

**MECHANISMS OF INDIGENOUS EXCLUSION IN BRITISH COLUMBIA'S
ENVIRONMENTAL ASSESSMENT PROCESS**

by

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Abstract

Due to changes in Canadian case law, there is a growing focus on making space for Indigenous rights and interests in BC's environmental assessment process. However, despite this increased attention, First Nations are continuing to report that their interests are poorly represented in evaluations of project effects. This disconnect is the focus of my research, and in this thesis, I discuss findings from a review of fifteen EA certificate applications approved by the provincial government between 2011 and 2016. I found that evaluations of the extent and significance of potential impacts on Indigenous rights and interests are now central (and required) components of every EA. However, the methods commonly used to carry out these evaluations often rely on settler-colonial assumptions that invalidate or obscure issues of critical concern to First Nations. This negation is so commonplace that my analysis revealed a consistent set of precise mechanisms through which project proponents systematically exclude Indigenous interests in such applications. In my research, I refer to these patterns as "mechanisms of exclusion", and describe three: (1) failure to recognize long-standing interests (particularly non-consumptive interests associated with territory governance and land and resource management); (2) insufficient consideration of extra-material dimensions of value in characterizations of Aboriginal interests and related evaluations of project effects; and (3) a lack of appropriate thresholds and/or transparency in evaluations of impact significance. My objective in doing so is to underscore the need to look more critically at the assumptions embedded in ostensibly inclusive processes such as EA. In addition, I offer recommendations as to how we can better represent Indigenous interests in evaluations of adverse project effects.

Lay Summary

This thesis explores the representation of Indigenous interests in British Columbia's environmental assessment process. Specifically, I examine how non-Indigenous assumptions about, objectivity, knowledge, and culture enable the exclusion of Indigenous peoples' interests and concerns in evaluations of adverse project effects. I draw on findings from a review of fifteen certificate applications approved by the Province between 2011 and 2016 to highlight three specific ways in which this exclusion occurs. My objective in doing so is to underscore the need to revisit participatory processes that enable these assumptions to flourish. In addition, I argue that the representation of Indigenous interests is very much dependent on the extent to which Indigenous peoples' perspectives are foregrounded in evaluations of adverse project effects. Too often, this is overlooked, and the result is protracted legal disputes; conflict between proponents, government and First Nations; and the continued dispossession of Indigenous peoples.

Preface

This thesis is based on original research. I designed the research program, collected and analyzed the data, and wrote the text comprising the content of this document. Dr. Terre Satterfield and Dr. Michael Meitner supported the design of the research program and provided crucial guidance during the writing process. They also reviewed the final product, offered valuable suggestions, and contributed essential edits.

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Special thanks to Emma Swan, Johnnie Manson, Metha Brown, and the many other friends, teachers and colleagues who have encouraged me along the way. Incidentally, I likely would not have found this path if it hadn't been for time spent in Palestine's West Bank in 2013. My experience was similar to that of Maya Mikdashi (2013), who writes, "it was when I understood that Israel is a settler colony that I came to see the United States as the same". Likewise, while I was very much aware of Canada's colonial history prior to my time in the West Bank, it was not until I lived briefly in a Palestinian refugee camp that I came to realize the extent to which Indigenous dispossession in Canada is a contemporary phenomenon. This experience will continue to guide my learning, and I am grateful for it.

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For Craig

1. Introduction

This thesis examines the exclusion of Indigenous perspectives from decisions about land use and large-scale natural resource development, with a specific focus on British Columbia (BC)'s environmental assessment (EA) process. In what follows, I explore intersections between settler colonialism, the misrepresentation of Indigenous values and interests in EA, and Indigenous dispossession. By “misrepresentation”, I am referring to the tendency that non-Indigenous people have of misinterpreting—both intentionally and inadvertently—the substance of Indigenous peoples’ claims with respect to traditional lands and resources (Tully, 2004; Porter & Barry, 2016; Altamirano-Jiménez, 2013). By “dispossession”, I mean both the gradual expropriation of Indigenous lands and waters since settler contact, and the corresponding damage to “cultural intangibles” (e.g., connection to territory) that has tended to accompany these losses.

The dispossession of Indigenous peoples is recognized by most Canadians as a dark chapter in our national history, wrapped up in the relocation of First Nations to reserve lands during the 1800s and early 1900s, and in past systems of maltreatment and abuse such as the residential school system, the banning of the potlatch, and the ‘60s Scoop (Harris, 2002; Coulthard, 2014). However, while most non-Indigenous Canadians are now aware of injustices done to Indigenous peoples in the *past*, many tend to ignore or overlook how settler logics continue to shape the present. In Canada, this is particularly true for how non-Indigenous people view First Nations’ claims with respect to territory and jurisdiction over land and resources. Though non-Indigenous Canadians are often willing to recognize the *cultural* distinctiveness of First Nations (typically understood in relation to Aboriginal rights associated with harvesting practices such as hunting and fishing), most view the issue of land ownership as settled. However, for many Indigenous peoples, “*the question of land*”—and specifically, the question of who has the right to make decisions about land and resource use in First Nation traditional territories—remains at the heart of Indigenous resistance today (Coulthard, 2014, p. 13, emphasis in original).

Against this backdrop, I use the term “dispossession” to situate this thesis in a growing body of scholarship that diagnoses settler colonialism as a structure rather than an event, following Wolfe (2006,

p. 388; 2013). This scholarship foregrounds the need to closely examine the role that contemporary settler institutions play in continuing the project of Indigenous dispossession. As Glen Coulthard (2014, p. 6) argues, this role is not limited to overtly colonial systems of oppression such as residential schools, but rather is entrenched in the kinds of “conciliatory discourses and institutional practices” that have evolved in response *to* Indigenous resistance. Of relevance to this study is Coulthard’s critique of institutions and processes that promote the principles of inclusion and accommodation while also privileging modes of recognition that “confine Indigenous claims to certain predetermined categories”, such as Aboriginal rights. Coulthard suggests that when the terms of recognition are fixed like this, they silence Indigenous claims to territory and suppress broader debates about the legitimacy of Indigenous ways of relating to place. Thus, while certain Indigenous losses (e.g., the social and cultural dislocation experienced by Indigenous peoples because of the residential school system) have become highly visible in mainstream society, other forms of loss have received relatively little attention outside of academia. This is particularly true for losses associated with the removal of Indigenous peoples from their traditional territories, and the corresponding (and ongoing) elimination of Indigenous access to, and control of, important sites and resources within these territories. Yet, as Mohawk author, educator and activist Taiaiake Alfred suggests, it is precisely these losses—and specifically, the effects of separation from the land and from associated land-based cultural practices, reciprocal relations, and obligations—that have led to the “cultural and physical disempowerment of First Nations as collectivities and as individuals” (2009, p. 53).

These issues have much to do with the study of EA, and they are where I have done the most learning over the course of writing this thesis. However, when I began this project, they were not the focus of my research. Instead, I was initially interested in existing critiques of EA, which consistently highlighted the fact that Indigenous peoples’ “cultural” interests were poorly addressed in evaluations of project impacts. I assumed that this omission was occurring because many cultural dimensions of value are intangible, and therefore difficult to communicate within the constraints of a technical process such as EA. At the time, I was working on several projects that involved the development and application of

methods and tools to better capture intangible dimensions of value in complex decision processes. I thought that by evaluating the representation of intangible dimensions of value across various EAs, I could identify some specific ways in which this representation could be improved.

In keeping with this line of thought, I began this study with the following research questions in mind: (1) how are intangible cultural values (e.g., connection to the land, cultural identity) currently being represented in BC EA certificate applications; (2) how are impacts to these values being measured, if at all; and (3) to what extent are such analyses integrated into broader EA decision frames such as significance evaluations? However, as I engaged in this research, I soon learned that I was asking the wrong questions. While my research confirmed that EA does in fact commonly sideline intangible dimensions of value, I found that for First Nations, the representation of intangibles (or lack thereof) is a product of a bigger underlying problem: that is, EA is based on “a whole set of implicit assumptions about the world” that do not align with Indigenous worldviews, many of which contravene Indigenous laws and obligations (Nadasdy, 2003, p. 6). Yet First Nations must participate in EA if they want to influence the development of major proposed projects in their traditional territories. This means that they must agree to the terms of recognition that participation in EA offers, and—to a certain extent—accept the assumptions on which EA is based. In doing so, First Nations often find themselves engaging in processes that fundamentally misrecognize the nature and scope of their interests and claims, both tangible *and* intangible.

This is not to say that there is no room for resistance, reinterpretation, or subversion; in fact, First Nations routinely resist EA on many fronts. My point, however, is that though the neglect of cultural intangibles in evaluations of project effects is a big problem for First Nations, this issue is better understood as a function of a deeper underlying challenge: misrecognition. This early finding made me rethink my research approach, as I realized that by framing my research questions in terms of cultural recognition and the representation of intangibles, I was already guilty of applying some of the “predetermined categories” critiqued above. For example, in drafting my initial research questions, I had assumed that intangible dimensions of value were being insufficiently represented in EA, but I had not yet

adequately considered the quality of the representation of *tangible* interests. To address this potential issue, I decided to back up and adapt my research slightly, instead framing the research problem more generally and making my problem statement less prescriptive. It became: *despite an increased emphasis on Indigenous participation in EA, Indigenous interests are not well represented in evaluations of adverse project effects. Why is this?*

I then focused on orienting attention towards Indigenous critiques of EA, which tend to emphasize that Indigenous interests are not being considered from an “Aboriginal perspective” in evaluations of project effects (Carrier Sekani Tribal Council, 2007). This critique indicates that many issues of considerable significance to First Nations are being misrepresented or otherwise excluded in representations of project effects. My research questions developed as follows:

1. How are Indigenous interests currently being represented in evaluations of project effects?
2. What does it mean to evaluate potential impacts from an “Aboriginal perspective”?
3. What do critical Indigenous studies and Indigenous planning literatures say about how EA could be facilitating the erasure of Indigenous interests and perspectives in evaluations of project effects?¹
4. What are some of the specific mechanisms that commonly enable this erasure to take place?

I have shared this personal progression because as someone who is both non-Indigenous and employed as a community planner, I think it is important to highlight how settlers—myself included—often fail to see the assumptions that we bring forward into planning spaces such as EA.² The planning and decision-making institutions that are in place today in BC and elsewhere in Canada are primarily founded on Western cultural values and worldviews, but because these are our own worldviews, we sometimes forget that what *we* see may not be what someone else sees. And because as settlers we are in

¹ I use the term “erasure” here to encompass both the *misrepresentation* and *omission* of Indigenous interests in these evaluations. The key point here is that Indigenous interests could be included in these evaluations, but are misrepresented in such a way that their inclusion is rendered meaningless.

² Following Kotaska (2013, xiv) I use the term settler to “refer to non-Indigenous people in contexts where I am drawing attention to patterns of thought that are developed in settler colonial contexts and the possibilities for decolonizing those patterns of thought”.

a position of relative power, we are typically not required to examine our own assumptions very carefully. Instead, we assume that our worldview is correct, and others must adapt their ways of thinking, being, and doing to our own.

The implications of this kind of negligence are substantial. In the context of EA, inadequate representation of Indigenous interests in evaluations of project effects is undermining reconciliation and adding to the legacy of dispossession. It is also creating a very fractious political environment that demonizes Indigenous peoples for rightfully resisting the further loss of land and everything that loss of land involves. The purpose of this research, then, is to draw attention to some of the implicit assumptions that structure EA. In doing so, my objective is to underscore how important it is to establish institutions and processes that are more reflexively aware of how certain assumptions constrain the terms of recognition in Indigenous-state encounters (Porter & Barry, 2016). Because this kind of reflexivity is not possible in a vacuum, I also highlight the need to bring Indigenous voices to the center, while orienting empirical attention towards some of the specific mechanisms through which the negation of Indigenous interests commonly takes place in these contexts. This requires unpacking our own assumptions about culture and knowledge, and ensuring that Indigenous peoples have the space to speak “for themselves” when engaging with translocal and external forces (Altamirano-Jiménez, 2013).

2. Mechanisms of Exclusion in BC's Environmental Assessment Process

2.1. Introduction

Since 2004, policy makers have gradually adapted Canadian environmental assessment processes to better ensure that impacts on Indigenous interests are considered in decisions about major proposed resource development projects. This shift has taken place following establishment of the duty to consult, which obliges government to “reconcile” Crown interests with those of First Nations by “taking steps to avoid or minimize impacts” whenever state actions or decisions are likely to infringe Aboriginal rights (Ministry of Aboriginal Affairs and Reconciliation, 2014, p. 11). In *Haida Nation v. British Columbia* (2004), Canada’s Supreme Court determined that a “good understanding” of the nature of potential impacts could only be acquired through “meaningful consultation” with Indigenous peoples (see also (Ministry of Aboriginal Affairs and Reconciliation, 2014, p. 11). Because such an understanding is a prerequisite for effective mitigation, regulators have adjusted EA to be more inclusive of Indigenous groups, while also making associated consultation requirements more rigorous (Craik, 2016). In effect, these changes have been implemented to ensure that potential impacts on Aboriginal rights are identified and evaluated during the project review process, so that they can be accommodated to the extent possible.

Due to these developments, First Nations in British Columbia (BC) and elsewhere in Canada now have expanded opportunities to participate in EA. However, as in many jurisdictions that use impact assessment models to evaluate the anticipated effects of major proposed projects, Canadian EA processes are largely proponent driven (Haddock, 2010). Briefly, this means that those proposing to develop major projects are typically responsible for preparing the technical studies that regulators rely on to assess adverse project effects and weigh the potential costs and benefits associated with project approval. In the Canadian context, this includes producing the studies that address potential impacts on the rights and interests of Indigenous communities. Thus, it is common practice for government regulators (both federal and provincial) to delegate the “procedural” elements of the duty to consult to industry. According to BC’s Ministry of Aboriginal Rights and Reconciliation, these aspects of the duty broadly include: providing information about the proposed project to affected Indigenous communities; engaging with

representatives of these communities to identify their interests and incorporate their concerns into relevant technical studies concerning adverse project effects; considering modifications to plans in order to address their concerns and, if possible, mitigate potential impacts on identified interests; and finally, providing documentation about engagement, findings, and proposed project modifications to Crown decision makers (2014, p. 3).

Naturally, regulators have developed guidelines to support proponents in undertaking the procedural aspects of the duty to consult. These guidelines are based on legal decisions that have clarified the duty over time, but a recent report to the Minister of Indigenous and Northern Affairs indicates that they have tended to be vague and therefore somewhat open to interpretation (Gray, 2016). In the context of EA specifically, proponents have considerable influence over how Indigenous groups are included at various stages within the assessment process. They also often hire consultants to produce the technical studies that comprise project application documents, which means that private consultants play a key role in shaping the decision frames through which regulators come to understand and evaluate costs and benefits (First Nations Energy & Mining Council, 2009). For these and many other reasons, Indigenous leaders have repeatedly expressed concerns about the representation of First Nation interests in analyses of adverse project effects. A common critique is that EA consultation processes have devolved into “box ticking” exercises that are undermining progress towards government-to-government relationships (Haddock, 2010) (First Nations Energy & Mining Council, 2009). Many First Nations also maintain that despite the shift towards more “inclusive” and participatory processes, EA is continuing to facilitate decisions that fail to accurately reflect what matters most to their communities (Carrier Sekani Tribal Council, 2007; Booth & Skelton, 2011). In short, there is a common perception among Indigenous groups that EA is neither fair nor independent.

Looking to the literature on EA, one of the most frequently cited complaints from Indigenous groups is that potential impacts on their interests are typically not assessed or discussed from an “Aboriginal perspective” (Carrier Sekani Tribal Council, 2007, p. 3; see also Bruce & Hume, 2015). Proponents are now required to include considerable information about how a given project is likely to

adversely affect Indigenous interests, but First Nations are finding that such evaluations are still falling short when it comes to adequately representing their perspectives on value and impact. These charges are significant, as they suggest that while proponents and regulators are ostensibly taking measures to better address Indigenous interests and concerns in EA, these measures are not resulting in outcomes that First Nations perceive as legitimate. But what does it mean to assess project impacts from an “Aboriginal perspective”? Why are First Nations finding that key community interests and concerns are not still being addressed via EA, despite the increasing emphasis on Indigenous participation and inclusion in such processes? Finally, how can we better ensure that Indigenous perspectives on value and impact are represented in these contexts?

These questions are the focus of this thesis. While a growing body of academic research has begun to draw attention to how EA processes in BC and elsewhere in Canada undermine Aboriginal rights and sideline Indigenous values and interests (e.g., Galbraith, 2014; Booth & Skelton, 2011; Bruce & Hume, 2015; Haddock, 2010), relatively few studies have focused on exposing the precise mechanisms that facilitate the negation of Indigenous interests in key EA texts (a recent study by Hoogeveen, 2016 is an exception). Fewer still have offered a systematic analysis of this erasure across a broad number of cases. Thus, there is increasing awareness in both professional and academic circles that Indigenous concerns are not receiving adequate attention in decision contexts involving major projects; however, there is still an incomplete understanding of precisely *how* Indigenous interests come to be made invisible through such processes. This gap is problematic, because as Porter and Barry (2016, p. 28) point out, when we fail to orient attention towards the specific, often subtle mechanisms through which settler-colonial systems of dominance operate in institutions such as EA, we tend to overlook how certain discourses and practices “co-opt Indigenous frames of reference and undermine sovereign Indigenous politics and jurisdictions”.

With this research, I sought to address this gap by conducting a review of fifteen EA certificate applications approved by the BC government between 2011 and 2016.³ Through this thesis, I examine how the interests of affected First Nations are commonly identified and described in evaluations of project effects; and I also evaluate how impacts on these interests are typically characterized. In presenting my findings, I draw on insights from critical Indigenous studies and Indigenous planning, which tend to challenge the idea that recognition-based models are adequately transforming the colonial relationship between Indigenous peoples and the state (Coulthard, 2014, p. 3; see also Altamirano-Jiménez, 2013; Alfred & Corntassel, 2005; Alfred & Tomkins, 2010). In doing so, I position this paper within existing critiques of EA (many of which highlight the fact that harder to measure “cultural” values tend to be neglected in impact evaluations), but also challenge the tendency within this area of research and practice to minimize, overlook or ignore the role that participatory structures play in maintaining hegemonic power relations (see Booth & Skelton, 2011a; Booth & Skelton, 2011b; The International Human Rights Clinic, 2010; O’Faircheallaigh, 2007 for examples). That is, I argue that if we want to design processes and methods that are “more reflexively aware, and accountable for, the way [participatory] structures assume that culture is a category that other people bring to the system (rather than also being built into those systems)”, we must direct more empirical attention towards identifying *how* Indigenous perspectives and interests come to be negated via such processes (Porter & Barry, 2016, p. 25).

I begin by briefly exploring the relationship between participatory structures and Indigenous dispossession, which I view as being closely linked to the misrepresentation of Indigenous interests in institutional processes such as EA. Next, I discuss how several key assumptions embedded in common EA practices and processes serve to delegitimize Indigenous ways of relating to and in place. Then, I

³ I use BC as the empirical setting for this research because the Province’s unique Indigenous rights context has foregrounded these issues and questions in a very specific and powerful way. This choice is further discussed in Section 2.3: Methodology.

present my results, which describe three patterns through which these assumptions commonly become operationalized in EA. To highlight the role that EA plays in “co-opting and taming Indigenous claims”, I characterize these patterns as “mechanisms of exclusion” and describe three. Briefly, they include: (1) failure to recognize long-standing interests (particularly non-consumptive interests associated with territory governance and land and resource management); (2) disregard for extra-material dimensions of value in characterizations of Aboriginal interests and related evaluations of project effects; and (3) poor thresholds for evaluating impact significance. Finally, I discuss some of the implications of these findings for practitioners who do EA work.

2.2. EA as a “participatory space”

Academics have long been critical of deliberative processes that do not address underlying power relations embedded in the design of deliberative processes involving multiple stakeholders (see Arnstein, 1969; Tully, 2004; Sandercock, 2005; Watson, 2006). In more recent years, this critique has been taken up by those who specifically contest discourses and practices that emphasize Indigenous-state reconciliation *via* Indigenous participation in established institutional processes such as EA. Though such discourses commonly highlight the importance—both moral and legal—of respecting and protecting Indigenous peoples’ *cultural* heritage, as several scholars have pointed out, they also tend to reify, dehistoricize, or otherwise misrecognize Indigenous claims (Altamirano-Jiménez, 2013; Coulthard, 2014; Simpson, 2011; Alfred & Corntassel, 2005). As Coulthard (2014) notes, the underlying issue is that for most First Nations, cultural recognition per se is not the central focus of Indigenous resistance. Rather, Indigenous resistance is better understood as a struggle “inspired by and oriented around *the question of land*—a struggle not only *for* land in the material sense, but also deeply informed by what the land *as system of reciprocal relations and obligations* can teach us about living our lives in relation to one another and the natural world” (Coulthard, 2014, p. 13; emphasis in original). In other words, territories, landscapes, ecosystems, places, local histories, and related social norms and practices (including subsistence practices) are all “transversally interwoven” into Indigenous peoples’ identities and struggles

(Altamirano-Jiménez, 2013, p. 222). Consequently, when Indigenous peoples are called upon to participate in processes that deny or misrecognize these broader aspects of their claims, many interpret this as an invitation (often coercive) to contribute to their own dispossession (see also Alfred & Tomkins, 2010).

This view may come as a surprise to those who consider recognition and accommodation of cultural practices and related rights (e.g., harvesting rights) to be an appropriate way to address the challenge that Indigenous claims pose for resource development in settler colonial contexts, but it will not be in the least bit surprising to people who understand the role that hegemonic rationalities play in shaping social imaginaries about “who ‘naturally’ knows best, on what grounds, and through what kinds of interactions with nature” (Wynne, et al., 2007, p. 74). In his informative work on this subject, Nadasdy (2003)—drawing on Bourdieu (1991), Foucault (1980) and Weber (1946), among others—describes how language, power, and bureaucracy function together to erase the legitimacy of Indigenous “ways of talking, thinking and acting” by sanctioning some worldviews while suppressing others. Specifically, Nadasdy argues that settler ways of knowing have been rendered “official” through the bureaucratization of Indigenous-state relations and the associated “institutionalization of ‘rationality’” (2003, p. 7). He suggests that out of necessity, Indigenous peoples have had to “become fluent” in settler discourses vis-à-vis land use, environmental management and resource development to influence or otherwise participate in state decision making concerning their traditional territories. However, he also points out that by becoming fluent in such discourses and engaging in similarly “official” institutional processes (e.g., EA), Indigenous peoples also tacitly agree to abide by the unstated assumptions on which these patterns of thought are based. In doing so, they play a role in legitimizing settler worldviews, thus further entrenching state power while simultaneously erasing their own power/knowledge.⁴

⁴ The term “power/knowledge” was coined by Michel Foucault to describe the interdependence of knowledge and power. According to Foucault, “truth isn’t outside power, or lacking power”, rather, “[t]ruth is a thing of this world: it is produced only by virtue of multiple forms of constraint. [...] Each society has its regime of truth, its ‘general politics’ of truth: that is, the types of discourses which it accepts and makes function as true, the mechanisms and instances which enable one to distinguish true and false statements, the means by which

Of course, First Nations also frequently challenge the legitimacy of state-sanctioned discourses precisely *by* developing the kind of fluency that Nadasdy describes and then leveraging this proficiency to resist the delegitimization of Indigenous worldviews. The problem, as Nadasdy and others point out (e.g., Povinelli, 2002; Cruikshank, 2005), is that because state discourses are rooted in social imaginaries that take their own rationality for granted, they are presumed to produce knowledge that is *true*. This assumption in turn regulates how other ways of knowing are viewed and interpreted, meaning that as official discourses become institutionalized as “acultural” and therefore rational, non-dominant ways of knowing subtly come to be regarded as “cultural” and thus *irrational* (Porter & Barry, 2016, p. 20). Accordingly, while dominant worldviews regarding how to be in relation to the (natural) world and what constitutes a meaningful life have gradually been institutionalized as truths, Indigenous worldviews have been steadily reinscribed as “beliefs” (Cruikshank, 2005). Indigenous perspectives regarding human/nonhuman relationships and related responsibilities are thus regularly viewed as peripheral to “the complex technical tasks of [natural resource management]” (Howitt, et al., 2013, p. 315). In other words, they are seen as cultural constructions that “cannot provide the factual basis for development or resource management” (Nadasdy, 1999, p. 37). At the same time, non-Indigenous perspectives regarding who is Indigenous and what it means to *be* Indigenous tend to “fix” the terms of recognition in essentialist configurations,⁵ making it that much more difficult for First Nations to defend the legitimacy of Indigenous ways of knowing (Alfred & Corntassel, 2005; see also Said, 1978).⁶

The ontological hegemony of Western rationalism in environmental management is a popular topic among academics, many of whom have studied how ostensibly rational institutional practices erase

each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true” (1980, 131).

⁵ Following Porter and Barry (2014) reading Tully (2004, 87), I use the phrase “terms of recognition” to refer to the “intersubjective norms” that structure how “the members [...] of any system of action coordination (or practice of governance) are recognized and governed”.

⁶ Indigenous scholars and activists have long recognized this challenge and are working through it (in both theory and practice) in interesting and transformative ways. For example, Leanne Simpson’s work on land-based learning and Indigenous resurgence calls for a “radical break from state education systems” and the “reclamation of land as pedagogy” (Simpson L. B., 2014, 1). On BC’s north and central coast, community-based Indigenous education programs are working towards this very goal.

Indigenous voices and constrain Indigenous claims (see Watson, 2006; Howitt, et al., 2013; Povinelli, 2002; Barry & Porter, 2011; Porter & Barry, 2016). However, scholars from outside this domain have raised similar concerns about increasingly technocratic governance regimes, with numerous people calling attention to how neoliberal development discourses and related assumptions about modernity, technology and risk are entrenching modes of governance that make “a generalized calculation of cost and benefit [...] the measure of all state practices” (Brown, 2005; see also Brown, 2015; Satterfield & Roberts, 2008; Dean, 1998; Dean, 1999). For example, Rayner (2007, p. 167; see also Rayner, 2003) characterizes the transition towards risk management-focused public policymaking as a paradigm shift that has replaced the “discourse of values” with a “discourse of valuation”. He argues that this shift has reduced ethical questions to issues of scientific uncertainty, removing consideration of—and deliberation about—complex social, political and cultural values from public sector decision making. Wynne et al. (2007, p. 27) make a similar argument, highlighting how social imaginaries about innovation, progress, and the need to “keep up” both technologically and economically have gradually entrenched risk-oriented state practices that rely on “the ‘sound science’ of risk assessment” to identify meaningful decision alternatives. Both suggest that within this paradigm, risk assessment is conceptualized as an “exclusively scientific process of objective factual discovery” that must precede any consideration of values, as it is presumed that costs and benefits must be clarified before trade-offs can be evaluated (Wynne, et al., 2007, p. 32). Yet, as these authors point out, assumptions about the neutrality of risk assessment overlook the fact that costs and benefits are inherently subjective and deeply ensconced in neoliberal economic and political rationalities.

From this perspective, it becomes apparent that it is more than just Indigenous values and interests that are at stake. Rather, the “discourse of valuation” is eroding the relevance of “non-rational” values—i.e., values that do not align with our current neoliberal paradigm—in *general* (see Brown, 2005; Brown, 2015). However, this erosion is particularly problematic for Indigenous peoples, because as Turner et al. (2008) point out, they tend to experience losses that are “not generally recognized or seen as important by others”. Turner et al. (2008, p. 1) describe these unseen losses as “invisible losses”, which

they define as losses that are some combination of the following: not easily measured; “not represented in a manner that is recognized as legitimate”; or “the result of a series of compounding impacts that are not easily connected to an original action”. In brief, invisible losses occur when settler assumptions about “space, place and human-land relationships” reduce Indigenous logics to cultural beliefs and render them irrelevant (Porter & Barry, 2016, p. 27). In other words, they are one outcome of the institutionalization of rationality discussed above.

Taken together, these issues are key to understanding Indigenous critiques of settler institutional processes that are ostensibly geared towards facilitating Indigenous inclusion and participation. In many ways, EA is a perfect example of how certain embedded assumptions legitimize some ways of speaking as “official” while delegitimizing others, as with EA—and specifically with respect to the consideration of project impacts on Indigenous interests—the question is rarely (if ever) whether the development of a given project *should* go ahead, or what alternatives exist. Instead, the question that regulators tend to ask is what *conditions* need to be established to ensure that project approval satisfies Crown responsibilities vis-à-vis the recognition and accommodation of First Nations’ (cultural) rights and related interests? This is so despite extensive case law requiring “meaningful” consideration of Aboriginal rights and interests, including title. At the same time, First Nations are in many ways coerced into participating in EA,⁷ even though the terms of recognition are relatively fixed and entirely dependent on the willingness of proponents to undertake a more collaborative or deferential approach.

Nadasdy (2003, p. 28) argues that if we are to see how Indigenous interests get negated in these kinds of contexts, we need to examine “how knowledge is produced, legitimated, marginalized, and/or eliminated”. In other words, we need to “make invisible losses transparent” by identifying precisely how dominant logics become operationalized through certain discourses and practices (Turner, et al., 2008). In

⁷ The duty to consult requires both the Crown and Indigenous peoples to engage in consultation “in good faith”, so if First Nations refuse to participate in EA they risk putting themselves at a significant disadvantage if they choose to later pursue a legal course of action. In addition, if First Nations choose not to participate in EA, but the project goes ahead, then they lose any opportunity to influence the process or protect specific sites of importance. In this sense, non-participation implies consent.

the remainder of this section, I highlight several such logics. I also draw clear connections between these logics and the mechanisms that reproduce them in the context of EA (intentionally and otherwise). These assumptions have been discussed elsewhere by anthropologists, geographers, Indigenous scholars, thus my objective in addressing them here is to put them in conversation with the study of EA and so reveal its implicit biases.

2.2.1. Assumptions about Indigeneity

In her work on Indigeneity, neoliberalism, gender, and the environment, Altamirano-Jiménez argues that “we must consider the historical and material contexts in which indigeneity is articulated if we are interested in demonstrating how systems of domination and subjugation are entrenched in temporally fixed (neo)colonial structures” (2013, p. 18). From this perspective, it is important to understand that in Canada, incoming settlers commonly viewed Indigenous peoples as primitive hunter-gatherers who were not using their lands productively. Because Indigenous peoples did not enclose, cultivate, or manage their lands and resources in a manner deemed logical by colonists, their traditional territories were considered empty and therefore available for settlement (Harris, 2002). This understanding enabled the symbolic erasure of Indigenous peoples from the landscape, which in turn facilitated their forced *material* displacement as settlers took possession of Indigenous lands (Altamirano-Jiménez, 2013). In the process, Indigenous peoples were confined to reserve lands, and settler ways of seeing, being and doing were imposed on their societies in a sustained effort to “civilize” them (Harris, 2002; see also Daschuk, 2013).

Over the past few decades, several scholars have unpacked these narratives (e.g., *terra nullius*, the “doctrine of discovery”) and exposed them as colonial constructions that had/have little to do with Indigenous peoples’ lived experiences (for examples, see Borrows, 2005; Harris (2002); Cruickshank (2005). As a result, it is now well established that prior to colonization, First Nations did in fact have complex social relations and governance institutions, as well as related logics, practices, customs and laws for managing their territories (see Turner, 2014; Napoleon, 2005; Menzies, 2010). In addition, they also cultivated food sources (e.g., clam gardens) despite the sheer abundance of marine foods, and

processed and stored foods as surplus to see people through winter months. Nevertheless, social imaginaries about Indigenous peoples' "primitive economies" have remained relatively fixed in dominant discourses. Though Indigenous peoples resist articulatory practices that essentialize their identities along these lines, such narratives continue to influence how "being Indigenous" is understood and defined in colonial spaces (Altamirano-Jiménez, 2013; see also Alfred & Corntassel, 2005). Here, I am specifically referring to the formal recognition of Indigenous peoples' *cultural* distinctiveness, operationalized through the discourse of Aboriginal rights. Though First Nations are unquestionably invested in remaining rooted in their distinct cultures, the Canadian Aboriginal rights discourse assumes that subsistence activities are what distinguished First Nations' unique, pre-contact cultural identities. Consequently, harvesting rights (i.e., rights associated with hunting, trapping, fishing and gathering) are now enshrined as Aboriginal rights, but broader practices and customs associated with Indigenous social, spiritual, economic, and governance relations, both "to and in place" (stewardship obligations, resource management systems, rights of access, etc.), are not (Altamirano-Jiménez, 2013, p. 12).

Of course, harvesting practices are important to First Nations, but as Altamirano-Jiménez (2013, p. 222, emphasis in original) notes, "it is not land-related activities *alone* that make people Indigenous". She goes on to suggest that when stereotypical constructions transform Indigeneity into a 'primordial artifact', "people's relationships with place are emptied of meaning and transformed into isolated cultural practices or quasi hobbies" that are not reflective of Indigenous social complexities (2013, p. 72). In the sections that follow, I argue that in the context of EA, such constructions play a significant role in determining how Indigenous interests are represented in evaluations of project effects, and what is left out.

2.2.2. Assumptions about objectivity

In BC and elsewhere in Canada, EA provides a mechanism for reviewing the potential adverse environmental effects (both human and natural) of major proposed projects. In brief, its purpose is to (1) clarify anticipated project impacts, (2) identify appropriate mitigation measures, and (3) establish the

likely extent and significance of any residual effects (i.e., adverse project effects that are deemed likely even with proposed mitigation measures in place). This information is then used by decision makers to evaluate the relative costs and benefits of proposed projects, with the assumption being that scientific inquiry offers a value-neutral lens for predicting causal relationships and making reasoned, evidence-based decisions about impacts and risk.

As First Nations and others have pointed out, this assumption is deeply flawed. First, as discussed in the introduction, project proponents are responsible for preparing the technical studies that describe the likely extent and significance of potential project impacts. This approach is premised on the notion that conflict of interest is not an issue so long as proponents gather evidence using scientifically rigorous methods, and evaluate potential impacts in relation to clearly defined (and therefore transparent) thresholds. However, it is important to note that the development of such studies is not simply a data gathering exercise; rather, it is an exercise in value judgment. In analyzing the potential significance of project impacts, proponents and the consultants they hire have considerable discretion in the defining of baselines, the selection of indicators used to measure effects, and the establishment of significance criteria (Haddock, 2010). Though impacted First Nations may be consulted about how these parameters are delimited, they typically are not in a position to modify or reject them.⁸ Instead, government regulatory bodies such as BC's Environmental Assessment Office (EAO) approve or reject study parameters, which is problematic for First Nations when they disagree with the state about what constitutes a "significant" adverse impact. It is also worth noting that it is generally in the proponent's best interest to reach conclusions of non-significance, and yet the EAO nevertheless largely relies on the technical expertise of proponents and private consultants to develop the terms of reference for the EA process (Haddock, 2010).

When it comes to evaluating impacts on Indigenous peoples' "cultural" interests and related rights, these issues become particularly revealing. For example, in technical studies pertaining to project

⁸ This is not to say that First Nations have no influence over the parameters used to evaluate project effects; rather, my point is that First Nations do not have a formal decision making role at this stage of the EA process. Thus, the state retains ultimate discretion to determine how best, and to what extent, to integrate input from First Nations (Gray, 2016).

impacts on Aboriginal rights and interests, project effects are typically evaluated in relation to a pre-project baseline (Bruce & Hume, 2015). This means that impacts on harvesting interests are assessed in comparison to the existing set of circumstances, prior to project development. This approach dehistoricizes EA (and resource extraction more generally) by obscuring the impacts *already* experienced by Indigenous peoples because of generations of colonialism, dispossession and extractive activity (Bruce & Hume, 2015; Carrier Sekani Tribal Council, 2007; Booth & Skelton, 2011). Similarly, while Indigenous peoples often express concerns about the *cumulative* impacts of resource development on their traditional territories, the spatial parameters identified by project proponents (and approved by regulators) are typically project specific rather than territory specific. This is the case even though First Nations have different traditional territories and thus experience cumulative effects in ways that are specific to each Nation.

If it were true that impact assessment methods were value-neutral, then none of this would be an issue. However, in view of the extent to which government regulators rely on data and related analyses produced by proponents and private consultants to understand and evaluate potential project impacts, it is not surprising that a common critique of BC's process is that it is not neutrally administered and therefore subject to "a pronounced bias [that] undermines the agency's claim to conducting objective and balanced processes" (First Nations Energy & Mining Council, 2009, p. 46). The very political economy of EA itself eliminates independent assessment.

2.2.3. Assumptions about human/nature relationships and what constitutes appropriate evidence

In addition to being rooted in the assumptions about Indigeneity and objectivity outlined above, EA is also premised on the following set of (related) assumptions about humans and the natural world: that humans are separate from nature; that nature is not sacred; and that Western science tells us true things about "what 'nature' is and how we can/should relate to 'it'" (which other modes of inquiry/ways of thinking cannot) (Reddekop, 2014, p. 4). A review of how these assumptions evolved and came to be held as "truths" in the Western tradition is beyond the scope of this paper (see Reddekop, 2014; Rorty,

2007 for examples), but for my purposes, it suffices to say that mastery over nature and the manipulation of nature for human wellbeing are assumed to be rational and therefore uncontested axioms. There are many more nuanced versions of this thesis, but the essential point is that our dominant worldview posits nature and the nonhuman world primarily as material *property* that can—and indeed, should—be owned, used, and exchanged, with a primary goal of improving individual wellbeing, most commonly understood through the lens of creating personal wealth.

This way of being in and relating to nature contrasts sharply with Indigenous ontologies. While I do not want to be reductionist or monological in drawing a distinction between Western and Indigenous worldviews, what I mean by this is that Indigenous peoples tend to relate to “nature” and nonhuman worlds differently than non-Indigenous people (Altamirano-Jiménez, 2013; Atleo, 2004). More specifically, Indigenous peoples tend to emphasize the interconnectedness of existence rather than make distinctions between humans and nature, which can (and often does) extend to recognition of animal personhood and/or the personhood of “insentient things”, as well as recognition of landscapes and nonhuman beings as alive or saturated with metaphysical properties (Nadasdy, 1999; Cruikshank, 2005; Atleo, 2004). Furthermore, Indigenous relationships to non-human beings and to place more generally are nested in social practices and obligations that are commonly grounded in, and informed by, notions of interrelatedness and reciprocity, and of the “oneness” of all things. Importantly, these relationships are not “knowable” in an observable sense and so do not align with modern ontological assumptions about what is real and not real.

For these reasons, Indigenous social practices and obligations (e.g., stewardship) are commonly construed as cultural constructions in settler environmental management contexts (i.e., beliefs). Again, others have explored this field in considerable depth and offered far more nuanced and fulsome descriptions of the key differences between Indigenous ontological and epistemological logics. For the purposes of this paper, what I want to draw attention to is the question of whether, given this and the other assumptions identified above, there is space in EA for the articulation (and accommodation) of

Indigenous perspectives, values, and interests—including realities about their metaphysical, relational and more-than-human worlds?

2.3. Methodology

Fifteen environmental assessment certificate applications approved by the BC government between March 2011 and April 2016 were analyzed as the body of material or “data” for this study. These fifteen applications represent all the mining and natural gas projects approved during this five-year time frame, which together comprise slightly less than half the total number of certificate applications approved within this period (n=33). I chose to limit this study to the mining and natural gas sectors because there is a substantial literature connecting extractive industries to Indigenous peoples’ ongoing dispossession. Moreover, the impetus for this project evolved in response to several recent high profile controversies regarding mining and natural gas projects in BC, all of which have primarily revolved around conflict between First Nations and the state. Sectors not addressed in this study include industrial projects (e.g., chemical manufacturing), water management projects (e.g., dams), waste disposal projects (e.g., waste management facilities), food processing projects, transportation projects, and tourist destination resort projects. While the findings from this research likely apply in many of these contexts as well, it was beyond the scope of this study to review all 33 certificate applications approved during this period. By focusing on two highly relevant sectors rather than taking a sample across all sectors (several of which are not particularly relevant to this research), I was able to comprehensively review all the approved applications within these constraints. The projects corresponding to the applications reviewed appear in Table 1 on the following page.

Table 1: Mining and Natural Gas Projects Approved by the Province, 2011-2016

Project Name	Proponent Name	Sector	Type	Date Certified
Woodfibre LNG Project	Woodfibre LNG Limited	Energy	LNG - facility	2015-10-26
Murray River Coal Project	HD Mining International Ltd	Mining	Coal	2015-10-01
Fording River Operations Swift Project	Teck Coal	Mining	Coal	2015-09-10
LNG Canada Export Terminal Project	LNG Canada	Energy	LNG - facility	2015-06-17
Brucejack Gold Mine Project	Pretium Resources Inc.	Mining	Gold/silver	2015-03-26
Pacific NorthWest LNG Project	Pacific Northwest LNG	Energy	LNG - facility	2014-11-25
Prince Rupert Gas Transmission Project	Prince Rupert Gas Transmission Ltd.	Energy	Natural gas	2014-11-25
Westcoast Connector Gas Transmission Project	Westcoast Connector Gas Transmission Ltd.	Energy	Natural gas	2014-11-25
Coastal GasLink Pipeline Project	Coastal GasLink Pipeline Ltd.	Energy	Natural gas	2014-10-23
KSM (Kerr-Sulphurets-Mitchell) Project	Seabridge Gold	Mining	Gold	2014-07-29
Fortune Creek Gas Project	Quicksilver Resources Inc.	Energy	Natural gas	2013-10-07
Line Creek Operations Phase II	Teck Coal	Mining	Coal	2013-09-25
Kitsault Mine Project	Avanti Kitsault Mine Ltd.	Mining	Molybdenum	2010-04-08
Roman Coal Mine	Peace River Coal Inc.	Mining	Coal	2012-12-14
Northwest Transmission Line (NTL) Project	BC Hydro	Energy	Natural gas	2011-02-23

This approach ensured that there were no overlooked outliers within the confines of this study, which was limited to projects approved by the BC government. However, one of the projects in my sample, the Woodfibre LNG Project, went through two environmental review processes: the BC process, and the “Squamish Nation Process”.⁹ The latter was developed and implemented by the Squamish Nation following the landmark *Tsilhqot’in* decision in June of 2014. That decision highlighted the need to obtain consent from First Nations with Aboriginal title, which the Squamish Nation claims across its territory.

⁹ If you include the federal review process, this project went through three review processes. However, under “one, project, one assessment” legislation, a substituted assessment was carried out by the Province. Substitution is explained in more detail on page 23.

Since the BC process does not require the Province to obtain the consent of affected First Nations, the Squamish Nation established the Squamish Nation Process as an alternative. The Squamish Nation Process replaces the BC process, and requires proponents to engage directly with the Squamish Nation's government and membership. A more detailed account of the Process is outside the scope of this thesis,¹⁰ but with respect to this research, it is important to note that it is confidential and I was unable to review any of the documents that may have been developed to support it. However, though the Squamish Nation did not participate in the BC review process for the Woodfibre LNG project, the Tsleil-Waututh Nation did. Therefore, I included the Woodfibre application in this study and focused my analysis on the representation of Tsleil-Waututh interests.¹¹

I focused this study on approved projects because while several additional mining and natural gas projects were currently “under review” during the same period (n=4 at the time of writing, some of which have since been approved), it was important to capture the fact that the applications analyzed for this study were approved despite the deficiencies I highlight. Projects that are “under review” are subject to change, and the content of project application documents is often adjusted following feedback from affected First Nations. Including these projects in this analysis could have skewed my findings.

Two other project applications were similarly omitted from this analysis. One excluded application was for a pipeline project that was withdrawn by the proponent, while the other was for a proposed molybdenum mine that was terminated by the EAO. In the first case, an application was submitted, but the proponent suspended and later withdrew the project due to a change in market conditions. In the second case, an application was submitted, but the EAO suspended the EA process and eventually terminated the application following an indication from the proponent that the project, if pursued, would be redesigned to the extent that a new application would need to be submitted. In both cases, I found no indication that the issues addressed in this research played a role in either the

¹⁰ For more information, see Bruce and Hume, 2015.

¹¹ As the first of its kind, there is no doubt that the emergence of the Squamish Nation Process has implications for my research, as it is an important example of Indigenous resistance to Crown EA processes. I discuss some of these implications in the conclusion to this thesis.

proponents' or the Environmental Assessment Office's decisions. Therefore, I excluded these applications for the same reason that I excluded the "under review" projects.

Document analysis was selected for this study because like many bureaucratic planning and decision-making processes, EA is predominantly textual. Decisions about proposed projects are made largely on the basis of what is written in proponent-developed certificate applications, as decision makers rely on the analyses of project effects presented in these applications to make judgments about the relative costs and benefits posed by each project. At the same time, it is well established within qualitative research paradigms that texts often play a critical role in establishing, maintaining and/or further entrenching power asymmetries, as they are a key medium through which certain ways of speaking (and hence, thinking and acting) become made more "official" than others. As several scholars have noted, document analysis enables a close study of the role that certain kinds of texts play in "[regulating] and [authorizing] institutional and behavior" (Barry & Porter, 2011, p. 9; see also Foucault, 1980; Bourdieu, 1991). Thus, document analysis provided an appropriate means to empirically examine the production and maintenance of knowledge/power in EA certificate applications. Methods such as key word searches, comparative analysis, thematic analysis, and pattern recognition proved particularly useful.

BC's EA process was selected as the research site primarily because the province has a highly unique Aboriginal rights context. In BC, most First Nations never signed historical treaties, which means that they also did not cede their rights to their traditional territories or the lands and resources within them.¹² As a result, there are hundreds of unresolved land claims in BC, and the content and scope of many First Nations' contemporary rights remain topics of considerable uncertainty in this province (Tsilqot'in Nation v. British Columbia, 2014; see also (BC Treaty Commission, 2017). This uncertainty has increased significantly in the past few years, most notably because of 2014's *Tsilhqot'in* decision, which upheld an Aboriginal title claim for the first time in Canadian history. Specifically, the *Tsilhqot'in* decision affirmed that the Tsilhqot'in Nation had previously existing title to approximately 1900 km² of

¹² This is not to say that Indigenous communities who did sign treaties ceded their rights to the land, but rather that this is how historical treaties have been interpreted by non-Indigenous lawmakers.

“Crown” land, and it also established that Aboriginal title confers the right to exclusive use and occupation of the land (notwithstanding some important constraints). This decision and others like it have changed the power dynamics in BC, as the vast majority of First Nations in this province now have considerably more legal leverage than most Indigenous communities in Canada (Miller, 2014). However, despite the direction provided by the *Tsilhqot’in* decision, the BC government has shown considerable reluctance to recognize First Nations’ claims to their traditional territories outside of the *Tsilhqot’in* case. This intransigence has led to EA becoming something of a battleground in BC, which in turn has helped to draw attention to several of the issues I identify in this paper.

Finally, I chose to focus on the provincial EA process as opposed to the federal EA process because the federal government and the BC government have signed a Memorandum of Understanding that enables the BC process to function as a “substitute” for the federal process. According to the BC Environmental Assessment Office, substitution means that “instead of doing two separate assessments on the same project, the BC Environmental Assessment Office conducts a single assessment that meets both provincial and federal requirements” (Environmental Assessment Office, 2015). While the federal and provincial ministers make separate decisions about project approval, they both rely on the environmental assessment report prepared by the BC regulatory body.

2.3.1. Research design and analytical methods

As mentioned in this paper’s introduction, my analytical objectives were to: (1) explore how Indigenous peoples’ interests were identified and described in recent EA certificate applications; and (2) examine how impacts on these interests were characterized and evaluated. The study began with a literature review that informed the development of an initial coding schematic and related categories. Specifically, I focused on existing critiques of EA that highlighted Indigenous perspectives on key issues with respect to the representation of Indigenous interests and concerns in these application documents, and I also carried out a broader review of literature pertaining to settler colonial environmental management regimes and related critiques (need example references). I also reviewed five applications

selected at random from the full collection (n=15). As key themes began to emerge, this first-pass review contributed to the development of the aforementioned coding scheme and related criteria. It also supported the development of a data collection framework and approach that was flexible enough to accommodate substantive differences among these documents. The coding framework was developed and refined iteratively during this period, and broadly focused on enabling comparative analysis of the following common certificate application components: traditional use, heritage effects, and community wellbeing in Part B; and Aboriginal Interests and “other matters of concern” in Part C. This paper primarily focuses on the representation of Aboriginal Interests in Part C, but in some applications, evaluations of project effects in Part B were carried forward into the analyses in Part C, so in many cases it was necessary to review both components.¹³

A comparative approach that was focused on identifying key words and recurring patterns and themes enabled the identification of which applications best represented Indigenous perspectives on value and impact. As it turned out, three applications were significantly above average in this respect (this is further discussed in the results section below), which aided considerably in the identification of coding categories, criteria, and scales. I used the better applications, findings from my literature review, and an analysis of correspondence between First Nations and the BC Environmental Assessment Office to identify components that *should* appear in evaluations of adverse project effects, and I also looked for discrepancies between what the proponent said they had done and what the content of the applications indicated had been done. Ultimately, I identified many ways in which Indigenous interests and concerns are made invisible in these applications, but for the purposes of this paper, I have focused the analysis on three such patterns. These three patterns, or “mechanisms of exclusion” as they are characterized here, were selected because they were (a) among the most cross cutting, (b) consistently corroborated through a

¹³ Part B is typically the section that deals with potential impacts on the “human environment”, while Part C, as noted above, is the section that deals with Aboriginal rights. How different proponents approach this varies from EA to EA, but in general, some assessments include sections in Part B that address Indigenous interests, such as chapters on Traditional Use. In these assessments, the findings in relevant components in Part B are typically carried forward into Part C to evaluate potential impacts on Aboriginal rights. In contrast, other assessments only address Indigenous interests in Part C.

review of the correspondence between affected Indigenous communities and the BC Environmental Assessment Office, and (c) in alignment with the issues previously identified in Indigenous critiques of EA, and thus clearly of importance to Indigenous peoples.

2.4. Results: Everyday acts of exclusion

This section presents an analysis of three mechanisms of exclusion commonly found in BC EA certificate applications. They include: (1) disregard for longstanding interests (chiefly non-consumptive interests) associated with territory governance and land and resource management in proponent characterizations of Aboriginal rights/Interests; (2) disregard for extra-material or “intangible” dimensions of value in favour of a focus on biophysical impacts and tangible interests (i.e., sites and resources); and (3) a notable lack of transparency and threshold suitability in evaluations of residual effects, particularly with respect to characterizations of *context*, *magnitude* and *significance*. These mechanisms are detailed below and further discussed in Section 2.5.

Before moving to a finer grain analysis, it is worth noting that three applications were found to be significantly above average in terms of how well they represented Indigenous voices, perspectives and interests. These applications were all for projects proposed by Teck Coal, and what set them apart was that the Ktunaxa Nation and a consultancy of their choosing (the Firelight Group Research Cooperative) jointly prepared Part C. This meant that project impacts on Ktunaxa interests were assessed from a Ktunaxa perspective, and while it is beyond the scope of this paper to evaluate whether better representation of Indigenous interests at the application stage translates to better decision *outcomes* for First Nations,¹⁴ it is evident that many of the problems identified in Section 2.2 were consciously resisted in these applications. In the analysis that follows, I frequently draw on examples from the Teck Coal-Ktunaxa applications to highlight how different modes of recognition serve to foreground or displace Indigenous interests and claims, depending on how they are operationalized.

¹⁴ That said, this is one of the key assumptions underlying this research.

2.4.1. *Finding 1: Disregard for longstanding interests (chiefly non-consumptive interests associated with territory governance and land and resource management) in proponent characterizations of Aboriginal rights/Interests*

Under BC’s existing EA framework, every certificate application must include a section in Part C that describes how a proposed project is likely to impact the Aboriginal Interests of affected First Nations.¹⁵ In this context, “Aboriginal Interests” are defined as “asserted Aboriginal rights, including title, or such determined Aboriginal or treaty rights” (Ministry of Aboriginal Affairs and Reconciliation, 2014, p. 3). Aboriginal rights are defined as “*practices, customs or traditions* integral to the distinctive culture of the First Nation claiming the right prior to European contact” (Environmental Assessment Office, 2013, p. 2, emphasis added). In BC, proponents regulate how Aboriginal Interests are delimited in certificate applications; so, for First Nations—many of whom hold asserted rights rather than determined (treaty) rights—the question of *what* rights and interests are recognized in Part C *as* Aboriginal Interests is crucial. How Aboriginal Interests were defined in these applications, and further, if project proponents explicitly included First Nations’ views on their respective rights/Interests within the assessments is similarly critical.

Overall, every application (n=15) abided by the letter of the law and so included a sentence or two defining the term “Aboriginal Interests” as being inclusive of asserted Aboriginal rights. Yet, First Nations’ views on their asserted rights were discussed in just five out of fifteen applications (33%), and of these, only four (27%) identified Aboriginal title as an Aboriginal Interest, though most BC First Nations assert Aboriginal title over their traditional territories. Aboriginal title is typically defined as an Aboriginal right, so this exclusion was notable given that within the EA context, Aboriginal Interests are synonymous with Aboriginal rights. In addition, while many First Nations assert customary rights associated with territory governance and land and resource management (often expressed through land claims, but also expressed through things like territory-wide land and marine use plans, territory

¹⁵ I use the term “affected First Nations” to describe First Nations whose traditional territories are likely to be impacted by project development. These First Nations are typically identified in Section 11 Orders as “Schedule B” Aboriginal groups.

stewardship programs, and the social responsibilities embedded in hereditary governance systems such as clan systems), in more than half of the applications reviewed, Aboriginal Interests were defined in constrained terms relating solely to subsistence use rights and other “fixities of identity” associated with settler assumptions about Indigeneity (Barry & Porter, 2011, p. 174). When they were recognized in these applications at all, non-consumptive interests were addressed in a separate subsection in Part C. This subsection was typically entitled “Other Matters of Concern to Aboriginal Groups”, “Non-rights Related Interests”, or another variation on this theme, and it is clear that affected First Nations did not have opportunities to determine which interests and concerns were portrayed as “rights related” and which were not.

Who controls what rights and interests are included and how matters precisely because, in the context of EA, non-Indigenous assumptions about what constitutes an “authentic” pre-contact Aboriginal practice, custom or tradition routinely contribute to the de/legitimization of Indigenous peoples’ claims, depending on what they are. By way of demonstration, in the application for the Pacific NorthWest (PNW) LNG project, “Aboriginal governance”, “traditional Aboriginal economic activities”, and “Aboriginal sacred places and related spiritual traditions” were all characterized as “Other Matters of Concern to Aboriginal People”, whereas subsistence use practices were characterized as Aboriginal Interests (i.e., rights). The very acknowledgement of Indigenous governance practices in this application was notable given that such interests and/or practices were recognized in less than a third of the applications reviewed. Yet, in distinguishing between these interests and subsistence use practices by referring to the former as “Other Matters of Concern” and the latter as “Aboriginal Interests”, the proponent implicitly denied their legitimacy *as* Aboriginal rights. This constrained mode of recognition is broadly consistent with Crown interpretations of Canadian case law in this area, but at the same time, BC’s EA process is explicitly not a rights-determining process. Thus, it seems odd that proponents and consultants were regularly in a position to make these kinds of calls, particularly considering that in many of the applications I reviewed, potential impacts on “other matters of concern” were analyzed much less rigorously (and so the interests characterized in these terms were not *de facto* given their due).

Taken together, these findings indicate that though the Aboriginal Interests identified in Part C were commonly portrayed as being consistent with the asserted rights of affected First Nations, in most of the applications reviewed for this study, this apparent equivalency was likely far from true. I found this pattern to be particularly problematic given that Indigenous laws and logics for territory management and resource use were often described in background ethnographic descriptions leading up to the identification of Aboriginal Interests, but then not included among the Interests that were evaluated in project impact analyses. The certificate application for the Westcoast Connector Gas Transmission Project provides a case in point. In this application, Metlakatla First Nation's customary governance practices vis-à-vis land and resource use were described in some detail in a background section that prefaced the analysis of project effects in Part C:

The four clans of the Coast Tsimshian are the Gisbudwa'ada (Killer Whale or orca), the Lax Giik (Eagle), the Lax Gyibuu (Wolf) and the Ganhada (Raven). Membership in a waap *conveys rights of access and resource use in that waap's laxyuup or territories*. Tsimshian law requires that only the hereditary chief responsible for a given laxyuup, or persons authorized by the chief, *may claim ownership of that laxyuup and speak to its management*. The chief manages the health of the laxyuup and is also responsible for the well-being of the waap. Present day Metlakatla hereditary chiefs are matrilineal descendants of the generations of chiefs before them who acquired, managed, defended and passed on intact the laxyuup of their waaps. (TERA Environmental Consultants, 2014, p. 11-302, emphasis added)

In this passage, several governance practices and traditions specific to the use of lands and resources within Metlakatla traditional territory are clearly highlighted, including both rights of access and resource use, and ownership and management responsibilities. In addition, the connection between “present day” Metlakatla hereditary chiefs and the “generations of chiefs before them” is also mentioned, which suggests recognition of continuity of practice.¹⁶ However, despite including this account of Metlakatla's territory management practices and related governance institutions in the contextual material leading up to the evaluation of residual project effects in Part C, ultimately, potential impacts on these interests were excluded from the proponent's assessment. Anticipated project impacts were instead evaluated solely in relation to traditional use practices (i.e., hunting, trapping, fishing, plant gathering, “cultural pursuits”,

¹⁶ This is one of the evidence requirements for evaluating rights claims.

and “ability to practice”), which is a substantial omission given that Metlakatla First Nation clearly asserts Aboriginal rights that encompass governance interests associated with land and resource use. My point is this: if Metlakatla asserts such rights, then—keeping in mind that it was acknowledged in the application that Metlakatla members actively maintain customary hereditary stewardship practices in Metlakatla traditional territory—why were these governance/territory management interests not included among the Aboriginal Interests identified in the application’s assessment of adverse project effects?

This example was indicative of a common trend that cut across these applications: when First Nations did not have opportunities to self-define the Aboriginal Interests analyzed in Part C, proponents and consultants tended to operationalize settler rationalities about the content and legitimacy of Indigenous interests and claims (thereby defaulting to the “fixities of identity” mentioned earlier). What is more, even when interests relating to Indigenous governance *were* formally included as Aboriginal Interests in Part C, they were generally defined in such a way that this inclusion had no effect. The treatment of governance in both the Prince Rupert Gas Transmission (PRGT) Project and the LNG Canada Export Terminal Project applications help to illustrate this point. In these applications, governance was identified as an Aboriginal Interest, but in the PRGT application, it was defined as “impeded ability to live off the land” (Prince Rupert Gas Transmission Ltd., 2014, p. 33-12); and in the LNG Canada application, it was defined in relation to potential effects on harvesting practices and “qualitative changes in harvested foods” (Stantec, Triton Haisla Ltd., 2014, p. 14-9). In other words, in both cases, governance interests were defined solely in relation to consumptive interests associated with subsistence practices. This meant that adverse project effects were not evaluated in relation to First Nations’ own principles for operating on the land, which likely also meant that the evaluations did not reflect these Nations’ perspectives on the extent and significance of potential project impacts.¹⁷

When compared against the much stronger characterization of Indigenous land use and governance interests in Teck Coal’s Fording River application, the reductive quality of these other modes

¹⁷ A review of correspondence between several affected First Nations, the Province, and the proponent confirmed this conclusion.

of recognition becomes especially evident. In this application, Ktunaxa relationships to place were emphasized throughout Part C, and explicit connections were drawn between historical Ktunaxa practices, customs and traditions; the rights and interests the Nation currently asserts; and the selection and definition of Interests to be evaluated in relation to project effects.¹⁸ No distinctions were made between Aboriginal Interests and non-rights related interests. Rather, it was explicitly stated in the application that the Ktunaxa Nation takes a “broad view of its rights in the Elk Valley” and so decided not to describe any interests as “other interests” (Firelight Group Research Cooperative, 2014, p. C-vii). In addition, Ktunaxa logics for operating on the land and in relation to other living things were foregrounded in the baseline descriptions pertaining to each Aboriginal Interest, as the excerpt below demonstrates:

The Ktunaxa philosophy of stewardship of the lands and waters is the recognition that we are a part of the land, and that our connectedness to it requires that we have respect for all things as anything that affects one, affects everything else. Ktunaxa believe that we must care for ?a'kxam̓is q̓api qapsin, or all living things, and in doing so we must ensure that the water is clean and pure, as it is the giver of life. We also believe that we must ensure that the land is properly stewarded; yaqa# hankati#ki na ?amak, which translates to “our people care for the land, the land cares for our people”. (Firelight Group Research Cooperative, 2014, p. C2-1)

This philosophy guided the evaluation of project effects in Part C, meaning that project impacts were assessed in relation to Ktunaxa values, principles, and experiences. The outcome of this approach was a residual effects assessment that clearly reflected Indigenous perspectives on value and impact.

2.4.2. Finding 2: Lack of attention to extra-material dimensions of value in favour of a focus on biophysical impacts and tangible interests (i.e., sites and resources) in evaluations of project effects

In addition to condemning BC’s EA process for operationalizing inaccurate assumptions about Aboriginal rights/Interests, Indigenous groups have also criticized the EAO for being too reliant on quantitative data and the professional judgment of consultants (First Nations Energy & Mining Council, 2009; Carrier Sekani Tribal Council, 2007). They maintain that these two factors have resulted in a concentration in EA on isolated variables that emphasize one-to-one (i.e., cause and effect) relationships, which—in the context of evaluating potential impacts on Aboriginal Interests—primarily means

¹⁸ Defined in this application as “valued components” or “VCs” (see section C.1.5.1 *Ktunaxa Seasonal Round and Associated Rights and Title*, p. C1-12).

evaluating biophysical impacts on the tangible sites and resources that First Nations use for land-based practices such as subsistence harvesting. The evaluation of biophysical impacts on sites and resources *is* of considerable importance to First Nations, but, as Altamirano-Jiménez writes, “subsistence activities are of little significance without the local web of social, spiritual, and economic relations in which they are embedded” (2013, p. 222). For this reason, many Indigenous groups view such a focus as being too reductive, as it seen as obscuring impacts on cultural or “extra-material” dimensions of value such as oral histories linked to very specific places, the relative sacredness of some sites over others, sense of order, identity, interconnectedness, and reciprocity across the human and non-human worlds.

In this study, I encountered this problem when looking at whether connections between impacts on tangible sites and resources and impacts on extra-material dimensions of value were identified in descriptions of anticipated project effects. Therefore, I examined whether the latter were reflected in evaluations of residual effects/impact significance in Part C. Overall, I found that almost every application included some reference to potential extra-material impacts, but in about half of these documents (8/15, or 53%), this was limited to the identification of possible impacts on the *experience of traditional use*. Most commonly, this extra-material dimensions of value was defined in terms of a measurable parameter such as “changes in the quality of the harvester’s experience” (or similar) and then evaluated in terms of a combination of the following: visual and acoustic impacts on traditional use sites, and impacts on the accessibility of these sites. Related intangibles such as cultural continuity, connection to territory, and community wellbeing were often mentioned in descriptive background sections outlining *why* certain Interests were of importance, but these values were rarely discussed or addressed in analyses of project impacts. When they were mentioned in these analyses, it was typically only in broad terms, and never in relation to specific sites of importance. Thus, though it was clear from this research that First Nations routinely voiced concern about the lack of representation of impacts on extra-material dimensions of value or requested that values such as “sense of place” be included among the valued components and/or Interests evaluated, for the most part, these calls were not taken seriously.

In the other seven applications reviewed, extra-material dimensions of value were addressed more comprehensively—though to varying degrees. For example, in the LNG Canada application, impacts were evaluated in relation to intangibles such as “Aboriginal identity” and “Aboriginal spiritual places” (with the latter defined as “potential disturbance of Aboriginal spiritual places by non-Aboriginal human activity”) (Stantec, Triton Haisla Ltd., 2014, p. 14-9), and in the Prince Rupert Gas Transmission application, “cultural transmission” (Prince Rupert Gas Transmission Ltd., 2014, p. 33-10) was identified as an Aboriginal Interest. However, while the Prince Rupert Gas Transmission application concluded that there were likely to be residual adverse effects on cultural knowledge transmission for several First Nations, these effects were not represented in the residual effects summary tables that appeared in Part C. The proponent explained this omission by stating that “effects on cultural transmission [...] do not readily lend themselves” to the approach that was used to characterize residual effects elsewhere in this application (Prince Rupert Gas Transmission Ltd., 2014, p. 33-14). In effect, then, impacts on cultural knowledge transmission were excluded from residual effects summaries *because* they are more difficult to measure. This issue was better managed in the LNG Canada application,¹⁹ but in this case, it was unclear how Indigenous perspectives on impact significance were incorporated into the residual effects evaluations. Given that identity and spirituality are both highly context-specific, it is hard to imagine how conclusions regarding project effects on such interests could be drawn without soliciting the views of the affected First Nation(s).

Some might argue that evaluations of impacts on tangible sites and resources are good proxies for analyzing impacts on extra-material dimensions of value, but it is important to point out that when these impact pathways are not made explicit or evaluated independently, the significance of a project’s effects are misrepresented. Let me briefly illustrate how this misrepresentation occurs. In a chapter on traditional use in Part B of the application for the Coastal GasLink Pipeline project, the proponent identified

¹⁹ For example, for “disturbance of Aboriginal spiritual places by non-Aboriginal human activity”, the proponent identified “quantitative and qualitative changes in non-Aboriginal interactions with *spanoxnox* areas or equivalent important areas” as a measurable parameter (Stantec, Triton Haisla Ltd., 2014, 14-11).

“cultural sites” as a valued component and described it as a proxy for “people’s long-term connection to the land, water and cultural continuity, [including] the ability to participate in and continue practices and activities conducted by past generations, as well as the ability to pass on the collective knowledge and use of the environment according to tradition” (Coastal GasLink Pipeline Ltd., 2014, p. 16-24). This description unambiguously suggests recognition of the importance of extra-material dimensions of value that go well beyond impacts to specific sites and resources; however, the proponent identified “disturbance of gathering places” and “disturbance of sacred sites” as the measurable parameters for this VC, and then defined “disturbance” as “the possibility that traditional resources users could be prevented from accessing cultural sites” (Coastal GasLink Pipeline Ltd., 2014, p. 16-41). In other words, adverse project effects on gathering places, sacred sites, connection to territory, cultural continuity, and cultural knowledge transmission were all reduced to possible impacts on First Nations’ ability to *access* cultural sites, and in this framing, “cultural sites” did not even include harvesting sites because impacts on harvesting sites were evaluated separately in relation to subsistence values (i.e., quality and quantity of resources, impacts on available harvesting sites). Because no *access*-related impacts were identified, the proponent drew the conclusion that any residual effects were likely to be “not significant”. This finding was then carried over into Part C to evaluate impacts on “cultural pursuits”, which—though not defined—appeared to be a proxy for *all non-consumptive cultural practices*. No new analysis was undertaken, so in short, impacts on non-consumptive Aboriginal Interests were also reduced to impacts on access, and no other potential impacts were discussed or communicated.

In sum, most of the applications I reviewed failed to capture either the interrelatedness of biophysical and extra-material impacts, or the ripple effect that project impacts often have with respect to extra-material dimensions of value. However, the representation of intangible values in the three Teck Coal-Ktunaxa applications stood in sharp contrast to this finding. In these applications, impacts were explicitly evaluated in relation to both tangible and intangible VCs, with intangible VCs including things like “Ktunaxa language and culture” and “future relationships with and knowledge of land and water” (Firelight Group Research Cooperative, 2015, p. C3-15). In addition, impact pathways between

biophysical project impacts and impacts on extra-material dimensions of value were communicated via both text and visual graphics (e.g., influence diagrams). These applications also included extensive discussion of impacts on intangible dimensions of value, with impacts such as “impairment of Ktunaxa sense of place and relationships to water, mountains, and the natural world” (Firelight Group Research Cooperative, 2014, p. C3-17) and “impairment of the ability of Ktunaxa citizens to maintain particular place-based knowledge and values” (Firelight Group Research Cooperative, 2015, p. C3-19) receiving considerable attention. Thus, the ensuing residual effects evaluations clearly reflected Ktunaxa perspectives regarding how these projects were likely to impact the Nation’s interests.

2.4.3. Finding 3: A notable lack of transparency and threshold suitability in evaluations of residual effects (i.e., significance), particularly in relation to characterizations of context and magnitude

In conjunction with strength of claim assessments and direct consultation with affected First Nations, regulators rely on the residual effects evaluations in certificate applications to estimate the likely “seriousness” of potential Aboriginal rights infringements.²⁰ These evaluations both inform the scope of Crown accommodation measures and shape project conditions, so for First Nations, a lot depends on how residual effects are portrayed in these analyses. Now, as discussed above, proponents have considerable discretion in defining the criteria used to evaluate residual effects, and they are also typically in a position to determine how and to what extent Indigenous voices are included in these evaluations. This conventional EA practice has generated considerable frustration and skepticism among First Nations, many of whom argue that evaluations of project effects fail to adequately capture Indigenous perspectives on the significance of project impacts, particularly in light of past impacts and cumulative effects. First Nations have specifically objected to proponents’ reliance on the professional judgment of consultants in these evaluations, which they maintain enables a “black box” evaluation environment wherein non-Indigenous experts may characterize residual project effects on Aboriginal Interests without having to

²⁰ “Seriousness” is the language typically used by both the state and the courts to discuss the duty to consult (and accommodate) in relation to potential adverse effects on the right or title claimed (see *Haida Nation v. British Columbia [Minister of Forests]*, 2004).

clearly define relevant thresholds or provide sufficient information to substantiate their judgments. A related problem is that it is often unclear *if or how* First Nations' input influenced their findings. Consequently, significance evaluations are frequently contested by First Nations, especially findings of "no significant residual effects".

An examination of this critique was explored in several ways. First, I analyzed whether the baseline or "existing conditions" descriptions for the Aboriginal Interests identified in Part C included any reference to past impacts. I did so because in EA, residual effects are evaluated in relation to change from baseline, yet from an Indigenous perspective, the extent to which losses have *already* been experienced is key to understanding impact significance (Turner, et al., 2008).²¹ Second, I looked at the criteria used to evaluate the significance of residual effects. These criteria varied across the documents reviewed, but in eight applications (60%), "context" was identified as one such criterion. Typically, this meant that there was an attempt to characterize each Aboriginal Interest in relation to its "resilience", "sensitivity" or "vulnerability". I focused my analysis on these characterizations because evaluations of the resilience/sensitivity/vulnerability of Aboriginal Interests were used to draw conclusions with respect to impact significance. Since resilience, vulnerability, and sensitivity all reflect a First Nation's ability to "endure" impacts, which itself is a function of past impacts (Adger, 2006), I was again looking to see if Indigenous perspectives on past impacts and/or Interest "resilience" were considered in these characterizations. I did so by examining the measures used to assess resilience/sensitivity/vulnerability (where these existed), and by checking to see if baseline descriptions influenced the resilience assessments. Finally, I also reviewed how residual effects assessments were ultimately made, and whether impact measures were identified and defined in reference to "magnitude", "seriousness" and/or "significance". If they were, I looked at whether these determinations included reference to key considerations such as relative importance and context, and I also looked for indications that the views of affected First Nations were included in the evaluations.

²¹ Therefore, if baseline descriptions failed to mention or discuss past impacts, this was an indication that Indigenous perspectives on impact significance were not likely to be well captured in associated residual effects evaluations.

In short, I found that despite often claiming that they did do so, proponents rarely considered impact significance in relation to First Nations' past experiences of impact. For example, in the application for the Prince Rupert Gas Transmission project, "context" was identified as one of six residual effects and defined in the following terms:

Context refers primarily to the current and future sensitivity and resilience of the Aboriginal Interest to change caused by the Project. Consideration of context draws heavily on the description of existing conditions of the Aboriginal Interest, which reflect cumulative effects of other projects and activities that have been carried out, and *especially information about the impact of natural and human-caused trends on the condition of the Aboriginal Interest*. (Prince Rupert Gas Transmission Ltd., 2014, p. 33-16, emphasis added)²²

Relevant measures were also identified, with "resilient" defined as "the Aboriginal Interest is not sensitive/has high resiliency to disruption" and "not resilient" defined as conditions wherein "the Aboriginal Interest is sensitive/has low resiliency to disruption" (Prince Rupert Gas Transmission Ltd., 2014, p. 33-16). These definitions clearly indicate recognition of the relationship between past impacts and the current sensitivity of Aboriginal Interests, which is noteworthy. However, cumulative impacts on the "condition of the Aboriginal Interests" were mentioned in baseline descriptions in just a few instances,²³ and even in these instances, this information did not seem to influence whether the context of a given Aboriginal Interest was judged to be "resilient" or "not resilient" in linked residual effects analyses.

This finding was surprising given that this application contained baseline descriptions for sixteen different First Nations, but what was more surprising still was that each Nation-specific residual effects assessment had the exact same context characterizations. Across sixteen different assessments, all harvesting related Interests (e.g., hunting, trapping, gathering) were characterized as "resilient", and all non-harvesting related Interests (e.g., sacred areas, cultural transmission, governance) were characterized

²² Other residual effects criteria included: magnitude, extent, duration, reversibility, and frequency.

²³ Instead, the proponent's existing conditions descriptions typically included an overview of each Nation's historical patterns of traditional use, followed by a characterization of current use patterns. Very few connections between impacts from other extractive activities or impacts and current conditions were identified, and in the few cases that such connections *were* drawn, it was clear that this information was not incorporated into the characterization of the effect.

as “not resilient”. In other words, judgments about the resilience/vulnerability/sensitivity of the Aboriginal Interests of these sixteen First Nations were applied uniformly, with no consideration for contextual specificity. Several First Nations had submitted detailed information outlining past impacts on harvesting activities and related concerns about the vulnerability of specific areas and interests, so it was by no means the case that the proponent did not have Nation-specific information about the vulnerability of certain Interests. Rather, the residual effects evaluations were simply not sensitive to each Nation’s individual circumstances and concerns.

In general, I found that a lack of alignment between assertions of sensitivity to First Nations’ concerns and findings of no residual effects due to the assumed “resilience” of Aboriginal Interests was a common occurrence across many of the applications I reviewed.²⁴ Further, while eight applications (60%) explicitly characterized the context of affected First Nations’ Aboriginal Interests in relation to resilience/vulnerability/sensitivity, in half of these applications, no justifications were provided for why a given Aboriginal Interest was determined to be “resilient” or “not resilient” (or “vulnerable”, “not vulnerable”, etc.). Instead, these terms were defined in the abstract and applied without substantiation. This meant that significance determinations were made in part based on evaluations of Interest resilience, but these evaluations were made without clear reference to either the condition of each specific Interest or Indigenous perspectives on their resilience, sensitivity, or vulnerability. In several cases, this was so even when detailed information to this effect was provided by affected First Nations.

Meanwhile, in the seven applications that did not characterize baseline context, characterizations of “magnitude” were used to describe the anticipated severity of project impacts. In five of *these* applications, however, magnitude was not defined. Instead, impacts were described as “of small magnitude”, “low to negligible magnitude”, and so on, but thresholds defining these distinctions were not

²⁴ Example from the Roman Mine application: “Resilient: Subject is likely to adapt or recover from change easily; Moderately resilient: Subject is likely to adapt or recover from change with difficulty; Vulnerable: Subject is unlikely to adapt or recover easily from change”.

provided.²⁵ This absence of clear logics or measures for thresholds meant that though proponents routinely used context (i.e., resilience) and/or magnitude terminology to characterize residual effects, in nine out of fifteen applications (60%), it was difficult if not impossible to determine how these characterizations were made. Further, in six of these applications, impact significance was evaluated in relation to the same criteria (low – high magnitude, etc.), but also not defined. So, in effect, in 40% of the applications reviewed for this study, impact significance was evaluated in a manner that can only be described as opaque.

In six applications, proponents provided clearer definitions of both magnitude and context (as applicable), and in several cases, they also acknowledged both the subjectivity of significance evaluations and the potential inappropriateness of evaluating Aboriginal rights infringements in these terms. In this vein, four applications (27%) did not include evaluations of impact significance at all. Of these, one simply identified areas of “potential infringement to inform Crown-Aboriginal consultation and accommodation processes” (ERM Rescan, 2014, pp. 20-11), one summarized potential residual effects but did not draw conclusions as to their significance (PRGT), and two evaluated residual project effects in terms of either their “predicted level of seriousness” vis-à-vis Aboriginal rights infringements or their predicted “interference with” Aboriginal rights (PNW and LNG Canada respectively). With respect to these last two, it is difficult to see how a prediction of “seriousness” differs from a prediction of significance, when in both cases it was unclear how Indigenous perspectives were incorporated into the evaluations. That said, this trend indicates a shift away from proponents evaluating the significance of project effects on Aboriginal Interests, which is promising.

Not surprisingly, the three Teck Coal-Ktunaxa applications best reflected Indigenous perspectives on value and impact, as in these applications, the evaluations of residual effects were written from a Ktunaxa point of view. This meant that residual effects characterizations clearly took the Nation’s past experiences of loss due to colonialism and resource extraction in Ktunaxa traditional territory into account

²⁵ Likely defined elsewhere in the application, but not specifically with respect to Aboriginal Interests.

(both within the lifetimes of current residents, and in a more historical sense). Also, associated criteria (e.g., context and magnitude) were defined in relation to the “vulnerability of value or sensitivity to change”, “cultural importance”, the “intensity of likely community concern”, and the “rarity of similar values” (Firelight Group Research Cooperative, 2015, p. C1-27). All told, this approach ensured that significance evaluations were focused on things that *matter* to the Ktunaxa Nation, rather than being limited to the evaluation of impacts on land-based practices expressed through changes in the quality and quantity of sites and resources. Also, it is worth noting that the definitions used to evaluate significance explicitly addressed the question of whether impacts were perceived as significant by Ktunaxa people:

In regard to Ktunaxa Nation title, rights and interests in relation to the Project, a significant effect is considered to be an effect (positive or adverse) that is attributable to the Project or the Project in combination with other changes (including effects of other projects or human activities), and that is likely to result in:

- Strong concern or interest by Ktunaxa Nation citizens; and,
- Clearly discernible (measurable or perceivable) changes to the preferred exercise of a culturally important practice, land use or right. (Firelight Group Research Cooperative, 2015, p. C1-29)

This definition of significance differs considerably from other approaches outlined in this study, which for the most part failed to acknowledge that First Nations might have very different views about what constitutes a “significant” impact on their Interests in comparison to those of industry or government.

2.5. Discussion

This research demonstrates that there are several highly problematic assumptions embedded in how knowledge is produced and legitimized in EA. As I have outlined above, these assumptions include misconceptions about Indigenous peoples’ “primitive” economic relationships to land and resources; delusions about the supposed neutrality of scientific inquiry; and the mistaken belief that mastery over nature and the manipulation *of* nature for human wellbeing (i.e., profit) are the only rational ways to live in relation to the natural world. In EA, these assumptions are commonly operationalized through specific, traceable mechanisms, some of which are explored in the previous section. By limiting what is possible with respect to the representation of Indigenous interests and perspectives in evaluations of project

effects, these mechanisms erase Indigenous claims and delegitimize Indigenous ways of knowing. However, just *how* they do so can be difficult to see. This is because the assumptions that underlie them have been legitimized through the “rationalization of bureaucratic and scientific functions” (Nadasdy, 2003, p. 8). In other words, they have come to be regarded as truths.

As Nadasdy (2003) suggests, it is precisely because these assumptions are hard to see that we must orient special empirical attention towards their exposure. In the context of EA, this means focusing on how certain ways of representing Indigenous interests and concerns come to be viewed as legitimate, while others are marginalized or suppressed. Thus, in highlighting the three mechanisms of exclusion identified in this paper—(1) failure to recognize long-standing interests (particularly non-consumptive interests associated with territory governance and land and resource management); (2) disregard for extra-material dimensions of value in characterizations of Aboriginal interests and related evaluations of project effects; and (3) poor/culturally inappropriate thresholds for evaluating impact significance—my intention has been to expose “which rationalities about space, place, and human-land relationships are hegemonic” (Porter & Barry, 2016, p. 27). When we take the time to do so, we begin to see how such rationalities become entrenched in processes that are ostensibly geared towards Indigenous participation and inclusion.

Not surprisingly, a key finding of this research is that the quality of the representation of Indigenous interests in EA certificate applications is very much dependent on the extent to which Indigenous perspectives on value and impact are foregrounded in evaluations of adverse project effects. When affected First Nations have opportunities to self-identify their Interests and define relevant measurable parameters that speak to what makes these Interests important to their communities, evaluations of project impacts are much more likely to reflect Indigenous ways of thinking about, being in, and relating to place. However, better representation of Indigenous interests in certificate applications is not enough to ensure that evaluations of residual and cumulative effects both reflect and respect Indigenous views on project impacts. Rather, potential impacts must also be evaluated in relation to temporal and spatial boundaries that are meaningful to Indigenous peoples. In part, this means taking past

experiences of loss into account when characterizing baseline conditions or describing the vulnerability of a given Interest. In addition, it also requires identifying more relevant spatial parameters for evaluating cumulative effects, though this topic was not directly covered in this paper.

Under BC's existing framework, a major obstacle to improving EA in these and other ways is that at present, project proponents and private consultants have considerable influence over how Indigenous subjectivities are represented in evaluations of adverse project effects. First Nations can and do challenge the (mis)representations that these asymmetrical conditions produce, but this research suggests that within the confines of the project review process, their efforts have limited success. In participating in EA, First Nations typically operate within an established system that merely invites them to "perform certain kinds of roles" within it (Porter & Barry, 2016, p. 26). Because the logics of that system remain relatively stable despite Indigenous resistance, proponents and consultants are routinely able to operationalize assumptions that render some Interests and impacts more visible than others. Where First Nations have seen more success is in negotiating alternative processes, such as the Teck Coal-Ktunaxa examples referenced throughout this paper, and the Squamish Nation example briefly described in the methodology section. However, in these cases, both the Squamish and the Ktunaxa were dependent on cooperative proponents.²⁶ While proponents are becoming increasingly invested in securing project approval from affected First Nations, the quality of our EA processes vis-à-vis the representation of Indigenous interests should not be reliant on the willingness of industry to come to the table.

Some would suggest that an obvious fix would be to establish a more inclusive and independent project review process, and indeed, these were two of the key recommendations in an Expert Panel Report

²⁶ In the Teck-Ktunaxa case, Teck Coal agreed to have a consultant of the Ktunaxa Nation's choosing develop Part C, while in the Squamish Nation case, the proponent agreed to participate in the Squamish Nation Process. While it is likely that proponents will become increasingly invested in obtaining social license from First Nations as Aboriginal title cases progress, at the same time, First Nations should not have to be reliant on the willingness of industry to come to the table.

that came out of a recent government-mandated review of the federal EA process.²⁷ However, this research shows that many of the mechanisms through which Indigenous interests come to be negated in EA are products of deeply engrained social imaginaries about Indigeneity and Western rationalism. Thus, though implementation of a more inclusive and independent process would certainly be a step in the right direction, there is no guarantee that the assumptions identified at the outset of this section would not be reproduced through the discourses and practices of a new process. It bears repeating that the problems highlighted in Section 2.4. were not the result of a lack of Indigenous participation in EA. In the same vein, I think it would be both inaccurate and unproductive to assume that the consultants who evaluated project impacts in relation to Aboriginal Interests in many of the applications reviewed for this study excluded Indigenous values and interests intentionally (although it is certainly possible that this did occur at times).

My point is that if we want to do better when it comes to representing Indigenous perspectives and interests in EA, we need to place far more emphasis on addressing issues associated with representation. The recommendations in the Expert Panel Report provide a good starting point, as they highlight the need to develop an independent process that is not reliant on evaluations of adverse project effects produced by project proponents. However, experience has shown that government actors tend to be reluctant to make significant changes when there is a perception that economic interests are under threat. Though the current arrangement in no way facilitates disinterested findings with respect to the evaluation of impacts on Indigenous interests, this bias benefits the state, as it ensures that Indigenous relationships to place are reduced to “a set of practices that have the potential to coexist with the capitalist economy” (Altamirano-Jiménez, 2013, p. 217). Accordingly, I would not be surprised if state actors continue to focus on making EA more inclusive and participatory, but fail to more substantively address First Nations’ grievances with respect to the issues this research identifies.

²⁷ This report is entitled *Building Common Ground: A New Vision for Impact Assessment in Canada*. It can be accessed at https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc038.

This may seem like a rather discouraging perspective, but in their work on the “struggle for coexistence,” Porter and Barry (Porter & Barry, 2016, p. 30) underscore that “contact zones between planning and Indigenous peoples cannot [...] be seen as automatically progressive or stable”. Though I find the Teck Coal-Ktunaxa examples to be useful in thinking through what a more transformative politics of recognition could look like in the context of EA, I also recognize that from a state/industry perspective, more fulsome acknowledgement of potential project impacts on Indigenous interests opens the door to more legal challenges associated with land claims and rights infringements. State intransigence in this area is therefore to be expected. However, this door is arguably already wide open, and in any event, it is impossible to have productive conversations about mitigation and project approval without first establishing a decision process that recognizes the legitimacy of Indigenous ways of knowing. In my view, this will require a new process that better “articulate[s] planning as a practice and ethics of coexistence” (Porter & Barry, 2016). Until such a process is in place, we will no doubt continue to see EA further exacerbate tensions between First Nations and the state.

3. Conclusion

This thesis applies a critical Indigenous studies lens to the study of EA. In doing so, it adds to a growing body of scholarship that is focused on exposing how certain modes of recognition “reify” existing power relations by enfolding Indigenous claims into prevailing systems of settler colonial dominance. While this body of scholarship is robust in many areas, it has only recently been put in conversation with critiques of EA (see Hoogeveen, 2016; Galbraith, 2014 for examples). Thus, though many scholars have drawn attention to EA’s problems with respect to meeting the duty to consult, relatively few have closely examined the role that project review processes both can and often do play in “co-opt[ing] and tam[ing]” Indigenous claims (Porter & Barry, 2016, p. 27). This gap is significant, because decision support processes such as EA are commonly framed as being predominantly technical and therefore value neutral. An associated assumption is that EA’s flaws with respect to meeting the duty to consult can be “fixed” by making EA more transparent and providing Indigenous peoples with more opportunities to express their concerns and interests in relation to potential project impacts. What is overlooked in this assessment is that bureaucratic processes such as EA are both value-laden and deeply entrenched in settler assumptions about who owns the land and how it should be used. However, because these assumptions are operationalized through institutional practices that emphasize Indigenous recognition and participation, their exclusionary logics tend to go unnoticed.

In drawing attention to these issues, I do not mean to suggest that inclusivity and transparency are not worthy goals for planning and decision making in contexts involving Indigenous peoples. Instead, my objective is to highlight how “seductive and cunning forms of inclusion [can] render the cultural presumptions of the settler state invisible” (Porter & Barry, 2016, p. 29). This statement is somewhat abstract, so let me clarify. In EA, affected First Nations are consulted throughout project review processes. During consultation, community representatives have opportunities to identify specific interests and express key concerns in relation to the use of their ancestral lands and resources. However, these interests and concerns are ultimately “rendered technical” in the studies that comprise EA certificate applications (Hoogeveen, 2016). As my research demonstrates, this process of (mis)translation commonly

results in the erasure of many issues of critical concern to Indigenous communities. Yet, these texts play a significant role in shaping the decision frame through which decision makers assess major proposed resource development projects. Thus, Indigenous interests get negated *via* Indigenous participation in EA, and at the same time, regulators and proponents get to claim that they did everything they could to engage in “meaningful” consultation with affected First Nations.

Nadasdy (2003) offers a useful perspective on these issues. He suggests that the process of Indigenous exclusion described above is best understood as a function of the bureaucratization of Indigenous-state relations. In other words, proponents and consultants are not necessarily *trying* to misrepresent Indigenous peoples’ perspectives in contexts such as EA; rather, they are “merely observing the forms and formalities” of existing “official” discourses (2003, p. 5). For example, certain ways of thinking about Indigenous relationships to land and resources have been legitimated over time due to settler assumptions about Indigenous peoples’ primitive economies and the “use value” of nature more generally. These ways of thinking have been reified through the articulation of Aboriginal rights, which in turn has shaped how Indigenous interests are talked about and represented in processes like EA. Thus, by focusing on harvesting rights and subsistence use practices in evaluations of project effects, proponents and consultants are just playing by the rules of the game as it has been laid out for them. Similarly, government regulators such as those employed at BC’s Environmental Assessment Office are simply working within an established system of thought and practice. Though some might want to operate differently, they too “are constrained by the implicit assumptions underlying the rules and forms of government bureaucracy” (2003, p. 8).

What this perspective adds to the study of EA is recognition of the complexity of Indigenous-state relations. To be clear, we are not talking about the state and industry as single entities with agency, we are talking about a multiplicity of actors working within a relatively sedimented institutional structure. For this reason, it is absolutely critical to closely examine the spaces within which Indigenous subjectivities are defined, negotiated and contested. By orienting attention towards these spaces, we can identify the mechanisms that operationalize the implicit assumptions embedded in settler institutions.

While these assumptions are ultimately discursive, they have very tangible effects on Indigenous relationships to land and place, and the wellbeing of Indigenous communities more broadly. If we fail to identify these mechanisms and trace how they contribute to Indigenous losses, we will also fail to recognize how our assumptions contribute to Indigenous dispossession.

3.1. Application of Findings

3.1.1. Recommendations

From a practical perspective, there are several key takeaways from this research. Below, I identify eight recommendations for those who do EA work. These recommendations are limited to the representation of Indigenous interests in Part C, and have been developed in response to the mechanisms of exclusion this research highlights. As such, they speak to the existing EA process and do not attempt to address broader concerns about jurisdiction and whether EA is an appropriate venue for the state to discharge the duty to consult.²⁸

1. Project proponents should not be in a position of authority when it comes to carrying out evaluations of project impacts on Aboriginal Interests, or representing the interests of affected First Nations in evaluations of adverse project effects. Until this changes, proponents should provide funding for First Nations to select and work with a consulting firm of their choosing. Part C should be developed collaboratively by the consultant and First Nations. First Nations should have opportunities to approve or reject the residual effects assessment.
2. First Nations must be in a position to ensure that project impacts are evaluated in relation to their own logics for operating on the land and in relation to other living things. Therefore, First Nations should have opportunities to identify their own rights and interests for the purposes of assessment, and they should also be able to influence how impacts on their interests are being measured and

²⁸ For critiques and recommendations in this vein, see Bruce & Hume, 2015; Carrier Sekani Tribal Council, 2007; Haddock, 2010; First Nations Energy & Mining Council, 2009.

evaluated. For example, if a First Nation identifies an interest in a specific site, impacts on that site should be evaluated in relation to that Nation's associated logics for why that site is important.

3. Distinctions should not be made between asserted rights and "other interests", unless an affected First Nation chooses to make such a distinction.
4. If Aboriginal title is claimed, impacts on Aboriginal title should be addressed in evaluations of residual effects.
5. Baseline conditions descriptions should identify past experiences of impact and highlight First Nation concerns with respect to the vulnerability or sensitivity of specific interests. These descriptions should inform significance evaluations.
6. Parameters for evaluating project impacts should not be limited to measures that are biophysical and therefore quantifiable. Measures should either be designed or approved by affected First Nations and potential impacts should be assessed using a mix of methods, with an emphasis on qualitative methods.
7. Parameters for evaluating project impacts should be spatially and temporally relevant.
8. Thresholds for determining impact significance should be transparent and relevant. To be relevant, they must reflect First Nation perspectives on what constitutes a significant impact.

3.1.2. Next Steps

More generally, this research underscores how discourses and practices that emphasize Indigenous recognition and inclusion can have a silencing effect on Indigenous peoples. Thus, it has important implications for reconciliation between First Nations and the state. Currently, reconciliation is described as the central goal for Indigenous-state relations, and there is considerable attention placed on acknowledging past injustices and recognizing Aboriginal rights. However, there is much less attention on or awareness about how contemporary modes of recognition impose reified articulations of Indigeneity and in so doing, "reproduce spatial relations in the interests of settler-colonial power" (Porter & Barry,

2016, p. 3). This is problematic given the tendency we have of thinking that the solution lies in creating more inclusive structures and institutions. While this is a commendable goal, it overlooks how underlying power dynamics constrain what is possible within such structures and institutions. For example, under BC's current EA framework, there is very little space to acknowledge Aboriginal title, and there is virtually no opportunity for First Nations to play a substantive role in making decisions about what happens in their traditional territories. From this perspective, Indigenous participation in EA is exacerbating tensions rather than facilitating reconciliation. Thus, it is also undermining other reconciliation efforts by demonstrating a lack of government sincerity on many issues that are of considerable significance to First Nations today.

In foregrounding the need to critically examine the assumptions underlying Aboriginal rights discourses and the way we think about our relationship to lands and resources, this research offers opportunities to reconsider how we might approach reconciliation. Reconciliation is a process, not a thing that can be "achieved", and for this process to move forward, there must be recognition that colonialism is a contemporary phenomenon. Yet we cannot see the assumptions implicit in our own institutions and structures without centering Indigenous voices, because we do not see them *as* assumptions. This is difficult to do in an era in which decisions are ostensibly made via the "'sound science' of risk assessment" (Wynne, et al., 2007, p. 32). But at the same time, EA is a dynamic and evolving field that is likely to experience substantial changes in BC and Canada over the next few years. At the federal level, there is a distinct possibility that the entire process will be overhauled in response to the recent Federal Review Panel report mentioned in Section 2, and at the provincial level, we are about to see a change in government for the first time in sixteen years. These developments suggest that there is a lot of room for growth and opportunity, and for moving forward with real change.

In this vein, I see value in publishing the findings from this research in a more user-friendly format. This is something I have an interest in doing, and though some of the theory behind what I have discussed in this thesis is complex, there are many practical insights and recommendations that can be developed from this analysis. Now is an opportune time to produce such a tool, as it can be framed in

response to the Federal Review Panel's report. This report contained many excellent recommendations, but was somewhat scarce on details about how these recommendations should be implemented. As this research demonstrates, the devil is in the details, so any tool that highlights how to address some of the issues discussed in this thesis will be of use to EA practitioners moving forward.

3.2. Limitations and Future Research Directions

This research took a macro-level approach to the study of EA, and focused on systematically reviewing mechanisms of exclusion across fifteen EA certificate applications. This survey facilitated the identification of specific mechanisms through which the negation of Indigenous interests commonly occurs in EA. This is important for thinking through how to address systemic issues associated with EA, however, what it did not allow very much room for is a more thorough analysis of the many ways in which Indigenous peoples are resisting the erasure that takes place through EA. This is a serious gap, because any study that looks at settler-colonial institutions and practices should also orient attention towards how Indigenous peoples are influencing and transforming these spaces. Thus, I see an opportunity for future research to focus more on strategies of Indigenous resistance in the context of EA. I am particularly interested in the Squamish Nation Process. The establishment of this process is among the most momentous rejections of the imposition of EA that I have seen to date. However, many questions remain as to how effectual this Process will be. For one, at the moment, the Process is dependent on compliant proponents. In addition, it is uncertain how the Province and the proponent would have responded if the Squamish Nation had not consented to the project. The Squamish Nation is currently involved in additional EA processes, and I would be interested in seeing research directed towards the implications and limitations of this strategy.

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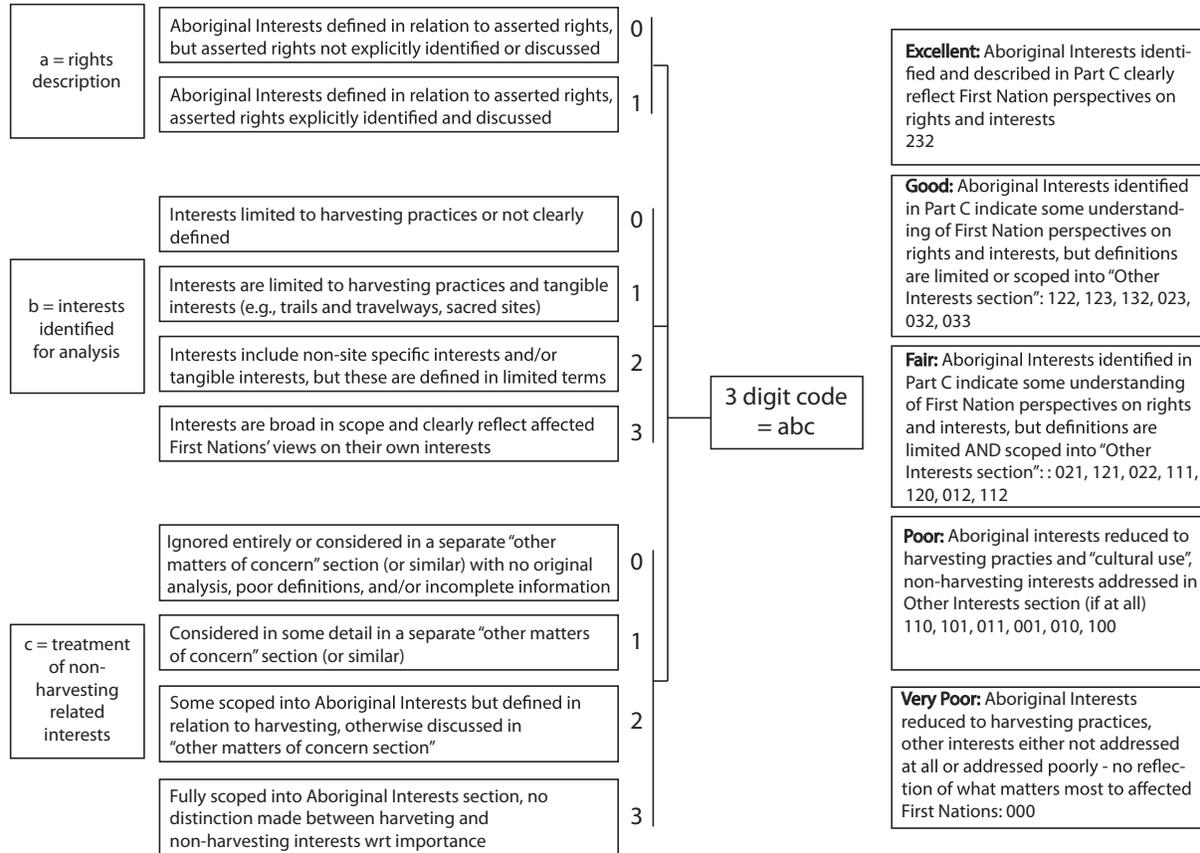
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Appendix A: Coding Schematics

Coding Schematic A



Coding Schematic B

