Area, BRFN claimed that their traditional territory is approximately 3,800,000 ha. However, it is worth mentioning that the traditional territory of the BRFN overlaps with some parts of the traditional territory of the Doig River First Nation (as they were the same Band – the Fort St. John Indian Band – until 1977). Determining the boundaries of the BRFN traditional territory was deemed to be fundamental for the outcomes of the litigation in order to determine whether the threshold had been crossed to define which kind of relief the Band was entitled to seek (Yahey v. BC S151727 - Defendant's opening 28th May 2019, at paras 119-131).

5.7 The final verdict of Justice Burke, 29th June 2021

On 29th June 2021, the BC Supreme Court issued the verdict of the Yahey v. British Columbia litigation (S151727). In the Reasons for Judgement, Justice Burke highlighted that the Province had been unable to properly assess the cumulative effects of industrial development on the exercise of BRFN Treaty rights, nor to find a way to ensure that BRFN can continue to exercise their Treaty rights nowadays. As Justice Burke stated, the Province had addressed BRFN concerns regarding cumulative effects in a way that *'frustrates the essential promise of Treaty 8'*.[50] Justice Burke decreed that the Province had breached its obligations towards BRFN, failing to act according to the honour of the Crown while ensuring that BRFN could keep living according to its traditional mode of life.[51] In fact, the Province has a fiduciary duty towards BRFN, according to which it must act with good faith towards the Band. This means that the Province should be able to develop tools to assess, manage and mitigate the cumulative effects of industrial development, which had not been done. As confirmed by Governmental officials in their affidavits, there are no comprehensive tools to address the several dimensions of cumulative effects of industrial development, which can only be mitigated,

[50] Yahey v. BC S151727 – Reasons for Judgement, 29th June 2021, at para 1779.
[51] Ibid, at paras. 1785-1786.

depending on the situation.[52] In Justice Burke's view, Treaty 8 had established an ongoing relationship between the Province and BRFN, and where cumulative effects assessment is completed and proper management processes established, development may continue. For the time being, these conditions have not been met.[53] Treaty 8 protects BRFN members' way of life from forced interference while ensuring their rights to hunt, fish, and trap in their traditional territory. Thus, the power of the Province to take up land is not infinite because enough land must be available to allow BRFN members to meaningful exercise their Treaty rights within their traditional territory.[54] This is no longer the case due to the cumulative effects of industrial development.[55]

BRFN brought the case before the Court seeking recognition for their Treaty and Constitutional rights, as established in Treaty 8 and Section 35 of the 1982 Constitution. In this sense, when an infringement is found, the Government should not be allowed to perpetuate such infringement. Thus, BRFN claimed that the Province should not be permitted to issue further permits until it is proved that it will not cause infringement or that such infringement is justified.[56] Therefore, the ruling established that:

1. By authorizing industrial development, the Province has breached its obligation to BRFN under Treaty 8, including its honourable and fiduciary obligations.
2. The taking up of lands has been so extensive that it had left BRFN members without sufficient territory where they can meaningfully exercise their Treaty rights, which had been infringed.
3. In such a context, the Province cannot continue to authorize activities that breach Treaty 8 and its unwritten promises.
4. The parties must consult and negotiate to establish enforceable mechanisms to assess and manage the cumulative effects of industrial development on the BRFN traditional territory to ensure that Constitutional and Treaty rights are respected.
5. Declaration n.3 is suspended for six months to allow the parties to start negotiating based on the litigation outcomes.
6. Given the result of the litigation, the Court awarded costs to BRFN.[57]

[52] Ibid, at paras. 1804-1805.
[53] Ibid, at paras. 1807-1808.
[54] Ibid, at paras. 1880-1881.
[55] Ibid, at para. 1809.
[56] Ibid, at paras. 1861-1862.
[57] Ibid, at paras. 1892-1895.

The BRFN v. BC litigation resulted in ground-breaking decisions that will advance the provincial and federal legal framework while promoting socio-environmental justice. Three main outcomes are worth highlighting:

- For the first time in Canadian legal history, the constitutionality of hearing fees for Indigenous Plaintiffs was addressed, with Justice Burke judging that charging hearing fees to Indigenous Bands seeking protection for their Constitutional and Treaty rights was inconsistent, in and of itself, with the spirit of Section 35 of the Constitution, the principle of the honour of the Crown and the ultimate goal of Reconciliation (2020 BCSC 278). Such a historical decision, taken before the final verdict, had added strength and significance to what was established in the final ruling, where Justice Burke awarded costs to the Band. As pointed out in paragraph 4.1, the BC Attorney General expressed its contrariety to the waiver of the hearing fees, as it did not believe that there was a *'prima facie meritorious claim'* such that it was against the interests of justice to lose the case because BRFN lacked financial means. By waiving Court hearing fees and awarding costs to the Band, Justice Burke recognised that the litigation BRFN v. BC was highly relevant and of public importance, with several issues at stake that had not been addressed and resolved in previous cases.[58]
- This ruling may help pave the way for integrating specific provisions established in international instruments (such as FPIC, as established in UNDRIP) in the provincial and federal legal framework. Although in the Reasons for Judgement, Justice Burke did not make any specific reference to UNDRIP, this ruling may well serve for the implementation of the Declaration within the Provincial and Federal framework, according to what had been established with the approval of Bill-41 by the BC Government in November 2019 and of Bill C-15 by the Federal Government in June 2021.[59]
- In light of the verdict and the recent legal developments at the provincial and federal levels, the province of BC decided not to appeal the decision of the BC Supreme Court. As stated by BC Attorney General David Eby, the Province understood that its assessment and management of the cumulative effects of industrial development must be improved and will work with BRFN to achieve such an aim while ensuring that Treaty and Constitutional rights of the BRFN are respected.[60] The Court had suspended its declaration for six months to facilitate such negotiations.

[58] Ibid, at para. 30.
[59] Bill-41, Declaration on the Rights of Indigenous Peoples Act, 4th Session, 41st Parliament, 2019, 3rd Reading; Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020, 1st Reading.
[60] https://www.cbc.ca/news/canada/british-columbia/treaty-8-province-appeal-1.6121474 (last accessed on August 12th, 2021).

> On October 7th, 2021, a preliminary agreement was reached. The province will allocate a total amount of C$ 65 million to the BRFN for land restoration activities and cultural practices revitalization (BC bulletin, 2021, p. 1).

By refusing to appeal to the Supreme Court of Canada, the BC Province has put itself in a privileged position to move forward with the full implementation of UNDRIP within the provincial legal framework. In addition to monetary remedies, the preliminary agreement signed in October 2021 establishes that an application framework will be developed to address the cumulative effects of current and foreseeable future industrial activities. Such a framework may well integrate elements of FPIC into it, especially regarding the implementation process. On a final note, it must be considered that the verdict of this trial will set an important precedent for other trials. In fact, should the findings be allowed to stand as a precedent, it might strengthen the litigation on the Site C dam that West Moberly First Nation will start (March 2022) against BC Province.[61] The first cumulative impact case in Canadian history might substantially change how industrial development is authorized and managed in British Columbia and beyond. It can pave the way to develop frameworks where First Nations establish their own procedures to consent to a project, implementing FPIC while considering community values, traditions and how members envision the future.[62]

[61] https://energeticcity.ca/2021/05/12/west-moberly-first-nation-gains-court-ordered-site-c-information/ (last accessed on August 12th, 2021).

[62] On this litigation, I wrote a piece on the Conversation Canada, available at https://theconversation.com/what-a-landmark-court-victory-for-b-c-first-nation-means-for-indigenous-rights-and-resource-development-164892 and a case comment https://doi.org/10.23865/arctic.v13.3802 (last accessed on March 24th, 2022).

Chapter 6 - The meaning of Treaty 8 between past and future expectations

'We need to be part of two different worlds. We need to have a foot in the Western world and another in the Indigenous world. And we must be able to navigate both, to find our way and live in both worlds.' (Cec Heron, DRFN former Land Manager)

Cec, the former DRFN Land Manager, often mentioned this ability Indigenous people must have. Throughout the time we worked together, I reflected on this sentence and its meaning, finding it fascinating and full of hidden nuances, offering the best way to summarize how community members live everyday life, with a foot in the Western world and another in the Indigenous one. Such a statement can also be used to address how Treaty 8 was perceived by ancestors when they took it: as a friendship agreement that would allow Indians to have a foot in the modern world while retaining their Indigenous distinctiveness and continuing their traditional lifestyle.

Nowadays, the need to navigate and live in both worlds can be achieved by conferring a new meaning to Treaty 8. The verdict of the litigation gives new importance to Treaty 8 and its unwritten promises. As I will explain in this chapter, Treaty 8 may be seen as a business Treaty (to use the word of Sharleen Gale) or as a policy tool (referring to the concept developed by Tess Lea) that can allow First Nation Bands to meet the needs of the modern world while preserving their culture, identity, and lifestyle.

6.1 On the importance of Treaty 8 nowadays: an episode from the field

'I had good feelings while installing the medallion on the floor; I was just happy to be there at that very moment. And it was the perfect way to close the first part of my fieldwork.'

(Doig Reserve, December 19th, 2019).

Figure 47 - The medallion laid down at the entrance of the DRFN Band Hall. Picture taken by Giuseppe Amatulli on December 19th, 2019.

On Thursday, December 19th, 2019, the Treaty 8 medallion was laid down on the floor of the DRFN Band Hall. It is a large-scale reproduction of the Treaty medals created once Treaty 1 and 2 were concluded (1871) as a gesture of good faith towards First Nations leaders.[63] This version, realized for Doig River First Nation and personalized with the surnames of the former Chiefs of the Fort St. John Indian Band (Doig and BRFN), serves as a reminder of the Treaty 8 commitments that the Government must respect. I was permeated with emotions and a general feeling of excitement to be part of such an important historical event. That morning, Bob McKenna (who was in charge of the project on behalf of the Doig) and I left Fort St. John at 8 a.m., arriving at the Reserve one hour later.

[63] https://www.thecanadianencyclopedia.ca/en/article/treaty-8 (last accessed on May 7th, 2022).

He was seriously concerned about the real possibility that the delivery would happen that day. Roads were almost impassable due to the previous night's snowfall, and the Christmas holidays were close.

The truck was supposed to arrive by 11 a.m., so we spent the morning wondering whether and when it would have arrived, constantly looking outside the windows, hoping to see a vehicle entering the Reserve. While waiting, we talked about the importance of having a Treaty 8 medallion laid down on the floor of the entrance of the Band hall. We wondered which meaning would have had for members and how company managers and BC government officers would have reacted when visiting the Reserve to discuss new projects, benefit-sharing agreements, etc. Do they know what treaty 8 is? What about its meaning nowadays? Would they ask themselves why the Doig decided to lay down such a medallion at the entrance of the Band Hall?

While speculating on such complex issues, at around 1 p.m., we saw a truck entering the parking lot of the Reserve. We immediately dashed outside, greeting the two workers who got off the truck, expressing their satisfaction with having arrived despite the terrible weather conditions. We discussed how to unload the medallion and where to put it; we agreed that it made sense to lay it down on the space already reserved for its installation, which was supposed to be completed after the Christmas season. Before unloading the medallion, we went back inside and cleaned the floor, brushing and washing the circle where the medallion was supposed to be installed. During this process, I was informed that the ground surface was supposed to be treated with specific materials to improve insulation, preventing possible adverse effects low temperatures could have on the medallion.

Unloading the medallion was not difficult. Despite its size, it was not that heavy, as it was made with just a thin layer of metal lined with a plastic layer on the surface. Manufactured in the Vancouver area, the community had been waiting to receive it since the summer of 2019. Several issues with the manufacturing company made the price almost double during the process and added more time to finish the job. Once ready, there were some difficulties in finding a reliable company available to ship it from the South to the Northeast at an affordable price. Whereas the weight was not a problem, we struggled with the weather. It was a cold day, with -20° C outside, and the metallic handles on the back of the medallion quickly froze once outside the truck. We used special gloves to handle it and preserve our skin from chapping while carrying it. It took us almost half an hour to unload the two halves of the medallion and put them on the ground. Once both halves were laid down, I asked Bob whether such medallions were present at the entrance of other First Nation Band Halls in the area. He replied that there was nothing like that in any surrounding Reserve. It was at that point that I had the feeling that I had just been part of a historical event.

6.2 Historical overview of Treaty 8

Treaty 8 is one of the eleven historical Treaties (also known as post-confederation numbered Treaties, Treaty 1-11) negotiated from 1871 to 1921 between the Canadian Federal Government and the many Indian groups scattered throughout the country (Asch, 2014, pp. 75–77).

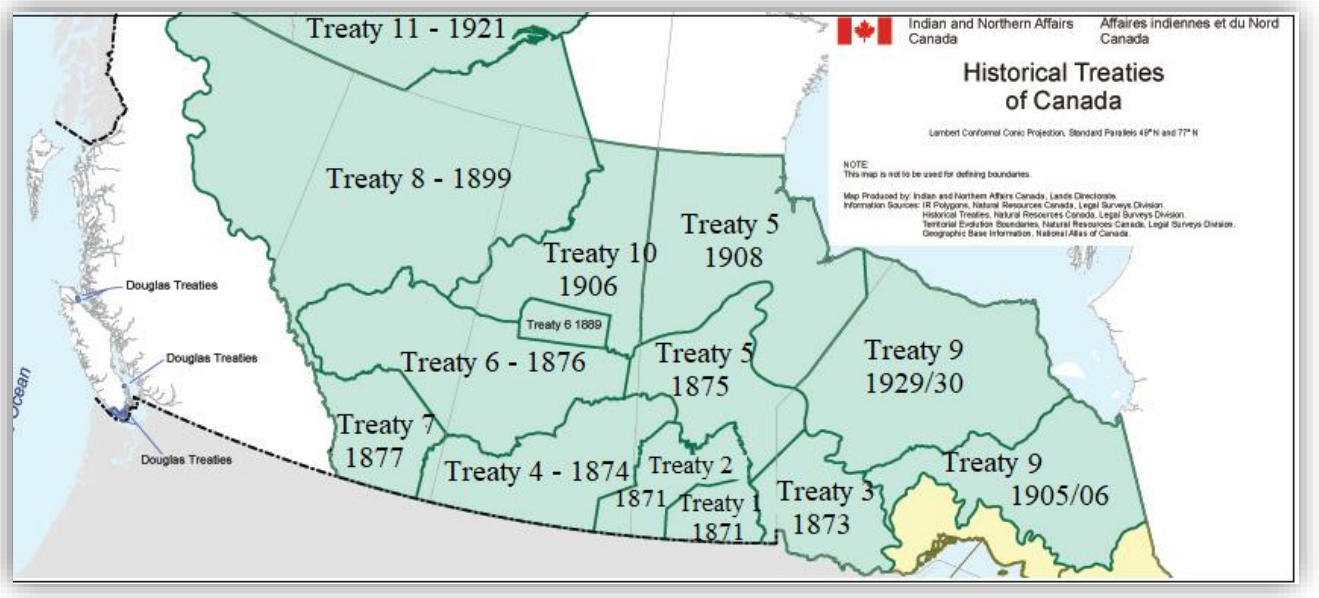


Figure 48 - Maps of the historical Treaties (1-11) signed in Canada. Downloaded on April 8th, 2020, from https://www.rcaanc-cirnac.gc.ca/eng/1100100032297/1544716489360

The newly born Canadian Government concluded treaties only for specific reasons and when specific interests were at stake (i.e., exploitation of resources, accommodating the needs of newcomers). Those Treaties were also used to address the issues related to those lands still classified as *'unceded portion of the territories.'* Nevertheless, the Government was not the only actor interested in concluding Treaties. Although for very different reasons, missionaries often supported the conclusion of Treaties between Indians and the Government. Treaties were perceived as a way to help Indians facing tough times (as was the case of the Indians living in the Athabasca-Mackenzie region) while 'including' them in a social and political structure. The Federal Government was fully aware of the hardships Indians living in those areas were suffering since 1870 when the Hudson's Bay Company (hereafter HBC) withdrew from the area by surrendering its charter due to the birth of the Canadian confederation (Mair, 1908, p. 20). The new Government of Canada was in charge of governing the North-western Territories; however, and notwithstanding the pleas made by missionaries, fur traders and Indians themselves to conclude a Treaty; it refused to change its policy until the land was required for newcomers or resource exploitation (Madill, 1986, p. 3). In this context, HBC and the missionaries kept pushing the Government to provide essential social services (previously provided by HBC) to Indians.

In 1881, the Government allocated $7.000 to be used for destitute Indians living in the *'unorganized territory'* of the north. Following this, in 1882, the Parliament approved the allocation of a yearly sum of $500 to the Mackenzie Roman Catholic Bishop in order to distribute twine and fish hooks to Indians in need (Madill, 1986, p. 4). Nonetheless, the Federal Government was still reluctant to conclude a Treaty with the Indians of the Athabasca-Mackenzie region (Fumoleau, 1973, p. 31). In the Government's opinion, the fact that the Hudson's Bay Company surrendered its charter did not exempt it from providing social services to destitute Indians. Most importantly, new settlements did not occur after the surrender, so the Government was not obliged to intervene (Madill, 1986, p. 5). However, as time passed, the idea that concluding a Treaty could be beneficial started to circulate among government officials. The deputy superintendent general of Indian Affairs, Lawrence Vanhoughnet, was among the promoters of a petition whose main aim was to raise awareness about the advantages of concluding a Treaty with the Indians of the area. Vanhoughnet was aware of the hardships Indians were facing (with some of them killing their horses for food) and their desire to sign a Treaty with the Government. In his petition addressed to Prime Minister John Macdonald, Vanhoughnet underlined that concluding an agreement would be beneficial for the Government on many different levels. If, on the one hand, it was a governmental duty to take care of the aforementioned Indians, on the other hand, the Government should use such a move to avoid possible blockades during future works in the region with regard to the construction of a railway or any other infrastructure (Madill, 1986, pp. 3–4).

Whereas the purpose of treaties 1-7 (signed from 1871 to 1877)[64] was to open Western Canada to new settlers while paving the way for constructing the new transcontinental railway; the purpose of Treaty 8 was slightly different and aimed at ensuring greater goals, such as the exploitation of subsoil resources that had been discovered in the area (Brody, 1988, p. 63). According to a Governmental Report released in the late 1880s, in the Athabasca District and the Mackenzie River Country, there were immense quantities of petroleum reservoirs, as well as other subsoil resources (i.e., gas, sulphur and salt, among others) (Madill, 1986, pp. 5–6). Hence, by negotiating a Treaty and offering various guarantees (i.e., federal protection and annual payments to different bands), the Government was in a position to nullify any form of resistance or hostility that Indians could have had regarding future advancements of the frontier economy. In fact, one of the most important goals the Government wanted to achieve by signing Treaties was the extinguishment of the Indian title. As emerged from

[64] https://www.thecanadianencyclopedia.ca/en/article/numbered-treaties (last accessed on April 8th, 2020). A good explanation of the historical Treaties and how they were concluded was written by Charles Mair in his book *'Through the Mackenzie Basin – A Narrative of the Athabasca and Peace River Treaty Expedition of 1899'.* The book can be download for free at the following link: https://archive.org/details/throughmackenzi02macfgoog/mode/2up (last accessed on April 8th, 2020).

the 1891 Privy Council Report, the Government was advised to extinguish the Indian title before starting the exploitation of natural resources present in the area, as well as to facilitate the construction of the railway and the arrival of new settlers (Madill, 1986, pp. 5–6). It is plausible that the Government started to consider Vanhoughnet's petition about concluding a Treaty before Indians discovered the actual monetary value of their land and its resources. This suggestion was remarked on in a letter that James Walker (a retired agent of the North-West Mounted Police) sent to Clifford Sifton, at that time minister of the Interior and superintendent general of Indian Affairs (Madill, 1986, p. 8).

The idea that concluding a Treaty was necessary also started to be considered by those Indians living in Athabasca-Mackenzie and Peace River areas. Towards the end of the century, they realized they were in a disadvantaged position in comparison to Treaty Indians, so concurring about the necessity to reach an agreement with the Government. As stated by the Chief of the Lesser Slave Lake Band, following a meeting held on 1st January 1890, most members favoured signing a Treaty with the Government. The narrative around Treaties was changing, and both the Government and Indians started to consider concluding a Treaty as a necessary step. Hence, plans were made to conclude a Treaty by the summer of 1892; however, the death of Prime Minister Macdonald in 1891 and the lack of good outcomes from the oil and gas exploration in the Peace Region halted the process, which was restarted only at the end of the century (Madill, 1986, pp. 5–6). By then, substantial gold reservoirs were discovered in the Klondike (Yukon), with the area assaulted by miners and prospectors during the so-called 'Klondike Gold Rush'. In June 1898, five hundred Indians halted police officers and miners from entering Fort St. John until a Treaty was concluded. They were concerned that the presence of so many foreigners in their traditional territory caused a considerable decrease in the number of fur-bearing animals in the area, thus compromising their traditional lifestyle (Madill, 1986, p. 10). This new situation prompted the Government to start negotiating a Treaty with the Indians of the Athabasca, Mackenzie, and Peace Region (Mair, 1908, pp. 22–23).

In determining Treaty 8 boundaries, several aspects were considered. It was in the Government's interest to include within the new Treaty boundaries those areas that were likely to be traversed by miners and explorers and territories where mining activities could take place in the foreseeable future. Thus, the Athabasca and Peace Rivers valley north of the Treaty 6 area, the territory touched by the Lesser Slave Lake, and the valleys of the Nelson, upper Peace and upper Liard Rivers in British Columbia were included in Treaty 8 negotiations. During the negotiations, there was a debate about including the districts of Fort St. John, Fort Nelson, and Hudson's Hope (the Northeastern part of BC) within Treaty 8 boundaries. There was a solid political will not to divide Indians of the Northeast

of the region from their allies of the Athabasca Region which supported the decision to include these districts in Treaty 8 boundaries (also considering that this area was on the route to the Klondike, in the context of the Goldrush (Madill, 1986, pp. 16–17).

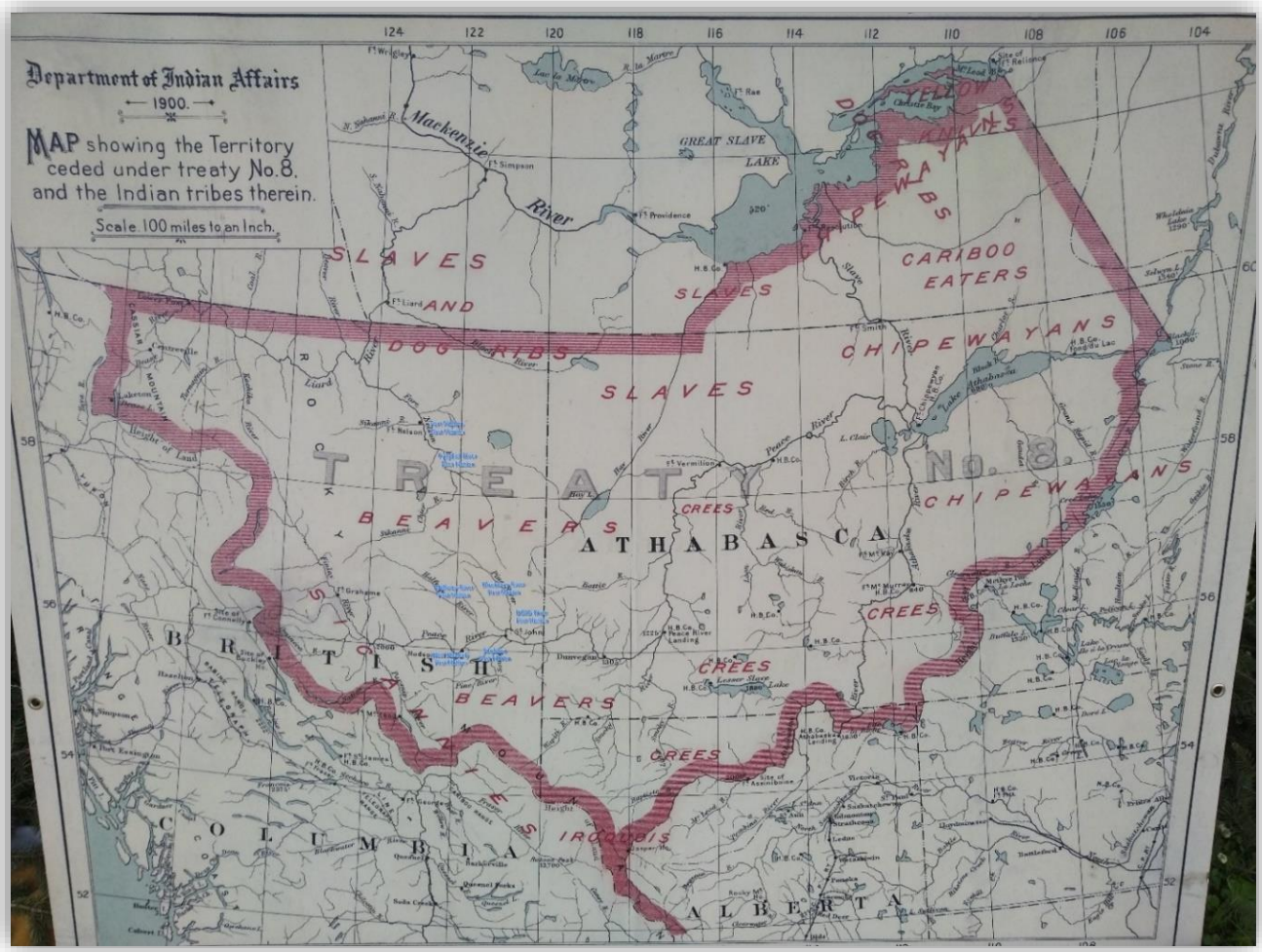
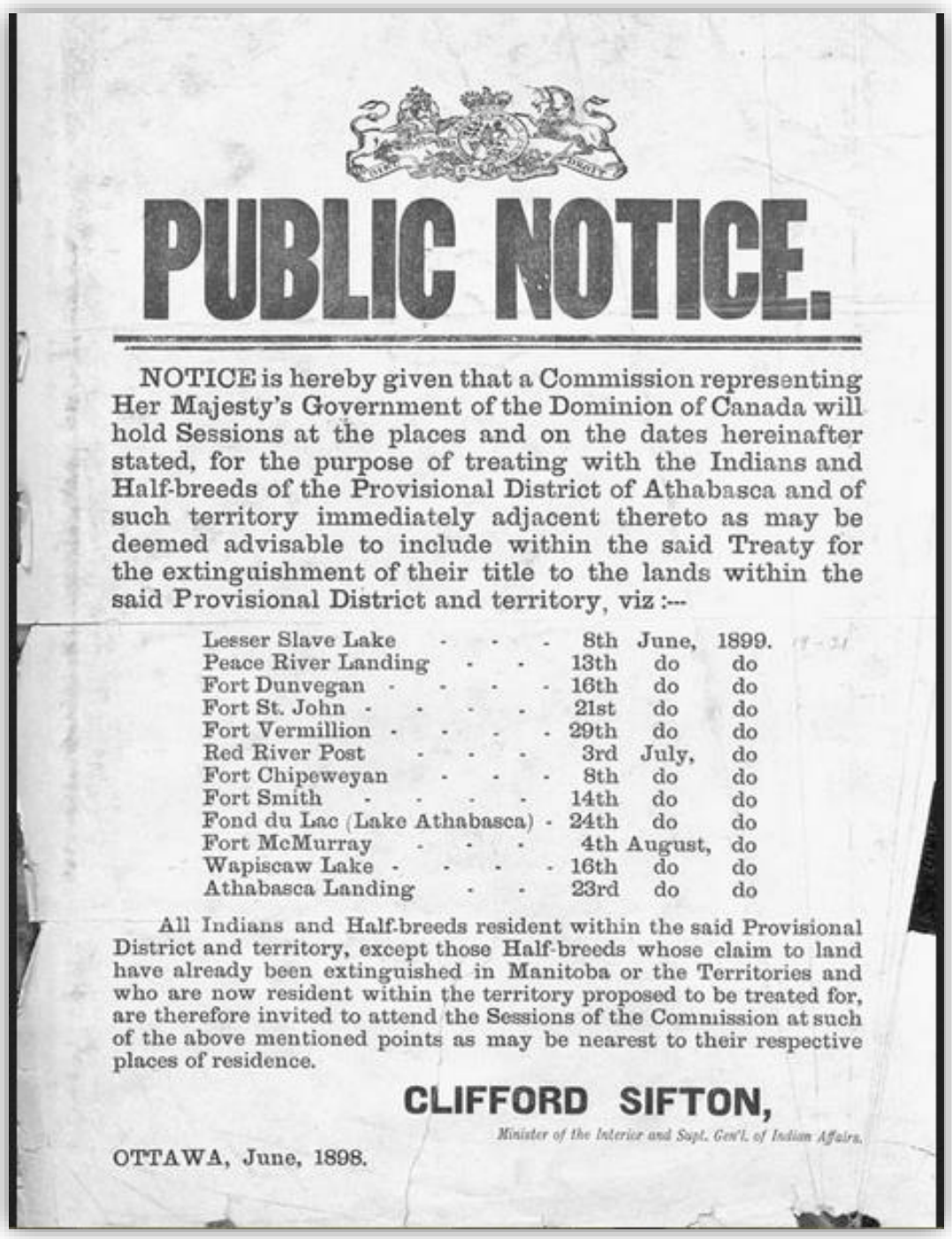


Figure 49 - Treaty 8 boundaries. Picture taken by Giuseppe Amatulli on July 13th, 2019.

6.3 Treaty 8 negotiations at Lesser Slave Lake

Treaty 8 negotiations took place in different places, at different times (and years) and with different First Nations. This should not be any surprise, considering that Treaty 8 comprises an area of 841,487 km^2, corresponding to the current North-eastern part of British Columbia, northern Alberta, and a small portion of North-western Saskatchewan and South-east West Territories (see Figure 48). In fact, it is the largest Treaty by area ever concluded in Canada. To inform the Indians living in these areas about the upcoming negotiations (supposed to take place in the summer of 1899), the Canadian Government published a public notice one year before. The notice was then spread to Western Canada

through several groups of people travelling to the area, which posted it in the many trading posts scattered in the Northwest.[65]



PUBLIC NOTICE.

NOTICE is hereby given that a Commission representing Her Majesty's Government of the Dominion of Canada will hold Sessions at the places and on the dates hereinafter stated, for the purpose of treating with the Indians and Half-breeds of the Provisional District of Athabasca and of such territory immediately adjacent thereto as may be deemed advisable to include within the said Treaty for the extinguishment of their title to the lands within the said Provisional District and territory, viz :—

Lesser Slave Lake	8th	June,	1899.
Peace River Landing	13th	do	do
Fort Dunvegan	16th	do	do
Fort St. John	21st	do	do
Fort Vermillion	29th	do	do
Red River Post	3rd	July,	do
Fort Chipeweyan	8th	do	do
Fort Smith	14th	do	do
Fond du Lac (Lake Athabasca)	24th	do	do
Fort McMurray	4th	August,	do
Wapiscaw Lake	16th	do	do
Athabasca Landing	23rd	do	do

All Indians and Half-breeds resident within the said Provisional District and territory, except those Half-breeds whose claim to land have already been extinguished in Manitoba or the Territories and who are now resident within the territory proposed to be treated for, are therefore invited to attend the Sessions of the Commission at such of the above mentioned points as may be nearest to their respective places of residence.

CLIFFORD SIFTON,

Minister of the Interior and Supt. Gen'l. of Indian Affairs.

OTTAWA, June, 1898.

Figure 50 - Treaty 8 Negotiations, Public Notice. Downloaded on April 15th, 2020, from https://lslirctarr.ca/treaty-8-interpretation-centre/making-of-the-treaty/setting/

The Commission in charge of negotiating Treaty 8 was made up of people who already had experiences in similar situations. Mr David Laird, previously Indian commissioner for Manitoba and

[65] https://www.thecanadianencyclopedia.ca/en/article/treaty-8 (last accessed on April 27th, 2020).

the Northwest Territories and among the makers of Treaty 7, was appointed as Treaty 8 Commissioner. Together with him, there was J.A.J. McKenna, acting as private secretary to the superintendent general of Indian Affairs and James Ross, minister of Public Works in the territorial government. Other people travelled with them as well: Harrison Young and J.W. Martin (secretaries of the Commission), H.A. Conroy (Treaty 8 accountant), Pierre D'Eschambault (interpreter) and Henry McKay (camp manager). In an advisory capacity, there was Father Lacombe, a Roman Catholic missionary from the Oblate Order of Mary Immaculate, who served in northwestern Canada for over fifty years, building relationships and trust with several Indian groups of the area. His role was fundamental in providing reliable information about the manners and customs of the Indians of the area (Madill, 1986, p. 19).

Treaty 8 negotiations were supposed to start on June 8th, 1899; however, due to weather conditions and transportation problems, the Commission could not reach Lesser Slave Lake before June 19th, so starting the negotiations only on June 20th, 1899 (Mair, 1908, p. 53). From the beginning of the negotiation process, commissioners showed a lack of knowledge regarding the northern environment and the Indians living in these areas (Madill, 1986, p. 23). As highlighted by Mair in his notes, they were shocked by:

> '*the level of civilization and well-being that this group was able to achieve without any treaty. Instead of paint and feathers, breechclout and scalp-lock; they were well dressed, wearing ordinary store-clothes, and well-washed, like respectable-looking men. These people were educated and disciplined, they lived inoffensive and honest lives and showed with their manners and speeches their sense of freedom and independence*' (Mair, 1908, pp. 54–55).

The negotiations at Lesser Slave Lake were conducted by Mr Laird. In his statement to the Indians, he asserted that the Queen and the Government of Canada were making a free offer to the Indians, as white people were coming into their country. Considering that the Queen's laws were supposed to be obeyed by everyone *'Indians, half-breed, and whites'*, it was in the interests of everyone to be at peace with each other and to *'shake hands when they meet'* (Mair, 1908, p. 56). Thus, by taking Treaty 8, Indians would have been as free as they were before taking it. As specified, Indians were free to refuse to take the Treaty, with no consequences to be suffered. Nevertheless, the law of the Queen was supposed to be respected, whether they signed the Treaty or not (Mair, 1908, pp. 56–57). Such an approach intertwined with the Commissioners' lack of knowledge of the Indians' way of life in the area (on different occasions, they quoted the Indians' life conditions on the Prairies, which were very different to those living in the Athabasca region), did not make a good impression on the Indians reunited at Lesser Slave Lake. That was one of the main reasons why those Indians made clear that

they were not interested in taking any Treaty unless they received specific guarantees regarding their rights to hunt, fish, and trap (Madill, 1986, p. 23).

The terms and conditions of Treaty 8 were explained by only mentioning the advantages, persuading Indians that the Treaty would allow them to have the same opportunities as white men while keeping their traditional lifestyle. Indians were offered money ($12 per person for the first year, $5 for each following year; $25 per year to the Chief and $15 per year to the Counsellors), pieces of land on Reserves (one square mile or 640 acres to each family of five) or outside Reserve (160 acres per person) and other benefits, such as education for their children, free healthcare and social assistance in case of famine or other major natural misfortunes (Mair, 1908, pp. 57–64). In exchange, the Government asked the Indians not to interfere or molest new settlers, miners, and travellers. They were asked to be good friends with everyone and report any white nuisance to the police. Remarkably, it was stated that a few things were not mentioned, but they could have been mentioned later (Mair, 1908, p. 58). Among the things omitted was the famous *'cede and surrender clause'*, according to which the Government would consider as extinguished any future claim regarding native title over their land. The concluding remarks were also quite interesting, as it was stated that the Queen owned the country, but there was a will to reach an agreement with the Indians by acknowledging their claims (Mair, 1908, p. 59).

The fact that the Commissioners asserted that the Queen was the owner of the land, not acknowledging the fact that Indians had been there since time immemorial, nor that they had proper governance structures and socio-economic organizations on which they had relied until the arrival of the newcomers, shows that Treaty 8 negotiations did not happen by considering the Indians at the same level as the Queen and the Government of Canada. Notwithstanding the courtesy shown during the opening statement, from Mair's account, it is evident that negotiations were not conducted using a Government to Government approach. First Nations were not regarded as such; instead, they were perceived as groups with whom it was necessary to reach an agreement for a specific purpose, which was not even to be fully disclosed (Mair, 1908, p. 58).

At Lesser Slave Lake, negotiations for the Indians were led by the Indian spokesmen, Chief Keenooshayoo and his brother Moostoos. During the first day of negotiations, Chief Keenooshayoo expressed his concern about Treaty 8 and its content as he said:

> *'You say we are brothers. I cannot understand how we are so. I live differently from you. I can only understand that Indians will benefit in a very small degree from your offer. You have told us you come in the Queen's name. We surely have also a right to say a little as far as that goes.'*
>
> (Mair, 1908, p. 59).

Figure 51 – Chief Keenooshayoo giving a speech at Lesser Slave Lake, during Treaty 8 negotiations. Picture taken from the Report of Charles Mair, '*Through the Mackenzie Basin, 1899*'.

Chief Keenooshayoo and his brother Moostoos pointed out that Indians should be allowed to make their own conditions to benefit from the Treaty as much as possible. This was important for them because the Treaty was supposed *'to last as long as the sun shines and the water runs'* (Mair, 1908, p. 60). During the negotiations, Chief Keenooshayoo asked several times if the Treaty was supposed to last forever and if the Government would be able to take care of the children, provide education for them, and of the elders, providing assistance when needed. The Commissioners replied orally that the Government was ready to provide what the Indians asked (Mair, 1908, pp. 67–68). During the negotiations, Indians were assured about the content of Treaty 8 and its unwritten promises by Father Lacombe. The use of familiar figures as go-betweens between treaty commissioners and Indigenous leaders was used by the Canadian Government to facilitate the acceptance of Treaties by Indigenous people (Campbell, 2019, p. 38). Father Lacombe gave a speech to the Indians of Lesser Slave Lake, aiming to convince them to sign Treaty 8 for their own good. His speech was perceived as a sign of the good intentions of the Crown and the Government, an important oral commitment that their rights and lifestyle would be respected (Mair, 1908, pp. 63–64).

The oral promises were fundamental to convincing the Indians gathered at Lesser Slave Lake to take Treaty 8. By taking the Treaty, Indians were promised free social assistance, health care and medicines, free education for their children, no taxation or forced military conscription, and no interference regarding their religion or livelihoods (Campbell, 2019, p. 42). These promises were not

part of the original Treaty 8 text but were included in the Commissioners' Report, which is now considered part of Treaty 8 terms. However, for many decades, the unwritten promises were not considered valid by the Canadian Government, provoking conflicts and divisions about the spirit of Treaty 8 since many Indian leaders felt betrayed when the verbal promises were not honoured. It is worth underlining that Indian leaders who took part in the Treaty 8 negotiations were unfamiliar with the legal meaning of specific English terms, besides not being confident with written reports to document discussions, as there was a strong oral tradition among Indians (Campbell, 2019, p. 42). Negotiations were usually conducted in a few days, with enormous barriers caused by the different languages, cultures, views and understanding of the world. Thus, the discussion about Treaty contents and their meaning remained general. This is one of the reasons why it was impossible to address specific topics or explain specific legal terms included in the written version (RCAP, 1996, p. 161).

Based on the explanations provided by the Commissioners and according to the unwritten promises, Indians understood that Treaty 8 was a *'Peace and Friendship Treaty'*, meant to improve their lives, besides protecting their traditional lifestyle, while sharing the land with the newcomers. Hence, many First Nations nowadays still do not consider Treaty 8 as a cede and surrender Treaty. As confirmed in many conversations I had during my fieldwork, Treaty 8 has always been (and still is) understood as a friendship agreement. By signing it, Indians agreed to share their land while coexisting with the newcomers; they did not give up their sovereignty or control over their lands and resources or their ownership over their territories (Campbell, 2019, p. 43). Contrariwise, the Canadian Government interprets each of the Numbered Treaties (and every Treaty signed before 1923) as a legal tool that extinguished the Indigenous title to lands, which is why in each Numbered Treaty, the so-called *'cede and surrender clause'* was included (Campbell, 2019, p. 44). Another remarkable difference regarding Treaty 8 interpretations regards its scope and length in time. Treaty rights were limited in scope for the Canadian Government and would eventually disappear once Indians were assimilated into the mainstream population. Contrariwise, for Indian leaders, Treaty rights were broad in scope, and they were supposed to last as long as the sun shone and the rivers flowed (Campbell, 2019, p. 45).

Treaty 8 was signed by Chief Keenooshayoo, who represented the Indians reunited at Lesser Slave Lake on Wednesday, 21st June 1899, just one day after the beginning of the negotiations (Mair, 1908, p. 64). The following day, the Treaty Commission decided to split up to meet the deadline for meetings they were supposed to have with other Indians of the Athabasca-Mackenzie-Peace Region. Commissioners Ross and McKenna left for Fort Dunvegan and St. John on June 22nd, 1899, while Commissioner Laird left for Vermilion and Fond du Lac on the same day (Mair, 1908, pp. 64–65).

The original date set up to meet the Indians of the St. John area was June 21st. However, due to the weather conditions, the Commissioners could not respect the timeline that the Government set up one year earlier (as they were already late when they reached Lesser Slave Lake). The Indians of the Fort St. John area were advised to stay there until the Commissioners arrived. However, the delay was considerable, and the Indians left for their hunting grounds, with the Commissioner within twenty-five miles of Fort St. John (Madill, 1986, p. 26). Treaty 8 negotiations with the Fort St. John Indian Band did not occur that year. They entered Treaty 8 by adhering to it the following year, without any proper negotiation involving the entire community (Mair, 1908, pp. 64–66). This development produced several twisted effects that are still impacting the community of the Doig River and the Blueberry River First Nation nowadays.

6.4 Treaty 8 and the Fort St. John Indian Band

As previously explained, Treaty 8 was negotiated and signed at Lesser Slave Lake on June 21st, 1899. Its written terms and conditions, unwritten promises and guarantees were negotiated on that unique occasion. Other Indian groups who joined the Treaty later did not have any opportunity to negotiate its content and terms with the commissioners, who just offered them entry to the Treaty by adhesion. This was part of the strategy the Commission had previously elaborated. Once Treaty 8 was taken by the Lesser Slave Lake Indians, the simple adhesion of other Bands was sought (Madill, 1986, p. 25). Thus, it should not be a surprise that there are no extensive reports as regards the nine meetings that followed the negotiations at Lesser Slave Lake in 1899, the four meetings that took place between Fort St. John and Fond du Lac in 1900, and the meetings that occurred in Fort Nelson in 1910. All these Indian Bands were brought into Treaty 8 by adhesion, accepting its content as it was (Madill, 1986, pp. 25–26).

The process of concluding Treaty 8 was also quite inconsistent through the years, given that several commissioners successively took on the role of representatives of the Crown. In February 1900, J.A. Macrae was appointed to pay an annuity to Treaty 8 Indians and obtain the adhesion of the Indians of Fort St. John. It must be underlined that only 46 band members could adhere to Treaty 8 in 1900 (Madill, 1986, p. 26). In his report of the 1900 meetings, Commissioner Macrae stated that many Indians expressed concern about the reserve system; while restating their desire to continue practising their traditional activities (trapping, hunting, and fishing) and lifestyle. Moreover, some of the Indians who attended the 1899 meeting required further explanations regarding Treaty 8 conditions. He also clearly pointed out that only about half of the Indians were reached in 1899, 2217 accepting Treaty 8

(Madill, 1986, pp. 27–28). According to his numbers, it is controversial to think that the Indian title was to be considered extinguished (as he claimed) if only half of the Indians joined Treaty 8.

For the following expedition in 1902, Macrae was replaced by H.A. Conroy, who took part in the first Treaty 8 expedition of 1899 as a clerk. As a Treaty 8 inspector, he visited the major trading posts, distributing annuities, fishing nets, and ammunition, listening to the Indians' complaints and admitting new Indians to take Treaty 8. In this way, several Indians of the Fort St. John Indian Band joined Treaty 8 in the following years, and by 1914 there were 162 adherents (Madill, 1986, pp. 28–29). Initially, they were reluctant to take the Treaty; they did not understand why they should adhere to Treaty 8. As Conroy reported on his note on October 5th, 1903:

> *'The Indians at this place are very independent and cannot be persuaded to take the treaty. Only a few families joined. The Indians there said they did not want to take treaty, as they had no trouble in making their own living. One very intelligent Indian told me that when he was old and could not work he would then ask the government for assistance, but till then he thought it was wrong for him to take assistance when he did not really require it.'* (DIA, 1904, p. 388).

Remarkably, the Fort St. John Indian Band was concerned about the meaning of Treaty 8. Members knew that several terms negotiated the years before were not respected or used to subjugate them. As in each Numbered Treaty (except for Treaty 9), Treaty 8 contained a clause establishing that Indians were to receive tools and seeds to cultivate the land, to make a shift from their semi-nomadic lifestyle to a more settled life. The Queen agreed to provide livestock, seeds, and the tools necessary for tilling and farming to those Indians who took the Treaty. The short-term goal was to provide Indians with a different option to make their livelihood, considering that game was becoming scarce, and the Indian traditional lifestyle was at risk. The long-term goal was to convert these hunters and gatherers into farmers and peasants who would embrace a Western lifestyle (Asch, 2014, pp. 141–142).

The Fort St. John Indian Band asked for assurances that they could move around, stay free, and not 'parked' on reserves like the Prairie Indians (Madill, 1986, pp. 25–26). Commissioner Conroy promised them that they would be guaranteed *'full freedom to hunt, trap, and fish if they would have signed the Treaty'* (RCAP, 1996, p. 159). However, his words were not enough and required the promise of Bishop Breyant that the Government would have honoured the promises.

> *'I gave my word of honour that the promises made by the Royal Commissioner, although they were not actually included in the Treaty, would be kept by the Crown… As the text of Treaty No. 8 and 11, which had been brought from Ottawa was not explicit enough to give satisfaction*

to the Indians, who were afraid to be treated as the Indians of the Prairies had been treated (the conditions of the North being altogether different), the following promises were made to the Indians by the Royal Commissioner, in the name of the Crown:

1. *They were promised that nothing would be done or allowed to interfere with their way of living, as they were accustomed to and as their antecedents had done.*
2. *The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, every effort would be made to improve their living conditions.*
3. *They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from the white competition, they would not be prevented from hunting and fishing, as they had always done, so as to enable them to earn their own living and maintain their existence.* (Fumoleau, 1973, p. 216).

Bishop Breyant truly believed that the oral promises made by him and Commissioner Conroy would be added to the text of Treaty 8. However, once the Commissioners returned to Ottawa, no mention was made of these additional promises. It is impossible to say if it was a dishonest strategy or just haste and carelessness; what is certain is that promises were never included in the official text of Treaty 8, and the Government did not feel obliged to comply with them (Fumoleau, 1973, p. 217).

6.5 Cede and Surrender v. Peace and Friendship Treaty: a never-ending debate about the legal meaning and implications of Treaty 8

'The jurisprudence agrees that by taking Treaty 8, Indians effectively surrendered their rights in exchange for the enjoyment of Treaty rights.' (Pink Mountain, July 3rd, 2019).

This is the core message of one of the first conversations I had with a lawyer I met during the Blueberry River First Nation annual gathering, held at Pink Mountain from July 2nd to 4th, 2019. We were having a conversation about the litigation BRFN v. BC on Treaty 8 infringements and the cumulative effects of industrial development. We spoke about Treaty rights, their meaning and the legal value and implications of Treaty 8. I asked if it could have been possible for the BRFN to see their native title recognized as an outcome of the litigation. To support my argument, I mentioned the 2004 verdict of the Supreme Court of Canada on the Haida Nation litigation, which is now considered a leading case law regarding the recognition of aboriginal title in Canada.[66] My interlocutor interrupted my argument, explaining an important difference between the two cases. The Haida never signed a Treaty with the Crown; legally speaking, their land was never surrendered, and they had the

[66] https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do (last accessed on July 16th, 2020).

right to claim their native title. In contrast, the BRFN is part of Treaty 8, a cede and surrender Treaty (at least for the Government and part of the jurisprudence).

As explained in the previous chapter, the infringement of Treaty 8 (together with the cumulative effects of industrial development) is among the reasons why BRFN sued the BC Government (BRFN V. BC – S151727).[67] I was well aware that the litigation was not about recognising the native title per se; however, I deliberately wanted to engage in this discussion to better understand how Treaty 8 was perceived. Since that conversation, I realised that getting a clearer picture of Treaty 8, its meaning and implications was of fundamental importance. In the following weeks, I started to think that the different interpretations and understanding of Treaty 8 were not just related to the legal framework. It was, perhaps, embedded in the way in which Indians and newcomers had perceived and understood their rights since the conclusion of the agreement. This dichotomy clearly emerged from several conversations I had during the BRFN cultural camp.

Towards the end of July 2019, I attended the BRFN Rodeo held at the BRFN Reserve. Indian Bands had organized rodeos since the '70s to bring members together while fostering a sense of community. As Garry Oker told me, Rodeos have become important summer gatherings while shaping and defining new social interactions between community members and beyond. As I learned throughout my fieldwork, these are perfect occasions to talk to people, exchange opinions, and gather relevant information. While having lunch on the first day of the event, I debated Treaty 8 and its meaning. *'Cede and surrender Treaty or Peace and Friendship Agreement?'* That was the first question I asked Clare-Anne, the Fort St. John lawyer whom I first met during the BRFN cultural camp at Pink Mountain. She replied that Numbered Treaties are considered surrender treaties in the Canadian legal system, without ifs and buts. I argued that not everyone agrees with this interpretation of Treaty 8, as several community members and staff who work with the community do not perceive Treaty 8 in this way. She replied by saying:

> '*Legally speaking, Treaty 8 was signed between the Crown, who ensured protection and certain rights to First Nations, and the different communities living in the area. By taking the Treaty, they recognised the sovereignty of the Crown over their land*.'
> (Conversation with Clare-Anne, BRFN Rodeo, July 27th, 2019).

Clare-Anne explained that the lawsuit BRFN v. BC should help understand whether and to what extent Treaty rights have been breached and what this means in terms of consequences, besides ensuring remedies to the BRFN. Nevertheless, in her opinion, the Court would not recognize that

[67] https://justice.gov.bc.ca/cso/esearch/civil/searchPartyResult.do?serviceId=63010403 (last accessed on July 16th, 2020).

BRFN has rights because Treaty 8 is not valid; otherwise, '*it will be like going back of 150 years…I do not see this option as possible'*. It is a fact that it is not possible to go back in time, but as Asch argues in his book 'On being here to stay': *'We are almost 150 years after Confederation, and there is Canada, there are provinces, there has been mass migration, we have already visited much harm on our partners, and our failures to implement in full even those promises written into the Treaty text are manifest.'* (Asch, 2014, p. 133).

Understanding the meaning of Treaty 8 and how it is perceived and understood by members and government officers had accompanied me throughout my fieldwork. After several months in the field and many conversations, I started thinking that there still is a problem with how Treaties had been formulated, translated, and explained. To me, specific sentences and words included in Treaty 8 are still not interpreted and understood in the same way by Indians and the Government. Nonetheless, this had always been the case, as testified by William Johnson, at that time British Superintendent of Indian Affairs. In a letter addressed to his superior to explain how Indians of Eastern Canada (Haudenosaunee and the Anishinabe from the Mississauga and Ottawa area) saw Treaties in 1764, one year after the Royal Proclamation was issued, he affirmed:

> *'[…] but you may be assured that none of the Six Nations, Western Nations [including the Western Confederacy] &ca. ever declared themselves to be Subjects, or will ever consider themselves in that light whilst they have any Men, or an Open Country to retire to, the very Idea of subjection would fill them with horror. Indeed I have been just looking into the Indian Records, where I find in the Minutes of 1751 that those who made ye Entry Say, that Nine different Nations acknowledged themselves to be His Majesty's Subjects, altho' [although] I sat at that Conference, made entrys [entries] of all the Transactions, in which there was not a Word mentioned, which could imply a Subjection, however these matters (notwithstanding all I have from time to time said on that subject) seem not to be well known at home, and therefore, it may prove of dangerous consequence to persuade them that the Indians have agreed to things which (had they even assented to) is so repugnant to their principles that the attempting to enforce it, must lay the foundation of greater Calamities than has yet been experienced in this Country. It is necessary to observe that no Nation of Indians have any word which can express, or convey the Idea of Subjection, they often say, 'we acknowledge the great King to be our Father, we hold him fast by the hand, and we shall do what he desires' many such like words of course, for which our People too readily adopt & insert a Word verry [very] different in signifiation [signification], and never intended by the Indians without explaining to them what is meant by a Subjection. Imagine to yourself Sir, how impossible it is to reduce a People to Subjection,*

who consider themselves Independant [Independent] thereof by both Nature & Scituation [Situation], who can be governed by no Laws, and have no other Tyes [Ties] among themselves but inclination, and suppose that it's explained to them that they shall be governed by the laws liable to the punishments for high Treason, Murder, Robbery and the pains and penaltys [penalties] on Actions for property or Debt, then see how it will be relished, and whether they will agree to it, for without the Explanation, the Indians must be Strangers to the Word, & ignorant of the breach of it."[68]

Such a vision was likely shared among all the Indians scattered throughout North America. As affirmed by Father Fumoleau in his book, '*As long as this land shall last: a history of Treaty 8 and Treaty 11, 1870-1939':*

'*Many words of the treaty text, their meaning, and their consequences were beyond the comprehension of Northern Indians. Even if the terms had been correctly translated and presented by the interpreters, Indians were not prepared, culturally, economically, or politically, to understand the complex economics and politics underlying the Government's solicitation of his signature. The Indian people did know that they could not stop the white people from moving into their territory and in their minds the treaties primarily guaranteed their freedom to continue their traditional lifestyle and to exchange mutual assistance and friendship with the newcomers.'* (Fumoleau, 1973, p. 19).

The fact that the Indians of the Athabasca-Mackenzie Region were not surrendering their land by taking Treaty 8 was made clear in a promise Commissioners made at Lesser Slave Lake. As mentioned in paragraph 6.2, Indians were reluctant to accept the Treaty as it was read to them; thus, the Commissioners promised to insert several clauses to protect their lifestyle and traditional activities (i.e. hunting and trapping). Only after such amendments were made (through oral promises) did Indians take Treaty 8 (Fumoleau, 1973, pp. 74–75).

When Indians of the Lesser Slave Lake referred to their rights, they probably referred to their traditional lifestyle, land, and resources; as for them, everything was interrelated and connected. As demonstrated during a Court hearing in 1973, Indians were comfortable in using the terms *land, land ownership, land use and use of natural resources* interchangeably (Fumoleau, 1973, p. 212). However, it does not mean that they were naïve about the possibility of staying on the land and using their land as long as '*the Sun Shines, the Grass Grows and the River Flows.'* In this sense, it is

[68] Full letter available at: http://www.inverhuronrate.com/history-inverhuron-1-main.html (last accessed on April 24th, 2020).

meaningful to mention how Treaty 8 was negotiated at Fort Resolution in 1900. Treaty Commissioner Macrae explained to the Indians that he was there to make peace. As he said:

> *'We don't come to make trouble. We come for peace and to talk about money. We come for peace. From now on, there will be lots of White men. So, if the White men come, you will treat them just like your own brothers. And the White men, if they see a poor Indian in trouble, they will help, just like he was their own brother. That is why we came here. From now on White men and Indians are going to be like one family.'* (Fumoleau, 1973, p. 90).

The Indians reunited at Fort Resolution were surprised by the offer and quite suspicious. The spokesperson they chose, Old Drygeese, addressed the Commissioner in these terms:

> *'If you want to change our lives, then it is no use taking treaty, because without treaty we are making a living for ourselves and our family. Don't hide anything that I don't hear. Maybe, later on, you are going to stop us from hunting or trapping or chopping trees down or something. So, tell me the truth. I want to know before we take the treaty.'* (Fumoleau, 1973, pp. 90–91).

The Commissioner replied that he was just doing what he was ordered to do and that there would not have been trouble for anyone. After receiving this reassurance, Old Drygeese stated:

> '*As long as the world does not change, the sun does not change, the river does not change, we will like to have peace. […] I would like a written promise from you to prove you are not taking our land away from us. There will be no closed season on our land. There will be nothing said about the land.'* (Fumoleau, 1973, p. 91).

It seems that the word *land* was never mentioned as something that Indians were surrendering by taking the Treaty. As already explained regarding Treaty 8 negotiations at Lesser Slave Lake, Indians requested formal guarantees that their land was not at stake and were promised that it would not be alienated. As remarked by Jimmy Bruneau, member and then Chief of the Tlicho Nation reunited at Fort Rae in 1920, when they signed Treaty 11:

> *'We made an agreement, but the land was never mentioned…a person must be crazy to accept five dollars to give up his land…It was never mentioned that there will be such things as reserves in the future, not that the treaty was against the land.'* (Fumoleau, 1973, p. 193).

With such evidence, it is difficult to say that Indians deliberately accepted the surrender of their lands by taking Treaties. On the contrary, they wanted guarantees that their land would not be taken away. Thus, it should be questioned if Commissioners negotiated Treaties in good faith. From the different

reports and accounts available, and according to the Report of the Royal Commission on Aboriginal Peoples (Volume I – Looking Forward, Looking Back), it seems that the *'cede and surrender clause'* was neither mentioned nor explained to the many Chiefs or spokes-persons who negotiated the Treaties for the different Indian bands (RCAP, 1996, pp. 158–162). Also, as confirmed by several witnesses and reports, several conditions and clauses were inserted in the text of the Treaties after Indians had already accepted them (Fumoleau, 1973, p. 79,211). Considering that the large majority of the Indians could not read English and understand the meaning of specific legal terms, it should be questioned whether such Treaties should be considered valid. As pointed out in the Paulette case: [69]

> *'How could anybody explain in the Athapaskan language through a Métis interpreter to monolingual Athapaskan hearers the concept of relinquishing ownership of land to people who have never conceived of a bounded property which can be transferred from one group to another?'* (RCAP, 1996, p. 160).

6.6 Cede and surrender: from the land to subsoil resources – Mineral rights in Northeastern British Columbia: the Montney case (1978)

Following the adhesion of the Fort St. John Indian Band to Treaty 8, the Crown started to work to set aside the Indian Reserve (I.R. 172, established in 1916) for the exclusive use and benefit of the Band. However, already after the end of World War I, settlers advanced requests over the eighteen thousand acres of the Reserve to be used for agriculture, meaning that the Band had to surrender the Reserve, as established under Section 37 of the Indian Act. Only after a formal surrender, could reserve land have been leased to local farmers (including its mineral rights). Nevertheless, the policy of the Federal Government was to maintain Indian Reserves in Indian ownership (Berger, 2002, pp. 243–244). The situation changed after the end of the Second World War, as the Government faced new pressure to open up Indian Reserve 172 to returning veterans. Thus, in 1945 the Department of Indian Affairs (DIA) convinced the Fort St. John Indian Band to surrender the entire Reserve. The Band lost its rights to use and benefit from the resources that could be found on the I.R. 172 (Berger, 2002, pp. 245–249). A few years later (1948), the Indian Reserve No. 172 was sold for $70.000 to the Department for Veterans Affairs, intended for farmland to be distributed to the veterans of WWII. This 18.168-acre Reserve was replaced by three different Reserves: Beaton River Indian Reserve No. 204, Blueberry River Indian Reserve No. 205, and Doig River Indian Reserve No. 206 (Madill, 1986, p. 60; Roe, 2003, p. 116).

[69] To know more about the Paulette case: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5866/index.do (last accessed on April 28th, 2020).

Nevertheless, when the I.R. 172 was sold, it was not specified that the surrender of the mineral rights was already negotiated in 1940 in the context of an application to explore oil and gas beneath the I.R. 172. Thus, DIA sought and obtained from the Band the surrender of the mineral rights of the I.R. 172; however, according to the agreement signed by the Band, such a surrender authorized the Crown to lease the mineral rights to oil and gas companies, not to sell them. This means that once the lease expired, mineral rights were to be held again by the Band. In this context, DIA issued several exploration permits for the I.R. 172 and the fees collected were credited to the Band's account (Berger, 2002, pp. 245–246). Mineral rights were never sold, as in the context of the sale of the I.R., they were not evaluated, and no payment was made to 'buy' them. Only surface rights over the I.R. 172 were sold, but mineral rights were transferred as well (Berger, 2002, pp. 249–250). Then, in 1952, the Department of Veteran Affairs entered a petroleum and natural gas agreement with the veterans (a total of forty people), in which it was agreed that they would equally share the royalties generated from the production of oil and gas (Berger, 2002, p. 251). Clearly, the loss of those mineral rights was a breach of trust by the Department of Indian Affairs; however, at that time, DIA was not regarded as legally accountable for its actions, meaning that nobody thought that an Indian Band could take DIA to Court to seek damages for a breach of trust (Berger, 2002, p. 252).

Thirty years later, in 1978, Blueberry and Doig River First Nation decided to start a lawsuit against the Department of Indian Affairs. The case went to trial in 1987, after the verdict of the Guerin case (1984), in which it was established that the Crown had a fiduciary duty when dealing with Indian lands and interests. Nonetheless, Justice Addy rejected the claim of the two Bands, arguing that when they signed the surrender, band members gave their *'informed consent'*, arguing that they could understand what they were doing (Berger, 2002, pp. 254–255). Doig and Blueberry decided to bring the case before the Federal Court of Appeal; Thomas Berger (who conducted the Mackenzie Valley Pipeline inquiry) was asked to argue the case.

In his argument, Berger highlighted that a fiduciary has the duty to look after a beneficiary's property using the same prudence it would use if it were its own property. Thus, a prudent owner would have leased the mineral rights to oil companies instead of selling or giving them away. So, the issue at stake was not related to the supposed *'informed consent'* that the Band gave; instead, it was related to the way in which the DIA acted. It was necessary to understand whether the DIA acted in the best interests of the Indians and if the fiduciary duty was breached (Berger, 2002, p. 255). According to the Federal Court of Appeal, as a fiduciary, the Crown was supposed to take good care of Indian interests, but it could not be liable for the consequences it might not have foreseen (Berger, 2002, p. 258). Berger disagreed with this reason for judgement. A fiduciary is responsible for all the

consequences, foreseen and unforeseen. Moreover, Indians did not receive any advice regarding their best interests, and the Crown made no attempt to protect their best interests. Berger's view was supported by the dissenting opinion of Chief Justice Isaac, according to whom, by transferring the mineral rights, the Crown had acted in breach of its fiduciary duty. Furthermore, the Crown's fiduciary duty did not cease with the Transfer of the I.R. 172 from DIA to the Department of Veteran Affairs (Berger, 2002, p. 259). Thus, an appeal was made to the Supreme Court of Canada.

In the appeal before the Supreme Court, Berger argued that the surrender of the I.R. 172 was improvident, and the Crown was well aware of it. The Crown, as a fiduciary, had an obligation to consider the best interests of the Band, taking into account possible future development. Moreover, Band members were illiterate, and therefore it was implausible that they could have provided their *'informed consent'* to the surrender of the I.R. 172. Finally, even if the Band had consented to the surrender of the Reserve, they were not informed and thus never agreed to surrender the mineral rights (Ridington & Ridington, 2013, pp. 307–308). As confirmed by a correspondence between a lawyer and the director of Veterans Affairs, the mineral rights were transferred just because there was no mention of them when the I.R. 172 was bought from the Department of Indian Affairs (Blueberry River Indian Band v. Canada, [1995] 4 SCR 344 at para. 94). Berger argued that the Crown did not take any step to ensure the Band's interests and obtain any benefit for the Band (Berger, 2002, p. 265).

The decision of the Supreme Court of Canada was ground-breaking. The Court did not recognize that the Crown breached its fiduciary duty regarding the surrender of surface rights, as other reserves were provided to the Indians. However, it was clear that the Crown breached its fiduciary duty regarding the surrender of subsurface rights (Blueberry River Indian Band v. Canada, [1995] 4 SCR 344 at paras. 20-23). As established by the Supreme Court of Canada:

> *'The 1940 surrender of the mineral rights imposed a fiduciary duty to the Band with respect to the mineral rights under the terms of the 1940 surrender, and that the DIA breached this duty by conveying the mineral rights to the DVLA.'* (Blueberry River Indian Band v. Canada, [1995] 4 SCR 344 at para. 105).

> *'The Crown, having first breached its fiduciary duty to the Indians by transferring the minerals to the DVLA, committed a second breach by failing to correct the error on August 9, 1949 when it learned of the error's existence and the potential value of the mineral rights.'* (Blueberry River Indian Band v. Canada, [1995] 4 SCR 344 at para. 118).

As Justice McLachlin explained in the conclusions:

> *'The duty on the Crown as fiduciary was "that of a man of ordinary prudence in managing his own affairs": Fales v. Canada Permanent Trust Co., [1977] 2 S.C.R. 302, at p. 315. A reasonable person does not inadvertently give away a potentially valuable asset which has already demonstrated earning potential. Nor does a reasonable person give away for no consideration what it will cost him nothing to keep, and which may one day possess value, however, remote the possibility. The Crown managing its own affairs reserved out its minerals. It should have done the same for the Band.'* (Blueberry River Indian Band v. Canada, [1995] 4 SCR 344 at para. 104).

With this verdict, it was recognised that the Crown breached its fiduciary duty. Thus, compensation was to be paid to the Bands for the losses (foreseeable and unforeseeable) suffered. After two years of negotiations, the two Bands settled for $147 million (Berger, 2002, p. 271). It was an amount calculated considering a narrower portion of land compared to the full size of the I.R. 172; however, it was a very substantial amount for the Bands.

This case law represents a significant advancement in the Canadian legal framework in a period when the Indian Oil and Gas Act was approved (1974). Consolidated in 1985 and amended again in 2009, the Act's main objective is to redistribute to First Nations the royalties paid to the Crown by companies that extract oil and gas located in First nations lands (Reserves). First Nations have surface and subsurface rights over Reserve lands; thus, the Crown still has a fiduciary duty towards them (Bill C-5, 2009, Section 4 (1)).[70] The provisions of the 2009 Act are enabled through the Indian Oil and Gas Regulation (amended in 2019), which regulates every aspect of oil and gas production, from exploratory research in First Nation lands to granting permits and leases, from the equitable production of oil and gas to the payment of royalties.[71]

It is worth mentioning that First Nations enjoy surface and subsurface rights only on their Reserve lands. Most lands in British Columbia have two different titles: surface rights and mineral rights, with the property owner enjoying the land's surface rights (use of the land and access to it). Nevertheless, ownership of subsurface rights (outside Reserves) is mainly retained by the Crown, which can allow companies to exploit subsoil resources through a leasing agreement, normally awarded from a

[70] Full version of the Oil and Gas Act at: https://laws.justice.gc.ca/eng/acts/i-7/page-1.html#docCont (last accessed on March 11th, 2021).
[71] Full text of the Indian Oil and Gas Regulation available at this link: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-196/index.html (last accessed on March 11th, 2021).

minimum of three to a maximum of ten years (with further extensions often granted).[72] (CAPP, 2014, pp. 3-4). Whereas the Crown can grant mineral rights to a company, the transfer does not include the right of access to the surface land, which is granted by landowners. Thus, a company must negotiate a surface lease with the landowner to access the land; after that, it must obtain a permit from the government to perform the specific activity proposed while complying with the regulations of the BC Oil & Gas Commission (CAPP, 2014, p. 4).

Since the Montney decision, Blueberry and Doig River First Nations have signed several benefit-sharing agreements with companies (as will be addressed in chapter 8), receiving monetary compensation for exploiting the resources found in their land. Nevertheless, subsoil resource exploitation in North-eastern British Columbia skyrocketed in the last thirty years, seriously impacting community members' ability to perform traditional activities (such as hunting, trapping, and fishing), thus compromising members' enjoyment of Treaty 8 rights. Given this, several First Nations have initiated a discussion about the current meaning of Treaty 8. Reinterpreting Treaty 8 according to the needs members have in the modern world while making sure it still produces meaningful outcomes according to what ancestors agreed when they adhered to it is the new challenge.

6.7 Treaty 8 nowadays: a new policy tool to address future challenges?

'*We need to talk about treaties and their meanings, because our partners seem to forget that it is peace and sharing. When I think about the first contact, I think about how our people survived. They shared things, they did trade together and then with newcomers. We started our relationship with them with Peace Treaties. I had an experience some weeks ago, where I discussed with a person the meaning of Treaty 8, if it was a cede and surrender Treaty or not. On that occasion, I had to explain that Treaty 8 is not a cede and surrender Treaty but a Peace and Friendship Treaty. When I think of Treaty 8, we are all Treaty partners. So, that's why we need to see this Treaty as an economic Treaty nowadays. If you want to save your language, culture, and identity, you need resources, and you need to get access to money to do things. We must be able to do it sustainably, to protect our environment, identity, culture, and so to have places where to go and feel Dane people. We still want to hunt, fish and be*

[72] There are cases where subsurface rights might have been transferred to Federal Government Agencies (such as National Parks), to companies or even to individuals. In those cases where subsurface rights are permanently owned, they are classified as 'freehold' mineral rights (CAPP, 2014, p. 3). More info at: http://c-cluster-110.uploads.documents.cimpress.io/v1/uploads/d4e35603-3269-4cc0-a8b0-b65f4b255c98~110/original?tenant=vbu-is digital (last accessed on November 16th, 2021).

Dane on our land. We are stronger together if we are together.'
(Sharleen Gale, Fort Nelson First Nation Chief - August 7th, 2019).

Gale's explanation of Treaty 8, its meaning, intents, and aims can be linked with how ancestors had always perceived Treaty 8. Ancestors used to refer to Treaty 8 as a way to implement *'witaskewin'*, a Cree term meaning *'living together on the land'* (Asch, 2014, p. 114). Whereas this word can have several meanings, in the Treaty context, it was used to refer to stranger nations that entered into agreements to share the land. By signing Treaties, First Nations assumed that newcomers recognized them as equal, self-governing Nations. This was the spirit of the early Treaties (Peace and Friendship Treaties, 1725-1779), and perhaps this was the spirit that First Nations believed they would find in the numbered Treaties (1871-1921). The Crown asked First Nations to share their lands with new settlers, and they accepted on the condition that they could continue practising their traditional lifestyle in their territory (RCAP, 1996, p. 161). As Tully argues: *'Canada is founded on an act of sharing that is almost unimaginable in its generosity. The Aboriginal peoples shared their food, hunting and agricultural techniques, practical knowledge, trade routes and geographic knowledge with the needy newcomers. Without this, the first immigrants would have been unable to survive.'* (Tully, 2008, pp. 244–245).

This partnership laid the foundation for the economic development of Canada and, as Tully suggests, it is something that should be renewed by giving numbered Treaties a new meaning, as First Nations have been seeking to do for a long time (Tully, 2008, p. 245). This resonates with Gale's approach, according to which Treaty 8 must be seen as an economic Treaty nowadays, based on a new economic relationship where sharing the land and its resources are still the key. For the Dane-zaa of Northeastern British Columbia, Treaty 8 is and will always be a *'peace and friendship'* agreement. By signing it, ancestors accepted to share their land, resources, and knowledge with newcomers. As highlighted by DRFN Chief Trevor Makadahay during one of the Council meetings I attended, Treaty 8 has never been perceived as a tool to get free food or easy money. Indians do not perceive Treaty 8 as a Treaty that ensures any kind of specific welfare to them. As he stated:

'For me, the road to prosperity is through economic development, and we need to build our own way of life. And there are different ways of doing it…and Treaty 8 is a tool for us to develop our Nation. Creating a sustainable community toward economic development. We will never get enough funding for education, healthcare, etc. So, we need to create our own way, to be self-sufficient.' (Trevor Makadahay, DRFN Chief – February 24th, 2020).

When Treaties were concluded, the concept of sharing was perceived by the commissioners as something old and against the new economic interests of the country due to a colonial ideology based on racism and principles of social Darwinism (Tully, 2008, pp. 226, 245). Nevertheless, it is now possible to do things differently, as a new pattern can be shaped to create a new, post-colonial relationship to generate mutually beneficial socio-economic opportunities in the long term (Tully, 2008, p. 246). Based on what I observed during my fieldwork, I argue that Treaty 8 should be interpreted as a '*living'* Treaty, adapting its content to the current socio-economic needs and the current challenges First Nations must address. Thus, Treaty 8 could be seen as a new policy tool, an economic Treaty, as Gale suggests, able to ensure benefits to First Nations in terms of socio, cultural and economic opportunities. This could allow First Nations to thrive and become self-sufficient while implementing various forms of political autonomy. As Sharleen Gale affirmed during the Northern Dene Gathering I attended in August 2019 (6th-7th August 2019, Doig Reserve):

> *'I do not have anything against industry or the oil and gas sector, but we need to understand how to do things in a good and better way. Sometimes it happens so fast that it is difficult. So, when the CGL pipeline was proposed…a few Nations came together, and they wanted to have a proper role in that project! So, it is important to be self-sustainable, to own companies. If you are the owner, you can decide how to do things. You can incorporate Indigenous values and knowledge into the development, and you can really make a difference within the community by building infrastructure, developing social programs, etc. We know Treaty promises have been broken, we do not have full funding for education, health and we do not get access to many things…but we need to fight to fix this! There is a new way to look at Treaty 8; perhaps we need to see it as a business Treaty. We have plenty of resources: mining, oil and gas, water, forestry…everything! We need to go backwards to make this Treaty work for us by incorporating our values into business and development projects. Federal grants and contributions are not going to solve our problems; we need to find our way, a sustainable way.'* (Sharleen Gale, Fort Nelson First Nation Chief - August 7th, 2019).

Drawing on Gale's statement and considering the argument made by Tess Lea in her book *Wild Policy* regarding public policy developed for Aboriginal Australians, I argue that Treaty 8 could and should be seen, used, and implemented as an Indigenous policy in the context of the modern world. Treaty 8 as a policy cannot escape the challenges and limits of the market-driven economy and should be implemented considering the strong dependency between extractivism, the wealth it generates and Indigenous welfare (Lea, 2020, pp. 21-22). Nevertheless, implementing it as a new socio-economic policy may well help address structural conditions of inequality (in terms of health access, education,

and social programmes) in many First Nation communities, thus improving the everyday life of each member. It can be a good Indigenous policy, providing that there is agreement about the meaning of the word ‘good’, which should be understood as ‘the best that can be expected’ (Lea, 2020, p. 157). Policy intentions are intertwined with struggles and compromises at every level, and right now, extractivism seems untouchable (Lea, 2020, pp. 15-16). Nevertheless, it does not mean that it will always be this way. Implementing Treaty 8 as a multilayered Indigenous policy addressing impellent social issues might well be a way to ensure that it has a continuous, long-lasting impact while fostering relevant changes to the status quo in the years to come (Lea, 2020, pp. 158-160).

Chapter 7 - The Canadian legal framework: a bijural and pluralistic system

The discussion on Treaty 8 and its meaning would not be complete without having a look at the Canadian legal framework and the relevant case laws that, in recent decades, have reshaped it while advancing Indigenous rights. The Canadian legal framework was shaped and influenced by the British and French legal tradition; the former based on common law, the latter on civil law. Consequently, Canada has a bijural legal system, with both common and civil law systems applied throughout the country. A Civil Code based on the French Napoleonic Code exists in Quebec to address matters of private law (i.e., contract law, property law), while common law applies in the rest of the provinces and territories (Department of Justice, 2015, pp. 4, 12). With the implementation of the common and civil law system, the legal principles of ownership, possession and property over the land were applied for the first time in a context where sovereign Indigenous Nations had other laws, systems, and principles to rely upon (Borrows, 2005, p. 188).

For centuries, the Indigenous legal tradition was neglected, considered inferior, and Aboriginal rights were almost wiped out. Only with the rulings of Sparrow, Haida, and Tsilhqot'in, among others, and the implementation of the provisions established in Section 35 of the Canadian Constitution Act (1982), were Aboriginal rights recognized while the pluralistic features of the Canadian legal system fully acknowledged (Borrows, 2005, p. 201).

Legal pluralism had been defined as *'the presence of more than one legal order in a social field.'* (Griffiths, 1986, p. 1). As argued by Braverman, in specific contexts, different types of law with diverse foundations of legitimacy, validity, power, and authority can coexist within the same social space (Braverman, 2014, pp. 34–43). This certainly applies to Canada, where several legal systems found application leading to a complex situation of legal pluralism. The affirmation of principles such as the honour of the Crown, its fiduciary obligations towards Indigenous peoples, and the duty to consult and accommodate would not have been possible otherwise (Borrows, 2005, pp. 204–206).

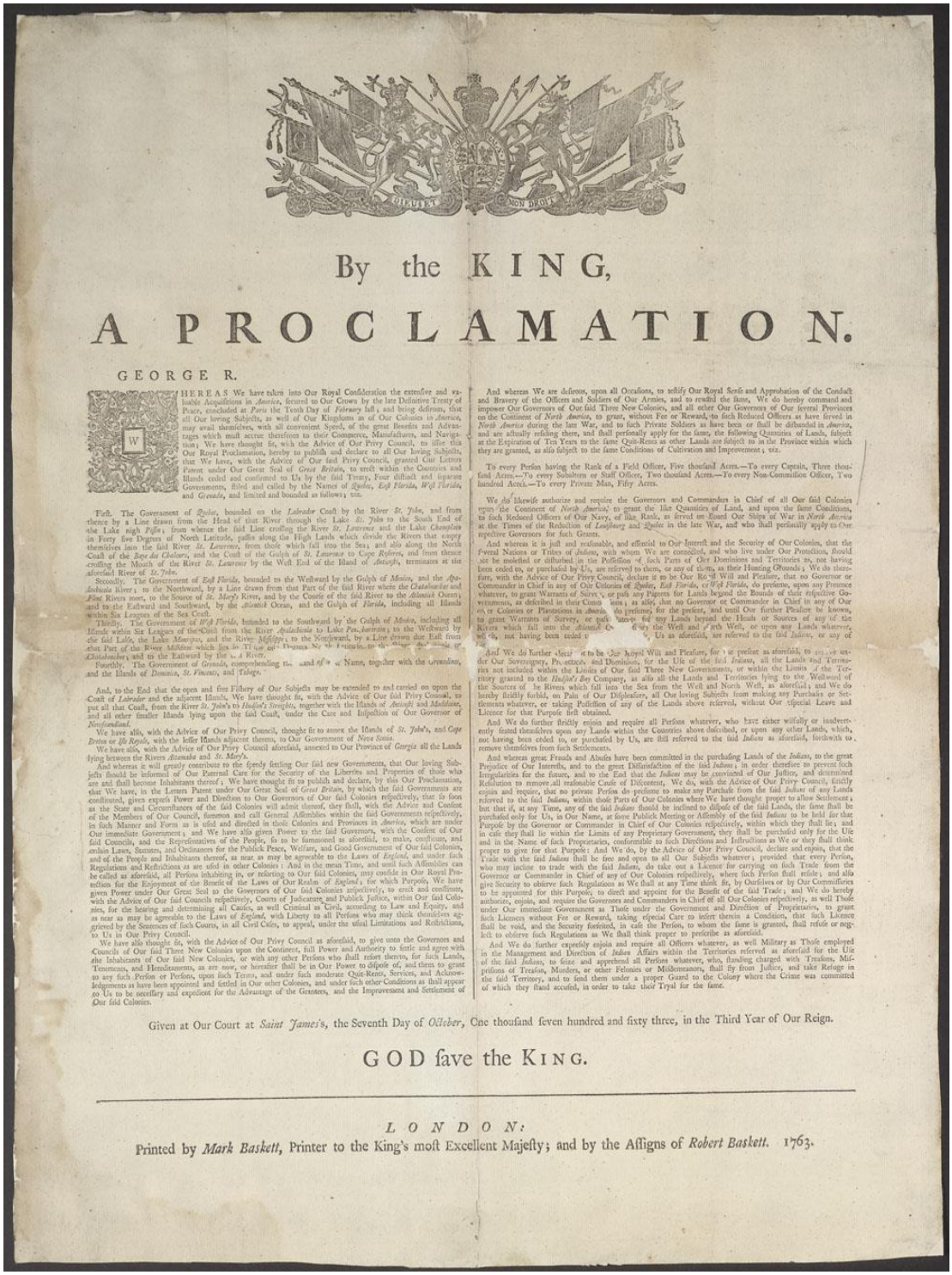
7.1 From the 1763 Royal Proclamation to the Indian Act of 1867

After the victory over the French in the Seven Years' War (1756-1763), Britain was forced to fight another conflict, this time with some local Nations. The so-called Pontiac War was initiated in 1763 by some sovereign Indigenous Nations led by Obwandiyag, an Ojibwe leader. It was a short conflict, but it was enough for the British to understand that to exert any kind of control over the land of North America, it was necessary to negotiate with sovereign Indigenous Nations. This was ground-breaking, considering that at that time, principles such as Eurocentrism, the Doctrine of Discovery and the principle of Terra Nullius were used in colonial discourse (T. Campbell, 2019, pp. 12–15). King George III issued a Royal Proclamation in 1763, also known as the Indian Magna Carta. The Proclamation is considered a fundamental document in Canadian legal history, as it recognized the existence of the Aboriginal title. In fact, if, on the one hand, it asserted the ownership of the King over Indigenous territories, on the other hand, it affirmed that the Aboriginal title had existed and continued to exist, it was not extinguished, and that all lands were to be considered Aboriginal lands until ceded by Treaties (RCAP, 1996, p. 109). The Proclamation forbade settlers from claiming Aboriginal lands from Aboriginal occupants, establishing that only the Crown could buy land from Indigenous groups and then sell it to settlers.[73] The Royal Proclamation is an important document as it created a three-cornered system of Governance in which the Crown, its colonies and Sovereign Indigenous Nations were supposed to coexist (Milloy, 2008, p. 3).

This system worked for around one century until Canada gained independence from Britain and started its own nation-building process. Indeed, although the Royal Proclamation recognised the existence of the Aboriginal title, it did not prevent the development of colonial legislation aiming at assimilating Canadian Indigenous peoples into Canadian society. Right after the approval of the Constitution Act in 1867 and the consequent birth of Canada as a Federal state, the Indian Act was issued (1867). In the context of nation-building, the main aim of the Act was to assimilate Indians as fast as possible to get rid of their culture, lifestyle, and political system (Milloy, 2008, p. 2-3). Every aspect of the day-to-day life of the Indians was regulated, with specific political structures to govern a Band (the current political structure, with an elected Chief and counsellors) were imposed (Milloy, 2008, p. 7). Moreover, the Indian Act established the Reserve system, institutionalised the concept of

[73] First Nations and Indigenous Studies UNBC, 2009, Royal Proclamation 1763, viewed on February 9th, 2021. https://indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/

Indian status (to define who qualified to be recognised as Indian) and promoted the boarding school system[74] (Hanson, 2009).



By the KING,

A PROCLAMATION.

GEORGE R.

WHEREAS We have taken into Our Royal Consideration the extenſive and valuable Acquiſitions in *America*, ſecured to Our Crown by the late Definitive Treaty of Peace, concluded at *Paris* the Tenth Day of *February* laſt; and being deſirous, that all Our loving Subjects, as well of Our Kingdoms as of Our Colonies in *America*, may avail themſelves, with all convenient Speed, of the great Benefits and Advantages which muſt accrue therefrom to their Commerce, Manufactures, and Navigation; We have thought fit, with the Advice of Our Privy Council, to iſſue this Our Royal Proclamation, hereby to publiſh and declare to all Our loving Subjects, that We have, with the Advice of Our ſaid Privy Council, granted Our Letters Patent under Our Great Seal of *Great Britain*, to erect within the Countries and Iſlands ceded and confirmed to Us by the ſaid Treaty, Four diſtinct and ſeparate Governments, ſtiled and called by the Names of *Quebec*, *Eaſt Florida*, *Weſt Florida*, and *Grenada*, and limited and bounded as follows; viz.

First. The Government of *Quebec*, bounded on the *Labrador* Coaſt by the River *St. John*, and from thence by a Line drawn from the Head of that River through the Lake *St. John* to the South End of the Lake nigh *Piſh*; from whence the ſaid Line croſſing the River *St. Lawrence* and the Lake *Champlain* in Forty five Degrees of North Latitude, paſſes along the High Lands which divide the Rivers that empty themſelves into the ſaid River *St. Lawrence*, from thoſe which fall into the Sea; and alſo along the North Coaſt of the *Bay des Chaleurs*, and the Coaſt of the Gulph of *St. Lawrence* to Cape *Roſieres*, and from thence croſſing the Mouth of the River *St. Lawrence* by the Weſt End of the Iſland of *Anticoſti*, terminates at the aforeſaid River of *St. John*.

Secondly. The Government of *Eaſt Florida*, bounded to the Weſtward by the Gulph of *Mexico*, and the *Apalachicola* River; to the Northward, by a Line drawn from that Part of the ſaid River where the *Chatahoochee* and *Flint* Rivers meet, to the Source of *St. Mary's* River, and by the Courſe of the ſaid River to the *Atlantick* Ocean; and to the Eaſtward and Southward, by the *Atlantick* Ocean, and the Gulph of *Florida*, including all Iſlands within Six Leagues of the Sea Coaſt.

Thirdly. The Government of *Weſt Florida*, bounded to the Southward by the Gulph of *Mexico*, including all Iſlands within Six Leagues of the Coaſt from the River *Apalachicola* to Lake *Pontchartrain*; to the Weſtward by the ſaid Lake, the Lake *Maurepas*, and the River *Miſſiſippi*; to the Northward, by a Line drawn due Eaſt from that Part of the River *Miſſiſippi* which lies in [illegible] to the River *Apalachicola* or *Chatahoochee*; and to the Eaſtward by the ſaid River.

Fourthly. The Government of *Grenada*, comprehending the Iſland of that Name, together with the Grenadines, and the Iſlands of *Dominica*, *St. Vincents*, and *Tobago*.

And, to the End that the open and free Fiſhery of Our Subjects may be extended to and carried on upon the Coaſt of *Labrador* and the adjacent Iſlands, We have thought fit, with the Advice of Our ſaid Privy Council, to put all that Coaſt, from the River *St. John's* to *Hudſon's Streights*, together with the Iſlands of *Anticoſti* and *Madelaine*, and all other ſmaller Iſlands lying upon the ſaid Coaſt, under the Care and Inſpection of Our Governor of *Newfoundland*.

We have alſo, with the Advice of Our Privy Council, thought fit to annex the Iſlands of *St. John's*, and *Cape Breton* or *Iſle Royale*, with the leſſer Iſlands adjacent thereto, to Our Government of *Nova Scotia*.

We have alſo, with the Advice of Our Privy Council aforeſaid, annexed to Our Province of *Georgia* all the Lands lying between the Rivers *Attamaha* and *St. Mary's*.

And whereas it will greatly contribute to the ſpeedy ſettling Our ſaid new Governments, that Our loving Subjects ſhould be informed of Our Paternal Care for the Security of the Liberties and Properties of thoſe who are and ſhall become Inhabitants thereof; We have thought fit to publiſh and declare, by this Our Proclamation, that We have, in the Letters Patent under Our Great Seal of *Great Britain*, by which the ſaid Governments are conſtituted, given expreſs Power and Direction to Our Governors of Our ſaid Colonies reſpectively, that ſo ſoon as the State and Circumſtances of the ſaid Colonies will admit thereof, they ſhall, with the Advice and Conſent of the Members of Our Council, ſummon and call General Aſſemblies within the ſaid Governments reſpectively, in ſuch Manner and Form as is uſed and directed in thoſe Colonies and Provinces in *America*, which are under Our immediate Government; and We have alſo given Power to the ſaid Governors, with the Conſent of Our ſaid Councils, and the Repreſentatives of the People, ſo to be ſummoned as aforeſaid, to make, conſtitute, and ordain Laws, Statutes, and Ordinances for the Publick Peace, Welfare, and Good Government of Our ſaid Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of *England*, and under ſuch Regulations and Reſtrictions as are uſed in other Colonies: And in the mean Time, and until ſuch Aſſemblies can be called as aforeſaid, all Perſons Inhabiting in, or reſorting to Our ſaid Colonies, may confide in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of *England*; for which Purpoſe, We have given Power under Our Great Seal to the Governors of Our ſaid Colonies reſpectively, to erect and conſtitute, with the Advice of Our ſaid Councils reſpectively, Courts of Judicature and Publick Juſtice, within Our ſaid Colonies, for the hearing and determining all Cauſes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of *England*, with Liberty to all Perſons who may think themſelves aggrieved by the Sentences of ſuch Courts, in all Civil Caſes, to appeal, under the uſual Limitations and Reſtrictions, to Us in Our Privy Council.

We have alſo thought fit, with the Advice of Our Privy Council as aforeſaid, to give unto the Governors and Councils of Our ſaid Three New Colonies upon the Continent, full Power and Authority to ſettle and agree with the Inhabitants of Our ſaid New Colonies, or with any other Perſons who ſhall reſort thereto, for ſuch Lands, Tenements, and Hereditaments, as are now, or hereafter ſhall be in Our Power to diſpoſe of, and them to grant to any ſuch Perſon or Perſons, upon ſuch Terms, and under ſuch moderate Quit-Rents, Services, and Acknowledgements as have been appointed and ſettled in Our other Colonies, and under ſuch other Conditions as ſhall appear to Us to be neceſſary and expedient for the Advantage of the Grantees, and the Improvement and Settlement of Our ſaid Colonies.

And whereas We are deſirous, upon all Occaſions, to teſtify Our Royal Senſe and Approbation of the Conduct and Bravery of the Officers and Soldiers of Our Armies, and to reward the ſame, We do hereby command and impower Our Governors of Our ſaid Three New Colonies, and all other Our Governors of Our ſeveral Provinces on the Continent of *North America*, to grant, without Fee or Reward, to ſuch Reduced Officers as have ſerved in *North America* during the late War, and to ſuch Private Soldiers as have been or ſhall be diſbanded in *America*, and are actually reſiding there, and ſhall perſonally apply for the ſame, the following Quantities of Lands, ſubject at the Expiration of Ten Years to the ſame Quit-Rents as other Lands are ſubject to in the Province within which they are granted, as alſo ſubject to the ſame Conditions of Cultivation and Improvement; viz.

To every Perſon having the Rank of a Field Officer, Five thouſand Acres.—To every Captain, Three thouſand Acres.—To every Subaltern or Staff Officer, Two thouſand Acres.—To every Non-Commiſſion Officer, Two hundred Acres.—To every Private Man, Fifty Acres.

We do likewiſe authorize and require the Governors and Commanders in Chief of all our ſaid Colonies upon the Continent of *North America*, to grant the like Quantities of Land, and upon the ſame Conditions, to ſuch Reduced Officers of Our Navy, of like Rank, as ſerved on Board Our Ships of War in *North America* at the Times of the Reduction of *Louiſbourg* and *Quebec* in the late War, and who ſhall perſonally apply to Our reſpective Governors for ſuch Grants.

And whereas it is juſt and reaſonable, and eſſential to Our Intereſt and the Security of Our Colonies, that the ſeveral Nations or Tribes of *Indians*, with whom We are connected, and who live under Our Protection, ſhould not be moleſted or diſturbed in the Poſſeſſion of ſuch Parts of Our Dominions and Territories as, not having been ceded to, or purchaſed by Us, are reſerved to them, or any of them, as their Hunting Grounds; We do therefore, with the Advice of Our Privy Council, declare it to be Our Royal Will and Pleaſure, that no Governor or Commander in Chief in any of Our Colonies of *Quebec*, *Eaſt Florida*, or *Weſt Florida*, do preſume, upon any Pretence whatever, to grant Warrants of Survey, or paſs any Patents for Lands beyond the Bounds of their reſpective Governments, as deſcribed in their Commiſſions; as alſo, that no Governor or Commander in Chief in any of Our other Colonies or Plantations in *America*, do preſume, for the preſent, and until Our further Pleaſure be known, to grant Warrants of Survey, or paſs Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the *Atlantick* Ocean from the Weſt and North Weſt, or upon any Lands whatever, which, not having been ceded to or purchaſed by Us as aforeſaid, are reſerved to the ſaid *Indians*, or any of them.

And We do further declare it to be Our Royal Will and Pleaſure, for the preſent as aforeſaid, to reſerve under Our Sovereignty, Protection, and Dominion, for the Uſe of the ſaid *Indians*, all the Lands and Territories not included within the Limits of Our ſaid Three New Governments, or within the Limits of the Territory granted to the *Hudſon's Bay* Company, as alſo all the Lands and Territories lying to the Weſtward of the Sources of the Rivers which fall into the Sea from the Weſt and North Weſt, as aforeſaid; and We do hereby ſtrictly forbid, on Pain of Our Diſpleaſure, all Our loving Subjects from making any Purchaſes or Settlements whatever, or taking Poſſeſſion of any of the Lands above reſerved, without Our ſpecial Leave and Licence for that Purpoſe firſt obtained.

And We do further ſtrictly enjoin and require all Perſons whatever, who have either wilfully or inadvertently ſeated themſelves upon any Lands within the Countries above diſcribed, or upon any other Lands, which, not having been ceded to, or purchaſed by Us, are ſtill reſerved to the ſaid *Indians* as aforeſaid, forthwith to remove themſelves from ſuch Settlements.

And whereas great Frauds and Abuſes have been committed in the purchaſing Lands of the *Indians*, to the great Prejudice of Our Intereſts, and to the great Diſſatisfaction of the ſaid *Indians*; in order therefore to prevent ſuch Irregularities for the future, and to the End that the *Indians* may be convinced of Our Juſtice, and determined Reſolution to remove all reaſonable Cauſe of Diſcontent, We do, with the Advice of Our Privy Council, ſtrictly enjoin and require, that no private Perſon do preſume to make any Purchaſe from the ſaid *Indians* of any Lands reſerved to the ſaid *Indians*, within thoſe Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, any of the ſaid *Indians* ſhould be inclined to diſpoſe of the ſaid Lands, the ſame ſhall be purchaſed only for Us, in Our Name, at ſome Publick Meeting or Aſſembly of the ſaid *Indians* to be held for that Purpoſe by the Governor or Commander in Chief of Our Colonies reſpectively, within which they ſhall lie; and in caſe they ſhall lie within the Limits of any Proprietary Government, they ſhall be purchaſed only for the Uſe and in the Name of ſuch Proprietaries, conformable to ſuch Directions and Inſtructions as We or they ſhall think proper to give for that Purpoſe: And We do, by the Advice of Our Privy Council, declare and enjoin, that the Trade with the ſaid *Indians* ſhall be free and open to all Our Subjects whatever; provided that every Perſon, who may incline to trade with the ſaid *Indians*, do take out a Licence for carrying on ſuch Trade from the Governor or Commander in Chief of any of Our Colonies reſpectively, where ſuch Perſon ſhall reſide; and alſo give Security to obſerve ſuch Regulations as We ſhall at any Time think fit, by Ourſelves or by Our Commiſſaries to be appointed for this Purpoſe, to direct and appoint for the Benefit of the ſaid Trade; and We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all Our Colonies reſpectively, as well Thoſe under Our immediate Government as Thoſe under the Government and Direction of Proprietaries, to grant ſuch Licences without Fee or Reward, taking eſpecial Care to inſert therein a Condition, that ſuch Licence ſhall be void, and the Security forfeited, in caſe the Perſon, to whom the ſame is granted, ſhall refuſe or neglect to obſerve ſuch Regulations as We ſhall think proper to preſcribe as aforeſaid.

And We do further expreſſly enjoin and require all Officers whatever, as well Military as Thoſe employed in the Management and Direction of *Indian* Affairs within the Territories reſerved as aforeſaid for the Uſe of the ſaid *Indians*, to ſeize and apprehend all Perſons whatever, who, ſtanding charged with Treaſons, Miſprions of Treaſon, Murders, or other Felonies or Miſdemeanors, ſhall fly from Juſtice, and take Refuge in the ſaid Territory, and to ſend them under a proper Guard to the Colony where the Crime was committed of which they ſtand accuſed, in order to take their Tryal for the ſame.

Given at Our Court at *Saint James's*, the Seventh Day of *October*, One thouſand ſeven hundred and ſixty three, in the Third Year of Our Reign.

GOD ſave the KING.

LONDON:

Printed by *Mark Baskett*, Printer to the King's moſt Excellent Majeſty; and by the Aſſigns of *Robert Baskett*. 1763.

Figure 52 - The Royal Proclamation issued by King George III in 1763, Library and Archives Canada, OCLC 1007612335, downloaded on February 9th, 2021.

[74] Regarding the boarding schools and the impact on Canadian Indigenous peoples, see the work of the Truth and Reconciliation Commission and its calls to action: https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525 (last accessed on March 5th, 2021).

In future amendments, the Indian Act was used to regulate those cultural practices that could or could not be performed. For example, in 1884, potlaches were banned (and a few years later, the same ban was extended to sun dances). Aiming to destroy the Indigenous economic system based on sharing and redistribution, it affected the ability of people to transmit their culture and values to future generations, thus, posing a serious burden to the survival of the Indigenous culture.

Additionally, the Indian Act restricted Indians from leaving Reserves without the permission of an Indian agent and prohibited the sale of alcohol to First Nations, who were also not allowed to enter pool halls, speak their native language, wear their traditional clothes in public dances and events (RCAP, 1996, pp. 259–271). Finally, it denied the right to vote to First Nations, besides revoking the Indian status to women married to non-Indian men. In the 1920s, Section 141 was added. According to this provision, Indigenous peoples were not allowed to hire lawyers to pursue land claims. Most of these provisions were changed only after World War II (Hanson, 2009).

7.2 The 1982 Canadian Constitution Act and Section 35

According to Milloy, the 1982 Constitution Act and the constitutionally protected rights it established for Canadian Indigenous peoples represent a turning point in Canadian legal history. While rejecting the assimilation policy that the Government tried to implement with the Indian Act (which, however, is still valid), it also refused the approach proposed in the 1969 White Paper, according to which the legal relationship between Indigenous peoples and the Canadian state was supposed to be overcome. First Nations in British Columbia strongly opposed the project, as they perceived it as a way to get rid of critical unsolved issues related to native title and the recognition of specific Aboriginal and Treaty rights (Hanson, 2009). In recent decades, many politicians have re-proposed the idea of abolishing the Indian Act, with many First Nations leaders opposing it. As explained in the Report of the Royal Commission of Aboriginal Peoples (RCAP), this is the paradox of the Indian Act.

Notwithstanding its discriminative nature, it is still perceived as the only legal document that makes a distinction between First Nations and other Canadians, acknowledging the unique relationship and obligations that the Federal Government has towards First Nations (RCAP, 1996, pp. 238–239). This paradox has probably been exacerbated by the fact that the rights of Canadian Indigenous peoples were not fully recognised until the last decades of the twentieth century. In fact, only with the finalization of the constitutional repatriation process and the adoption of the 1982 Canadian Constitution Act the principles enshrined in the 1763 Royal Proclamation regained value

and were finally reasserted as the baseline of Canadian-Indigenous peoples' relations [75] (Milloy, 2008, p. 2). Some scholars argue that the Royal Proclamation is still valid, due to the content of Section 25 of the 1982 Canadian Constitution Act, according to which:

> *25. 'The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, including: (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.'*

In the context of the new Constitution, Section 35 became the reference point to advance Indigenous rights in Canada. As established in relevant case laws, its content has served to ensure judicial identification and protection of historical aboriginal rights by applying general constitutional principles. Besides this, it also paved the way for just settlements, recognizing Indigenous rights in a modern way and reconciling them with the interests of Canadian society (Slattery, 2005, p. 445). Article 35 affirms: *'Recognition of existing aboriginal and Treaty rights (1) The existing aboriginal and Treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. Definition of "aboriginal peoples of Canada" (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada. Marginal note: Land claims agreements (3) For greater certainty, in subsection (1) "Treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired. Marginal note: Aboriginal and Treaty rights are guaranteed equally to both sexes (4) Notwithstanding any other provision of this Act, the aboriginal and Treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.'* [76]

7.3 The recognition of Aboriginal title in British Columbia – Calder v. BC (1973) and other relevant case-laws

> *'At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province. This Crown title, however, was burdened by the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival. The doctrine of terra nullius (that no one owned the land prior to European assertion*

[75] It is worth mentioning that the BC Province has always affirmed that the Royal Proclamation could not apply to British Columbia, given that BC was not under British rule when the Proclamation was issued (1763). Nevertheless, most of the First Nations inhabiting the Province never took a Treaty, arguing that the Province still exerts its sovereignty illegitimately, on stolen land, given that the vast majority of British Columbia has never been ceded.

[76] Constitution Act 1982, available at: https://laws-lois.justice.gc.ca/eng/const/page-15.html#h-38 (last accessed on March 15th, 2021).

of sovereignty) never applied in Canada, as confirmed by the Royal Proclamation of 1763. The Aboriginal interest in land that burdens the Crown's underlying title is an independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.' (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para 69).

With such a statement, the Supreme Court of Canada finally addressed and ended a dispute that has produced divisions for centuries. **The doctrine of *terra nullius* does not apply in Canada**. This was established by the Supreme Court of Canada more than forty years after the Calder case, which is considered the leading case law that triggered the discussion on the existence of Aboriginal title in the Canadian legal framework (Asch, 2002, p. 26).

In Calder, the Nishga'a First Nation sought legal recognition of their Aboriginal rights, arguing that they had right prior to colonization and that those rights were never extinguished. The British Columbia Court of Appeal issued its verdict in 1970, arguing that the Nisga'a did not have any ongoing Aboriginal rights, based on the principles of the doctrine of *terra nullius* and considering that:

'at the time of settlement, Indians were very primitive people, with few of the institutions of civilized society and none at all of our notions of private property.' (Calder et al. v. BC, 1973 SCR 313, at page 347).

This judgement was upturned by the Supreme Court in 1973, with Justice Judson stating:

'When the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means.' (Calder et al. v. BC, 1973 SCR 313, at page 328).

The Supreme Court of Canada acknowledged the existence of the Aboriginal title to land when the Royal Proclamation was issued (1763) and that it existed outside the context of colonial law (Calder et al. v. BC, 1973 SCR 313, at page 396-397). However, the Court was split when addressing the Nishga'a claim of the existence of their native title after centuries of colonial control, and the case was dismissed on a technicality (Calder et al. v. BC, 1973 SCR 313, at pages 420-427).

Nevertheless, the Calder case had two significant outcomes. Firstly, the Canadian Government started a negotiation with the Nishga'a to define their rights to land and resources (Joseph, 2019, p. 11).[77] This was the first modern Treaty negotiated in British Columbia, according to a new approach

[77] For a more comprehensive explanation about the modern Treaty concluded between the Canadian Government, the BC Government, and the Nishga'a Nation: https://www.nisgaanation.ca/understanding-treaty (last accessed on March 3rd, 2021).

that the Government of Canada wanted to apply to address unsolved issues related to the native title. However, the desired outcome was the same: achieving 'certainty' through extinguishing Aboriginal title in exchange for benefits, the recognition of certain rights, and the non-assertion of specific rights in the future. Nevertheless, the very concept of extinguishment has not been accepted by many Indigenous Bands, who believe that their rights are simply inalienable (Hanson, 2009, pp. 1–2). Secondly, the Calder case paved the way for the uprising of Aboriginal claims related to Aboriginal title. Among those, it is worth mentioning some leading case-laws such as Guerin v. The Queen (1984), R. v. Sparrow (1990), Delgamuukw v. British Columbia (1997), and Mikisew Cree v. Canada (2005).

7.3.1 Relevant jurisprudence on the Aboriginal title: Guerin v. The Queen (1984), R. v. Sparrow (1990), Delgamuukw v. British Columbia (1997)

The first relevant case after Calder was Guerin v. The Queen (1984). The issue was brought to Court by the Musqueam First Nation, which in the late '50s approved to lease some of its Reserve Land to a Golf Club. The Crown conducted the negotiations with the Band and then concluded the deal with the Golf Club. However, the final agreement signed by the Crown was different to the one negotiated with the Band and far less advantageous (Joseph, 2019, p. 12). The decision of the Supreme Court of Canada was ground-breaking as it ascertained that the Aboriginal title has always existed; it was not created by the 1763 Royal Declaration (although its existence was recognized in it) nor by the 1867 Indian Act. The Court sentenced that it is a ***sui generis*** right with no equivalent and existed before the Royal Proclamation as an inherent right of Canadian Indigenous peoples (Guerin v. The Queen, [1984] 2 SCR 335, pp. 379-387). Because of it, the Crown has a fiduciary duty when dealing with Indian lands and Indian interests, as it was even recognised by Section 18 of the Indian Act (T R Berger, 2002, pp. 253–254). As the Court stated:

> *'In my view, the nature of Indian title and the framework of the statutory scheme established for disposing of Indian land places upon the Crown an equitable obligation, enforceable by the courts, to deal with the land for the benefit of the Indians. This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the Crown breaches this fiduciary duty it will be liable to the Indians in the same way and to the same extent as if such a trust were in effect. The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native, or Indian title.'* (Guerin v. The Queen, [1984] 2 SCR 335, p. 376).

In R. v. Sparrow (1990), for the first time since the approval of the 1982 Constitution Act, the Supreme Court of Canada relied upon the content of Section 35 in its reasoning. Sparrow was a case brought to Court by Ronald Sparrow, a member of the Musqueam band, who was arrested for fishing with a net wider than his license allowed. The Court referred to Section 35(1) of the 1982 Constitution Act to determine if aboriginal rights still existed and if the breach perpetrated by the Province of British Columbia was justifiable. The Court ruled that the aboriginal right to fish of Musqueam people was not extinguished, notwithstanding more than 100 years of governmental restrictions and regulations (Joseph, 2019, pp. 13–15). Such a decision resulted in the so-called ***'Sparrow test'*** still being used to identify whether a right exists and if the government can be justified in those cases of infringement. An infringement ought to be justified if it serves 'valid legislative objectives', if the infringement has been as little as possible, if fair compensation was provided, and if Indigenous groups were consulted or informed (R. v. Sparrow, [1990] 1 SCR 1075). Although the Sparrow case represents a fundamental step in the affirmation of Indigenous rights in the Canadian context, it also confirms that such rights are not absolute, and possible breaches can be justified (R. v. Sparrow, [1990] 1 SCR 1075, at para. 58).

In Delgamuukw v. British Columbia (1997), the Supreme Court of Canada dealt with the definition of the concept of aboriginal title according to the content of Section 35. The appellant (thirty-five Gitxsan and thirteen Wet'suwet'en Hereditary Chiefs) claimed ownership over 58,000 km^2 of land in northern British Columbia. They sought recognition of their aboriginal title to govern their traditional land and seek compensation for land loss and exploitation of their natural resources. In the Reasons for Judgement, the Supreme Court of Canada established that the provincial government had no authority to extinguish the right of Indigenous people to their lands (Joseph, 2019, p. 17). Thus, ***"The Delgamuukw test"*** was created, according to which, in order to enjoy their aboriginal rights, Indigenous people must prove, among others, their inherent right to the land by demonstrating their *sufficient, continuous and exclusive* occupation of the lands (Delgamuukw v. British Columbia [1997] 3 SCR 1010, at paras. 193-200). It is also important to mention that in Delgamuukw, the Supreme Court of Canada recognised that Aboriginal title also includes Aboriginal jurisdictional authority regarding the use of the land. Moreover, it recognises collective ownership over the land and Indigenous people's specific cultural relationship with their traditional territory [78] (Hanson, 2009).

[78] In those years, the existence of the native title was also recognised to Australian Aboriginal peoples in the Mabo case (1992). More info at: https://aiatsis.gov.au/explore/mabo-case (last accessed on March 12th, 2021).

7.4 Recognizing Indigenous rights for Treaty 8 signatories: R. v. Badger (1996) and Mikisew Cree v. British Columbia (2005)

The case laws analysed so far were brought to Court by Bands that never took a Treaty. This means that their land was never surrendered to the Canadian state; therefore, they had a strong prima facie case in seeking the recognition of the existence of their Aboriginal title. However, even those Bands who entered historic Treaties (as is the case of the Fort St. John Indian Band, nowadays Doig River and Blueberry River First Nation) had been litigating in Court to see their rights recognised and enforced. Whereas they did not seek recognition of their native title as such, through litigation, they sought the protection of their Treaty and Constitutional rights while advancing claims related to participation and inclusion in decision-making when their traditional territories and resources are at stake.

In R. v. Badger, the appellants were status Indians who hunted for food on privately owned lands. Those territories fell within the tracts surrendered by Treaty 8. They were charged with an offence under the Wildlife Act. They firstly appealed their convictions to the Court of Queen's Bench and then to the Court of Appeal, contesting the constitutionality of the Wildlife Act, as it might affect them as status Cree under Treaty 8. To solve the case, the Court dealt with three main issues.

- Whether status Indians under Treaty 8 had the right to hunt for food on privately owned land situated within the territory surrendered under the Treaty.
- Whether the hunting rights set out in Treaty 8 had been extinguished or modified by para. 12 of the Natural Resources Transfer Agreement, 1930 (NRTA).
- If requiring a hunting licence and the existence of hunting seasons applied to the appellants, as established by art. 26-27 of the Wildlife Act (R. v. Badger [1996] 1 SCR 771).

In the Reasons for Judgement, the Court found that:

> *'Treaty No. 8, then, guaranteed that the Indians "shall have the right to pursue their usual vocations of hunting, trapping and fishing". The Treaty, however, imposed two limitations on the right to hunt. First, there was a geographic limitation. [...] Second, the right could be limited by government regulations passed for conservation purposes.'* (R. v. Badger [1996] 1 SCR 771, at para. 40).

As it continues towards the conclusion of the Reasons:

> *'In summary, it is clear that a statute or regulation which constitutes a prima facie infringement of aboriginal rights must be justified. In my view, it is equally if not more important to justify prima facie infringements of Treaty rights. The rights granted to Indians by treaties usually form an integral part of the consideration for the surrender of their lands. For example, it is clear that the maintenance of as much of their hunting rights as possible was of paramount concern to the Indians who signed Treaty No. 8. This was, in effect, an aboriginal right recognized in a somewhat limited form by the treaty and later modified by the NRTA. To the Indians, it was an essential element of this solemn agreement. Treaty No. 8 represents a solemn promise of the Crown. For the reasons set out earlier, it can only be modified or altered to the extent that the NRTA clearly intended to modify or alter those rights. The Federal government, as it was empowered to do, unilaterally enacted the NRTA. It is unlikely that it would proceed in that manner today. The manner in which the NRTA was unilaterally enacted strengthens the conclusion that the right to hunt which it provides should be construed in light of the provisions of Treaty No. 8.* (R. v. Badger [1996] 1 SCR 771, at para. 82-84).

With this judgement, the Court recognized the importance and the validity of the rights enshrined in Treaty 8, besides providing new approaches regarding the interpretation of the Treaty. Moreover, it pointed out that the Federal Government would have perhaps acted differently if the Act had been enacted when the litigation took place. Such a statement could be seen as the first sign of a change of approach that the Court was operating. Indeed, consultation with Indigenous Bands began to be seen as necessary when Indigenous rights were at stake, even in those cases where a Band took a historic Treaty (such as Treaty 8 Bands).

Treaty interpretation was an issue the Court addressed in R. v. Marshall (1999). Firstly, it was acknowledged that the words of the Treaty, and its historical and cultural context were to be considered when dealing with Treaty interpretation. Two steps were proposed when interpreting a Treaty. Firstly, it was established that Treaty clauses and their wording were to be examined to determine their meaning and individuate any possible ambiguities or misunderstandings produced by linguistic and cultural differences. Consequently, the different meanings arising from the Treaty's wording had to be considered, taking into account the historical and cultural background of the time when the specific Treaty was concluded. Courts dealing with Treaty interpretation are supposed to consider the historical context when determining which type of interpretation reflects the parties' common intentions and how they understood the Treaty when they took it. When choosing the

interpretations to be adopted, Courts must consider those that best reconcile with the parties' interests (R. v. Marshall [1999] 3 SCR 456, at paras 80-83).

What started with the Badger case was completed in Mikisew Cree v. Canada, which established a new precedent regarding the duty to consult and accommodate Indigenous people and in terms of Treaty infringements. Mikisew Cree First Nation brought the case to Court after that a proposed 118km winter road designed to cut through the Mikisew Cree First Nation Peace Point Reserve was approved. The Nation argued that they were not included in the consultation process; thus, they never gave their consent to the construction of the proposed road. In this case, the Court dealt with the duty to consult and accommodate, the 'taking up' clause and the right of First Nations to keep practising their traditional lifestyle and activities (i.e., hunting and trapping), as assured by Treaty 8 (Schwartz & Rettie, 2006, pp. 465–467). The verdict of the Court was ground-breaking, as it established that the Crown must engage in a meaningful process of consultation and accommodation when a possible 'taking up' of land may negatively impact the exercise of First Nations' Treaty rights. These duties must be fulfilled whether the 'taking up' may give rise to a prima facie infringement of a Treaty right (Schwartz & Rettie, 2006, pp. 468–469). In the specific case of the Mikisew Cree, the Court established that the Nation had a right to consultation and accommodation already at the preliminary stage of the project consideration. The procedural duty to consult is embedded in the honour of the Crown, a distinct source of obligations that exists besides any specific Treaty (Schwartz & Rettie, 2006, pp. 469–470). As affirmed by the Supreme Court:

> '*The honour of the Crown infuses every treaty and the performance of every treaty obligation. Treaty 8 therefore gives rise to Mikisew procedural rights (e.g., consultation) as well as substantive rights (e.g., hunting, fishing and trapping rights). Were the Crown to have barrelled ahead with implementation of the winter road without adequate consultation, it would have been in violation of its procedural obligations, quite apart from whether or not the Mikisew could have established that the winter road breached the Crown's substantive treaty obligations as well*.' (Mikisew Cree v. Canada, 2005 SCC 69, at para. 57).

Mikisew is a significant case because the Court set a low threshold for triggering the procedural duty to consult, which involves giving notice, offering direct engagement, providing information addressing relevant concerns and potential adverse effects, receiving feedback, minimize adverse impacts (Schwartz & Rettie, 2006, pp. 470–471). In this case, the Supreme Court of Canada also addressed whether the 'taking up' was subject to the *Sparrow infringement test*. The Court established that not every 'taking up' would automatically result in Treaty infringements (Schwartz & Rettie, 2006, p. 474). When dealing with the 'taking up', it is necessary to first consider how the 'taking up'

is planned to happen and whether this action is compatible with the honour of the Crown. If not, the ***Sparrow test*** must be used to establish if an infringement of Treaty rights might happen due to the 'taking up' process (R. v. Sparrow, [1990] 1 SCR 1075 at para. 59). According to the Court, the exercise of the 'taking up' clause triggered a ***duty to consult,*** and that duty was not met, given the unilateral decision to re-align the proposed road route, without consulting the Mikisew Cree First Nation (Joseph, 2019, pp. 25–26). As argued by Schwartz and Rettie, it may be that in Mikisew Cree v. Canada, the aim of the Court was not to impose a specific outcome; instead, to establish a framework for reconciliation through dialogue and mutual accommodation (Schwartz & Rettie, 2006, p. 475).

In April 2012, the Canadian Parliament introduced two new bills that were believed to affect Canada's environmental protection regime. Mikisew Cree FN was not included in any consultation process during the development of the bills or prior to the granting of royal assent. Thus, the Band brought an application for judicial review in Federal Court, asserting that the Crown had a duty to consult them on the development of the legislation when it could potentially affect their Treaty rights (hunting, trapping, and fishing), as established by Treaty No. 8. In 2018, the Supreme Court of Canada established that there is no duty to consult when developing new legislation.[79]

7.5 The doctrine of the honour of the Crown, its fiduciary obligations towards Indigenous peoples and the duty to consult and accommodate – The case law Haida Nation v. British Columbia (2004)

As it is possible to understand from the case laws considered so far, the Canadian legal framework was re-defined and advanced after adopting the new Constitution. Key legal principles such as the honour of the Crown, its fiduciary obligations, and the duty to consult and accommodate Indigenous peoples found a renewed definition. In this sense, there is perhaps no better case law than Haida v. British Columbia (2004) to explain how those principles have been fully recognised.

The Haida case was about issuing a "Tree Farm License" to a large forestry firm. By doing so, the Province of BC allowed the company to harvest trees in an area of Haida Gwaii. Haida Nation claimed their aboriginal rights and title to the lands over Haida Gwaii and surrounding waters. In 2002, the BC Court of Appeal sentenced that the Government and the company had a ***duty to consult with and accommodate*** the Haida Nation (Haida v. BC, 2004 SCC 73, at para 9). In 2004, the Supreme Court of Canada sentenced that Haida Nation had a ***strong prima facie case to claim native title*** to all of Haida Gwaii. According to the Court, the duty to consult and accommodate is an integral part of the

[79] Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17288/index.do (last accessed on March 4th, 2021).

process of fair dealing and reconciliation; it arises when the Crown is aware of the potential existence of the native title and possible conduct that can be detrimental to it. In Haida, the necessity to carry out consultation based on title claim was classified in a spectrum (so-called ***"Haida Spectrum"***), which varies depending on the situation (Haida v. BC, 2004 SCC 73, at paras 43-45).

The verdict of the Haida case produced a shift as to how the Crown is supposed to act towards Indigenous peoples when it comes to consultation and concerning the native title and sovereignty claims. In Haida, it was recognized that the Crown took control and claimed its (asserted) sovereignty over Canadian territories despite pre-existing Aboriginal sovereignty and territorial rights (Slattery, 2005, p. 437). By doing so, the Crown has exercised a *de facto* sovereignty that has been accepted for practical purposes. Nevertheless, such sovereignty was not *de jure,* exercised rightfully and legitimately. Since then, overlapping territorial claims arose, with the Crown required to ***'honourably deal' with Indigenous people*** to identify and negotiate Aboriginal rights. In fact, any sovereignty claims the Crown advances over Indigenous territories should be considered null until there is a settlement of Indigenous rights through negotiated treaties (Slattery, 2005, pp. 437–438). As stated in Haida:

> *'Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982. Section 35 represents a promise of rights recognition, and "[i]t is always assumed that the Crown intends to fulfil its promises" (Badger, supra, at para. 41). This promise is realized, and sovereignty claims reconciled through the process of honourable negotiation. It is a corollary of s. 35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests. This, in turn, implies a duty to consult and, if appropriate, accommodate.'* (Haida v. BC, 2004 SCC 73, at para 20).

The duty to ***act honourably*** gave rise to the principle of the ***'honour of the Crown'***, a fundamental principle that the Crown must respect when dealing with Indigenous-related issues. For some scholars, such a principle finds its foundation in the 1763 Royal Proclamation, where it was affirmed:

> *'And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.'* (1763 Royal Proclamation, Library and Archives Canada, OCLC 1007612335).

According to another theory, instead, the ***honour of the Crown*** stemmed from a general principle of imperial law, which should be considered as the basis of the sovereignty claim of the Crown over Indigenous peoples' territories. Such a principle required the Crown to ***honourably deal*** with and respect the basic rights of these people; thus, the Proclamation served as a formal recognition of such a legal duty (Slattery, 2005, pp. 443–444). Nevertheless, the Supreme Court of Canada established in Haida that the duty to act honourably arose beside the Royal Proclamation. Undoubtedly, the Proclamation *bears witness* to the existence of such a duty, but it cannot be considered its source (Slattery, 2005, p. 445).

The honour of the Crown gives rise to another fundamental duty the Crown must fulfil: ***the duty to consult with and accommodate*** Indigenous people in all those cases where activities authorized by the Crown may infringe Indigenous rights (Slattery, 2005, pp. 436–437). Furthermore, the fact that the Crown took control over Aboriginal interests, the honour of the Crown gives rise to a ***fiduciary duty***, with the Crown that is supposed to act in the best interest of Indigenous people (Haida v. BC, 2004 SCC 73, at para 18). As for when and in which situations the duty to consult arise, the Supreme Court of Canada stated:

> *'The foundation of the duty in the Crown's honour and the goal of reconciliation suggests that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.'* (Haida v. BC, 2004 SCC 73, at para 35).

While at para. 32, it continued:

> *The jurisprudence of this Court supports the view that the duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the Constitution Act, 1982. This process of reconciliation flows from the Crown's duty of honourable dealing toward Aboriginal peoples, which arises in turn from the Crown's* ***assertion of sovereignty*** *over an Aboriginal people and de facto control of land and resources that were formerly in the control of that people.* (Haida v. BC, 2004 SCC 73, at para 32).

In its reasoning, the Supreme Court of Canada explained that the Crown is supposed to achieve a just settlement of Aboriginal rights through negotiations and by concluding treaties. This means that the Crown has an active role in bringing a new legal order into life, with Courts assisting when needed. Thus, the Supreme Court of Canada attributes a generative and dynamic function to Section 35 of the 1982 Constitution. As stated in Haida:

> *'Put simply, Canada's Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized, and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.'* (Haida v. BC, 2004 SCC 73, at para 25).

Nevertheless, despite these constitutional provisions and several ground-breaking rulings issued by the Supreme Court of Canada in the last decades, Canadian Indigenous peoples still need to go to Court to seek recognition and enforcement of their Constitutional and Treaty rights. This is true even for those Bands who took a Treaty, as is the case for BRFN, that entered Treaty 8 in 1900. As one of the BRFN lawyers told me:

> *'The outcomes produced by the Haida Nation v. BC verdict cannot be applied in those areas under Treaty 8. Indeed, in Vancouver Island, no treaties were concluded between First Nations and the Crown, meaning that the land had never been surrendered. Hence, there is validity for those First Nations to claim the native title and specific rights. In this sense, the Haida case is unique, as they are the only group living in that area. It is kind of easy for them to claim those rights! In Treaty 8 area, instead, that is not possible. The jurisprudence agrees that by taking Treaty 8, Indians effectively surrendered their rights in exchange for the enjoyment of treaty rights.'*

Still, Treaty 8 signatories struggle to see their Treaty rights recognised, besides having lost any possibility to claim their native title. In this sense, it is worth mentioning that the current lawsuit I discuss in the context of this PhD (BRFN v. BC, S-151727) was unique, as for the first time in Canadian legal history, a case was brought to Court for the infringement of a numbered Treaty (Treaty No. 8) in relation and in order to tackle the cumulative effects of industrial development.

7.6 From the duty to consult to achieving consent - Tsilhqot'in Nation v. British Columbia (2014)

The long process of recognition of Aboriginal title in Canadian legal history has had one of its peaks with Tsilhqot'in Nation v. British Columbia (2014). The struggle of the Tsilhqot'in started in 1983 when the Province of British Columbia issued Carrier Lumber Ltd a logging license on land considered by the Tsilhqot'in Nation to be part of their traditional territory. As a consequence, the Band sought a declaration to stop commercial logging on the land. Negotiations between the Nation and the Government went on for several years, but a final agreement was not reached. Hence, in 1998 the original land claim was amended to include a claim for Aboriginal title to the land; however, the provincial and the federal governments opposed the title claim (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 5). According to the Supreme Court of British Columbia, occupation was established, and the existence of Aboriginal title was proved by showing regular and exclusive use of the land within the claimed area. However, by applying a stricter test based on site-specific occupation, in which it was required to prove that the ancestors intensively used a specific tract of land, the British Columbia Court of Appeal rejected the Tsilhqot'in claim to Aboriginal title. By applying to the Supreme Court of Canada, the Tsilhqot'in Nation sought a declaration to see the existence of their Aboriginal title recognised (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at paras 8-9).

In order to determine the existence of the Aboriginal title for the Tsilhqot'in Nation, the Supreme Court of Canada applied the Delgamuukw test, according to which sufficient pre-sovereignty, continuous and historic occupation must be proved. However, the Court highlighted that those concepts must match the Aboriginal perspective (taking into account the Band's size and lifestyle, and according to the territorial use-based approach established in Delgamuukw), and not only the meaning that they may have according to the common law (intention to occupy or hold land). (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at paras 31-41). For example, the Court established that '*Continuity simply means that for evidence of present occupation to establish an inference of pre-sovereignty occupation, the present occupation must be rooted in pre-sovereignty times'*. Contrariwise, occupation and exclusivity are to be interpreted as the intention and capacity to control the land (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para 46-54). The Supreme Court of Canada established that the Tsilhqot'in occupation was sufficient and exclusive; therefore, recognizing the existence of the Aboriginal title.

In specifying the set of rights that Aboriginal rights conferred, the Court agreed to what was established in Delgamuukw, according to which Aboriginal title *'encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes.'* (Delgamuukw v. British Columbia [1997] 3 SCR 1010, at para. 117). Those purposes are not necessarily limited to traditional uses of the land. In fact, Aboriginal title recognizes the title holders the rights to enjoy the benefits that specific use of the land can produce, such as profiting from its economic development (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 70). Therefore, the Crown does not uphold any beneficial interest in the Aboriginal title; however, it still retains its underlying title to land, acquired at the time of assertion of European sovereignty over North America. According to the Supreme Court of Canada, such an underlying title gives rise to two intertwined elements. Firstly, a fiduciary duty that the Crown has when dealing with Aboriginal-related issues, and then the opportunity to justify possible infringements of the Aboriginal title if a broader public interest is at stake. The existence of those two, apparently dichotomous elements, is to be seen in the broader context of reconciling Aboriginal interests with the broader public interests under Section 35 of the 1982 Constitution (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 71).

Aboriginal title is *sui generis*, and it stems from the historic relationship the Crown has with Canadian Indigenous peoples. It grants ownership rights like those conferred with fee simple, i.e., the right to occupy and possess the land, decide how to use it, and enjoy the economic benefits of the land. At the same time, it is a collective title that future generations are entitled to enjoy; thus, it cannot be alienated (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at paras. 72-74). Therefore, the right to control the land that such title confers translates into the fact that whoever wants to use the land must seek and obtain the ***consent*** of the Aboriginal title holders. If consent is not given, the only way for the Government to use the land is to demonstrate that such use can be justified under Section 35 of the 1982 Constitution (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at paras. 76, 83). Thus, the Government has a duty to consult and accommodate anytime an action can adversely affect an Indigenous group and its Aboriginal title (as established in Haida and according to the Haida spectrum). In those cases where the Crown might need to proceed even when consent is not given, it is important to consider that:

> *'The Crown's fiduciary duty infuses an obligation of proportionality into the justification process. Implicit in the Crown's fiduciary duty to the Aboriginal group is the requirement that the incursion is necessary to achieve the government's goal (rational connection); that the government go no further than necessary to achieve it (minimal impairment); and that the benefits that may be expected to flow from that goal are not outweighed by adverse effects on*

the Aboriginal interest (proportionality of impact).' (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 87).

Tsilhqot'in is relevant because the Supreme Court of Canada refers to the ***consent*** the Crown should try to achieve before starting any exploitation on title land (Joseph, 2019, p. 22). As the Court affirmed:

'Finally, once title is established, the Crown cannot proceed with development of title land not consented to by the title-holding group unless it has discharged its duty to consult, and the development is justified pursuant to Section 35 of the 1982 Constitution Act.' (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 91).

In this specific case, the Supreme Court of Canada found that the province provoked the breach by issuing a permit to allow third parties to carry on forestry activities before the Aboriginal title was declared. This meant that the interest in the land of the Tsilhqot'in was not legally recognized. Besides, and according to the honour of the Crown, the Province was supposed to consult and accommodate their interests, which was not done either. Thus, according to the Supreme Court, when the land is going to be used and its resources exploited, before or after the Aboriginal title is declared, it is possible to avoid being charged for failing to adequately consult *by obtaining the consent of the Band* (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 95-97).

7.7 The significance of Tsilhqot'in in light of the Canadian endorsement of UNDRIP

Cases such as Tsilhquot'in have been relevant to advancing the Canadian legal framework, also in light of the development of international law. When the verdict of Tsilhquot'in was issued (2014), Canada still maintained an ambiguous position regarding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, only two years later (2016), the Declaration was fully endorsed under the first Trudeau Government. The fact that in less than ten years Canada shifted from voting against the adoption of the Declaration to its endorsement could be seen as the peak of a long process that started in the '70s with the ratification of fundamental human rights legal instruments. In fact, in 1970, Canada ratified the UN Convention on the Elimination of Racial Discrimination (CERD), followed by the ratification of the International Covenant on Civil and Political Rights (ICCPR) in 1976.[80] Both Conventions have contributed to the advancement of human rights in Canada, in particular the rights of Canadian Indigenous peoples. As stated by the UN Human

[80] https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/tcp.html (last accessed on March 12th, 2021).

Rights Committee in its General Comment No. 23, article 27 of the ICCPR applied to Indigenous peoples (CCPR/C/21/Rev.1/Add.5, 8th April 1994, at para. 3.2, 7).

This happened in Lubicon Lake Band v. Canada (Communication No. 167/1984, 26th March 1990, U.N. Doc. Supp. No. 40 (A/45/40)). The case was about the exploitation of oil, gas and timber in areas traditionally used by the Lubicon Lake Band, a Treaty 8 Band, for traditional activities (such as hunting, trapping, and fishing). Canada was accused of violating the right of the Band *'to determine freely its political status and to pursue its economic, social and cultural development.'* Moreover, the right of members to *'dispose of their natural wealth and resources was violated'*, considering that *'in destroying the environment and undermining the Band's economic base, the Band is allegedly being deprived of its means to subsist and of the enjoyment of the right of self-determination guaranteed in article 1'* of the ICCPR (U.N. Doc. Supp. No. 40 (A/45/40), at para. 2.3).

The Band decided to address the Human Rights Committee after having exhausted the domestic remedies and receiving a denial for leave to appeal by the Supreme Court of Canada. The Committee stated that a violation of the provisions enshrined in article 27 was perpetuated due to historical inequities and certain developments that pose a risk to the traditional lifestyle and culture of the Lubicon Lake Band (U.N. Doc. Supp. No. 40 (A/45/40), at para. 33). As for CERD, according to Section 1 of the General Recommendation XXIII, 1997, discrimination against Indigenous peoples falls under the scope of the Convention. In its concluding observations on the combined XXI to XXIII periodic report issued in September 2017, the CERD Committee affirmed that Canada needed to implement the 94 calls to action suggested by the Truth and Reconciliation Commission, besides implementing the provisions established in the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) within its legal framework (CERD/C/CAN/21-23, 2017, at para. 18).

Unlike the above-mentioned international instruments, UNDRIP is not a legally binding document under international law (being a Declaration and not a Convention).[81] Nonetheless, it has acquired more relevance through the years and in some cases, its provisions have been used in leading decisions on Indigenous peoples' rights (Amatulli, 2015, pp. 39-41).[82] In the Canadian context, the

[81] According to article 2.1 of the 1969 Vienna Convention on the law of treaties, *'"Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.'* Meanwhile, according to the UN Treaty Handbook, Section 5.2, *'The use of the word "declaration" indicates some level of solemnity and may be used in several ways. Some UN Resolutions of a solemn nature are called declarations, examples include: the Universal Declaration on Human Rights (A/RES/217(III)[A]) or the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295).'*

[82] The Inter-American Court of Human Rights has referred to UNDRIP in Saramaka People v. Suriname, 2007 (Section 131). https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf (last accessed on March 11th, 2021).

Truth and Reconciliation Commission declared UNDRIP a framework for reconciliation, encouraging Provinces and the Federal Government to implement it in the legal framework (Chan, 2019, p. 1). The Declaration, adopted by the UN General Assembly in 2007 (UNGA 10612, 13th September 2007), ensures the protection of fundamental Indigenous peoples' rights. I.e., art. 3 on the right to self-determination and art. 4 on the right to self-government; art. 10 against any forced removal from their lands; art. 11-12-13 on traditional practices, culture, and language; art. 14 on education; art. 18-24 on political & economic rights; art. 25-29 on use of lands and resources, environmental protection, and cultural heritage; art. 33-37 on Indigenous law and customs, treaties, and agreements.[83]

The Declaration also promotes and advances the debate on the implementation of specific principles that could ensure better and more comprehensive protection of specific Indigenous rights. Among those is the principle of Free Prior and Informed Consent (FPIC), mentioned in several articles (articles 10, 11, 19, 28, 29 and 32). Whereas it is accepted that FPIC should be implemented to prevent forced removal while protecting cultural practices (art. 10-11); in the last decades, there has been much debate on the meaning of FPIC when it comes to adopting and implementing legislative measures that can affect Indigenous peoples (art. 19), or when it comes to the use of traditional Indigenous land and natural resources that can be found in those territories (art. 28-29) and the approval of any project that can affect their lands and resources (art. 32).

This debate has been particularly intense in British Columbia, considering that BC has been the first Canadian Province to pass a law (Bill-41, 28th November 2019) to implement the provisions enshrined in UNDRIP in the provincial legal framework (Chan, 2019, p. 1). Bill-41 mirrors the content of Bill-C262, proposed at the Federal level and which did not pass the exam of the Senate. Nonetheless, in December 2020, a new Bill (C-15) was presented to the Canadian Parliament to implement the content of UNDRIP at the Federal level (Eggerman, 2020, pp. 1–3). Bill-41 (also called DRIPA – Declaration on the Rights of Indigenous Peoples Act), developed in cooperation with the BC Assembly of First Nations, requires the provincial Government to take all the necessary steps to ensure that the provincial legal framework is consistent with UNDRIP. To do so, the BC Government must prepare and implement an action plan in cooperation with the Indigenous peoples of British Columbia. Moreover, a report must be prepared each year to assess the progress made in implementing UNDRIP in the provincial framework (DRIPA, 2019, Section 2-5). The approval of

[83] Full text of the Declaration available at: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html (last accessed on March 12th, 2021).

Bill-41 has generated quite a lot of debate around the meaning of FPIC and whether it gives or recognises the right to VETO to Indigenous peoples. The BC Government defines FPIC as such:

> '*Free, prior and informed consent recognizes Indigenous peoples' rights, interests and voices. It means early, deep and meaningful involvement of Indigenous peoples on matters that affect their peoples, communities and territories.'* (BC Government, 2021).[84]

The minister of Indigenous Relations and Reconciliation has affirmed that FPIC does not mean that Indigenous peoples will have a VETO right. However, he has admitted that Bill 41 will give Indigenous people a stronger influence over governmental decisions and better inclusion in decision-making, besides moving on from the classical governmental approach of 'take or leave' used so far (Plummer, 2019). The minister's position represents a step forward; however, the fact that consent is conceived more as a negotiation process than a real power that Indigenous peoples may exert to agree or not on a specific project or legislative measure may generate future issues when relevant projects, specific legislative measures, and economic interests will be at stake. Besides, this position does not reflect what the Supreme Court of Canada established in Tsilhqot'in, where it affirmed:

> *'Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group.'* (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, at para. 87).

7.8 Managing Land and Resources: the necessity of a Land Code

Tsilhqot'in is a landmark case law in Canadian history. It shed light on the benefits that Aboriginal title (a *sui generis* collective title that grants ownership rights similar to those conferred with fee simple) confers to the Band while specifying the features of the underlying title the Crown still retains. This is particularly relevant for the use of land and its resources (especially subsoil resources), considering that in British Columbia, surface and subsurface rights are disjointed. As explained in the final part of chapter 6, most fee simple titles to property do not include subsurface rights. This is different for Reserves though, as in that case, First Nations have surface and subsurface rights over Reserve lands. In recent years, there has been a growing awareness regarding the meaning of being entitled to enjoy surface and subsurface rights, as established in the 2019-2021 Doig Council Strategic Plan, which I will analyze in the next chapter.

[84] https://declaration.gov.bc.ca/ (last accessed on March 12th, 2021).

However, for the purpose of this paragraph, it is important to mention that one of the mission statements established in the Strategic Plan, titled *'Territory and Treaty Rights',* identifies two goals: *'Be present throughout our territory and assert our Treaty rights'*, and *'Protect the land and manage its natural resources for the greatest benefit of our members.'* (Council Strategic Plan, 2019-2021). As for the former, a set of actions are being implemented, such as re-establishing and maintaining old trails (started with the trail cutting I took part in during the summer of 2019); establishing a K'ih tsaa?dze Tribal Park (between Northeastern BC and Northwestern Alberta); negotiating specific land use measures and protections for Doig traditional territory, with particular attention to those areas of critical cultural use; finalizing Treaty Land Entitlement (TLE) negotiations; selecting crown lands that should be transferred to the community as provided by the Tripartite Land Agreement signed with BC Hydro (as partial compensation for the disruptions and land alienation produced by the Site C dam), as well as addressing boundary overlaps with other First Nations (DRFN CCP, 2017, p. 38-40). As for the latter, it was established that actively participating and engaging in the consultation process was vital to ensure effective management of lands and natural resources throughout the traditional territory. Thus, the development of a Consultation Policy and Guidelines Manual was proposed to ensure that proper consultation procedures are followed, with mitigation and accommodation plans in place when resource development projects might infringe Treaty and Aboriginal rights. In this sense, it is essential to consider and address the cumulative effects development projects can have on the traditional territory while identifying areas and items of critical importance (i.e., valued components) and establishing the actions to be implemented regarding the restoration of compromised areas. To properly use the land and its resources, the CCP mentioned the appropriateness of developing a Land Code under the First Nations Land Management Regime (DRFN CCP, 2017, p. 39).

7.8.1 An introduction to the Framework Agreement and the Land Code

The Land Code stems from a long process that started in the '90s with the Framework Agreement on First Nation Land Management[85] and the approval of the First Nations Lands Management Act (FNLMA)[86] by the Canadian Parliament in 1999. Intended to be a Government-to-Government agreement signed by fourteen First Nations, it was designed to allow signatory First Nations to opt out of the section of the Indian Act related to land management to give the Nations full control over their lands and natural resources (FNLMRC, 1996, p. 1). The Framework Agreement recognises First

[85] Full text of the Framework Agreement available at: https://labrc.com/wp-content/uploads/2018/11/Framework-Agreement-on-First-Nation-Land-Management-Dec-2018.pdf (last accessed on June 22nd, 2021).
[86] Text available at: https://laws-lois.justice.gc.ca/eng/acts/f-11.8/page-1.html (last accessed on June 22nd, 2021).

Nation Bands as autonomous Governments entitled to negotiate and conclude agreements without the need to obtain ministerial approval when a decision affects their traditional territories and natural resources (Jung, 2019, p. 248). To enact the Framework Agreement, a Nation must adopt a Land Code, a piece of legislation where the Band can set up its own Land governance system.[87] Once the Land Code is approved and adopted by the Band, the land management provisions of the Indian Act no longer apply to Reserve Lands, and the Federal Government does not have any role as regards the management of First Nations' lands and natural resources. Nevertheless, it must be underlined that oil and gas revenues continue to be managed according to the Indian Oil & Gas Act provisions. To gain independence in managing such revenues, the Band should implement the First Nation Oil, Gas and Moneys Management Act (FNOGMMA).[88]

In the Land Code, the Band is required to identify and describe the territories that will be subject to Land Code legislation (called First Nation Land) while establishing the procedures for using these lands and defining possible conflict of interest rules. Including certain portions of lands into the Land Code does not compromise the possibility for the Band to make further future claims for any other lands or boundary adjustments (FNLMRC, 1996, p. 5). The adoption and implementation of the Land Code give the Nation the possibility to apply First Nation laws within the territory under the Land Code, define dispute resolution processes, and set up procedures to acquire lands for community purposes. Once the Land Code is adopted, a First Nation has the power to legislate on matters related to the use of land, its management and development, and its conservation and protection (FNLMA, Section 20). A Band is also entitled to develop its own environmental assessment procedures through the implementation of First Nation laws. Whereas federal and provincial or territorial agencies are willing to participate, the Band should be able to harmonize its own environmental protection laws with federal and provincial/territorial environmental laws as long as it complies with the Canadian Environmental Assessment Act (FNLMRC, 1996, p. 5).

To enforce the Land Code, the Band usually appoints a Justice of the Peace and special prosecutor, besides having the power to establish comprehensive enforcement procedures such as fines, imprisonment, community services, etc. Moreover, a Band can also establish its own dispute resolution procedures comprising mediation, facilitated discussions, negotiations, neutral evaluation and arbitration (FNLMRC, 1996, pp. 5-6). Therefore, a Band has jurisdiction over decision-making regarding First Nation Land and natural resources, with the limit that lands cannot be sold or

[87] A general model of a modern Land Code, together with a list of Land Codes concluded by Canadian First Nations is available at: https://labrc.com/resource/land-codes/ (last accessed on June 21st, 2021).
[88] Available at: https://laws-lois.justice.gc.ca/eng/acts/F-11.9/FullText.html (last accessed on June 21st, 2021).

surrendered. Nevertheless, it is possible to exchange portions of land should the interested Nation consider such an exchange in its best interests (FNLMRC, 1996, p. 3).

For the Land Code to be effective, an Individual Agreement with the Canadian Government must be finalized. In such an agreement, a comprehensive list of First Nation Lands that the Band will govern must be provided, as well as detailed information regarding the transfer of administration from Canada to the interested First Nation. By adopting the Land Code, a First Nation is accountable to its members for the governance of the land, natural resources and revenues (FNLMRC, 1996, p. 4). The Land Code and the Individual Agreement must be approved by eligible community members, with the quorum being 25% plus one. In addition, it must undergo an official verification from an independent verifier, who must confirm that the ratification process followed by the community and the Land Code itself comply with what had been established in the Framework Agreement (FNLMRC, 1996, pp. 2–3). After such a check, the Land Code is operational and produces effects. It is worth underlining that Reserve Lands do not become the property of the Band; they continue to be Federal Lands reserved for Indians, as established in section 91 of the 1867 Constitution Act. Nevertheless, according to Section 18 of the FN Land Management Act, the Band has the legal status, rights and privileges of an owner to govern and manage the land and its natural resources (FNLMRC, 1996, p. 3).

7.8.2 Is the Land Code advancing Reconciliation or promoting a neo-colonial paradigm?

The Land Code can be seen as a legal tool that can trigger First Nations' economic and administrative autonomy. Since Delgamuukw (1997), the Supreme Court of Canada established that Aboriginal title is protected by Section 35 of the 1982 Constitution Act, meaning that specific rights related to subsoil resources should also be protected. In this sense, it should not be forgotten that with Tsilhquot'in (2014), it was affirmed that Aboriginal title is a collective right and that the right to control the land translates into the fact that whoever wants to use the land must seek and obtain the consent of the Aboriginal title holders. Thus, after Tsilhquot'in, it is assumed that the right to use resources beneath the land subject to the Aboriginal title has not been surrendered to the Crown, and that is the reason why seeking and obtaining the consent of the Band prior to the beginning of any exploitation is necessary (Harrison, 2014, p. 3). Adopting a Land Code further moves the bar higher, although only in the context of Reserve Lands. With its adoption, Bands will be free to manage their lands as they wish and according to their political, social, and economic agenda.

Although not perfect, the Land Code (together with the Framework Agreement) may well be perceived as another step toward self-Governance, economic autonomy, and political advancements in the context of building G2G relationships with the Provincial and Federal Governments. Those instruments had been praised by many Indigenous scholars and activists as successful ways to promote and advance Reconciliation.[89] In fact, they may provide a real opportunity for Indigenous peoples to fully exercise their right to self-determination while deciding which path must be followed when it comes to development and project approvals. By adopting the Land Code, it had been affirmed that several Bands had embraced Reconciliation while promoting meaningful Government to Government relationships with the Province, Government agencies and companies. As stated in the first Reconciliation Action Plan drafted by TransCanada Energy: *'Creating enduring relationships and expanding economic opportunities for Indigenous communities are part of the reconciliation that must occur between the Indigenous and non-Indigenous peoples of North America.'* (TC Energy, 2021, p. 2).

Nevertheless, there have been cases where Bands have struggled to reach the quorum to approve the Land Code, some of which did not meet the voting threshold on several occasions (Jung, 2019, p. 251). Community members may have different perceptions of the Land Code, its meaning, and what it ensures to First Nations. For some members, the Land Code represents a way to get rid of many provisions of the Indian Act while advancing autonomy. For others, it represents a tool that will transform Reserve lands into fee simple lands, realizing what the Harper Government proposed to do with Reserve lands through the First Nations Property Ownership Act (FNPOA).[90] The FNLMA has also been opposed by several Bands and community members as it has been perceived as a concession from the Canadian Government to offer control over Reserve lands to Indigenous peoples who already have an inherent and collective right over their land (Jung, 2019, pp. 251–252).

Achieving Reconciliation by adopting the Land Code has been heavily criticized by many Indigenous activists, scholars and leaders. For some of them, Reconciliation is a word used by the Provincial and Federal Governments and companies to *'put the past behind'* while seeking to restore a relationship that, for many Indigenous peoples, had never existed (Jung, 2019, p. 257). In this sense, it has been argued that instead of Reconciliation, there is a need to start a real and long-lasting

[89] According to the Truth and Reconciliation Commission, Reconciliation means *'establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country.'* For Reconciliation to be effective, there is a need to *'be aware of the past, an acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour.'* (TRC Canada, 2014, pp. 6–7).

[90] The First Nations Property Ownership Act was proposed in 2006 to transform BC Reserve Lands in private property lands owned by Indigenous residents. The proposal raised an intense debate in BC and was never passed. See: *Beyond the new Dawes Act: a critique of the First Nations Property Ownership Act,* Fabris, 2016. Available at: https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0308596 (last accessed on December 14th, 2021).

decolonization process, dismantling the neo-colonial governance structures while challenging the extractive industry and its market-driven logic as well as the way in which Governments and companies use Indigenous lands for such purposes (Jung, 2019, pp. 257-258).

Tully argues that Reconciliation is an ongoing process that must be negotiated between Indigenous and non-Indigenous peoples. Instead of calling it Reconciliation, he refers to it as a *'just and new relationship'* that must be negotiated, achieved, and maintained between Indigenous peoples and the broader Canadian society (Tully, 2010, p. 223). Such a new relationship should be based on recognising that Indigenous peoples are equal, coexisting, and self-Governing nations that share mutual responsibility with the Canadian state. In such a context, it should be recognized that Indigenous and non-Indigenous peoples govern themselves and their lands according to their own cultural values and traditional laws. This is paramount to building a new and just relationship (Tully, 2010, p. 232).

Tully's statement resonates with Napoleon's argument, according to whom Indigenous law has been used to regulate every aspect of Indigenous life while helping members understand and regulate the changes happening in the social context. Indigenous peoples have applied their law since time immemorial to manage all aspects of everyday life, from politics to economics, from harvesting fish and game to using resources, lands, and waters. According to Napoleon, Law is a human endeavour, never isolated from the socio-political context of a given society, and it should be seen as an intellectual process, something people do to regulate and collectively manage themselves. Thus, Law is societally bound and produces effects only within the specific society that generates it (Val Napoleon, 2012, p. 232). For the Law to be valid, it must be effective; that defines a legal system as valid. Thus, Law is effective only if it is appropriate to people's life experiences to which it will apply (Val Napoleon, 2012, p. 232). In this sense, Law can be perceived as a *'language of interaction'* that provides general rules people follow by interpreting and applying them (Val Napoleon, 2012, pp. 235-236).

Nevertheless, sometimes there can be a discrepancy between Law and real life, between what is and what ought to be (van Klink, 2009, p. 149). In this sense, the concept of Living Law could help, as far as it is not perceived as an alternative way to the law created by the state but as a valuable addition. This is especially true in a bijural legal system, where Living Law can penetrate the official law by inspiring state officials who create laws (mainly judges and legislatures). From a normative perspective, the law is either valid or invalid; from an empirical perspective, the law is either effective or not. Living Law can exert an influence to recognize and include in the legal framework of a state

those norms that have been generated from societal interactions but that have not yet been included in the legal framework (van Klink, 2009, p. 153).

The concept of Living Law was elaborated by Eugen Ehrlich in the past century to explain the law as a social phenomenon. In his view, there was a need to create a comparative science of law, able to explore the living content of the law and how it manifests itself empirically among people (Vogl, 2009, pp. 97-98). Ehrlich defined Living Law as *'the law which dominates life itself even though it has not been posited in legal propositions.'* (Ehrlich, 1936, p. 493). According to Ehrlich, the law had two main functions, i.e. to serve as forms of social organizations (thus representing the inner order of social association) and as norms for court decisions (Vogl, 2009, p. 100). Whereas the primary function of the law is to create order within society and social associations, in Ehrlich's view, Living Law is the one that dominates life, being the one predominating in the interaction between the various types of law. He argued: *'Only that which becomes part and parcel of life becomes a living norm; everything else is mere doctrine, norm for decision, dogma, or theory.'* (Vogl, 2009, p. 101). Ehrlich distinguished the law defined from the judge's perspective, for which the law is *'a rule according to which the judge has to decide the legal disputes that are brought before him*'; and a more social concept of the law that allows making sense of the much broader social reality, the one that *'lives and is operative in human society as law.'* (Vogl, 2009, p. 98). Living Law is made by people, representing a social relationship that can also be classified as a legal relationship. Social norms may well be Living Law if they are effective in everyday life, with Living Law being the 'real law' because it consists of norms that people create and obey in their daily lives (Vogl, 2009, pp. 101-102).

It is fascinating to think that what in Europe was proposed as something new and unconventional (and heavily criticised and quickly forgotten) had always been part of the Indigenous perspective of conceiving the law and its implementation in everyday life. As argued by Napoleon, the law can be perceived as a collaborative problem-solving and decision-making instrument, which in the Indigenous tradition exists in public memory and is organized and transmitted through oral histories, stories, etc. The law is applied to solve everyday life problems while creating new precedents to solve future disputes (Val Napoleon, 2012, p. 232). The distinction Ehrlich made between the law defined from the *'judge's perspective',* and the *'social perspective'* can be compared with the distinction made by Val Napoleon between *'legal systems'*, a state-centred legal system in which legal professionals practice the law in legal institutions, and the *'legal order'*, used to describe the law of non-state social, political, economic, and spiritual institutions. As Napoleon pointed out, Indigenous Law is of paramount importance for Indigenous peoples, as it is connected with how Indigenous peoples manage themselves individually and collectively (Val Napoleon, 2012, pp. 230–231).

Although many scholars have argued that Living Law can only have a rhetorical-political function, I argue that in specific cases, it could help advance the legal framework by taking into account the everyday life of people and the norms they obey. This is particularly true for several First Nations, based on what I have experienced during my fieldwork. Living Law can be a way to better implement existing laws or create better laws, considering that laws stem from society and interactions among people, with most legal norms inspired by non-governmental actors. The validity of norms does not mean effectiveness, as norms people obey do not necessarily match the ones endorsed or enforced by the state. In this sense, the effectiveness of the state's law depends on other social norms existing in society (van Klink, 2009, p. 154). Thus, the state should consider the developments happening in society to make laws that reflect the evolution of a specific society, its needs, and what people would need based on the type of law they obey in their everyday lives. This is important for the very survival of a state and the effectiveness of its legal system while helping to bridge the gap between law and society.

Chapter 8 - My involvement with the Land Office - Implementing Doig values in the modern world through UNDRIP

'Between January 6th and 24th, 2020, we have received more than 80 applications from different proponents: water use, forestry, oil and gas. Gord and Cec are dealing with the TLE 24/7. Then there is the RLMP, EAs, etc. There is a lot happening, and the capacity of the Band is limited to deal with all these issues. Thus, there is no time to address all the issues in a proper way; because there are so many applications, and it is necessary to move on to the next one. There is a tremendous amount of applications coming, and there is a huge amount of requests for ensuring that UNDRIP and its provisions are taken into account when an application is analyzed.' (Jen Mccracken, DRFN Land Manager, January 25th, 2020).

Formed by two GIS analysts, one forester, two Doig members involved with the ALP/BC OGC monitoring programme and led by the Land Manager; the Land Office's role is to ensure that Treaty and Aboriginal rights are respected while mitigating adverse effects that exploitation of natural resources may generate. In the Strategic Plan released in April 2020, ambitious goals were set up, i.e. complete the TLE -Treaty Land Entitlement- selections with BC Government and the TLA -Tripartite Land Agreement- with BC Hydro while advocating for the establishment of the K'ih tsaa?dze Tribal Park (KTP). In addition, the Land Office aims to conclude the Government to Government (G2G) Agreement with BC, complete the OGC Agreement and revise the Interim Consultation Policy, and seek to understand and implement UNDRIP/DRIPA while developing the Land code for reserve lands (DRFN Land Strat Plan, 2020, p. 1). During the time I spent working with the DRFN Land Office, understanding how UNDRIP could be implemented in the BC framework according to community values became my main task.

8.1 Implementing UNDRIP, operationalizing FPIC, ensuring Treaty rights through Council Plans and Policies

'Our mission is to implement treaties by protecting and preserving our land, water, air, and wildlife so we may practice our culture for so long as the sun shines, the river flows, and the grass grows.' (DRFN Lands and Resources Department Strategic Plan, 2020).

In recent years, DRFN has been very active in setting up procedures and guidelines to achieve socio-economic goals through responsible use of the wealth generated by exploiting natural resources situated in the Nation's traditional territory. Relevant benefit-sharing agreements, such as the Impact Benefits Agreement (IBA) with BC Hydro[91] for the Site C dam and the Pipeline Benefits Agreement (PBA) with LNG Canada for the CGL pipeline project,[92] have been concluded. Moreover, the Band is finalizing the Treaty Land Entitlement (TLE)[93] with the BC Government, a specific procedure to resolve land disputes available to those Nations that were not allocated the right amount of Reserve land when they entered one of the numbered Treaties.[94] Doig is determined to use the wealth generated by industrial development in its traditional territory to develop social and cultural programmes. To better define its actions, the Band developed several strategic plans, such as:

- The 2017 Comprehensive Community Plan (CCP)
- The 2019-2021 Council Strategic Plan (CSP)
- The 2019 Natural Resources Policy and Procedures Protocol (NRPPP)
- The 2020 Lands and Resources Strategic and Work Plan (LRSWP)

These plans can be considered soft law instruments the Band drafted with a threefold aim: making good use of the wealth generated by resource exploitation, according to members' views and desires; advancing the position of the Band on how companies and the Government should engage with the community; paving the way to begin the discussion on the Land Code. These steps go towards a precise path Doig has been following since early 2000: becoming economically self-sufficient while building an autonomous Government.

Whereas the CCP and the CSP describe how Doig members envision the future and what they perceive to be necessary to live a good and happy life, according to their values and lifestyle; the LRSWP and the NRPPP set the procedures to be followed to ensure the achievement of such bright

[91] https://www.sitecproject.com/bc-hydro-reaches-agreements-with-doig-river-first-nation (last accessed on November 15th, 2021).
[92] https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/doig_-_cgl_pba_-_signed2.pdf (last accessed on November 15th, 2021).
[93] On TLE, https://www.sac-isc.gc.ca/eng/1100100034822/1612127247664 (last accessed on November 15th, 2021).
[94] https://pub-prrd.escribemeetings.com/filestream.ashx?DocumentId=1180 (last accessed on November 15th, 2021).

future members envision. Both documents recall UNDRIP and its content, with a specific emphasis on FPIC, as an essential tool to achieve such goals. In the LRSWP, it is stated that one of the goals of the Land Office for the years to come is to *'Seek to understand and implement UNDRIP/DRIPA in DRFN lands work'* (LRSP, 2020, p. 1). To reach such an ambitious aim, the Land Office had been working on creating the DRFN Natural Resources Policy and Procedures Protocol (NRPPP).

In the first draft of the NRPPP released in June 2019, FPIC is defined according to the definition provided by the FAO in its manual for practitioners (see p. 227). The Protocol establishes that *'The requirement to give notice and consult with DRFN includes any action, undertaking, activity, conduct, decision or project, existing or proposed, which has the potential to adversely affect the rights and interests of DRFN and its territory.'* (White, 2019, p. 4). According to the Protocol, the duty to consult and accommodate rests with the Crown; however, where possible and legally admissible, the Crown can delegate certain procedural aspects of consultation to proponents. Consultation must be carried out with: community members, who are supposed to provide information and their views on relevant matters at stake; staff, who are responsible for carrying out and conveying DRFN policies and procedures, by receiving direction from Chief and Council as well as from community members; Chief and Council, who are responsible for implementing the wishes of the community, while providing leadership (White, 2019, p. 5). The Protocol establishes that meaningful consultation can be conducted only with the elected Chief and Council or the representatives appointed by them, with the DRFN Land Office being the first and primary contact point. However, to engage with the community, DRFN welcomes and supports community engagement sessions (i.e., open houses, community meetings, etc.), aiming to inform members of new projects and opportunities (White, 2019, p. 6). As stated in Section 5 of the Protocol:

> *'The Crown and proponents must undertake consultation in good faith in order for it to be meaningful, address potential issues, create shared value and enhance relationships. This includes initiating the consultation process at the design stage and be prepared to modify the project to avoid impacts […] The duty to consult is not met by addressing only the direct, site-specific impacts of any proposed project but must also consider and substantively address the potential indirect, induced and cumulative impacts of other existing, planned, or reasonably foreseeable industrial development(s) on the environment and our Treaty and Indigenous rights. The Crown and proponents will consider and respect the natural and ecological integrity of DRFN's territory. This includes incorporating Indigenous knowledge and environmentally sustainable practices and principles in decision-making processes concerning resource development activities.'* (White, 2019, pp. 6–7).

When I started cooperating with the Land Office of DRFN, I worked on a project whose main goal was to develop a framework to explain how community values and Council goals could be used to strengthen specific UNDRIP provisions in the context of their implementation in the provincial legal framework.[95] While carrying out a preliminary analysis, I noticed that several objectives set in the CCP, the Legacy Goals of the CSP, many goals of the LRSP and the procedures set up in the NRPPP were similar and intertwined with those established in UNDRIP. I found overlapping objectives in five key areas: Beaver Culture, Education & Language; Traditional Lifestyle; Health & Social well-being; Economic Self-Sufficiency & Autonomous Government; Land & Resources.[96]

Figure 53 - The framework I developed while working with the DRFN Land Office

<u>Legacy Goal #1</u>: Ensuring the community is healthy, strong, and prosperous

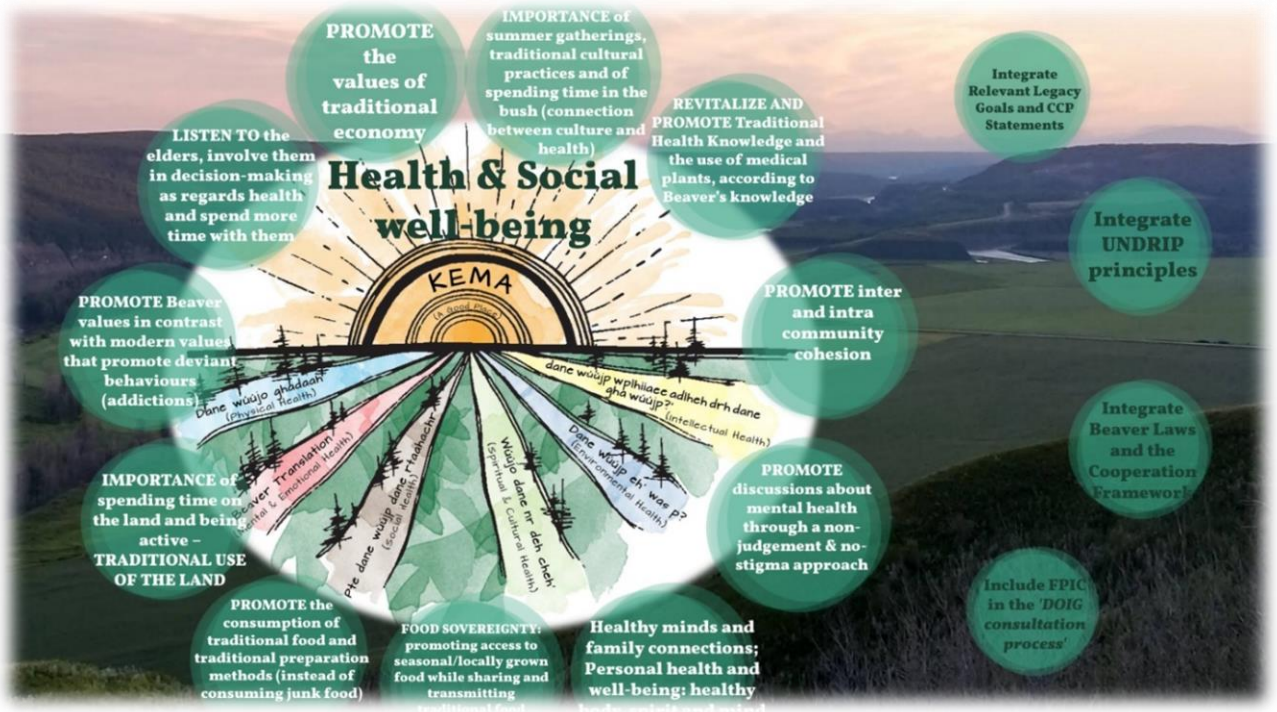
Legacy Goals #1, #2 & #4 are intertwined with the CCP Statements 4.2 (Culture and Language) and 4.5 (Supporting our members) and UNDRIP Articles 8, 11 to 16, 19, 21 to 24, 31. When I was doing my fieldwork, DRFN was negotiating an agreement with the Federal Government of Canada to assume jurisdiction over employment and training programs previously managed by NENAS - Aboriginal Human Resource Development Society. This action echoes what had been established in article 21 of UNDRIP, where article 1 establishes that Indigenous people have the right to improve their economic and social conditions regarding (among others) education, employment, vocational

[95] http://doigriverfn.com/about/undrip/ (last accessed on February 8th, 2022).
[96] The interactive framework is available at: https://prezi.com/view/ElDMlNDyMuaWsOxQE4EG/ (last accessed on May 21st, 2021).

training, and social security. As for states, they are required to take adequate measures to ensure that such goals are achieved. DRFN was also finalizing a new Local Education Agreement with School District #60, aiming at improving K-12 education outcomes for Doig pupils. In this sense, the provisions established in article 14 of UNDRIP (establish and control educational systems) are a starting point to include Dane-zaa history, culture, and language in the school curricula. This should mark the beginning of new cooperation between Doig and School District #60, with the long-term aim to teach Dane-zaa language and traditional knowledge at school.

<u>Legacy Goal #2</u>: We achieve tangible results that people can see

Article 21 of UNDRIP should find full implementation in the BC legal framework to ensure better housing solutions for Doig members (as also established in the CCP, pp. 45-46). As for outdoor recreational areas, cultural sites, and historic trails, the implementation of the provisions established in Articles 11, 12, 21 and 23 are of paramount importance to achieve these goals. As provided by Article 11, paragraph 2, for Indigenous people to practice and revitalize their cultural traditions and customs, states should cooperate in developing effective mechanisms (including restitution of cultural, intellectual, religious and spiritual property). Therefore, the repatriation of ceremonial objects should be promoted (Article 12, 2); while ensuring access to Indigenous sacred and cultural sites (Article 12, 1).



<u>Legacy Goal #4</u>: We use our Dane-zaa language, stories, and cultural traditions to prepare future generations for a modern world

Legacy Goal #4 would be better achieved if the BC Province would fully implement the following articles of UNDRIP: Article 11 (practice and revitalization of cultural traditions and customs); Article 12 (practice and teach of spiritual and religious traditions – linked to Legacy Goal #2); Article 13 (revitalize, develop and transmit histories, language and oral traditions); Article 14 (establish an Indigenous educational system – linked to Legacy Goal #1 & #4); Article 15 (right to the dignity and diversity of cultures) and Article 31 (maintain, control, protect and develop Indigenous cultural heritage, TK and traditional cultural expression). With the full implementation of what had been established in the articles mentioned above, relevant community goals could be met, such as: redeveloping and maintaining a network of trails, cultural spaces and cabins for socio-cultural purposes throughout Doig territory; organising annual cultural camps in different areas, to share, practice and spread the culture; building an arbour for tea dances and gatherings; developing educational materials (i.e. books and other learning tools) for children, youth, and adults so to spread the culture, while developing a Dane-zaa language Plan, to revitalize the Beaver language in the context of the Beaver Literacy Programme.

<u>Legacy Goal #3</u>: We continue to practice our Treaty rights and protect the land

What had been established in the Legacy Goal #3 is intertwined with the CCP Statement 4.1 (Governance and Administration), 4.3 (Territory and Treaty Rights), 4.4 (Economic Development), and with UNDRIP Articles 8, 10, 18, 19, 25 to 29, 32, 37. Among these articles, the full implementation of Article 28 in the legal framework of BC is of paramount importance. According to its content, Indigenous peoples have the right to redress (and this include just, fair and equitable compensation, as well as restitution) for their lands, territories and resources, traditionally owned or used and occupied by Indigenous peoples and confiscated, taken, used or damaged without their Free, Prior and Informed Consent (FPIC).

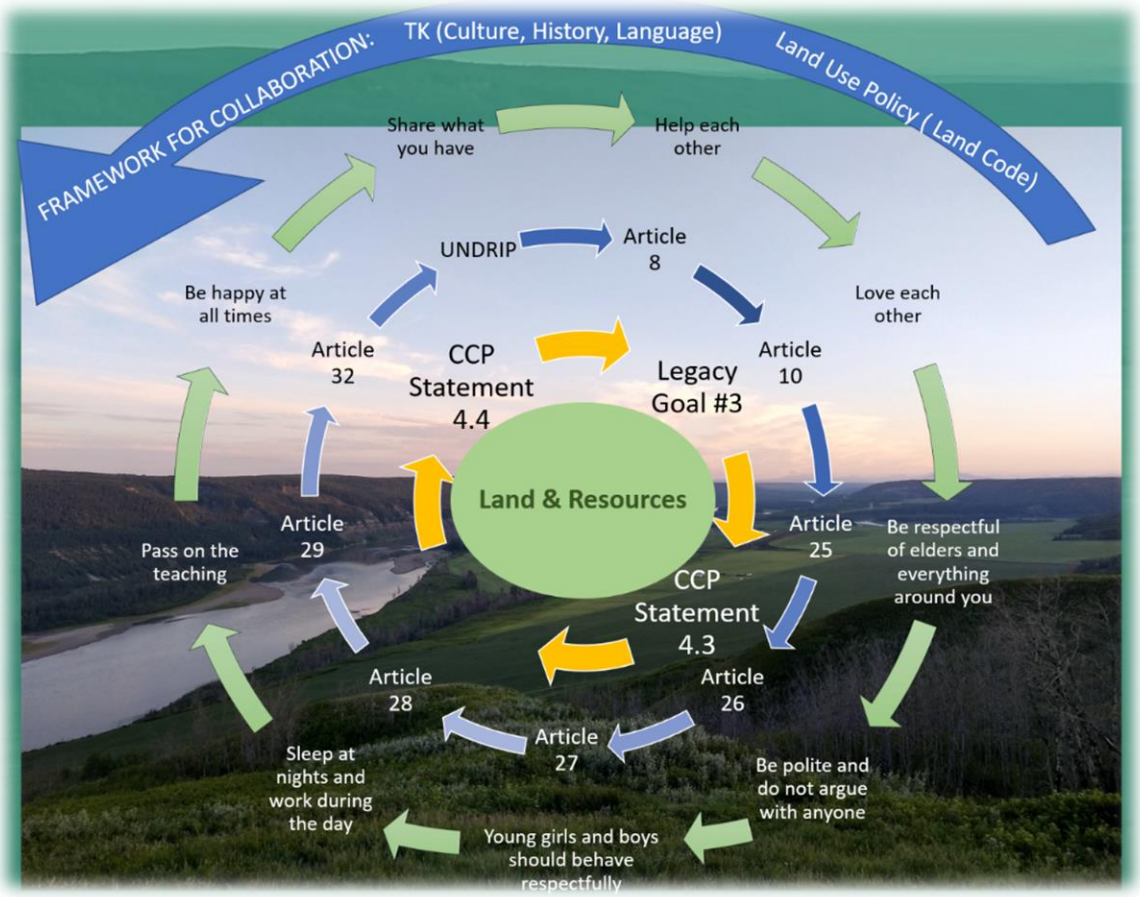
Regarding Mineral Rights and other related Settlement Agreements, the provisions established in several articles of UNDRIP are of paramount importance to conclude meaningful agreements with the Government and companies. In this sense, Article 8 (b) sets that *'states shall provide effective mechanisms for prevention of, and redress for (b) any action which has the aim or effect of dispossessing them of their lands, territories or resources.'* These provisions should be fully implemented together with the ones established in article 25 (maintain and strengthen their spiritual relationship with their traditional lands, territories, water and resources), article 26 (right of Indigenous peoples to the lands and resources they have traditionally owned and used and to develop such resources), article 27 (adjudicate the rights of Indigenous peoples to their lands and resources), article 28 (redress, including restitution or compensation, for the lands and resources they have

traditionally used and that have been confiscated, occupied, used or damaged without their FPIC), article 29 (conservation and protection of the environment and the productive capacity of Indigenous lands and resources), and article 32 (rights of Indigenous peoples to determine priorities and strategies to develop their lands and resources).

As regards establishing G2G relations while building new and stronger relationships with the Government and companies will only be possible if the principle of FPIC (Free, Prior and Informed Consent) is fully implemented and operationalized in the provincial legal framework as established in article 18, 19, and 32 of UNDRIP. Only in this way can DRFN have a proper and active role in decision-making while implementing shared policies with the BC Government. Finally, it should not be forgotten that DRFN is a signatory of Treaty 8. According to Article 37 of UNDRIP, *'Indigenous people have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements.'* Thus, implementing the provisions established in UNDRIP may also favour the full implementation of what had been provided in Treaty 8.

While working on the framework, it was clear to me that community values, Council objectives and international provisions established in UNDRIP are already intertwined and, to some extent, integrated. I drafted a scheme (below) to explain better such a connection, including traditional Beaver Laws and Traditional Knowledge as overarching structures to '*glue'* everything together. I indicated the Land Code as a possible way to incorporate all these values, objectives and legal provisions in a piece of legislation created by the Band for the Band. As discussed during the meeting I had with Cec on Wednesday, 11th March 2020, the Land Code should be envisioned as a legal tool

where community values, Council goals, and UNDRIP provisions are blended into a comprehensive piece of legislation. It would ensure better protection and implementation of DRFN members' rights regarding land access and use and exploitation of natural resources. The Land Code should be hybrid legislation, where Western and Indigenous legal principles are implemented, a pluralistic legal instrument, valid for the Band to face the challenges of the modern world.



8.2 What is Consent? Between institutional definitions and the voice of community members

As mentioned in the previous chapter, UNDRIP was fully endorsed by Canada only in 2016, under the first Trudeau Government.[97] Following the recommendations contained in the Call to Actions issued by the Truth and Reconciliation Commission of Canada[98], the Province of British Columbia approved Bill-41 (also called UNDRIPA/UNDRIP Act) on November 29th, 2019; thus becoming the first Canadian Province to pass such a law (BC Government, 2020a, p. 3). One year later, on December 3rd, 2020, a similar Act was introduced at the Federal level (mirroring the already proposed Bill C-262, which did not pass the exam of the Senate before the end of the first Trudeau

[97] https://www.justice.gc.ca/eng/declaration/index.html (last accessed on May 11th, 2021).
[98] http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf (last accessed on February 5th, 2020).

Government). Thus, on 16th June 2021, the Canadian Parliament passed Bill C-15[99] to implement the provisions established in UNDRIP within the Canadian legal framework. By consulting and cooperating with Indigenous peoples, the Government will be asked to ensure that the laws of Canada are consistent with the content of the Declaration while implementing an action plan to achieve the Declaration's goals (Department of Justice, 2020, pp. 1–3). These Bills mark a turning point at the Federal and Provincial levels as they represent an important step in the process of Reconciliation with Canadian Indigenous peoples. Relevant legislative changes, better consultation practices, and a more comprehensive inclusion in decision-making are expected in the years to come to ensure that the provisions enshrined in UNDRIP are implemented.[100]

In British Columbia, these changes are intertwined with the conclusion of projects, such as the BC Hydro Site C dam and the LNG/CGL pipeline project, which had been proposed and approved without seeking and receiving the Free, Prior and Informed Consent (hereafter FPIC) from several affected Indigenous communities. For the former, it is worth remarking that it brought together First Nations and rural non-Indigenous residents in a way that nobody would have predicted. Those groups formed what Grossman has called *'environmental alliances'*, bringing them together to oppose a project that would submerge traditional Indigenous territories and farmland (Grossman, 2005, p. 21). For the latter, it must be remembered the protests of the Wet'suwet'en hereditary Chiefs against the CGL pipeline, started in January 2020 and still ongoing.[101] The demonstrations, followed by riots and arrests, were a direct consequence of the lack of involvement and consultations with some Wet'suwet'en families and Hereditary Chiefs. Amnesty International, the BC Human Rights Commission and the UN Committee on the Elimination of Racial Discrimination have criticized the project that should not have been approved without receiving the FPIC of all groups affected.[102] The debate around FPIC, its meaning and implementation, is at the core of the discussion regarding the implementation of UNDRIP in BC. Eventually, it also became the main topic I worked on during my time with the Land Office.

[99] https://www.canada.ca/en/department-justice/news/2021/06/joint-statement-by-minister-lametti-and-minister-bennett-on-the-senate-passing-billc-15an-act-respecting-the-united-nations-declaration-on-the-righ.html?fbclid=IwAR3Kd4dv_brZtglWd23DM_C2apPwU8z5foDZsdm29YCcYMmkz4fUtUE_FyA (last accessed on November 15th, 2021).

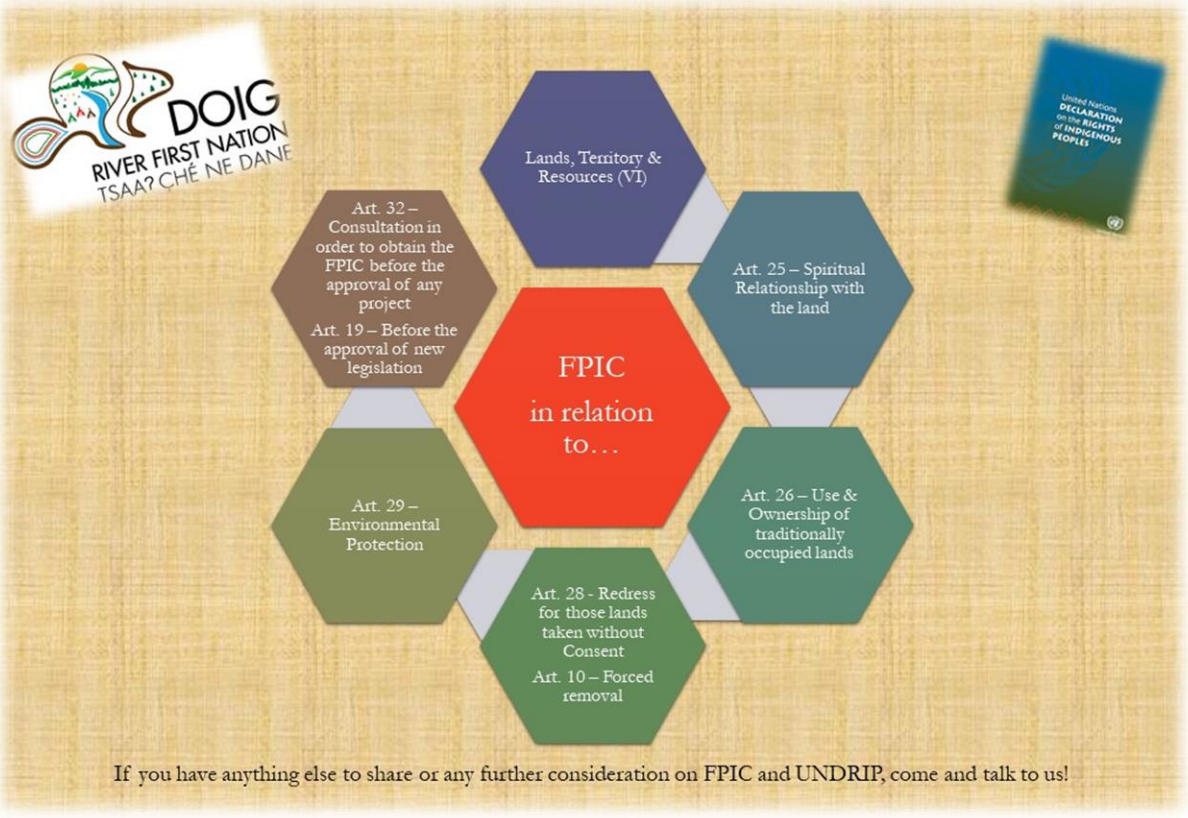
[100] https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/new-bc-legislation-now-in-force-to-implement-declaration-on-the-rights-of-indigenous-peoples-act.pdf?la=en-ca&revision= (last accessed on February 3rd, 2020).

[101] The Canadian Anthropology Society issued a statement of support to the Wet'suwet'en, strongly emphasizing the need to implement FPIC before a project is approved. Available at: https://www.cas-sca.ca/images/pdfs/Solidarity_with_the_Wet.pdf (last accessed on June 9th, 2021).

[102] https://theconversation.com/wetsuweten-why-are-indigenous-rights-being-defined-by-an-energy-corporation-130833 (last accessed on May 11th, 2021).

8.2.1 FPIC defined by the BC Government: does it recognise a Veto power to Indigenous peoples?

FPIC is perhaps one of the most important and controversial rights established in UNDRIP. Being a Declaration a non-legally binding document in international law, states do not need to deal with the real implications of its provisions until they are implemented within the national or provincial legal framework, as is now the case in Canada and British Columbia. FPIC is mentioned in several key articles of the Declaration, such as article 10 on relocation and forced removal, article 11 on cultural, intellectual, religious, and spiritual property taken away without consent, and article 19 as regards adopting and implementing legislative measures that can affect Indigenous peoples. FPIC emerges as a fundamental right for Indigenous peoples regarding land and natural resources. In this sense, article 28 establishes that Indigenous peoples have the right to redress for the lands and resources that they have traditionally owned, occupied or used and that were taken away without their FPIC, while article 32 establishes specific provisions for FPIC when it comes to the use of land and natural resources.[103] To explain to community members the importance of FPIC and in which areas it can be applied, I drafted the honeycomb table below that I used during the final workshop to explain in simple terms why properly implementing FPIC is essential for the community. I will talk more about this in the next paragraphs.



[103] UNDRIP, A/RES/61/295. Official text available at: https://undocs.org/A/RES/61/295 (last accessed on May 12th, 2021).

Following the approval of Bill-41, there has been a lively debate about the meaning of implementing UNDRIP in the provincial legal framework, with specific attention to FPIC. Several definitions of FPIC have been provided, with the BC Government establishing that:

> *'**Free, prior and informed consent** recognizes Indigenous peoples' rights, interests and voices. It means early, deep and meaningful involvement of Indigenous peoples on matters that affect their peoples, communities and territories. Instead of uncertainty and conflict, we can work together to build a stronger B.C., with more opportunities for Indigenous peoples, B.C. businesses, communities and families.'*[104]

Although there is a general agreement about the meaning of the words *Free, Prior and Informed*, the same cannot be said regarding the word *Consent*. It has been questioned what *Consent* means and if it implies the recognition of Veto power to Indigenous peoples. Scott Fraser, at that time minister of Indigenous Relations and Reconciliation, affirmed that FPIC does not mean veto. Nevertheless, the new law was supposed to ensure better inclusion of Indigenous peoples in decision-making and a stronger influence on those decisions that can affect them. As he said: *'The time for the government to say, 'This is how we're going to do it; take it or leave it,' is what we're moving away from.'*[105]

Anita Boscariol, former director-general for Treaties and Aboriginal Government West at the Department of Indigenous and Northern Affairs, affirmed:

> *'In the articles specifically dealing with free, prior and informed consent in the Declaration, and most specifically articles 19 and 32 of the UN Declaration, the emphasis is not on the consent or achieving the consent, it's in the process of working towards achieving consent. So, the idea is in a consultation context with Indigenous people, it should be the government's goal always to work to try and achieve consent with Indigenous people. But it doesn't mean that if no consent is reached, nothing can go forward.'* [106]

This position is echoed by many legal practitioners, consultants, and Government officials that emphasize that *Consent* can be achieved through meaningful consultation, in a spirit of constructive cooperation, aiming to achieve *collaborative consent*. As shown in the following paragraphs, this was the message that Government officials and consultants gave during the workshop on UNDRIP I

[104] https://declaration.gov.bc.ca/ (last accessed on May 12th, 2021).
[105] https://hashilthsa.com/news/2019-11-27/guided-undrip-indigenous-rights-declaration-passes-law-bc (last accessed on May 12th, 2021).
[106] Full interview available at: https://www.canadianlawyermag.com/practice-areas/indigenous/indigenous-law-expert-explains-how-undrip-advances-the-law-of-consultation-and-consent/330496 (last accessed on May 27th, 2021).

attended at BRFN on 28th February 2020. The emphasis on consultation is remarkable, to the point where it becomes more important than consent itself. The issue is worth exploring.

Consultation acquired importance in the Canadian context since the duty to consult and accommodate had been affirmed with leading case law (i.e. Haida), following what had been established in Section 35 of the 1982 Constitution Act, where Indigenous peoples' rights were finally recognised and guaranteed. The duty to consult and accommodate was also used to address the evolving relationship between Indigenous peoples and Canadian society to achieve Reconciliation. Bankes points out that this duty is the product of the evolution of the Canadian legal framework, where international law and international legal instruments had no influence (Bankes, 2020, p. 270). It should not be forgotten that Canada is not part of the ILO Convention 169, the only internationally legally binding document on the rights of Indigenous peoples. In the Convention, the importance of achieving Free and Informed Consent when dealing with Indigenous-related issues was finally enshrined. FPIC had also achieved full recognition in UNDRIP, which was not endorsed by Canada in 2006 when it was approved. This evidence may well explain why the debate around FPIC in Canada is intertwined with the duty to consult and accommodate to the point that Consent is perceived more as a component of the process of consulting and accommodating Indigenous peoples.

Bankes argues that the way in which FPIC was framed in articles 19 and 32 of the Declaration represents one of the nuanced versions of the principle of FPIC. Implementing it properly means performing consultation in good faith and with the view to obtaining the Free, Prior and Informed Consent, rather than pretending that FPIC can be obtained in any case (Bankes, 2020, p. 271). Such an interpretation resonates with what the Expert Mechanism stated in its study on FPIC, according to which consultation should be a process of dialogue and negotiation aiming at achieving consent (UN A/HRC/39/62, 2018, p. 5). To achieve such a goal, Doyle proposes the development of FPIC protocols so that rights established in the international framework are adopted in the national/provincial framework. There is no one-size-fits-all, though; FPIC protocols should be shaped and operationalized by each community, based on how members conceive FPIC and consultation (Doyle, Whitmore & Tugendhat, 2019, p. 15-16). As shown later in this chapter, DRFN is following this path by developing a Natural Resources Policy and Procedures Protocol.

In conclusion, the minister's position regarding the meaning of Consent represents a step forward in interpreting UNDRIP provisions in the BC legal framework. However, the fact that obtaining Consent is conceived as a consultation process aiming at achieving *'collaborative consent'* rather than permission that Indigenous peoples may give or not to a specific project should not be underestimated. Such an interpretation may not reflect how FPIC had been defined and applied in the

international arena, by human rights judicial institutions (such as the Inter-American Court of Human Rights), and other UN agencies (such as the ILO – International Labour Organization and the FAO – Food and Agriculture Organization). It is worth remembering how the FAO defines FPIC.

> *'**Free** refers to a consent given voluntarily and without coercion, intimidation or manipulation. It means that the process must be self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.*
> ***Prior** means that consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community.*
> ***Informed** refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.*
> ***Consent** refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives, while ensuring the participation of youth, women, the elderly and persons with disabilities as much as possible.'* (FAO, 2016, pp. 15–16). Precisely, Consent is: *'A freely given decision that may be a "Yes", a "No", or a "Yes with conditions", including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges. It is a collective decision (e.g. through consensus or majority) determined by the affected peoples in accordance with their own customs and traditions; it represents the expression of rights (to self-determination, lands, resources and territories, culture); it is given or withheld in phases, over specific periods of time for distinct stages or phases of the project activities. It is not a one-off process.'*[107] (FAO, 2016, p. 16).

8.2.2 At Doig Reserve: Council meeting on UNDRIP and Consent – 24th February 2020

On Monday, 24th February 2020, I gave a presentation to Doig Council on UNDRIP and Bill-41, based on the work I did during my first month with the Land Office. I explained that Bill-41 establishes that the provincial framework must be harmonized with the Declaration's content (para. 2-3). To achieve such a goal, an action plan must be implemented (as established in para. 4), besides

[107] Available at: http://www.fao.org/3/i6190e/i6190e.pdf (last accessed on May 12th, 2021).

providing annual reports regarding how the action plan will be implemented (para. 5).[108] Finally, I mentioned that Bill-41 provides the opportunity for a minister to negotiate and conclude agreements with Indigenous Governments (para. 6-7) to facilitate inclusion in the decision-making of the whole community. At that point, the Chief stopped me and pointed out:

> *'We have always had representatives, but there is no inclusion from the grass-root. So, leaders are invited to speak with the government; but there is no consultation with community members, and that's the main issue…there is a need to have grass-roots consultation with community members. We don't wanna be spectators; we wanna be protagonists.'*
> (Trevor Makadahay, DRFN Chief, February 24th, 2020).

At that point, the conversation shifted to FPIC. I mentioned that UNDRIP contains relevant articles that deal with the right to land and use of natural resources (Art. 26) and with the right to be consulted in order to obtain the FPIC before the approval of any new legislation (Art. 19) or project (Art. 32). When discussing FPIC, I stressed that there is a huge debate around the meaning of the word Consent, whether it means that Indigenous people have a Veto right when it comes to decision-making. According to the Province, there is no Veto right. However, there will be a change in the way in which legislation is developed and implemented (especially when it comes to natural resources and land rights) and regarding the consultation process before the approval of a new development project.

I pointed out that it was necessary to understand the Government's view and how specific provisions established in UDRIP will be implemented in the BC legal framework. Then, I mentioned the meeting I had with Cec the week before and our talk about the necessity to understand how First Nations could use the Declaration to reach better agreements with companies, the Government, and its agencies (i.e., the BC Oil & Gas Commission). To do so, a community must know the meaning of specific provisions and how they should be implemented. With Cec, we already discussed the necessity to have a community workshop to ask members what Consent meant to them. At that point, Trevor said:

> *'Before implementing anything, we need to conclude the TLE (Treaty Land Entitlement Process). We really need to make sure we are done with it before starting anything else.'*

Right after, Shona added:

[108] The first Report, released in April 2020, covers the period 28th November 2019 (when Bill-41 was passed) until the end of the fiscal year (31st March 2020). Interestingly, there is no mention of FPIC in it. Full text available at: https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples/annual-reporting (last accessed on May 14th, 2021).

'We need to embed UNDRIP into the LRMP (Land Resource Management Plan), and the Land Code Doig will be implementing. So companies could know how to do business with Doig. However, it is difficult because the Government doesn't listen to the real users of the land; they do not take members' opinions into account. They just say that we need to participate and sign up agreements, according to what they have [been] already decided. But they do not respect the Nation. So, if there is no engagement and you just do desk-based research, how is that meaningful?'

(Shona Nelson, DRFN Band Manager, February 24th, 2020).

From inclusion and meaningful engagement, the conversation shifted to the Wet'suwet'en protest that took place in those weeks in British Columbia, the issue of historical treaties, etc. Towards the end of the meeting, Shona and Trevor invited me to join them at the meeting on UNDRIP they were going to have on Friday, 28th February 2020, at Blueberry Reserve.

8.2.3 At Blueberry Reserve: workshop on UNDRIP and Consent – 28th February 2020

'Today, there is no KEMA for these oil companies. Even if I say don't go there, because there is my cabin, they still go there! And that's it…my cabin is KEMA; I do not want anything going there! KEMA means somewhere where your traditions are respected; nothing goes there, nothing can scare us.'

(BRFN elder May Apsassin on Consent, BRFN Reserve, February 28th, 2020).

The meeting held at BRFN Reserve on Friday, 28th February 2020, was the first of a series of workshops on UNDRIP and Bill-41 jointly organized by BRFN, DRFN and HRFN.[109] The Chiefs of the three Nations, the mayor of Fort St. John, and several BC Government officers (from the BC Oil&Gas Commission and FLNRORD) attended. The workshop was introduced by Laureen Whyte, a private consultant, who gave a presentation on UNDRIP and how it should be implemented in the legal framework of British Columbia. As for FPIC and its meaning, she explained that the word Consent must be interpreted with a collaborative spirit. She spoke about the necessity to reach and implement *'collaborative consent'* between First Nations and the BC Government. Nevertheless, it was unclear what collaborative consent meant and how it should be negotiated and reached. While discussing the meaning of Consent, BRFN Chief Marvin Yahey took the word. He expressed his concern on how FPIC will be implemented, given that the Province does not seem to listen to the

[109] The next workshop was supposed to happen in April 2020 at Halfway River First Nation Reserve. Due to the outbreak of COVID-19, it was cancelled and never took place.

instances of First Nations of the area and the Oil & Gas Commission keeps approving projects without any pre-engagement with First Nations. He said:

> *'I have received calls from the Wet'suwet'en if I need any support. Canada and the BC Province do not understand people…how is that possible? Only after the damage has been done, they wanna reconcile! Today, companies steal resources, and they are doing whatever they want, and the Province is allowing them…I'm so close to saying to the Wet'suwet'en to come and join me. It is frustrating… If something doesn't work for our Nation, well it doesn't! The OGC doesn't understand this…and it continues to happen. Ex. A pipeline…even if we say no, they do not care. So, I have no choice than going to Court. I sent a letter to the minister last week, asking, 'Why are you giving the approval to steal our resources from critical areas, without taking into account our needs and desires?' I met the OGC here, and the guy (Dean Zimmer) smiled and said: 'I have a job to do. I have an order to approve it.'*
>
> *I replied: 'By whom?'*
>
> (BRFN Chief Marvin Yahey, February 28th, 2020).

The discussion about Consent went on; several participants expressed their opinion on the meaning of FPIC and how it was supposed to be implemented. Notably, there was no agreement about the meaning of the word Consent. Quasi Veto power for some, a collaborative process for others, another way to better include First Nations in decision-making for others. While driving back to Fort St. John, I discussed the issue with Shona. We both agreed that Consent means Consent, as defined by the Oxford dictionary: *'Voluntary agreement to or acquiescence in what another proposes or desires; compliance, concurrence, permission.'*[110]

8.2.4 An insight from Doig River First Nation on FPIC, Consent and Veto

The workshop on UNDRIP at BRFN Reserve was the last one before the lockdown. A few days later, the Doig and BRFN Band Offices shut down due to the outbreak of the Covid-19 pandemic and only residents and essential workers were allowed to enter the Reserves. Nevertheless, I continued working with Cec remotely, developing the framework I mentioned in paragraph 8.1 and that I presented to the Band and Land Manager on May 15th, 2020. Lands and resources, Treaty rights and UNDRIP, economic self-sufficiency and autonomous Government, were among the topics we discussed during the presentation. The Band Manager was particularly interested in the section about Self-Governance and implementing new tools to ensure the Nation has better economic self-

[110] https://www.oed.com/view/Entry/39517?rskey=4aTeU1&result=1#eid (last accessed on May 14th, 2021).

determination and independence. The Land Manager suggested finalizing the presentation as a learning tool for people working for the BC Oil & Gas Commission and oil, gas, and forestry companies. As for UNDRIP and FPIC in particular, we all agreed that there was a need to understand better how members define Consent and how it should be implemented regarding the use of land and the exploitation of natural resources that can be found on those lands. With this in mind, we decided that whenever possible, at least one workshop was to be organized on FPIC.

Hoping to host the workshop sometime in July 2020, Cec and I had several discussions, and a couple of meetings were organized with the Land Manager and the Band Manager. We agreed that, first and foremost, it was necessary to discuss with members the meaning of the word Consent, how it is understood in the Beaver language, and if there are differences in comparison to the way it is defined and understood in English. We came to this conclusion considering that there are words that Indigenous peoples define with different nuances based on their ontology and relation to the ecosystem. Only after addressing such an issue would it be possible to move on and discuss how members wanted to see FPIC implemented regarding project approvals, use of land, and exploitation of natural resources. We agreed that particular attention was to be given to the meaning the word Consent has for community members.

Many of those who oppose the full recognition of FPIC for Indigenous peoples argue that Consent, as established in UNDIRP and conceived by Indigenous people, means Veto (as already mentioned at the beginning of this chapter). During one of the discussions I had with Cec in preparation for the final workshop, she explained how she perceives Consent and why in her view, it is not Veto.

'Let's assume to be in the bush, hunting a moose. When the animal appears, we may need to operate a decision on how to act and why. Suppose we apply the principle of FPIC as regards moose hunting. In that case, we start with the assumption that we hunt the animal if we really need it (as in the Indigenous world, you take what you need, and you do not overexploit resources for the purpose of accumulating them). So, the questions that we may want to answer in order to make our decision may be: is the moose going to help someone who is starving and needs food? We need to carry out an assessment of the situation; we need to evaluate the pros and contras and make a decision. If the answer is yes and we see more pros than downsides, we may go for it; if not, we may decide not to hunt the moose. <u>What is important here is to evaluate to reach a meaningful balance based on the needs, the current situation, and future perspectives</u>. We shouldn't hunt the moose if we are going to freeze the meat without consuming it, just because we got a very large freezer. That may be related to the desire to accumulate, not to fulfil an urgent need, and it may be contrary to our

principles.'

(Conversation with Cec, Doig Reserve, June 16th, 2020).

Watson argues that from a First Nation ontological point of view, not giving Consent to a project simply means that Indigenous peoples do not consent to the destruction of their territories. Without land, there is no food and water, and this is a threat to the future of humanity and other living beings (Watson, 2018, p. 125). A community should be asked to give consent in the context of full and meaningful inclusion in decision-making. It means that full information on the project must be provided, and the community should have enough time to evaluate it, assess the pros and contras, and make its own decision. If a community refuses to consent to a specific project, it is because there are more cons than pros, meaning that a community has proper reasons not to consent to a project. Joffe argues that this is one of the differences between Consent and Veto, with the latter providing complete, unilateral and arbitrary powers, without any balance of rights. This is not how Consent is understood and defined according to the provisions established in UNDRIP. Consent is not about having the last word on the approval of a project; instead, it is about being fully informed of what will happen while having the possibility to refuse a project that may not work for a community (Joffe, 2018, p. 1-2). In this sense, Doyle argues that how Governments have explained FPIC is inconsistent with the way in which it has been framed in the jurisprudence of human rights, where FPIC has been defined as a tool Indigenous peoples are entitled to use to fully enjoy their rights; rather than a tool that could be used to stop national development (C. M. Doyle, 2014, p. 165).

During a conversation I had with Gary Oker on the topic, he told me: *'Consent can be given only when someone knows what is going to happen.'* According to him, consent cannot be translated with just one word in Beaver, as it is a concept that can be explained in different ways based on the context and situation. So, when it comes to the content of UNDRIP, Consent may have a different meaning regarding the spiritual relationship to the lands and the use of land and its resources. According to Gary, to consent to something means that he gets a clear picture of the situation and the future outcomes. In the case of a project, he would give his Consent if he is fully informed and knows about the mitigation strategies that can be adopted and how. For him, Consent means to be Conscious about something, having complete information while evaluating the situation, its pros and cons, before making a decision. He gave me this example:

'Let's say that I give you the authorization to use the land, and you will give me something (let's say you go hunting, you will give me part of what you hunt). You wanna use my traditional land. Let's have a discussion about the reasons why you wanna use it. I may agree or not… Sometimes, conflicts arise due to the lack of understanding why a part says no.

Another example. Let's say we wanna go picking wild mint (as we did in the afternoon). Now we know that there is lots of water, perhaps in two weeks the situation will be perfect for picking wild mint and you won't need to wear boots. So, if you follow the recommendations based on TK and daily experience, you may be able to enjoy the experience without downsides. It is a matter of talking and being able to reach an agreement.'

(Conversation with Gary Oker, Doig Reserve, June 16th, 2020).

Gary also pointed out that Consent is not Veto. As he said: *'In order to Consent to something, you need to understand what's going on, to evaluate and eventually you will say yes or not. This is not Veto.'*

8.3 The final workshop with members at Doig Reserve

The final workshop with members was held on Tuesday, July 21st, 2020. I remember arriving at Doig Reserve quite early in the morning, as I needed to print the latest documents and information materials to be distributed during the workshop. One hour later, Cec came to my office, and before commencing setting up the tables outside, we had a quick chat on how to run the workshop while respectfully engaging with community members. Due to Covid restrictions, only six people at a time were allowed to attend the workshop. We decided to be extra cautious to protect the elders, so we planned to have two different sessions: the morning session was reserved for the elders, and the

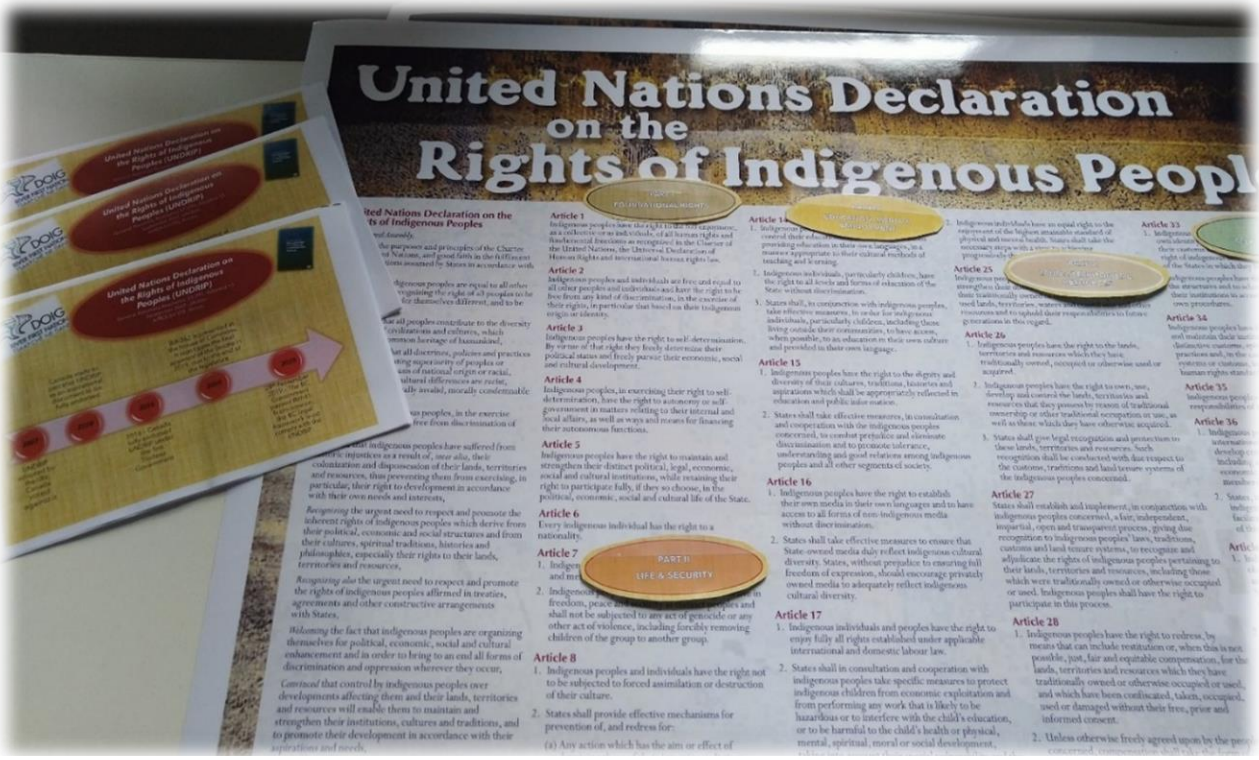


Figure 54 - The booklets I prepared for the workshop. Picture taken by Giuseppe Amatulli on July 21st, 2020.

afternoon one was open to everyone else. To provide some basic information about UNDRIP, FPIC, and the workshop's aim, I created a booklet to be distributed to participants.

I grouped the different rights of the Declaration in macro-sections, based on the protection they guarantee as regards particular areas, such as Life & Security; Culture, Spirituality & Language; Education, Media & Employment; Political, Economic & Social Rights; Lands, Territories & Resources; Self-Government.[111] In the pamphlet, I illustrated the main steps made by the Canadian Government regarding UNDRIP, from the first vote against it in 2007 to its full endorsement in 2016. I also mentioned Bill-41 and its approval by the BC Government in 2019.

Figure 55 - The area reserved for our workshop. Doig Reserve, picture taken by Giuseppe Amatulli on July 21st, 2020.

People started to arrive at 10,30 a.m. We welcomed them by handing out the booklet while giving a short overview of the workshop and the reasons why it was important and timely to discuss specific concepts and rights enshrined in the Declaration. Cec led the conversation as she was well known and respected by the elders. At first, I listened to the discussion while taking notes and making comments;

[111] The PDF of the booklet is available at https://durhamuniversity-my.sharepoint.com/:b:/g/personal/bsww33_durham_ac_uk/EUK4iLzUr8lCjpM87mWcYAgBnm88x2iiRoaUmc7ZEJATJw?e=JHsDex

as time went by, I found myself engaged in very interesting conversations with some participants. Throughout the workshop, I started to understand why consulting and including community members in decision-making is still perceived, interpreted, and understood in diametrically opposed ways by the Government and companies on the one hand and by the Band and its members on the other. I came to realize that the days, weeks, and months I spent with community members, every activity I performed with them was meaningful involvement. And still, I was just at the beginning of my experience with this community. In a place like Fort St. John, where every year there are new managers working on new projects and new public officials employed by the Oil & Gas Commission, it is almost impossible for a Band to trust and build meaningful relationships with industry and institutions. If there is no time to get to know each other, the relationship will remain superficial, meaningful involvement and inclusion in decision-making remain a pipe dream that will never come true.

Some members remained suspicious regarding the workshop itself and its aims. As a community member asked me at the beginning of the morning session:

'Did the BC Government give you money to implement this and consult with us or what? Because they should! We always do their dirty work, you know. And then they say that they did it…but they did not do anything!'

We explained that the Government was not involved in the organization of the workshop and that the money to pay participants came from Durham University through the Durham ARCTIC PhD programme. After clarifying this, members were more relaxed, and we started to have interesting conversations in small groups or one to one. Cec briefly introduced the workshop by saying:

'We want to hear from members what they think UNDRIP is about, and one of the biggest things in UNDRIP is FPIC – Free, Prior, and Informed Consent. The BC Government has not implemented UNDRIP yet, so we are trying to make people aware of UNDRIP and the content of its articles. And we want to hear what you guys have to say about it, particularly regarding FPIC. Now, part of the issue is that there is usually a communication problem around those English words. Especially for the Beaver speakers, we are very interested in knowing your interpretation, from Beaver to English. What is the meaning in Beaver of the words Free, Prior and Informed Consent? Is there even such a thing in the thinking of the Beaver people? Does consent mean that you agree to something? Do you think is it ok? Or what? We are looking for these interpretations because the BC Government does not take these kinds of things into consideration…'

Right after, Mary commented:

> *'All land has been bought up by industries and Government…so, if First Nations want to go and do something…we don't own it, BC doesn't own it… these guys own it! And everything on the land is double layered with permits…rules and regulations…So, now you need to get all these things just to do something on the land…'*

Another member (Daria) added:

> *'Being on the land, being able to enjoy being in the bush. We want to be free to camp at K'ih tsaa?dze Tribal Park.'*

Cec asked Daria if that was how she would define the word free, and she nodded. Mary added:

> '*There is always some legislation or rules that oversee you. Let's say that there was a good hunting spot and we wanted to protect it and then all of a sudden…your family went there for years and years, and then industries come and develop it, and those wild animals are no longer there; so, that place is destroyed. So, you cannot bring your grandchildren or great-grandchildren there, you know…So, you've lost that spot. Even berry picking areas…some areas are gone! Because when we picked the herbs last year, we had to drive long ways to find them; because they are no longer there where we usually find them! So, we need to go a long way now, and we even had to find the right spot in the forest.'*

Cec continued: *'And so, how then…are you then saying that because of that you cannot freely practice Treaty Rights? What is your interpretation of Treaty Rights?'* Mary replied:

> *'To be free on the land, to be able to go where we wanna go, to harvest, to hunt, to camp…To set up cabins so that we can go to our cabins. But nowadays, if we wanna harvest trees, that too…you need a permit! Because forestry owns all the trees! So, then you are going to get a permit to get trees, build cabins…and even tell you what size of cabin you are going to build. Trees are free…God made them for everybody to use. There shouldn't be rules on them. But there are! We are not free nowadays!'*

Figure 56 – Discussing with community members during the workshop. Picture taken by D. Loro, Doig staff, on July 21st, 2020.

The conversation became very interesting, as Mary pointed out that there is regulation everywhere and on everything, thus preventing members from living off the land according to their traditional cultural practices. As she said:

> *'They got rules on water too. But wildlife is a bit better, you know. We can kill whatever we want; without any permit or… well, that is not so strict; but other things are. Similarly, we should be able to use the water as we choose, how we choose! We should be free to use our natural resources.'*

While Cec and Mary continued the conversation, I saw a few elders arriving; Jack and Maggie were among them. I grabbed some sandwiches, fruits, and soft drinks and moved toward them. I greeted them and offered them food while talking about the session. After a while, I said to Maggie:

'So, one of the main issues with the Declaration is the word Consent. The Declaration was developed by the UN with and for Indigenous Peoples, which are entitled to decide for themselves and to give their Consent before a project is approved. Do you have this concept in Beaver? How do you define and translate Consent in Beaver?'

Figure 57 - Discussing the meaning of Consent with Maggie during the workshop. Picture taken by D. Loro, Doig staff, on July 21st, 2020.

Maggie replied:

'Consent…if you tell me, I wanna do this at your house or something like that, and I say 'Ok, I give you my consent'… Even if I'm not here, you can do it. That's Consent for me. In Beaver, I would say Consent is 'O-onehsi.'

Meanwhile, Mary came and took a seat next to Maggie. She jotted down the transliteration of the word Consent in Beaver language (picture above).

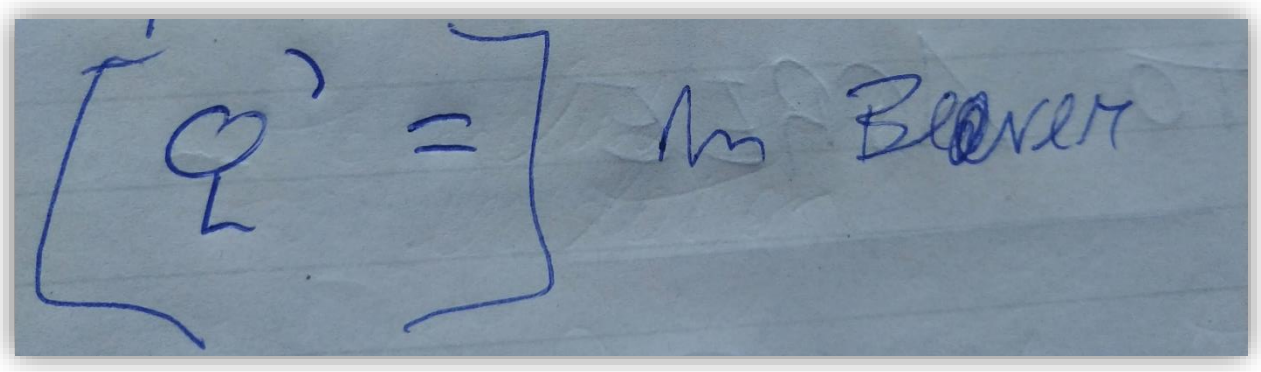


Figure 58 - Transliteration of the word Consent in Beaver. Workshop with Doig members, 21st July 2020.

The conversation on Consent and its meanings continued with Jack, who was having lunch while talking with Maggie. I started eating my sandwich while writing down a few sentences for him. In his seventies, he had been suffering from deafness for several years now, so we used to communicate through written sentences. I asked him if Consent could be translated into Beaver. He replied:

'The way how it's gonna be or the way how it will be. If people agree, because it's not about individuals, it is a collective concept. It's for all. There is no word in Beaver to express consent on an individual basis. It's about people, so I say people agree. I don't know how to spell it, though.'

We laughed a lot when he said that; I always had a good time with Jack. I first met him at his wife's funeral (Janice Askoty) in July 2020. Throughout my year of fieldwork, I got to know him better while working in the forest, attending cultural camps, and visiting him in the cabin he built for himself. During our conversation, he pointed out an essential feature of how Consent is conceived in Beaver and Beaver people. He said it is about people, meaning that it is not an individual right; it is a collective one that people should exercise together.[112]

8.4 Operationalise FPIC in the Doig Land Code

Doyle argues that collective rights are inherent to the Indigenous philosophical conceptions and ontology, and they find full recognition in Indigenous customs and sources of law. The international community has recognised the collective rights of Indigenous peoples, acknowledging that they are *inherent* and *sui generis* in nature. Consequently, a new meaning to the concept of self-determination

[112] On collective rights of Indigenous peoples, see the 2020 Study of the Expert Mechanism on the Rights of Indigenous Peoples on Land and FPIC - A/HRC/45/38 and A/HRC/39/62. Available at https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Call.aspx (last accessed on June 10th, 2021).

has been given as well (C. M. Doyle, 2014, p. 113). Whereas an inherent right to self-determination compatible with State sovereignty exists, UNDRIP has pointed out that a new relationship based on equality and trust must be built between Indigenous peoples and states. The former should be entitled to decide how to exercise their right to self-determination as regards economic development, participation and inclusion in decision-making as for resource extraction and development projects that are supposed to take place on their traditional lands (C. M. Doyle, 2014, pp. 117–123). In this sense, FPIC may well be perceived as the manifestation of the right to self-determination that Indigenous peoples have regarding economic, political, and socio-cultural aspects (UN A/HRC/39/62, 2018, p. 5). Precisely, FPIC can be seen as an overarching structure to protect and enhance relevant Indigenous peoples' rights, ranging from the right to self-determination and inclusion in decision-making to the recognition of peculiar collective rights; such as the right to property over traditionally used and occupied lands, territories and resources, the right to health, life, traditional food, and other cultural rights (Doyle, 2014, pp. 125–131).

Arguably, there is no one size fits all when it comes to the implementation of FPIC, as it may differ due to the political and legal system of a country and based on the specific needs a community may have. It is then desirable that FPIC is designed, controlled and implemented by Indigenous peoples, allowing them to give or withhold their consent in the context of enacting a self-determination-informed right to protect Indigenous traditional lifestyles, cultures, and lands while participating in decision-making. This means that Indigenous peoples should be free to decide how they want to be consulted, on what, and on how they can give or withhold their consent, while their customary laws and decision-making processes are respected (Doyle, Whitmore & Tugendhat, 2019, p. 15). As DRFN Chief Trevor Makadahay told me during a conversation:

> '*We wanna be included. We wanna be at the decision table. We do not want others to decide for us anymore. We want to have an active role in the decision-making process. We want to be part of that.'* (Doig Reserve, June 17th, 2020).

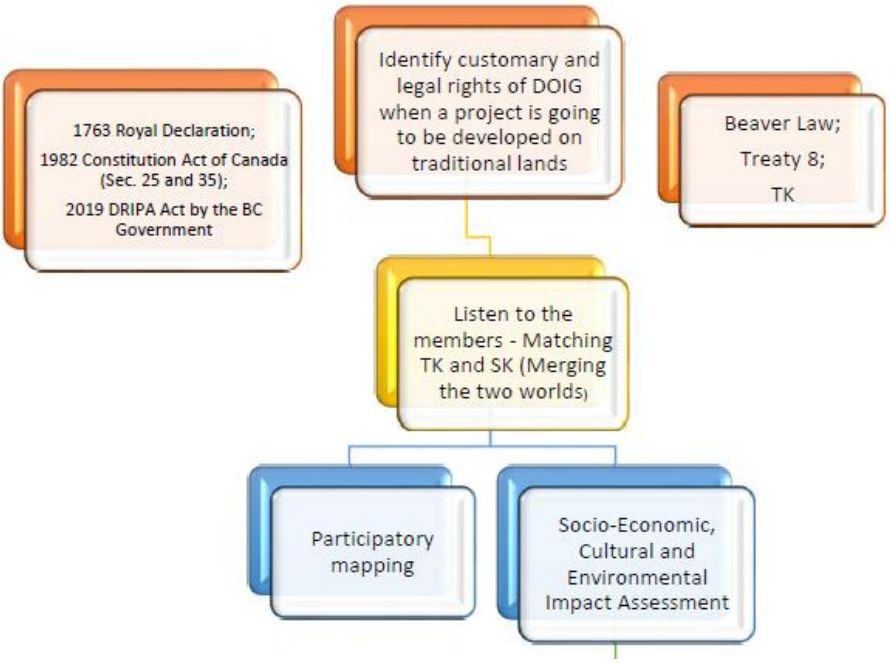
Nevertheless, in the first annual Report[113] (2019/2020) released by the BC Government on the implementation of UNDRIP in BC, FPIC is not mentioned. Although the Report was issued only a few months after the approval of Bill-41, the fact that FPIC is not mentioned is perhaps the demonstration that there is still no agreement on what FPIC means for the Government and how it should be implemented.

[113] Available at: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/dripa_annual_report_2020.pdf (last accessed on May 27th, 2021).

While developing the interactive framework to link Council Legacy Goals and CCP Statements with the content of UNDRIP, I also drafted a framework on how DRFN could integrate and operationalize FPIC (perhaps in the new Land Code that is being developed)[114], taking into account the Canadian legal system, as well as Indigenous Traditional Knowledge and sources of Law. I developed this framework considering the Guidelines on FPIC provided by the Legal Companion to the UN-REDD Programme.[115] As argued by Doyle, FPIC can be seen as an overarching structure to protect and enhance relevant Indigenous peoples' rights, ranging from the right to self-determination and inclusion in decision-making to the recognition of peculiar collective rights, such as the right to property over traditionally used and occupied lands, territories and resources, the right to health, life, traditional food, and other cultural rights. Therefore, operationalizing FPIC is important to ensure inclusion in decision-making while advancing certain rights and protecting traditional lands and resources (Doyle, 2014, pp. 125–131).

In Phase 1 of FPIC operationalization, customary and legal rights of DRFN must be identified, taking into account federal and provincial legal instruments, Treaty 8, Beaver legal values and TK. This will allow performing socio-cultural, economic, and environmental impact assessments matching different values, knowledge and visions based on what members envision and desire.

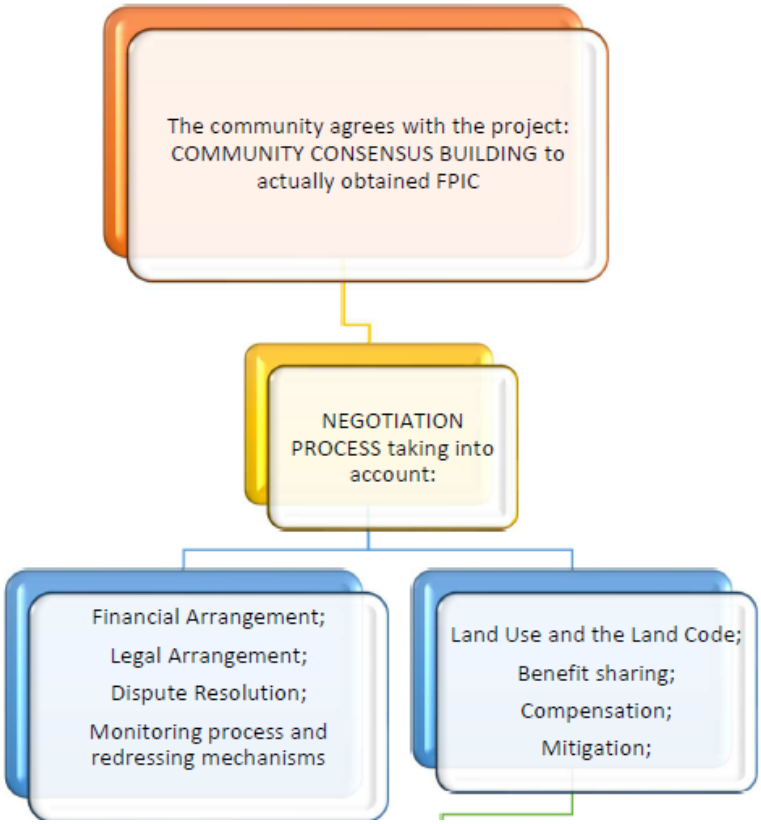
Phase 1



[114] More information on the current work DRFN is doing on the Land Code is available at: https://doigriverfn.com/our-lands/drfn-land-code/ (last accessed on May 11th, 2022).
[115] Available at: https://www.unredd.net/knowledge/redd-plus-technical-issues/fpic.html (last accessed on June 10th, 2021).

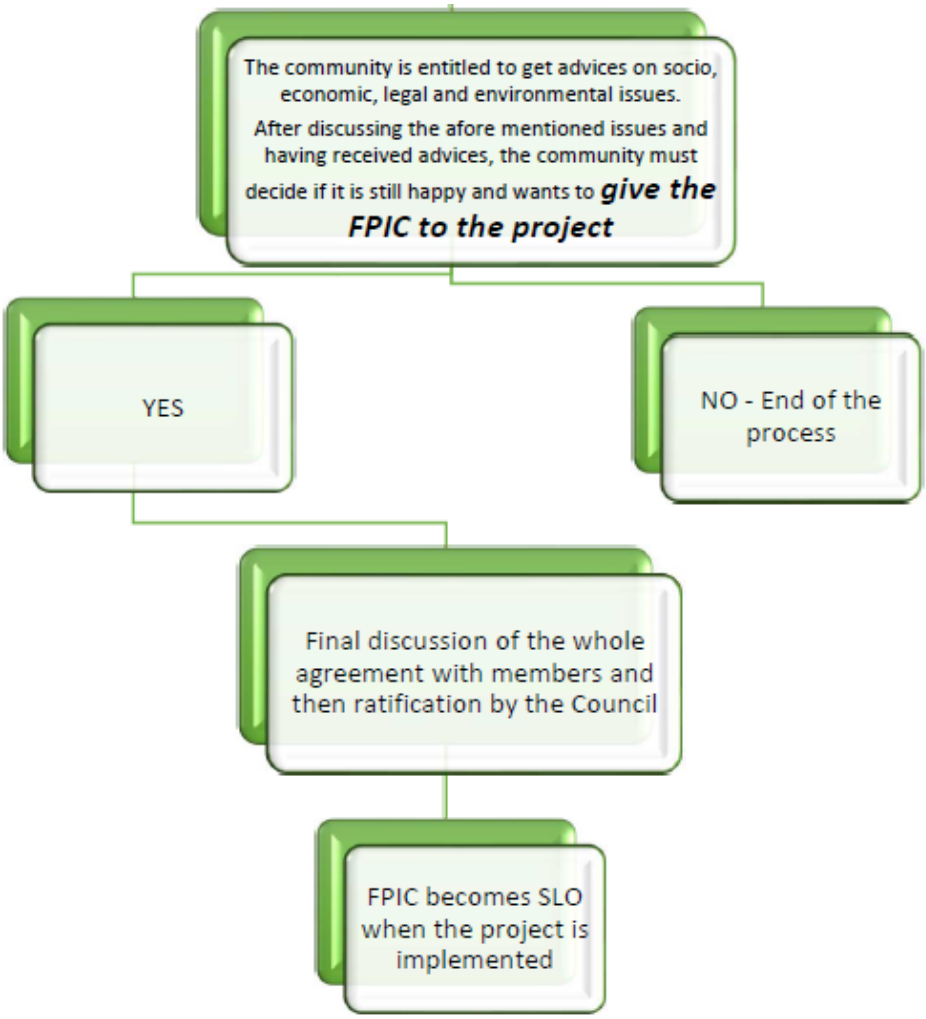
After assessing benefits and mitigation strategies, risks and legal implications (in terms of rights that can be breached if a project is approved), the community has the right to decide if FPIC can be given to the project and move on to the next phase, to start negotiating the terms of the agreement. If Consent is not given, the process is over; if it is given, the negotiation process with the Government/companies can be initiated in a process called *'Community Consensus Building'*.

Phase 2



Phase 3

In Phase 3, once that community consensus-building has been reached, the community must consider the pros and cons of the project before giving its final Consent. According to what is proposed in this framework, FPIC does not disappear once the project is accepted. Instead, it continues to exist, although differently and with diverse features. It could be argued that FPIC becomes a sort of Social License to Operate (SLO). Thus, the community continues to be engaged throughout the whole project and can withdraw the given Consent if the project is implemented in a way contrary to what had been agreed. As affirmed in the Study of the UN Expert Mechanism on FPIC, Indigenous peoples should have the option to give Consent for any relevant step of a project. Thus, giving Consent should be envisioned as an ongoing process, reviewed and renewed every time major changes to the project happen (UN A/HRC/39/62, 2018, p. 12). In this sense, the UN Global Compact defines Consent as '*a formal, documented social license to operate; with Indigenous peoples having the right to give or withhold consent, and in some circumstances, revoke the consent previously given.'* (UN Global Compact, 2013, p. 28).



This statement resonates with what had been established in the DRFN Natural Resources and Procedure Protocol, where it is clearly stated that community members are continuously engaged throughout the entire FPIC process (White, 2019, p. 4). In the Protocol, comprehensive steps are listed to accommodate and compensate the community. Moreover, the possibility of not giving Consent to a proposed project is also mentioned, should its impact be impossible to mitigate and if the community does not identify any other accommodation/compensation option. In these cases, the Land Office will discuss with the Crown and the proponents to individuate alternative methods to resolve the dispute (Alternative Dispute Resolution - ADR). Whereas a solution cannot be found through ADR, DRFN is entitled to inform the Crown that it does not consent to the project, so retaining the right to participate in any regulatory proceedings related to the proposed project; as well as to seek a resolution by bringing the case to Court (White, 2019, pp. 11–12). Nevertheless, the option that DRFN does not Consent to a project does not translate into the project being stopped.

Chapter 9 – Conclusions: Envisioning the future

'We have to think about future generations. We need to think about the future, and the Government needs to understand this, and we do not have to wait for the Government to say what is good for us. We need to say what is good for us, for our community. And not just yes, let us approve this or that!' (Doig Reserve, July 23rd, 2020).

This was one of the last conversations I had with a Doig member towards the end of my fieldwork. Throughout the year I spent in Fort St. John, the word future had been mentioned hundreds of times by Doig and Blueberry River First Nation members and staff, residents and politicians of the Fort St. John area, Government officials, company managers, workers, and independent consultants. Each person had a different understanding of the word 'future'.

Nevertheless, the word future was commonly used when talking about development, well-being, socio-cultural continuity, economic opportunities, life perspectives and expectations. The word future was also mentioned in the litigation BRFN v. BC. Eventually, while exploring and unpacking the concept of cumulative effects, I started wondering what the future meant in the specific context of Northern British Columbia and if it was somehow possible to find a link between the way people conceive and imagine the future with the concept of cumulative effects.

Intensive resource extraction and massive industrial development began after the end of WWII in British Columbia. Since then, the race to modernity found an important ally in *'extractivism'*, which was used to build a new social, political, and economic order. Eventually, a new order based on economic liberalism impacted the lifestyles and mindsets of community members living in those areas. It slowly changed how they lived, worked, and interacted with each other within their communities and beyond. In my doctoral research, I thought that unpacking the concept of cumulative effects could help describe the many changes happening in North-eastern British Columbia in a new light, not only from an environmental and biological point of view but also from a cultural, social, and economic perspective. I believe it has served my scope beyond my best expectations, as it allowed me to describe how people's mindset and ability to envision the future is impacted by these changes while pointing out that doing things differently is possible if a change of mindset occurs.

Willow argues that *extractivism* is a mindset, a way of thinking that defines how some people relate to and make sense of the world. It is based on the assumption that taking more is right, that there are no limits to what can be extracted, and that it is never enough (A. J. Willow, 2019, p. 234). For *extractivism* to be profitable, high consumption levels are required, as only in this way could the sector sustain itself and stay alive (Artaraz et al., 2021, p. 4). In such a context, *extractivism* finds its place in an economic order linked with the idea of modernity promoted by the principles of the free-market economy (Wittrock, 2000, p. 34). According to Willow, the modern capitalist system intertwined with the industrial culture of the Western world has generated an idea of progress and modernity intrinsically defined by endless economic opportunity and material excess (Willow, 2019, p. 234).

Drawing on Willow's statement, I argue that the wealth generated by the extractive industry has always been depicted as *the way* to bring development to underdeveloped areas while tackling unemployment and socio-economic problems and ensuring a better future for residents. This is, perhaps, the brighter side of the coin, the one shown to justify *extractivism* while promoting it. The other side, however, is way less bright. Whereas *extractivism* generates enormous wealth, in terms of high-paid jobs, revenues for the Government, profit for companies and benefit-sharing agreements for First Nations, it also phagocytized such wealth in order to stay alive. On a small scale, it fosters consumption of any sort of goods, thus bolstering the demand for further goods, which means sustaining the demand for extracting natural resources necessary to produce those goods. This directly affects the large scale, with companies always looking for the next opportunity, the next underdeveloped area eager to embrace *extractivism* and enjoy its benefits. On a community level, *extractivism* and its cumulative effects have significant social consequences, impacting how people

think and conceive the world. Slowly but relentless, *extractivism* affects how community members conceive living, their relationship to their land and the sentient beings that live on it, and how they can get by today and tomorrow. In such a context, cumulative effects have a massive impact on the socio-economic organization of a community, shaping social relationships and how members relate to each other. As a community member pointed out: *'People used to share meat in the past; they do not share money nowadays.'* In a socio-economic context dominated by *extractivism*, community members tend to see only one way to get by, to be part of the modern world. They were forced into a different system to have a better life. They were considered to be living in a precarious status; however, they embraced another precarious lifestyle defined by the market-driven economy. As argued by Tsing, *precarity has proven to be a condition of our time* (Tsing, 2015, p. 20).

Whereas *extractivism* is a mindset, over-consumption and depletion of resources are its main fuels, with capitalism and the market-driven economy the only systems compatible with its survival. *Extractivism* is like an engine that works perpetually; it cannot be stopped if not by breaking it down. In this context, it is difficult to imagine that anything else is possible and that a different path can be followed. Whereas *extractivism* is a mindset, cumulative effects change the minds, compromising the ability of people to imagine something different, do something different, and (re)discover new ways of living. In a short sentence, *cumulative effects change how people envision the future and their ability to envision different possible future(s)*. Community members are then trapped into what I have already defined in the introduction *'Atemporal Modernity',* continuously waiting for a better future yet to come, which can only be achieved through *extractivism*, the promises it brings, and the hopes and dreams it generates about possible futures.

Mason uses the expression *'events collective'* to refer to the cycle of promises built around Arctic hydrocarbon development projects. In his view, *'events collective'* is a strategy used by politicians to build expectations while attracting attention from financial sponsors to stimulate setting a certain agenda to realize a specific project (Mason, 2004, p. 326). The concept of *'events collective'* may well fit the broader theoretical framework called *'the iron law of megaprojects'*, elaborated by Bent Flyvbjerg. In Flyvbjerg's view, mega-projects are built even if they do not make sense, and they will be a financial fiasco and an environmental disaster. Politicians use them to get elected, make long-term plans, and shape public policies while creating hopes for possible better futures (Flyvbjerg, 2016, pp. 9–12). As argued by Gupta, *'Infrastructures are important not just for what they do in the here and now, but for what they signify about the future. Particular infrastructures signal the desires, hopes, and aspirations of a society or of its leaders. Nation states often build infrastructures not to meet felt needs, but because those infrastructures signify that the nation-state is advanced and*

modern.' (Gupta et al., 2014, p. 49). In such a context, megaprojects can be defined as large-scale, complex ventures that take many years to be approved and built. They usually involve multiple private and public stakeholders, their cost is in the scale of several billion dollars, and they are 'trait making', meaning that they are designed to transform the structure of society from an economic and cultural perspective. Examples of megaprojects, among others, are airports, high-speed rail lines, ports, highways, wind farms, hydroelectric dams, oil and gas facilities, such as wells and pipelines (Flyvbjerg, 2016, p. 3).

Flyvberg argues that megaprojects are so attractive due to some specific features that characterize them; the so-called *'four sublimes'* (Flyvbjerg, 2016, p. 3). The first sublime is the technological one, and it is used to describe the rapture that engineers get from building large and cutting-edge projects to pushing the boundaries of technology, always aiming to reach new achievements (i.e. building the fastest plane, the longest bridge, the tallest building). This concept was first applied by Frick to study the construction of the multi-billion-dollar bridge San Francisco-Oakland Bay; arguing that the technological sublime influenced the design, outcomes, and reception of the project (in terms of public debate and lack of accountability) (Flyvbjerg, 2016, p. 3). Flyvberg integrates this sublime with three additional ones: political, economic, and aesthetic sublime.

The political sublime is defined as the rapture politicians get from approving and building new magnificent buildings and infrastructures. Mega projects generate consensus among citizens while promoting the action of a certain politician. In addition, they are media magnets and bring visibility to politicians, which is fundamental to being re-elected (Flyvbjerg, 2016, p. 3). As regards the economic sublime, Flyvberg argues that it satisfies businesspeople and industries, the government and trade unions for the money (in terms of revenues, taxes, etc.) and jobs they generate. Megaprojects involve many actors, such as banks and financial institutions, investors, landowners and developers, lawyers, consultants, engineers, and other sector workers. The trade-off for these categories is huge. Last is the aesthetic sublime, which refers to the pleasure designers and people get from the building by looking at something beautiful and eye-catching (Flyvbjerg, 2016, p. 3).

The Iron Law of megaprojects can help explain why a project like Site C is under construction, even though it is an economic, environmental, and social disaster. In addition, development projects are often used to promote a specific vision of future(s) based on the idea that being part of the market-driven economy is what people need and want to live a good life. Whether they are realized or not, proposed projects are used as a trigger to the minds to make people think that something will happen sooner or later.

In this context, a rigid dichotomy is generated between the past and the future. The former is romanticized and described as a time when community members were happy to live a simpler but more fulfilling life, with less money and commodities, and where extractivism was not the main sector or did not exist. Berliner has defined this feeling as *'exonostalgia'*, a kind of nostalgia for a past that people have never experienced (Berliner, 2020, p. 9). The latter is perceived as a happy time yet to come, where members will have a fulfilling life thanks to the resources *extractivism* generates. In the past *basic needs* of members were met; in the future, their *desires and wants* will be met. Between the *'basic past'* and the *'desired future'*, members must face a *'challenging present'*, a time full of issues to be addressed in order to achieve a better future, which is nevertheless elusive and flawed (Abram & Weszkalnys, 2013, p. 3). The *challenging present* is shaped by a romantic past intertwined with dreams and hopes for a better future(s).

Community members are between past and future(s) while living in an uncertain present. To paraphrase Guyer, *'one could perhaps reduce all this to a historical life in uncertain times.'* (Guyer, 2007, p. 418). I argue that this condition perfectly matches the concept of *atemporal modernity*, which can be seen as a continuous becoming in time and space. The *challenging present* cannot exist without an idea *of modernity as a continuous becoming*. Both concepts exist thanks to *extractivism* and *industrial development*, the hopes and dreams they generate for a better future, and the hurdles they produce in a challenging present to achieve a better future. It can be said that the *challenging present is the defining feature of an atemporal modernity in continuous becoming*. In this sense, e*xtractivism* itself is a continuous becoming activity. It never stops, as there will always be something to extract, a new place where *extractivism* can be performed, and people who will accept *extractivism* due to the hopes and dreams it generates.

Nevertheless, *extractivism* is an anthropogenic phenomenon and, as such, can be stopped, reshaped, and changed. Once more, I like to cite Willow, according to whom *'extractivism is a mindset; there is no reason to believe it cannot be changed'* (A. J. Willow, 2019, p. 248). The question is how. How to overcome *extractivism* and its logic? How to make sure people may have a different future, where they are not completely dependent on *extractivism* and the consumeristic loop it creates? How to survive *extractivism*? Is it even possible? Surviving *extractivism* is possible but requires people to think differently, act differently, and eventually live differently. People must have the *possibility* to make different choices on how they want to live; to do so, they must believe that living differently is possible. In a sentence, overcoming *extractivism* is about hope.

Bryant and Knight argue that *'hope as a futural orientation bridges the gap between potentiality and actuality.'* (Bryant & Knight, 2015, p. 136). Hope is constantly in motion and can be perceived, as Bloch would argue, as a tendency towards something (Bloch, 1986, 18). Hope brings people into the future by transforming *'improbable desires from the realm of potentiality to actuation.'* (Bryant & Knight, 2015, pp. 136–137). Based on my fieldwork experience, I argue that community members have accepted and embraced *extractivism* because it creates hopes while generating dreams of possible better future(s). On many occasions, people have embraced *extractivism* because they had no choice; they were not offered any alternative, and *extractivism* was depicted as the only hope to have a better future. People's *hopes and dreams* have been used to fabricate consent around development projects, with *extractivism* seen as the answer to address key issues, such as lack of jobs and economic opportunities and poor socio-cultural well-being (Wilson & Bowles, 2016, p. 287).

Whereas development projects and infrastructures are used to depict possible better future(s) by creating expectations, hopes, and dreams, a narrative is built around their vital importance. One could argue that the *'concrete'* of infrastructures is not about the built parts; instead, it is *'cemented'* in the very idea that they are needed to make life better and live in the modern world (and to be part of it). As argued by Deborah Cowen, '*Infrastructures reach across time, building uneven relations of the past into the future, cementing their persistence. In colonial and settler colonial contexts, infrastructure is often the means of dispossession, and the material force that implants colonial economies and socialities.*'[116]

Nevertheless, the socio-economic improvements brought by *extractive infrastructures* only last in the short term, leaving people in despair and with more socio-economic problems to address when extractive operations are over. As argued by Tsing: *'Industrial transformation turned out to be a bubble of promise followed by lost livelihoods and damaged landscapes. If we end the story with decay, we abandon all hope; or turn our attention to other sites of promise and ruin'* (Tsing, 2015, p. 18). The hope community members have placed in *extractivism*, and the development it brings may well be used to overcome it by putting people on a new and different horizon. To paraphrase Guyer, *'the new indexing of diagnosis of the present to an infinite horizon in the future places people in emotional and sociological terra nova.'* (Guyer, 2007, p. 413).

In chapter 4, I explained that some companies and politicians use a specific narrative to shape the tale while promoting the vision that people need development projects on a continuous basis to have

[116] https://www.versobooks.com/blogs/3067-infrastructures-of-empire-and-resistance (last accessed on September 14th, 2022).

better futures. Infrastructures are future-oriented; they are assembled considering what enables and sustain existing power relations in the context of current settler states and the material organization of everyday life in space and time (Spice, 2018, p. 47). Once more, I would like to mention Abram, who argues that *'the idea of improved futures to be achieved by the rational application of policy and the hygienic distribution of development is emblematic of a modern worldview.'* (Abram, 2014b, p. 129). This idea of better futures to be reached through development shapes the narrative around *extractivism* in the current context of Northern British Columbia, sustained by the fact that it ensures First Nations the kind of wealthy western lifestyle they were excluded from for so long. However, it comes at a high price. To be part of the 'modern world' and live according to the western lifestyle, Indigenous peoples have suffered land disruption, cultural losses, and resource exploitation driven by the fluctuant needs of the market. This kind of development is not compatible with the Indigenous ontology and cosmovision, the way in which Indigenous peoples conceive and relate to the world and the ecosystem, their land and the sentient beings that populate it and that have sustained an environmental, social, and cultural balance since time immemorial. However, a different path can be followed.

As I have highlighted in this work, Doig and Blueberry River First Nations are not against development. However, they want to have a real role in shaping the development of their traditional territory. This translates into empowering community members to exercise control over development, which also means that a community must have *the right to say no* to projects that do not meet the community's interests, future visions, and expectations (Wilson & Bowles, 2016, p. 286). As argued by Spice, Indigenous expressions of dissent towards development projects, in the form of blockades, checkpoints, or political leverage a Band might be able to exert on the Government and companies; are not only spaces of negation but also spaces of radical possibilities to develop something different under Indigenous jurisdiction and leadership (Spice, 2018, p. 48).

How community members envision the future, what they need and what they do not want is crucial to avoid 'fabricating' false hopes and dreams while fueling extractivism and bolstering demands for further development projects that only create expectations for the future(s) that will never mirror what members really want. These reflections bring me back to one of the first conversations I had with a BRFN member during the 2019 BRFN cultural camp. At some point during our chat, I asked:

'So, what do you think about development? Are you happy with it? Do you want it?'

The answer was:

'I do not want it. But what can we do? They do not listen to us; the Government does not listen to us. They decide what to do, even if we are against it. We do not decide anything.'
(Pink Mountain, July 4th, 2019).

This brief and straightforward answer clearly highlights how important it is for members to be heard and to have their views considered when development projects that might affect them are discussed.

In this sense, the ground-breaking verdict of the BRFN v. BC litigation certainly advances the position of the BRFN and other Treaty 8 First Nations in terms of constitutional, environmental, and social justice. It highlights that a community must have a say when development projects are discussed and that without the final approval of the community, projects cannot take place in a Nation's traditional territory. To use the words of Bowles, McDonald and Wilson, *'Whereas projects offer the lure of jobs, jobs are not enough compensation for the destruction that resource development can bring.'* (Wilson & Bowles, 2016, p. 289). It must be accepted that for many First Nations, economic development and projects approval must be compatible with the protection of the ecosystem and a specific lifestyle it supports, such as living in a mixed economy, where resources can be obtained and distributed outside the market system while protecting the land and sacred sites. To do so, a First Nation must have the political authority to make decisions and a real possibility to have a say regarding development projects. Then, these decisions must be respected and not contested by companies and the provincial Government.

These legal developments are relevant not only for British Columbian First Nations and Indigenous peoples living within the boundaries of the Canadian state. The outcomes of the BRFN v. BC litigation may go well beyond national boundaries, reshaping the way development projects are proposed, discussed, and approved in other areas of the world where Indigenous groups are involved. Like other leading case law, this verdict can bring essential changes in how Indigenous peoples fight against corporate/state-imposed development decisions in their traditional territories. Those are common struggles Indigenous peoples around the world share and fight to reach a common goal: a more balanced path towards resource exploitation and development that should not only take into account economic growth but other socio-cultural factors. It is then evident that the outcomes of the BRFN v BC litigation can inspire other Indigenous peoples worldwide. From North America to the Southern part of the continent, from Nordic countries where the Sámi people live to the Australian hemisphere, which is home to many Aboriginal peoples, from Africa to Asia, which is home to many recognized and unrecognized Indigenous peoples; this litigation can be a game changer. Thus, it is reasonable to believe that this PhD work can contribute to raise awareness among Indigenous peoples

worldwide on what is happening in Northeastern British Columbia and how First Nations are fighting their battles.

In our contemporary world, development is often justified due to the jobs and revenues it generates. In recent decades, the debate over *extractivism* and development projects has been shaped by the conflict environment v. jobs. As argued by Bowles, this is not the main point in British Columbia. In fact, this debate is now about ways to govern, the role that communities should have and who has the authority to make decisions (Wilson & Bowles, 2016, p. 291). In a sentence: *Who decides what and how?* The verdict of the BRFN v. BC litigation suggests that a significant shift has been initiated, with First Nations called to co-decide with the provincial Government the kind of future they want and which projects they want to approve. However, this historical shift cannot happen without fully implementing the principles of Free, Prior, and Informed Consent in the legal framework. As I showed in the previous chapters, the BC Province is working to include FPIC within its legal framework. It remains to be seen how specific provisions (such as Consent) will be interpreted and implemented. At the same time, many First Nations of Northern British Columbia are working to implement new tools to ensure a higher degree of independence for the Nation. Relevant in this sense is the case of the Doig and the development of the Land Code the Nation is carrying out. As I outlined in chapter 8, it could be one of the first Land Code in which FPIC can be included and implemented.

To conclude, I would like to reflect on the meaning of this work and how it could enhance the critique of *extractivism* and cumulative effects while proposing new ways of looking at and perhaps addressing challenges that intertwine the local with the global. This ethnography describes a sub-arctic reality in which the hopes and dreams of locals and Indigenous members are blended with the logic of *extractivism*, the mantra of development, and the rules of the market-driven economy. To describe such a reality, I have tried to let people talk, conscious of my own limits. I hope I have done a decent job highlighting the struggles people living in North-eastern British Columbia must face in their everyday lives. In an area rich in natural resources, there are choices to be made, and I hope this work can provide some ideas about different paths that can be followed.

Nevertheless, the issues I highlight in this doctoral thesis are not limited to the specific reality of Northeastern BC, where I carried out my fieldwork. These are common challenges that we share as humans. Cristina Dorador Ortiz, a microbiologist member of the newly 2021 Chilean Constitutional Convention working on a new Constitution to face the challenges of the green transition, affirmed: *'We have to assume that human activity causes damage, so how much damage do we want to cause?*

What is enough damage to live well?'[117] That is the turning point, as instead of living for more, we should try to learn to live well (Guardiola & García-Quero, 2014, pp. 177–178). Whereas completely shutting down extractive activities is impossible, as we heavily depend on resources to live in such a complex and interconnected world, it is certainly possible to operate a shift to reduce the amount of resources extracted and used to meet our needs.

In and of itself, the use of natural resources to sustain our life needs is not negative; nevertheless, as many DRFN and BRFN community members kept telling me throughout my fieldwork, the balance has been lost with the scale and purposes of *extractivism* that must be revisited (Chassagne, 2021, pp. 109–110). Gudynas argues that the first step to change *extractivism* is to move from a *'predatory extractivism'* to a *'sensible extractivism'*, in which proper measures are adopted for remediation and the abandonment of sites while social compensation is provided, and effective mitigation measures are implemented. This is perhaps something that could happen in North-eastern BC following the ruling of the BRFN v. BC. The second step would then be to move to an *'indispensable extractivism'*, where only extractive activities necessary to meet people's real needs are carried out (Gudynas, 2013, p. 175).

In a more sustainable society, natural resources would be used more responsibly to meet people's real needs and not the desires created by the market-driven economy, the consumeristic society and in the name of making profits. In a socio-economic system run differently, different types of wealth would be considered essential to ensure well-being by valuing non-economic aspects of society, like the environment and socio-cultural values of a community. *Living differently* is not about living with no money or within a barter economy; instead, it is about living in a sustainable society, from an economic, cultural and social perspective; in which always wanting more and growth without limits is not the main aim of a person's life (Chassagne, 2021, pp. 93-94). Living differently and valuing non-economic features of a society should not be seen as a problem but as an alternative to be considered.

In an article written during the first COVID wave in March 2020, Abram argued that how we travel, use energy and resources, and expect to live are not only matters of personal choices.[118] Those things are defined by the expectations to live well, according to certain standards we have been adopting for decades. Nevertheless, it does not mean that there are no other options. To see a way

[117] https://www.nytimes.com/2021/12/28/climate/chile-constitution-climate-change.html (last accessed on December 30th, 2021).

[118] https://theconversation.com/coronavirus-worlds-response-has-slashed-co-emissions-heres-how-to-keep-them-down-134094?fbclid=IwAR02mZ6t6iukaJDArp9gco05LoTnZSVBoObiIGPRApRrjhveec6s6zAmNNs (last accessed on January 6th, 2022).

out, we should accept the idea that *perpetual growth and over-consumption* do not ensure a fulfilling life. Contrariwise, they promote a materialistic lifestyle in which our social well-being is left behind. *'Whereas we were raised on dreams of modernization and progress'* (Tsing, 2015, pp. 20–21), we now need to accept that we cannot live a good and happy life if we are overwhelmed with the idea of always achieving more, of wanting always more. Although changing our lifestyle cannot happen overnight, we can certainly start revisiting how we live by changing our behaviours in everyday life.

As Cec (DRFN former Land Manager) and Trevor (current DRFN Chief) told me on several occasions during my fieldwork: *'According to the Dane-zaa worldview, you only take what you need from the ecosystem. You do not overexploit resources for the purpose of accumulating them.'* Changing how we, as human beings, conceive, relate, and live with accumulation and consumption (and over-consumption) may provide us with a way forward to survive *extractivism* and overcome it. There is much to learn from a rich and different cosmovision like the Indigenous one. Whereas the Western approach to development is based on economic growth, with job creation and high paid salaries as the reward each member of society can get from it; the Indigenous approach to development is people-centred, meaning that the well-being of community members is put above mere economic gain and wealth accumulation. This is an essential difference between two different development models and ways of conceiving the world that suggest there is no reason not to believe that Indigenous peoples will benefit from the current opportunities without losing the ability to move on and develop something different whenever needed.

The lure of development, the jobs and revenues it generates, has been used by companies and Governments to advertise a certain type of economic trajectory. However, it is clear that the narrative according to which Indigenous people need jobs and development is not totally accurate. Governments need to create jobs to ensure, on the one hand, that revenues are generated and, on the other hand, to keep the market-driven economy alive. In addition, politicians need to defend the status quo and create more economic opportunities for citizens if they want to stand a chance of being re-elected. Indigenous peoples then benefit from the system by establishing joint ventures with more prominent companies, working as contractors or simply being employed in the oil and gas sector. However, there is no reason not to believe that, whereas oil and gas exploitation will stop, they will not be able to go back to the land and live off the land. It is already happening, with several Indigenous Bands working to make sure members are ready to embrace a different lifestyle, with much more limited resources and wealth, whenever it happens. Some members are ready; others will get there, someone else might not. Most likely, those who will not be ready to get through a significant change

like this will be the city people, who have always lived by relying on goods and services given for granted.

In 1977, Justice Berger wrote in the Mackenzie Valley Pipeline Inquiry that the Canadian High North was considered the last frontier. However, the North has become a frontier only in the last decades while it has been the homeland of the Dene people for thousands of years (Thomas R Berger, 1977, p. 6). The North is also a heritage, a unique environment to be preserved (Berger, 1977, p. vii). Berger argued that the future of the Canadian North was supposed to *'reflect the ideas of the people who call it their homeland.'* (Berger, 1977, p. xix). Forty-five years later, not much has changed, and his recommendations are more valid than ever. As I have tried to show in this work, the social costs of industrial development have been huge mainly because it has been massive and overwhelming instead of being slow and ordered (Berger, 1977, p. 22). A change is needed and wanted, as demonstrated by the BRFN v. BC litigation and its the ground-breaking verdict, and the feelings of many people (community members and not) living in Fort St. John and surrounding areas. There is a need to believe, perhaps to dream, that a different future is possible, and we need to move towards it. As former DRFN Chief and current councillor Garry Oker keeps saying:

'We are still dreaming. There are still dreamers among us. Dreaming is about envisioning the future and moving in positive ways towards that vision.'

Appendix A: Doig & Supervisor Placement support letter

Doig River First Nation
Box 56
Rose Prairie, BC.
V0C 2H0

To whom it may concern,

Re: Giuseppe Amatulli Placement

Dear Sirs/Mesames:

On behalf of Doig River First Nation, I would like to support the request of Mr Giuseppe Amatulli (PhD student in the Durham Arctic Programme) to carry out his placement with the Doig River First Nation.

In his PhD research, Giuseppe is addressing specific issues related to sustainable development and socio-cultural issues that First Nation communities must face in modern society. Over the last 6 months, Giuseppe has spent a considerable amount of time participating in activities with our Nation. We believe that the spent with us has given him a better picture of our community, challenges and issues that need to be addressed.

As Band Manager, I believe his research will be beneficial as it can shed light on specific socio-cultural issues related to our community that we need to address. Therefore, I support his request to carry out his placement with us, in the context of the continuation of his fieldwork.

Should you have any questions regarding this letter, do not hesitate to contact me at the address below.

Best regards,

Shona Nelson, BA. CAPA
Dane-zaa ghaa adishtl'ish gha deh (Band Manager)
Doig River First Nation
Direct Line: 778.715.9712
Mobile: 250.793.0367

Department of Anthropology
Durham University
Dawson Building,
South Road,
Durham, DH1 3LE

22 January 2020

Prof Philip Steinberg
c/o Jennifer Gadouleau
Doctoral Training Partnership Administrator
Faculty of Social Sciences and Health
Arthur Holmes Building | Lower Mountjoy | Durham | DH1 3LE

Dear Phil,

Re: Giuseppe Amatulli Placement request

Please accept this letter in full support of Giuseppe's request for placement with the Doig River First Nation. This really is an extraordinary opportunity, since First Nation bands do not routinely accept researchers to join them. This will be a significant contribution to the good renown of Durham Arctic.

I should like to congratulation Giuseppe, therefore, on achieving an agreement with them, and wish him all the best to learn from this rare opportunity.

Yours sincerely,

Prof Simone Abram
Anthropology
Durham University

Appendix B: Memorandum of Understanding signed between DRFN and Durham University

THIS AGREEMENT dated January 20 2020 **is made BETWEEN:**

(1) THE UNIVERSITY OF DURHAM, whose address is at The Palatine Centre, Stockton Road, Durham, DH1 3LE (the "University")

(2) Doig River First Nation, whose registered office is at Doig Reserve, British Columbia, Canada (the "Company")

The aforesaid organisations are hereinafter referred to individually as "Party" and collectively as "the Parties"

WHEREAS

(A) A component of the course for students enrolled in the Durham Arctic Programme funded PhD studentships is to experience a Placement. The aim of the Placement is to provide the Student(s) with the opportunity for training and development in a non-academic environment.

(B) The Parties acknowledge that the terms of this Agreement are to govern the Placement to enable the Student(s) to gain first-hand experience in the relevant sector (according to the subject of his/her PhD) and to carry out the requirements for a postgraduate research degree in accordance with the University's regulations.

(C) The Parties further acknowledge that in the course of the Placement the Parties may be exposed to proprietary and commercially valuable information or materials of the Company and/or the University. All Parties recognise the importance of holding in confidence such information or materials.

DEFINITIONS

1.1 In this Agreement, the following expressions shall have the following meanings:

1.1.1 "Academic Supervisor" means Simone Abram or his/her successor as communicated to the Company;

1.1.2 "Arising Intellectual Property" means any Intellectual Property Rights arising from and developed in the course of the Project by any of the Parties;

1.1.3 "Background Intellectual Property" means Intellectual Property Rights controlled or owned by any Party prior to the date of the commencement of this agreement or IPR generated by any of the Parties independently of the Project and controlled or owned by that Party or any IPR to which the Party has the necessary rights;

1.1.4 "Company Representative" means the Band Manager (Shona Nelson) or his successor as communicated to the University;

1.1.5 "Confidential Information" means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, together with all information derived by the receiving Party from any such information and any other information clearly designated by a party as

being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

1.1.6 "Intellectual Property Right" or "IPR" means any patent, registered design, copyright, database right, design right, trade mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world;

1.1.7 "Project" means the project of work, to be undertaken by the Student(s) during the Placement with the Company: and

1.1.8 "Student(s)" means Giuseppe Amatulli the student(s) undertaking the Placement.

2. THE PARTIES OBLIGATIONS

2.1 The Company shall provide a Placement to the Student(s) in line with the general form of the University's placement programme

2.2 The Placement shall run for the period starting on and including ***27/01/2020*** until and including ***05/06/2020***.

2.3 For the purpose of the Placement, the Student(s) shall not be deemed to be an employee of the Company, but the Company agrees to comply with all relevant employment legislation as it applies between the Company and the Student(s). The Student(s) shall still be covered under the Company's employee and public liability insurances.

2.4 The Company accepts liability of the Student(s) under the Health and Safety at Work Act 1974 and any subsequent regulations and confirms that it has in place a written Health and Safety Policy. Company shall make said Health and Safety Policy available to the University upon request.

2.5 The Placement will be conducted mainly in the Company, under the supervision of the Company Representative. Where the Student(s) are expected to work with machinery, equipment or substances hazardous to the Student(s)' health, the Company shall ensure that adequate safety precautions are put into place and shall include but not be limited to ensuring adequate first aid facilities are available; adequate training and supervision; and the provision to the Student(s) of protective clothing; prior to the Student(s)' undertaking of the activities.

2.6 The Company shall promptly inform the University of any substantive injury or damage to the Student(s) during the Placement.

2.7 The University warrants that the Student(s) shall at all times conduct themselves as is reasonable to expect from an individual working towards a higher degree of the University and that the Student(s) will at all times comply with all applicable laws and all of the Company's policies including but not limited to the Company's Ethics, Anti-bribery, Anti-corruption, Dignity at Work, Acceptable Use and Anti-Slavery Policies.

2.8 The Company will use its reasonable endeavours to provide adequate facilities and to obtain any requisite materials, equipment and personnel to allow the Student(s) to undertake the Project within the Placement. The University does not warrant that the work carried out under or pursuant to this Agreement will lead to any particular result or outcome.

2.9 The Student(s) shall be enrolled as a student with all of the rights and responsibilities associated with the status of a student for the higher degree of the University.

2.10 The Student(s) will be allowed to spend time at the University. The periods of such attendance will be scheduled by mutual agreement with the Company Representative.

2.11 The Student(s) shall keep the University informed of the progress of the Project at meetings as agreed by the Parties. The Student(s) shall supplement the meetings with written reports to the Academic Supervisor. Said meetings shall, where the Academic Supervisor reasonably deems it appropriate, be attended by the Company Representative.

2.12 The University shall ensure the Student(s) complies with all reasonable instructions from the Company during the terms of the Placement.

3. INTELLECTUAL PROPERTY

3.1 All Background Intellectual Property belonging to one Party is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its' right to use the Background Intellectual Property has derived.)

3.2 The University accepts that Arising Intellectual Property shall vest and be owned solely by the Company.

3.3 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

4. CONFIDENTIALITY

4.1 The University undertakes, and shall procure the Student(s) undertakes, to use reasonable endeavours and establish and maintain adequate security measures to keep confidential and not to disclose to any third party other than external examiners or to use themselves other than for the purpose of the Project and as authorised under this Agreement, any confidential or secret information in any form directly or indirectly belonging or relating to the Company, its Affiliates, its or their business or affairs, disclosed by the Company and received by the University pursuant to or in the course of the Project.

4.2 The University and Student(s) in receipt of Confidential Information shall not during a period of five (5) years after the termination of the Agreement, use such Confidential Information for any purpose other than in accordance with the terms of this Agreement.

4.3 The obligations contained in this Clause 4 shall survive the expiry or termination of this Agreement for any reason but shall not apply to any Confidential Information which:

4.3.1 is publicly known at the time of disclosure;

4.3.2 after disclosure becomes publicly known otherwise than through a breach of this Agreement by the Student(s), the University, its officers, employees, agents or contractors;

4.3.3 can be shown by reasonable proof by the University or Student(s) to have reached its hands otherwise than being communicated by the Company including being known to it prior to disclosure, or having been developed by or for it wholly independently of the Company or having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry:

4.3.4 is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the University or Student(s), provided that, where practicable, the Company is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purpose of such compliance; or

4.3.5 is approved for release, in writing, by an authorised representative of the Company.

4.4 The Company acknowledges the University's disclosure obligations under the Freedom of Information Act, where the University falls under the definition of a public authority.

5. THESIS

5.1 The Company acknowledges that the Student(s) may make reference to work carried out on the Project as part of their final PhD thesis.

5.2 The University and the Student(s) acknowledge that no information relating to the Company or Confidential Information shall be included in the thesis without the Company's prior written consent.

6. TERMINATION

6.1 This Agreement will expire upon completion of the Placement. This Agreement may be terminated by the Company:

6.1.1 due to breach by the Student(s) involving gross negligence, wilful misconduct or withdrawal from the University; or
6.1.2 material breach of this Agreement by the University.

6.2 Upon expiry or termination of this agreement, the Parties shall: (a) return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; (b) erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and (c) certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or

based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of clause 4 shall continue to apply to any such documents and materials retained by a recipient Party.

7. LIMITATION OF LIABILITY

7.1 The University accepts no responsibility for any use that may be made of any work carried out under or pursuant to this Agreement, or of the results of the Project, nor for any reliance that may be placed on such work or results, nor for advice or information given in connection with them.

8. GENERAL

8.1 Nothing in this Agreement shall create, imply or evidence any partnership or joint venture between the Parties or the relationship between them of principal and agent or employers and employee.

8.2 This Agreement and its Schedules (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the Parties for the Project. Any variation shall be in writing and signed by authorised signatories for both parties.

8.3 The University shall not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Company.

8.4 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

8.5 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

8.6 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

8.7 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

8.8 This agreement does not create, and shall not be constructed as creating, any right under the Contracts (Right of Third Parties) Act 1999 which is enforceable by any person who is not party to this agreement.

8.9 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice

or communication at its address as set out in this Agreement or as otherwise specified by the relevant party by notice in writing to each other party.

The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt
Pre-paid first class post or other next Working Day delivery service providing proof of postage **OR** proof of delivery.	9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
Pre-paid airmail providing proof of postage **OR** proof of delivery.	9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service.

A notice given under this agreement is not valid if sent by email.

This Agreement has been signed by the duly authorised representatives stated below:

For and on behalf of COMPANY

Signature: _____ Date: January 30, 2020

Name: **Shona Nelson**

Title: **Band Manager - Doig River First Nation**

For and on behalf of the University of Durham

Signature: _____ Date: 28 January 2020

Name: Stephen Wills

Title: Chief Financial Officer

Appendix C: Placement Scheme Application Form

All sections of this form must be completed

Please read the accompanying Guidance Notes *carefully before completing this form.*

SECTION 1 - To be completed by the Award-holder and Main Supervisor:

Name:	**Giuseppe Amatulli**
Student Number:	**000783589**
School/Department:	**Durham University – Department of Anthropology**
Main Supervisor:	**Simone Abram**
Contact Email:	**simone.abram@durham.ac.uk**

Details of the Placement:

Name of Host Organisation:	Doig River First Nation
Proposed Placement Start Date:	27/01/2020
Proposed Placement End Date:	05/06/2020

Summary of Placement Activities and Planned Outcomes:
Provide a summary of the placement to be conducted, including the activities that will be undertaken and the planned outcomes.

During the placement, the student will work under the direct supervision of the band manager of Doig River First Nation. The work the student will carry out is related to specific socio-cultural issues that need to be addressed, taking into account the challenges that the modern world poses as regards the existence of First Nations as indigenous people with a specific culture, traditional lifestyle as well as system of belief and legal framework.
Nowadays, the Doig River First Nation is fully part of the modern world and recognised the authority of the Canadian State. However, this does not mean that the traditional culture, knowledge and lifestyle have disappeared. Contrariwise, thanks to how resources obtained from the oil and gas sector have been used, the culture is thriving; and many cultural projects are flourishing (i.e. cultural camps in the summer, language projects and tools to revitalize the Dane-zaa language, cooperation with the municipality in the context of the visibility project to raise the awareness of locals about the presence of the Dane-zaa people in this area since time immemorial).
Therefore, the outcomes of the research work the student will be conducting with the Doig River First Nation could serve to shed light on how traditional knowledge, culture and system of belief is being transformed and adapted in the context of modern society. Besides, the outcomes of this research could be used to raise awareness about specific cultural practices (such as syncretism as regards the religious sphere) that have allowed specific indigenous practices to survive by being merged with elements of other external cultures while keeping their main features. This could be useful to explain how the indigenous culture has been able to survive and to be kept alive notwithstanding brutal colonization and assimilation practices, development projects and a market-driven economy that has threatened the existence of many First Nation communities in the Canadian context.

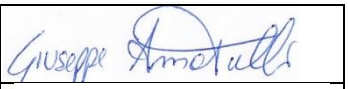
Support and Facilities Provided by Host Organisation for the Placement:
Outline what support, facilities and other resources the host organisation will be providing in support of the placement.

Doig River First Nation, as the host institution, will provide to the student all necessary facilities to have a meaningful experience in the context of his placement. As regards technical facilities, the host organization provides all the technical facilities necessary to carry out the work office (a desk with accessible printer and scanner, a high-speed wi-fi connection, etc.). The student will have his own office in the band hall, so to carry out his work in direct contact with the band manager (who will act as his supervisor during the entire duration of the placement), the land manager, the Chief and the counsellors; as well as other professional figures and members working for the community.

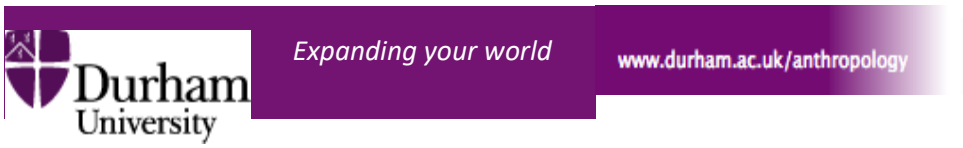
Ethical issues ***What ethical and practical issues will arise from the Placement and how do you propose to address them?***
The host institution (Doig River First Nation) and the student are aware of the challenges that may arise when researching First Nation related issues and, therefore, they have reached specific agreements as regards Intellectual Property (IP), copyrights and ownership over the work that will be produced. As regards Intellectual Property, the Parties (the host institution and the student) agree about the existence of: • Background Intellectual Property, i.e. Intellectual Property Rights controlled and owned by any Party before the commencement of the Placement; • Arising Intellectual Property, i.e. any Intellectual Property Rights which may arise during the Placement. The student is aware that too many times, First Nation communities have not been acknowledged and recognized in the academic world as they should be. To avoid any behaviour that could be harmful to the community, as well as could replicate any form of exploitation as regards traditional knowledge, know-how, etc.; the Parties agree that the outcomes of the research will be disclosed to the band manager and the council (Chief and counsellors) before being published in the doctoral thesis that the student will be writing after completing the placement. In this sense, the student agrees to provide a draft of the thesis before defending it. Besides, a public talk (open to all members of the Doig River First Nation) could be organised in the summer of 2021. In this way, the content of the research work and its outcomes will be disclosed and discussed with all members of the community (as well as to the Council) to prevent any problem with the content of the doctoral dissertation. Finally, the Parties agree that the Intellectual Property, copyrights and ownership over the work that will be produced (especially in the event that the dissertation will be published as a book) will be recognised to the Doig River First Nation and the student in equal share.

Accompanying Documents: *Please ensure the following supporting documents accompany your application:*	
A Letter of Support from your Main Supervisor:	☒
A Letter of Support from the Host Organisation:	☒

"I confirm that I have read the accompanying* Guidance Notes *and understand and accept the conditions of the Durham ARCTIC Placement scheme. I undertake to inform the Durham ARCTIC if the placement is cancelled or the length of the placement is reduced, and I understand that I (the award-holder) will be required to refund any money overpaid to the Durham ARCTIC."

Signed: **(Award-holder)**	**Date: 23/01/2020**	
Signed: **(Main Supervisor)**	**Date:23/1/20**	

Appendix D: Ethics and Data Protection Monitoring Form, Participant Information Sheet and Consent Form



Ethics and Data Protection Monitoring Form

All teaching, learning, research and other projects that involve human participants and/or raise ethical issues by all academic and related Staff and Students in the Department is subject to the standards set out in the appropriate Code of Practice. The Sub-Committee will assess the research against the discipline guidelines [e.g. Association of Social Anthropologists; Economic and Social Research Council; British Sociological Society Association; British Psychological Society.

It is a requirement that prior to the commencement of all projects, this form must be completed and submitted to the Department's Ethics and Data Protection Subcommittee. The Subcommittee will be responsible for issuing certification that the project meets acceptable ethical standards and will, if necessary, require changes to the methodology or reporting strategy.

Please fill out the entire form where appropriate – so that there will be no additional Ethics paperwork. Please note that Travel and Risk Assessment forms are not part of the ethics approval process. Any queries relating to travel insurance and risk assessment should be directed to Judith Manghan, Health and Safety Manager (Judith.Manghan@durham.ac.uk)

Name: Giuseppe Amatulli

Email: giuseppe.amatulli@durham.ac.uk

Title of project: The cumulative effects of the expansion of the oil and gas industry on the Blueberry River First Nations (BRFN) in British Columbia.

Country where research will be carried out: Canada – British Columbia

Proposed start & end date of research: 1/7/2019 – 10/7/2020

Funding (if applicable): Durham ARCTIC PhD Programme – Leverhulme Trust scholarship

Name of co-investigator(s), position (i.e. staff, PGR, PGT), institution:

Delete as appropriate: PGR

Start Date of Supervised Study (if applicable): 1/10/2018

End Date of Supervised Study (if applicable): 30/9/2021

Name of Supervisor: Simone Abram

QUESTIONNAIRE

A. Describe your project and research methods:

The rapid industrial development that has taken place in the BRFN traditional territory has resulted in land fragmentation (with most of the lands that the BRFN used for traditional activities now unavailable or under significant disturbances) and water contamination, with negative impacts on the community's traditional lifestyle (A. Willow, 2017, p. 23). The realization of the NMML pipeline is a further burden on the BRFN, and its potential negative effects should be considered in a cumulative way. The pipeline is 301 km long, and it is formed by two sections, the Kahta section and the Aitken Creek, which will be realised in the core of the BRFN traditional territory. That is, the estimated impact should be based on past, present and future development projects (including but not limited to the oil and gas sector) that might take place in the area (McDonald & Craig, 2014, p. 3). As underlined by Candler & McDonald, the NMML pipeline project has been defined without taking into consideration the BRFN Traditional Land Use (TLU) or Traditional Knowledge (TK) data, which according to them, would have helped to understand potential clashes with current and historical land use. There has been a general lack in considering the cumulative effects of such a project on the BRFN, combined with an inadequate assessment of possible future industrial development with possible project-induced demand (McDonald, Alistair; Candler, 2014, pp. 7–8).

The Canadian Environmental Assessment Agency (CEEA) defines cumulative effects as *"those changes to the environment that are caused by an action in combination with other past, present, and future human actions."* (CEAA, 2016). In this sense, the expansion of the oil and gas industry has played a fundamental role in creating cumulative effects in the BRFN traditional territory. The outcomes of such an expansion translate into ground disruption and water contamination. Indeed, it is common to see compressor stations, gas plants and water storage ponds containing contaminated water in the BRFN traditional territory (Pollon, 2018).

In this sense, there seems to be little written on the cumulative effects of the expansion of the oil and gas industry in the BRFN traditional territory and its role in promoting induced demand of further development in other sectors, which fosters land disruption and water contamination. The BRFN are concerned that the realization of the NMML pipeline and other related projects, such as the proposed Coastal Gas Link Pipeline and the LNG facilities in Kitimat, will lead to increased market demand for oil and gas, and this will provoke further damages to the BRFN traditional territory (McDonald, Alistair; Candler, 2014, pp. 54–55). It is evident that pipeline projects are "can opener" projects, as they pave the way to further development activities (McDonald, Alistair; Candler, 2014, p. 55). Projects are approved on a case by case bases, meaning that each project is taken into account individually and without considering future development demand that it can provoke (Baker & Westman, 2018, p. 150; Gislason & Andersen, 2016, p. 4; Noble, 2010, p. 3). As confirmed by the British Columbia Environmental Assessment Office (EAO), there is no mandate to carry out any cumulative assessment as regards a new project, and the provincial government does not require it (A. L. Booth & Skelton, 2011, pp. 695–696). Such disaggregated approach does not allow to have a full understanding as regards the impact of a project and its cumulative effects on a specific community (Gislason & Andersen, 2016, p. 4).

I am starting my fieldwork in July by attending the 2019 BRFN annual meeting. On April 26th, I received an official invitation to join the meeting, which will take place at Pink Mountain, a BRFN sacred site located on mile 143 of the Alaska Highway, from July 2nd to 5th. Robin Ridington (former professor of Anthropology at the University of British Columbia) has introduced me to the BRFN Chief, and this is of considerable help in order to get acquainted with the BRFN members. Before attending the annual meeting, together with Robin, I am planning to visit the BRFN Reserve. Thus, I will have the possibility to introduce myself to the Chief and to other BRFN members so I can start familiarizing myself with the place and its inhabitants. After a couple of days, we will move to Pink Mountain for the annual meeting. A tepee has been reserved for us, and I plan to camp there for the entire duration of the meeting. During the 4-day meeting, Robin Ridington and his wife Jillian will host some sessions with a photo exhibition and video projection to honour the memory of Randy Yahey (BRFN singer and member, brother of the current BRFN Chief Marvin Yahey), who passed away in February 2019 and with whom Robin was working in collecting and transcribing BRFN traditional stories.

Being there and attending the meeting will be a unique experience, as I will get to know people while establishing connections. As an outsider, I will observe and learn about the new environment while getting to know people and engaging in conversations with those ones who will be attending the meeting (BRFN members and not). I will write

down my findings when I will have some time, as I think there will be events happening throughout the day. In order to remember key information, I will jot them down on a pad during the conversation or once the talk is over, depending on the context and the situation. Indeed, people with whom I may be talking may not feel comfortable speaking with someone that is taking notes throughout the conversation (Sanjek, 1990, pp. 189–193). At this stage, I would avoid interviewing people, as they do not know me and, perhaps, they may not feel comfortable about being interviewed by an outsider whom they do not know and who does not know anything about them. Interviewing is a complex process, which requires a certain degree of acquaintance between the interviewee and the interviewer (Davies, 2008, p. 105).

Currently, I do not know whether and for how long I will be accepted to live within the BRFN. Thus, once the annual meeting is over, I plan to move to Fort St. John, which is about a one-hour drive from Buick, the Reserve in which the BRFN live. Having the possibility to go back and forth between the town and the community will allow me to build trust and friendship with the BRFN while they will get to know me and my research. Meanwhile, living in Fort St. John will allow me to better understand the current situation as regards the industrial development that is taking place in Northeast British Columbia. The town hosts the largest office of the British Columbia Oil and Gas Commission, a Crown corporation created in 1998 by enacting the Oil and Gas Commission Act with the aim to regulate oil and gas activities in British Columbia.[119] During my stay in Fort St. John, I plan to visit the Commission office in order to better understand its mandate and to acquire a better knowledge as regards the expansion of the oil and gas industry in Northeast British Columbia. In this way, I might be able to get in touch with some of the officers employed by the Commission and to hear their opinions as regards the development of the oil and gas industry in Northeast British Columbia and the involvement of First Nations communities in the sector.

Meanwhile, by going back and forth between the town and the BRFN Reserve, I will acquire a better idea about the potentiality and limitations of carrying out participant observation within the BRFN community. In this sense, getting the trust of the community is fundamental in order to obtain the authorization of the Chief to move and carry out my fieldwork within the BRFN community. Thus, in the first phase of my fieldwork, I will prefer to observe, listen and interact with BRFN members when I am visiting them, rather than doing interviews. This will allow me to acquire information and to discover nuances that are not possible to get from an interview, besides fostering common acquaintanceship (Sanjek, 1990, p. 212). Once a certain relationship with community members is established, I will conduct unstructured and semi-structured interviews to make the speaker comfortable to address those topics they may retain value.

Thus, my ethnographic research will take place in three different places: it will start in Pink Mountain, where I will attend the BRFN annual meeting; it will continue in Fort St. John; it will go ahead in the BRFN community. According to Eslava, ethnography is a useful tool to analyse the way in which law, decision-making, and legal regulations are embedded in social processes (Eslava, 2015, p. 29). This is particularly true in the case of the BRFN, as they have been historically reluctant to accept the dominion of the Government of British Columbia over their traditional territory. Thus, conducting participant observation in the BRFN community has a specific meaning, as they have historically opposed foreign companies entering their territory with the only aim to exploit their resources. As Chief Marvey Yahey stated during the 2018 cultural camp: "*We are not against development, but what I am against is people making decisions about my core territory without my permission, or my people's permission.*"[120]

During my fieldwork within the BRFN community, I will be able to take part in different social and cultural activities and events that may take place in the Reserve. Though the community numbers only around 500 members, they organise many cultural events and gatherings. Initial enquiries from the BRFN official website (https://blueberryfn.com/) indicate that there are plenty of cultural events, which I plan to attend when I am there.

Ideally, my fieldwork will last one year, and I am planning to divide it into different phases. After attending the BRFN annual meeting and spending six months in Fort St. John/within the community (July-December 2019), I will spend one month and a half in Victoria (British Columbia), where I will be doing my placement at the Firelight Group, a consulting group that has done extensive work with First Nations communities and with the BRFN as well. In this period, in addition to the placement, I plan to attend a couple of master courses on Ethnographic mapping and Indigenous Cartographies and Ethnographic Research Methods at the University of Victoria. From mid-February 2020 to July 2020, I will be back

[119] https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/crown-corporations/bc-oil-and-gas-commission; https://www.bcogc.ca/about-us (last accessed: 30/4/2019).

[120] https://thenarwhal.ca/blueberry-river-death-by-thousand-cuts/ (last accessed: 30/4/2019).

in the community for the second part of my fieldwork (5 months).

B. <u>Please copy & paste below an information sheet on your project, which could serve as a written and/or verbal summary for participants and/or gatekeepers</u>

Participant Information Sheet

Project title: The cumulative effects of the expansion of the oil and gas industry on the Blueberry River First Nations (BRFN) in British Columbia.

Researcher: Giuseppe Amatulli
Contact details: giuseppe.amatulli@durham.ac.uk
Supervisor name: Simone Abram
Supervisor contact details: simone.abram@durham.ac.uk
Department: Anthropology

As you may know, my presence in your community is part of the fieldwork that I am conducting in the context of my PhD at Durham University (UK). The Chief and the Band manager have granted me the authorization to live with you and to involve you in my research. As BRFN members, your participation is highly valuable for the aim of my research. However, before getting involved, you need to be aware of some details related to my research and the rights that you have while taking part in it. You can read the following paper, or I can explain its content to you orally. Please, do not hesitate to ask me any question you may have or if you would like to receive further information. My fieldwork has received ethical approval from the Ethics Committee of the Department of Anthropology of Durham University. The rights and responsibilities of anyone taking part in Durham University research are set out in our 'Participants Charter': https://www.dur.ac.uk/research.innovation/governance/ethics/considerations/people/charter/

What is the purpose of the study?
The aim of my PhD research is to understand how the cumulative effects of the expansion of the oil and gas industry are affecting the BRFN and their traditional territory. By living within the BRFN community and spending time with BRFN members, I would like to understand how they perceive and understand the expansion of the oil and gas sector. To do so, I will study the construction of the NMML gas pipeline, using it as an entry point to address the concepts of cumulative effects and induced demand of further industrial development that the expansion of the oil and gas industry is fostering.

Why have I been invited to take part?
As a member of the BRFN community, your involvement is important for the purpose of my research. Since the time of the first contact with white people and even after the conclusion of Treaty 8, your community has shown an impressive degree of independence and pride as a First Nation. Thus, I find the BRFN struggle to defend its traditional territory fascinating and worth to be studied.

Do I have to take part?
You do not have to get involved in this research if you do not feel comfortable, as your participation is totally voluntary. If you decide to take part, you can withdraw at any time, without providing further explanations.

What will happen to me if I take part?
If you agree to take part in this research, I will be interested in spending time and talking with you, besides getting involved in activities related to your everyday life. If you agree and feel comfortable, I might need to take notes while talking or recording some of the conversations that we will have.
Are there any potential risks involved?

Risks
There are no risks for you to participate in this research, as I will ensure your anonymity and the information that you will provide will be safely stored in order to avoid that other people can get access to them. I will avoid asking personal/sensitive questions; however, you have the right to refuse to answer or to interrupt the conversation anytime you feel uncomfortable.

Benefits

From a personal perspective, you may not perceive any benefit in dedicating your time to me and by taking part in this research (as there is no monetary compensation as well). However, the outcomes of my research might be beneficial for the BRFN community, as they can shed light on the reasons why the BRFN are fighting the current industrial development taking place in their traditional territory. Indeed, I want to do research that is beneficial for the community and that can help to raise awareness about the BRFN, its history and its struggle.

Will my data be kept confidential?

The information that I will be able to collect will be kept confidential and anonymous. As I will be taking notes and recording while interviewing people, I will keep my notes and recorder in a safe place, making sure that I am the only person to have access to them. Thus, I will get a numbered padlock that I will use to lock my laptop bag in which I will store my recorder, notes, and pc. As regards the latter, as I will be transcribing my notes and I will be elaborating my audio recordings, I will use a programme for file-encrypting to protect my fieldwork data and to encrypt my pc so that I will be the only one having access to it. As regards data storage, in addition to storing them in my encrypted pc, I will save them online, in my personal OneDrive space. In this way, they will always be available to me, in case my pc should be damaged at some point during my fieldwork or if it will be stolen.

Permission will be sought if I will need to mention any identifiable data before publishing the thesis.

What will happen to the results of the project?

As I said before, this fieldwork is an important part of my PhD research. Once back from the fieldwork, I will start writing my PhD thesis, which I intend to submit by the end of 2021. Thus, the information that I will be able to collect during my fieldwork will be an important part of my thesis. After defending the thesis, I intend to continue doing research on/with BRFN; thus, it is possible that I will use the data collected during the fieldwork for further research, publications, reports, and presentations.

Durham University is committed to sharing the results of its world-class research for public benefit. As part of this commitment, the University has established an online repository for all Durham University Higher Degree theses, which provides access to the full text of freely available theses. The study in which you are invited to participate will be written up as a thesis. On successful submission of the thesis, it will be deposited both in print and online in the University archives to facilitate its use in future research. The thesis will be published open access.

Whom do I contact if I have any questions or concerns about this study?

If you have any further questions or concerns about this study, feel free to get in touch with me, Giuseppe Amatulli (giuseppe.amatulli@durham.ac.uk) or to my supervisor, Simone Abram (simone.abram@durham.ac.uk).

If you are unhappy with the procedure or you wish to make a formal complaint, please submit a complaint via the University's Complaints Process: https://www.dur.ac.uk/ges/3rdpartycomplaints/

Thank you for reading this information and for considering taking part in this study.

C. Where appropriate, please copy and paste below the consent form you intend to use, tailored to your project, featuring your name, contact information and project title. This could be used either as the basis of a verbal summary or as a document provided to key participants and/or key gatekeepers

As explained above, in order to be admitted carrying out fieldwork within the BRFN community, I need to comply with the community Protocol and to get formal acceptance by the Band manager and the Chief. Thus, the reasons for my presence within the community will be well known to everyone. I do not think I will give out a written consent form while conducting interviews within the BRFN community. There are several reasons why I think this is not suitable for carrying out interviews with the people I will be living with. Indeed, as I will be living within the community, I want to establish a genuine relationship with community members. Building trust and friendship take time, and it will be completely awkward to ask those people to sign a form in order to give their consent. Indeed, people may perceive it in

a suspicious way, they may think it is a governmental document or something similar, and they may change their behaviour towards me. Thus, consent will be obtained verbally and, as I plan to record my interviews, this will be mentioned (thus recorded) at the beginning of the conversation. Before starting the interview, I will make sure people are aware of the content of the Participant Information Sheet (by handing out a copy or by reading it), so they are aware of the purposes of the research, their rights and their role as participants. However, I have realized a Consent Form (see below) to be used in those cases in which I may be taking interviews with people outside the community (i.e. governmental officers, companies' employees, managers, etc.).

Consent Form

Project title: The cumulative effects of the expansion of the oil and gas industry on the Blueberry River First Nations (BRFN) in British Columbia.

Researcher: Giuseppe Amatulli
Contact details: giuseppe.amatulli@durham.ac.uk
Supervisor name: Simone Abram
Supervisor contact details: simone.abram@durham.ac.uk
Department: Anthropology

This consent form serves to confirm that you understand the aims of the project and your rights as a participant.

Please tick each box to indicate your agreement:

I confirm that I have read and understood the Participant Information Sheet (date: …/…/……)	
I have had enough time to consider the information provided and ask questions about the project, and I have received satisfactory answers	
I am aware of how personal information will be processed and stored and what will happen to them at the end of the project	
I give my consent to be audio recorded	
I understand that my participation is voluntary and that I am free to withdraw at any time without any specific reason	
I agree to take part in this research	

Participant's Signature:…… Date:…/…/……

(NAME IN BLOCK LETTERS):……

Researcher's Signature:…… Date:…/…/……

(NAME IN BLOCK LETTERS):……

QUESTIONNAIRE

		YES	NO	
1.	**Does your project involve living human participants?**	X		IF NO, go to Q12a. If YES, go to Q3a
2.	**Does your project involve only the analysis of large, secondary and anonymised datasets?**		X	IF YES, go to DECLARATION at the end

3a	**Will you provide informants with a written information sheet explaining your project and the uses of any data that you might generate?**	X		If NO, please provide further details and go to Q3b. If YES, please go to Q4
3b	**Please explain how you will deal with the issue of informed consent, as appropriate to your study and based on the code of practice of the relevant professional association**			Please explain in the 'further details' box below
4.	**Does your work involve intentionally covert surveillance?***		X	If YES, explain in further detail below
5a	**Will your information *automatically* be anonymised in your work?**	X		If YES, go to Q6. If NO, please explain in further detail and go to 5b
5b	**Will you explicitly give *all* your informants the right to remain anonymous?**	X		If NO, explain in further detail below
6.	**Will recording devices be used openly and only with the permission of informants?**	X		If NO, explain in further detail below
7.	**Will your informants be provided with a summary of your project findings?**	X		If NO, explain in further detail below
8.	**Will the outcomes of your project be available to informants and the general public without authorities restrictions placed by sponsoring authorities?**	X		If NO, explain in further detail below
9.	**Have you considered the implications of your project intervention on your informants?**	X		Please explain in further detail below
10.	**Are there any other ethical issues arising from your project?**		X	If YES, explain in further detail below
11.	**Does your research involve the study of an organisation that is proscribed under the terms of the Terrorism Act, or require accessing materials produced by or in support of such an organisation (see https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2)**		X	If YES, please follow the relevant directions in the department's Advice on Ethics and Ethics Applications and explain the steps taken below.

Further details – Please specify details with reference to the above Question Numbers.

9 – I have considered the implications of my fieldwork on my informants, and I believe there are no risks or negative impacts that the BRFN community may suffer due to my research/fieldwork. Since I will ensure anonymity to those people I will be working with more closely, I believe the research is feasible and do not create problems. As far as I know, the BRFN are in touch with the Government of British Columbia as regards the development of the oil and gas industry in their territory. Indeed, they aim to build relationships in order to meet their needs and protect their lifestyle and culture while enjoying the benefits that the exploitation of subsoil resources can produce. Many BRFN members are involved in the oil and gas business; thus, I do not see any threat that my research can produce between the BRFN, the BC Government and the oil and gas industry.

***** Covert surveillance means observing research subjects from a position of concealment unbeknownst to the observed. This can be physical, e.g. behind a barrier or screen, or it can mean that in the process of participant observation, the fact that observation is being conducted is not disclosed at appropriate opportunities, nor is informed consent in principle sought after.

11. **Please add any other additional information that is relevant to your project**
Data protection and use of data during and after my fieldwork

The information that I will collect will be kept confidential and anonymous. As I will be taking notes and recording while interviewing people, I will keep my notes and recorder in a safe place, making sure that I am the only person to have access to them. Thus, I will get a numbered padlock that I will use to lock my laptop bag in which I will store my recorder, notes, and pc. As regards the latter, as I will be transcribing my notes and I will be elaborating my audio recordings, I will use a programme for file-encrypting to protect my fieldwork data and to encrypt my pc so that I will be the only one having access to it. As regards data storage, in addition to storing them in my encrypted pc, I will save them online, in my personal OneDrive space. In this way, they will always be available to me, in case my pc should be damaged at some point during my fieldwork or if it will be stolen.

Once back from the fieldwork, I will start writing my PhD thesis, which I intend to submit by the end of 2021. Thus, the information that I will be able to collect during my fieldwork will be an important part of my thesis. After defending the thesis, I intend to continue doing research on/with BRFN; thus, it is possible that I will use the data collected during the fieldwork for further research, publications, reports, and presentations.

12. **Please answer the following questions only if you selected 'NO' in question 1**

		YES	NO	
12a	**Does your project involve non-human primates?**			
12b	**Have you sent an application for Life Sciences approval?**			If NO, please do so
12c	**Has your application been approved by Life Sciences?**			If NO, the committee must wait until Life Sciences approval has been given
12d	**Have you attached or enclosed your Life Sciences approval?**			If NO, please attach or enclose

13. **Will your research use any materials from human participants (e.g. skin, saliva, blood, waste products (urine etc.), bone, tears, etc.)? If necessary, consult the full list of relevant materials at https://www.hta.gov.uk/sites/default/files/Supplementary_list_of_materials_200811252407.pdf. If you are not certain, contact the Human Tissue Advisor, Dr James Dachtler. Full information on the application process is found at https://www.dur.ac.uk/research.innovation/governance/ethics/human.tissue/masterfile/.If approval is required, indicate in the box below whether approval has been given, or the application is pending, or you have not yet applied.**

Please tick as appropriate:	
Approval given	☐
Application pending	☐
Not yet applied	☐

In my research, I will not use any material from human participants such as skin, saliva, blood, etc.

Declaration

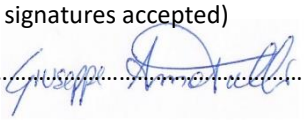
I have read:

1. I have read the Code of practice of the relevant professional association (e.g. ASA) and the University Policy on Ethical Approval and believe that my project complies fully with the precepts of those documents.

2. Please state the professional organisation whose code of practice you are following: ASA

3. I confirm that my project will adhere to The Durham University Principles for Data Protection. http://www.dur.ac.uk/data.protection/dp_principles/

I will not deviate from the methodology or reporting strategy without further permission from the Department's Ethics Subcommittee (electronic signatures accepted)

Applicant's Signature ……  …… Date: 6/5/2019

Please ensure that you send a completed electronic version of this form to Jennifer.legg@durham.ac.uk (Modern Apprentice, Research & Finance) by the appropriate deadline.

Bibliography

Abram, S. (2014a). 'Bias Binding': Re- Calling Creativity in Qualitative Research. In *The Craft of Knowledge*.

Abram, S. (2014b). The time it takes: Temporalities of planning. *Journal of the Royal Anthropological Institute*, *20*(S1), 129–147. https://doi.org/10.1111/1467-9655.12097

Abram, S., & Weszkalnys, G. (2013). *Elusive Promises : Planning in the Contemporary World*. Berghahn Books, Incorporated. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=5407907

Allen-Collinson, J., McNarry, G., & Evans, A. B. (2021). Sensoriality, Social Interaction, and "Doing sensing" in Physical–Cultural Ethnographies. *Journal of Contemporary Ethnography*, *50*(5), 599–621. https://doi.org/10.1177/08912416211014266

Amatulli, G. (2015). The Legal Position of the Sami in the Exploitation of Mineral Resources in Finland, Norway, and Sweden. *Institute for Human Rights - Abo Akademi University*, *35*, 93.

Amnesty International. (2016). *Out of Sight , Out of Mind Executive Summary Gender , Indigenous Rights , and Energy Development*.

Appel, H., Anand, N., & Gupta, A. (2014). Temporality, Politics, and the Promise of Infrastructure. *Temporality, Politics, and the Promise of Infrastructure*, *9*(2), 1–38.

Artaraz, K., Calestani, M., & Trueba, M. L. (2021). Introduction: Vivir bien/Buen vivir and Post-Neoliberal Development Paths in Latin America: Scope, Strategies, and the Realities of Implementation. *Latin American Perspectives*, *48*(3), 4–16. https://doi.org/10.1177/0094582X211009461

Asch, M. (2002). From Terra Nullius to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution. *Canadian Journal of Law and Society*, *17*(2), 23–39. https://doi.org/10.1017/S0829320100007237

Atkinson, P. (2009). Ethics and ethnography. *Twenty-First Century Society*, *4*(1), 17–30. https://doi.org/10.1080/17450140802648439

Baker, J. M., & Westman, C. N. (2018). Extracting knowledge: Social science, environmental impact assessment, and Indigenous consultation in the oil sands of Alberta, Canada. *Extractive Industries and Society*, *5*(1), 144–153. https://doi.org/10.1016/j.exis.2017.12.008

Bankes, N. (2020). The duty to consult in canada post-haida nation. *Arctic Review on Law and Politics*, *11*, 256–279. https://doi.org/10.23865/arctic.v11.2568

BC bullettin. (2021). *Industry bulletin*.

BC Government. (2015). *Cumulative Effects Framework*. https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework

BC Government. (2019a). *FSJ Land & Resource Managament Plan*. https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/northeast/fortstjohn-lrmp

BC Government. (2019b). *Muskwa-Kechika Management Area*. https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/northeast/muskwa-kechika

BC Government. (2020a). *DRIPA 2019/2020 Annual Report*. 90.

BC Government. (2020b). *Fort St. John Land and Resource Management Plan Update*. https://landuseplanning.gov.bc.ca/p/5deeb36ce7c4150024a5ac33/background-info

2018 Regional Strategic Environmental Assessment Renewal Agreement, (2018).

BC OGC. (2020). *Natural Resource Aboriginal Liaison Program*.

BCUC. (1983). *Site C Report* (p. 315).

Beaudry, N. (1992). *The Language of Dreams : Songs of the Dene Indians (Canada)*. *34*(2), 72–90.

Bechtel, W., & Richardson, R. C. (2010). *Discovering Complexity*. Mit Press. http://www.jstor.org/stable/j.ctt5hhhpx

Bellringer, C. (2015). *Managing the cumulative effects of natural resource development in British Columbia*. *May*, 1–37. http://www.bcauditor.com/sites/default/files/publications/reports/OAGBC Cumulative Effects FINAL.pdf

Berger, T R. (2002). *One Man's Justice: A Life in the Law*. Douglas & McIntyre. https://books.google.co.uk/books?id=90lcvgEACAAJ

Berger, Thomas R. (1977). *Northern Frontier Northern Homenland - The Report of the Mackenzie Valley Pipeline Inquiry, Volume I*. 214.

Berleant, A., Sarapik, V., Tuur, K., & Laanemets, M. (2002). Notes for a Cultural Aesthetic. *Place and Location*, *2*(1991), 19–25.

Bird-David, N. (1992). Beyond "The Original Affluent Society." *Current Anthropology*, *33*(1), 25–34.

Blaser -, M., Feit, H. A., & McRae, G. (2004). *In the way of development : indigenous peoples, life projects and globalization*. Zed.

Bloch, E. (1986). *The principle of hope*. MIT Press.

Booth, A. (2017). *Northern Environmental Justice: A Case Study of Place, Indigenous Peoples, and Industrial Development in Northeastern British Columbia, Canada*.

Booth, A. L., & Skelton, N. W. (2011). *"You spoil everything!" Indigenous peoples and the consequences of industrial development in British Columbia*. *13*(4), 685–702. https://doi.org/10.1007/s10668-011-9284-x

Borrows, J. (2005). Indigenous Legal Traditions in Canada. *Washington University Journal of Law & Policy*, *19*(January), 167–223. http://voyager.library.uvic.ca/vwebv/holdingsInfo?bibId=1557137

Bowles, P. (2016). "Globalizing" Northern British Columbia - What's in a Word? In *Resource Communities in a Globalizing Region: Development, Agency, and Contestation in Northern British Columbia*.

Braverman, I. (2014). *The Expanding Spaces of Law : A Timely Legal Geography*. Stanford Law Books. http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=762049&site=ehost-live

Brody, H. (1987). *Living Arctic: hunters of the Canadian North*. Douglas & McIntyre,.

Brody, H. (1988). *Maps and Dreams: Indians and the British Columbia Frontier*. Faber and Faber. http://books.google.com/books?id=AcpEPgAACAAJ&pgis=1

Bryant, R., & Knight, D. M. (2015). *The Anthropology of the future*. *January*, 132–157.

Campbell, A. (1995). *Getting to Know Waiwai : An Amazonian Ethnography*. Taylor & Francis Group. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=169783

Campbell, T. (2019). *A Beginner's Guide to Understanding Indigenous Rights*.

CEAA. (2016). *Cumulative Effects Assessment Practitioners' Guide*.

https://www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1&toc=show&offset=6

CEAA. (2018). *Technical Guidance for Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012* (Issue March). https://www.ceaa-acee.gc.ca/Content/B/8/2/B82352FF-95F5-45F4-B7E2-B4ED27D809CB/Cumulative_Environmental_Effects-Technical_Guidance-Dec2014-eng.pdf

Cerwonka, A., & Malkki, L. H. (2007). *Improvising Theory : Process and Temporality in Ethnographic Fieldwork*. University of Chicago Press. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=432171

Chan, E. (2019). New BC legislation now in force to implement Declaration on the Rights of Indigenous Peoples Act. *Norton Rose Fulbright, Legal Update*, 2.

Chassagne, N. (2021). *Buen Vivir as an Alternative to Sustainable Development: Lessons from Ecuador*.

Chen, S. (2020). Debating Extractivism: Stakeholder Communications in British Columbia's Liquefied Natural Gas Controversy. *SAGE Open*, *10*(4). https://doi.org/10.1177/2158244020983007

Clandinin;, D. J., & Connelly, F. M. (2001). Narrative inquiry : Experience and story in qualitative research by D . J . Clandinin and F . M . Connelly ; Personalizing evaluation by S . Kushner. *Visual Arts Research*, *27*(1), 107–111.

Coates, K., & Young, J. (2016). Development, Province Building, and Globalization in Northern British Columbia. In *Resource Communities in a Globalizing Region: Development, Agency, and Contestation in Northern British Columbia*.

Cunsolo, A., & Ellis, N. R. (2018). Ecological grief as a mental health response to climate change-related loss. *Nature Climate Change*, *8*(4), 275–281. https://doi.org/10.1038/s41558-018-0092-2

Davies, C. A. (2008). *Reflexive ethnography : a guide to researching selves and others* (Second edi). Abingdon, Oxon .

Delamont, S. (2016). *Fieldwork in Educational Settings: Methods, pitfalls and perspectives*. Taylor & Francis. https://books.google.co.uk/books?id=IWKpCwAAQBAJ

Department of Justice. (2015). Canada's system of Justice. In *Department of Justice*.

Department of Justice, C. (2020). *Bill C-15: UNDRIP Act*. https://doi.org/10.1007/978-3-030-30018-0_30

Dingwall, R. (2008). The ethical case against ethical regulation in humanities and social science research. *Twenty-First Century Society*, *3*(1), 1–12. https://doi.org/10.1080/17450140701749189

Doig River FN. (2019). *2019-2021 Council Strategic Plan*.

Doyle, C. M. (2014). Indigenous peoples, title to territory, rights and resources: The transformative role of free prior and informed consent. In *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior and Informed Consent*. https://doi.org/10.4324/9781315780665

Doyle, C., Whitmore, A., & Tugendhat, H. (2019). *Free Prior Informed Consent Protocols as Instruments of Autonomy*.

DRFN newsletter. (2020). *DRFN newsletter - November 2020* (Issue November).

Duinker, P. N., & Greig, L. A. (2006). The impotence of cumulative effects assessment in Canada: Ailments and ideas for redeployment. *Environmental Management*, *37*(2), 153–161. https://doi.org/10.1007/s00267-004-0240-5

Eggerman, S. et al. (2020). *Bill C-15: Canada announces new legislation to implement UNDRIP*.

Eslava, L. (2015). *Local Space, Global Life: The Everyday Operation of International Law and Development*. Cambridge University Press. https://doi.org/DOI: 10.1017/CBO9781316135792

FAO. (2016). *Free, Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities - Manual for project practicioners*. 1–52.

Firelight Group. (2018). *Doig River First Nation Knowledge and Use Study for TransCanada Pipelines Ltd.'s - 2017 NGTL System Expansion Project* (p. 136).

Flyvbjerg, B. (2016). *Introduction: The Iron Law of Megaproject Management*. 1–18.

Fortis, P. (2019). The aesthetics of 'time reckoning': a Guna chromatic history★. *Journal of the Royal Anthropological Institute*, *25*(3), 441–466. https://doi.org/10.1111/1467-9655.13077

Gaslink, C. (2019). *SEEMP Status Report No. 2 July to November 2019*. *2*. https://www.projects.eao.gov.bc.ca/api/document/5d4362d94cb2c7001b137bbe/fetch/CGL4703-CGP-SE-RPT-0001 SEEMP STATUS REPORT 1.pdf

Geertz, C. (1973). *The interpretation of cultures : selected essays*.

Gell, A. (2006). *The art of anthropology: essays and diagrams* (E. Hirsch (ed.)). Oxford : Berg.

Gillingham, M., & Johnson, C. (2016). Cumulative Impacts and Environmental Values. In M. P. et al. Gillingham (Ed.), *The Integration Imperative: Cumulative Environmental, Community and Health Effects of Multiple Natural Resource Developments* (pp. 49–82). Springer International Publishing AG.

Gillingham, M. P., Halseth, G., Johnson, C. J., & Parkes, M. W. (2016). *The integration imperative : cumulative environmental, community and health effects of multiple natural resource developments*. Cham, Switzerland : Springer.

Gislason, M. K., & Andersen, H. K. (2016). The Interacting Axes of Environmental, Health, and Social Justice Cumulative Impacts: A Case Study of the Blueberry River First Nations. *Healthcare (Basel)*, *4*(4). https://doi.org/10.3390/healthcare4040078

Government of BC. (2018). *The Evolution of British Columbia's Industrial Electricity Policy*. 11. https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/iepr/ministry_discussion_paper_iepr.pdf

Government of British Columbia FLNRO. (2016). *Cumulative Effects Framework Interim Policy*. *October*, 30. https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework

Government of Northwest Territories. (2017). *NWT - Cumulative Impact Monitoring Program*.

Gowdy, J. M. (1998). *Limited wants, unlimited means : a reader on hunter-gatherer economics and the environment*. Island Press. http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=972638

Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, *18*(24), 1–55. https://doi.org/10.1080/07329113.1986.10756387

Guardiola, J., & García-Quero, F. (2014). Buen Vivir (living well) in Ecuador: Community and environmental satisfaction without household material prosperity? *Ecological Economics*, *107*, 177–184. https://doi.org/10.1016/j.ecolecon.2014.07.032

Gudynas, E. (2013). *Transitions to post-extractivism : directions , options , areas of action*. 165–188.

Guyer, J. I. (2007). Prophecy and the near future: Thoughts on macroeconomic, evangelical, and punctuated time. *Representations*, *34*(3), 409–421. https://doi.org/10.1525/ae.2007.34.3.409.American

Halseth, G. (2016). Cumulative Effects and Impacts: Introducing a Community Perspective. In M. P. Gillingham (Ed.), *The Integration Imperative: Cumulative Environmental, Community and Health Effects of Multiple Natural Resource Developments* (pp. 83–115). Springer International Publishing AG.

Hanson, E. (2009). *Aboriginal Title*. https://indigenousfoundations.arts.ubc.ca/aboriginal_title/

Harding, S. G. (1987). *Feminism and Methodology: Social Science Issues*. Indiana University Press. https://books.google.co.uk/books?id=w2gzw6zz4fIC

Harmon, A. (2010a). *Rich Indians : Native People and the Problem of Wealth in American History*. University of North Carolina Press. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=605916

Harmon, A. (2010b). *Rich Indians : Native People and the Problem of Wealth in American History*. University of North Carolina Press.

Harrison, S. (2014). *Subsurface Rights and Conservation Covenants in B.C.*

Harvey, P., & Knox, H. (2012). The Enchantments of Infrastructure. *Mobilities*, *7*(4), 521–536. https://doi.org/10.1080/17450101.2012.718935

Haynes, K. (2012). *Reflexivity in Qualitative Research*. https://doi.org/10.1177/0890334419830990

Hegmann, G., Cocklin, C., Creasey, S., Dupuis, S., Kennedy, A., Kingsley, L., Ross, W., Spaling, H., & Stalker, D. (1999). Cumulative Effects Assessment Practitioners Guide. In *Prepared by AXYS Environmental Consulting Ltd. and the CEA Working Group for the Canadian Environmental Assessment Agency* (Issue February).

Hertogh, M. (ed. . (2009). *Living law: reconsidering Eugen Ehrlich*. Hart Pub.

Hughes, D. (2015). *LNG Reality Check Series implications and economic potential* (Issue May).

IAA. (2020). *Overview of the Impact Assessment Act Level 1 Training*. 1–55.

Ingold, T. (1994). From Trust to Domination: An alternative history of human-animal relations. *Animals and Human Society: Changing Perspectives*, 1–22.

Iversen, R. R. (2009). “Getting out” in ethnography: A seldom-told story. *Qualitative Social Work*,

8(1), 9–26. https://doi.org/10.1177/1473325008100423

Jacobs, M., & Mazzucato, M. (2016). *Rethinking Capitalism : Economics and Policy for Sustainable and Inclusive Growth*. John Wiley & Sons, Incorporated. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=4605617

Janicki, E. (2106). Petroleum Exploration History. *Aapg*, 41–57. http://www.aapg.org/about/petroleum-geology/petroleum-through-time/petroleum-exploration-history#3430311-about

Jeffrey, B., & Troman, G. (2004). Time for ethnography. *British Educational Research Journal*, *30*(4), 535–548. https://doi.org/10.1080/0141192042000237220

Jenkins, K., Atkins, E., & Dietzel, A. (2020). Just Transition : Pathways to Socially Inclusive Decarbonisation. *COP26 Universities Network Briefing*, *October*, 1–6.

Jeremiah. (2020). *2020-2021 Fur Prices – Trapping Today's Fur Market Forecast*. https://trappingtoday.com/2020-2021-fur-prices-trapping-todays-fur-market-forecast/

Joffe, P. (2018). *" Veto " and " Consent " – Significant Differences*.

Johnson, C., Gillingham, M., & Halseth, G. (2016). A Revolution in Strategy, Not Evolution of Practice: Towards an Integrative Regional Cumulative Impacts Framework. In M. P. Gillingham (Ed.), *The Integration Imperative: Cumulative Environmental, Community and Health Effects of Multiple Natural Resource Developments* (pp. 217–242). Springer International Publishing AG.

Johnson, C. J. (2016). Defining and Identifying Cumulative Environmental, Health, and Community Impacts. In M. P. et al. Gillingham (Ed.), *The Integration Imperative: Cumulative Environmental, Community and Health Effects of Multiple Natural Resource Developments* (pp. 21–45). Springer International Publishing AG.

Johnson, N. (1984). Sex, Color, and Rites of Passage In Ethnographic Research. *Human Organization*, *43*(2), 108–120. https://doi.org/10.17730/humo.43.2.w4jv003kt040w130

Joseph, B. (2019). *Indigenous Rights, Title, and The Duty to Consult*. www.ictinc.ca

Jung, C. (2019). The First Nations Land Management Act: Twenty Years of Reconciliation. *American Review of Canadian Studies*, *49*(2), 247–261. https://doi.org/10.1080/02722011.2019.1617936

Kryzanowski, J., & Lara Almuedo, P. (2010). Cumulative Impacts of Natural Resource Development

on Ecosystems and Wildlife. *Forrex Forum for Research and Extension in Natural Resources*.

Larkin, B. (2013). The politics and poetics of infrastructure. *Annual Review of Anthropology*, *42*, 327–343. https://doi.org/10.1146/annurev-anthro-092412-155522

Latour, B. (2018). *Down to earth: politics in the new climatic regime*.

Lee, P., & Hanneman, M. (2012). *Atlas of land cover, industrial land uses and industrial-caused land change in the Peace Region of British Columbia*. [British Columbia Ministry of Advanced Education].

Leech, S., Bates, P., & Blueberry River First Nations. (2016). *BRFN Indigenous Knowledge Study of Chinchaga Muskeg Caribou and Pink Mountain Caribou Final Report*. 73. www.thefirelightgroup.com

Macdonald, E. (2016). *Atlas of Cumulative Landscape Disturbance in the Traditional Territory of BlueBerry River First Nations*.

Madill, D. (1986). *Madill, Dennis - Treaty Research Report Treaty Eight 1899*.

Martineau, F. (2013). *SITE C Clean Energy Project Volume 5 Appendix A03*. *January*.

Mason, A. (2004). *The Social Life of a Promise-Disappointment Cycle*.

Matthews, S., & Hrychuk, B. (2012). *Appendix I - BRFN TLU Study*.

McCallum, C. (2020). *Gender and Sociality in Amazonia: How Real People Are Made*. Taylor & Francis. https://books.google.ca/books?id=90MHEAAAQBAJ

McDonald, Alistair; Candler, C. (2014). *The Proposed North Montney Mainline Pipeline Project: Initial Consideration of Impacts on Blueberry River First Nations' Use of Lands, Resources and Treaty 8 Rights*.

Mertins-Kirkwood, H., & Deshpande, Z. (2019). *Who is included in a Just Transition? Considering social equity in Canada's shift to a zero-carbon economy* (Issue August).

Milloy, J. (2008). Indian Act Colonialism: A Century Of Dishonour, 1869-1969. *National Centre For First Nations Governance*, 21. http://deslibris.ca.proxy.lib.sfu.ca/ID/224717

Morgan, D. L., & Nica, A. (2020). Iterative Thematic Inquiry: A New Method for Analyzing Qualitative Data. *International Journal of Qualitative Methods*, *19*, 1–11. https://doi.org/10.1177/1609406920955118

NEB. (2018). *NEB - Frequently Asked Questions - An assessment of the unconventional petroleum resources in the Montney Formation, West-Central Alberta and East-Central British Columbia*. https://www.neb-one.gc.ca/nrg/sttstc/ntrlgs/rprt/ltmtptntlmntnyfrmtn2013/ltmtptntlmntnyfrmtn2013fq-eng.html

NEB - National Energy Board. (2019). *Jurisdiction over the Coastal GasLink Pipeline Project MH-053-2018* (Vol. 12, Issue July).

Noble, B. (2010). *Occasional Paper Series No. 8 - December 2010 - Cumulative Environmental Effects and the Tyranny of Small Decisions: Towards Meaningful Cumulative Effects Assessment and Management, University of Northern British Columbia, Prince George, BC, Canada*. *8*.

Olagunju, A. O., & Gunn, J. A. E. (2015). Selection of valued ecosystem components in cumulative effects assessment: lessons from Canadian road construction projects. *Impact Assessment and Project Appraisal*, *33*(3), 207–219. https://doi.org/10.1080/14615517.2015.1039382

Olson, R., & Steager, T. (2014). *Blueberry River First Nations - Knowledge and Use Study Report. The proposed North Montney Pipeline Project*.

Overing, J., & Passes, A. (2002). The Anthropology of Love and Anger. In *The Anthropology of Love and Anger*. https://doi.org/10.4324/9780203184653

Parlee, B. L. (2015). Avoiding the Resource Curse: Indigenous Communities and Canada's Oil Sands. *World Development*, *74*, 425–436. https://doi.org/10.1016/j.worlddev.2015.03.004

Pink, S. (2015). *Doing sensory ethnography*. http://www.vlebooks.com/vleweb/product/openreader?id=none&isbn=9781473917040

Plank, S. (2019). *BC Information bulletin 3rd October 2019*.

Pollon, C. (2018). *Blueberry River and the death by a thousand cuts*. https://thenarwhal.ca/blueberry-river-death-by-thousand-cuts/

Popper, M. (2016). Human enhancement and the concept of Liminality. *Human Affairs*, *26*(2), 128–139. https://doi.org/10.1515/humaff-2016-0014

PRRD; Government of British Columbia. (2014). *Peace River Regional District Plan*. 1–34. http://prrd.bc.ca/wp-content/uploads/Background-Report-Final-November-2014.pdf

Rabinow, P. (2007). *Reflections on Fieldwork in Morocco: Thirtieth Anniversary Edition, with a New*

Preface by the Author. University of California Press. https://www.jstor.org/stable/10.1525/j.ctv1xxz0j

RCAP. (1996). *Looking forward, looking back. 1*.

Richards, A. I. (2015). *The development of field work methods in social anthropology* (pp. 272–316).

Ridington, R. (1988). *Trail to Heaven: Knowledge and Narrative in a Northern Native Community*. Douglas & McIntyre. https://books.google.co.uk/books?id=vABHPgAACAAJ

Ridington, Robin. (1990). Little bit know something: Stories in a language of anthropology. In *Little Bit Know Something: Stories In A Language Of Anthropology*. Iowa City : Univ. of Iowa P. http://cyber.usask.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=fih&AN=fih-D95451A6-D0099BC6&site=ehost-live

Ridington, Robin, & Ridington, J. (2013). *Where happiness dwells : a history of the Dane-zaa First Nations*.

Sahlins, M. (1972). *Stone age economics*. Aldine-Atherton.

Sanjek, R. (1990). *Fieldnotes : the makings of anthropology*.

Schwartz, B. P., & Rettie, D. L. (2006). The Long and Winding Road : Case Comment on Mikisew Cree First Nation v . Canada (Minister of Canadian Heritage). *Supreme Court Law Review*, *34*(70).

Seitz, N. E., Westbrook, C. J., & Noble, B. F. (2011). Bringing science into river systems cumulative effects assessment practice. *Environmental Impact Assessment Review*, *31*(3), 172–179. https://doi.org/10.1016/j.eiar.2010.08.001

Shakespeare, W. (1994). *The merchant of Venice*. Harlow, Essex, England : Longman, [1994] ©1994. https://search.library.wisc.edu/catalog/999732871002121

Simpson, B. (2015). *The SAGE Handbook of Fieldwork ' You Don ' t Do Fieldwork , Fieldwork Does You ': Between Subjectivation and Objectivation in Anthropological Fieldwork*. 1–22.

Slattery, B. (2005). *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference Aboriginal Rights and the Honour of the Crown Aboriginal Rights and the Honour of the Crown*. *29*, 20. https://digitalcommons.osgoode.yorku.ca/sclr/vol29/iss1/20

Smart, C., Hockey, J., & James, A. (2014). The Craft of Knowledge. In *The Craft of Knowledge*. https://doi.org/10.1057/9781137287342

Spice, A. (2018). Fighting invasive infrastructures: Indigenous relations against pipelines. *Environment and Society: Advances in Research*, *9*(1), 40–56. https://doi.org/10.3167/ares.2018.090104

Stephenson, E., Reid, J., & Wynn, G. (2012). *Potential Regional Impacts of the*. 45–72.

Stoller, P. (1989). *The Taste of Ethnographic Things*. University of Pennsylvania Press. http://www.jstor.org/stable/j.ctt3fhjx9

TC Energy. (2021). *Reconciliation Action Plan*. 15. http://www.amazon.co.uk/Our-Ancestors-Italo-Calvino/dp/009943086X

Thomassen, B. (2009). The uses and meanings of liminality. *International Political Anthropology*, *2*(1), 5–27.

Transportation Agency. (2012). *Environmental Assessment Terms and Acronyms*.

TRC Canada. (2014). Honouring the Truth, Reconciling for the Future. In *Drugs*.

Tsing, A. L. (2015). *The mushroom at the end of the world: on the possibility of life in capitalist ruins*.

Tuhiwai Smith, L. (2012). *Decolonizing Methodologies : Research and Indigenous Peoples*. Zed Books. http://ebookcentral.proquest.com/lib/durham/detail.action?docID=1426837

Tully, J. (2010). The negotiation of reconciliation. In *Public Philosophy in a New Key*. https://doi.org/10.1017/cbo9780511790737.009

Turner, V. W. (Victor W. (1967). *The forest of symbols : aspects of Ndembu ritual*. Ithaca : Cornell Univ. P.

UN A/HRC/39/62. (2018). *Free, prior and informed consent: a human rights-based approach Study of the Expert Mechanism on the Rights of Indigenous Peoples*. 20. www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyFPIC.aspx.

UN Global Compact. (2013). *A Business Reference Guide*. www.unglobalcompact.org.

Usher, P. J. (1976). Evaluating Country Food in the Northern Native Economy. *Arctic*, *29*(2). https://doi.org/10.14430/arctic2795

Van Lanen, J. M. (2018). Foraging and motorised mobility in contemporary Alaska: A twenty-first century ‘hunter-gatherer situation.’ *Hunter Gatherer Research*, *3*(2), 253–288. https://doi.org/10.3828/hgr.2017.13

Virtual Museum of Canada, D. (2007). *Dreamers and the land*. Virtual Museum of Canada. http://www.virtualmuseum.ca/sgc-cms/expositions-exhibitions/danewajich/english/dreamers/dance.php#1

Vogl, S. (2009). Eugen Ehrlich's Linking of Sociology and Jurisprudence and the Reception of his Work in Japan. In *Living Law: Reconsideting Eugen Ehrlich*.

Watson, I. (2018). Aboriginal relationships to the natural world: Colonial 'protection' of human rights and the environment. *Journal of Human Rights and the Environment*, *9*(2), 119–140. https://doi.org/10.4337/jhre.2018.02.01

WCED. (1987). *The Brundtland Report: "Our Common Future."* https://doi.org/10.1080/07488008808408783

White, L. (2019). *DOIG RIVER FIRST NATION NATURAL RESOURCES POLICY AND PROCEDURES – PROTOCOL*.

Willow, A. (2017). Cultural cumulative effects: Communicating energy extraction's true costs. *Anthropology Today*, *33*(6), 21–26. https://doi.org/10.1111/1467-8322.12394

Willow, A. J. (2019). *Understanding extrACTIVISM : culture and power in natural resource disputes*.

Wilson, G. N., & Bowles, P. (2016). *Resource Communities in a Globalizing Region: Development, Agency, and Contestation in Northern British Columbia*. UBC Press. https://books.google.co.uk/books?id=qbx3rgEACAAJ

Wittrock, B. (2000). *Modernity: One, None, or Many? European Origins and Modernity as a Global Condition*. https://link-springer-com.proxy.libraries.uc.edu/content/pdf/10.1007%2F978-3-642-19199-2.pdf

Wright, A. C., & Griep, Y. (2019). Burning the midnight oil: Examining wellbeing and vulnerability in Alberta's oil patch. *Extractive Industries and Society*, *6*(1), 77–84. https://doi.org/10.1016/j.exis.2018.10.001

Civil claim S151727 - BRFN v. BC, (2015).

Yahey v. BC - Defendant's application response S-151727 - 6th July. (2015). *Defendant's Application Response, 6th July 2015*.

Yahey v. BC - Defendant's application response S151727 - 14th October. (2016). *Application Response 14th October*.

Yahey v. BC - Defendant's application response S151727 - 8th December. (2017). *Application Response, 8th December 2017*.

Yahey v. BC - Plaintiffs' notice of application S151727 - 18th July. (2019). *Notice of Application 18th July 2019*.

Yahey v. BC - Plaintiffs' notice of application S151727 - 19th June. (2015). *Plaintiffs' Notice of Application - 19th June 2015*.

Yahey v. BC - Plaintiffs' notice of application S151727 - 1st December. (2017). *Notice of Application, 1st December 2017*.

Yahey v. BC - Plaintiffs' notice of application S151727 - 24th September. (2019). *Application Response 24 Sept 2019*.

Yahey v. BC - Plaintiffs' notice of application S151727 - 8th August. (2016). *Notice of Application, 8th August*.

Yahey v. BC - Response to civil claim S151727 - 24th April. (2015). *Civil claim S151727 - BRFN v. BC* (p. 12).

Yahey v. British Columbia, 2015 BCSC 1302, (2015).

Yahey v. BC S151727 - Defendant's opening 28th May. (2019). *Opening statement Defendant*.

Yahey v. BC S151727 - Plaintiffs' opening 27th May. (2019). *Plaintiff's opening - S151727*.

Yahey v. British Columbia BCSC 278. (2018). *Yahey v. BC, 2018 BCSC 278*.

Yahey v. British Columbia BCSC 278. (2020). *Yahey v. British Columbia BCSC 278*.

Yahey v. British Columbia BCSC 899. (2017). *Yahey v. British Columbia, 2017 BCSC 899*.

Yang, T., Silveira, S., Formuli, A., Paolini, M., Pöppel, E., Sander, T., & Bao, Y. (2019). Aesthetic experiences across cultures: Neural correlates when viewing traditional eastern or western landscape paintings. *Frontiers in Psychology*, *10*(MAR), 1–10. https://doi.org/10.3389/fpsyg.2019.00798