

## SYNTHESIS REPORT

# Implementing a Regional, Indigenous-Led and Sustainability-Informed Impact Assessment in Ontario's Ring of Fire

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14 April 2020

This report has been prepared with support from the *Knowledge Synthesis Grant Program: Informing Best Practices in Environmental and Impact Assessments*, of the Social Sciences and Humanities Research Council of Canada and the Impact Assessment Agency of Canada.

## EXECUTIVE SUMMARY

### **Background: the issue**

Development in Ontario's "Ring of Fire", a significant deposit of minerals, including chromite, located in the boreal region of the far north of the province, has been on the table for many years. Despite the fact that successive governments have hyped the value of the resources, the remoteness and lack of infrastructure, as well as the inability of governments to obtain the buy-in of all of the First Nations communities in the region, has left the Ring of Fire undeveloped.

Thus, Ontario's far north remains one of the world's largest, most intact ecological systems. The boreal forest and peatlands play key roles in regulating the climate. Proposed mining in this region has generated significant controversy and conflict because the potential for wealth generation is accompanied by the potential for significant and possibly serious negative impacts and cumulative effects, as recently-proposed infrastructure developments quite literally 'pave the way' for multiple mines and generations of extraction. The proposals also present a likelihood of inequitably distributed benefits and risks at a variety of physical and temporal scales, with remote Anishinaabe and Anishini communities and their ways of life particularly vulnerable in this regard. These communities are already experiencing an ongoing state of social emergency with youth suicide, addiction and housing crises, as well as a persistent lack of essential community infrastructure, including safe drinking water.

For many years, analysts and First Nations leaders have been calling for a regional process in order to broadly assess the expected impacts of the proposed developments in the Ring of Fire. They have noted the complexity of the contemplated infrastructure decisions, the potential for lasting negative impacts, and vast cumulative effects. And yet, without this framework in place, provincial and federal impact assessment (IA) regimes are currently proceeding to assess two individual road proposals that threaten to open the region up to mining.

### **Objectives**

With this research, our team has synthesized knowledge across a range of areas, including Indigenous-led IA, regional and strategic approaches to IA, and the use of gender-based analysis plus in IA, and applied it to the example of Ontario's Ring of Fire. In doing so, our primary aim has been to develop, test, and propose a workable plan for how such an approach could be adopted in the specific context of Ontario's Far North.

### **Methodology**

Our team began with a period of background preparation and literature review, including following the developments in the region over the fall months, including the progression of the project-level assessments that were being conducted at the federal and provincial levels for the [Marten Falls Community Access Road](#) and the [Webequie Supply Road](#). The PI conducted a community visit, workshop and some interviews in collaboration with Neskantaga First Nation in November 2019. Subsequent to that visit, the team collaboratively prepared three draft models for how a regional IA could be implemented in partnership with an Indigenous

Governing Authority (IGA) in the region. The team convened a day-long meeting with 14 community representatives, elders and leaders from Neskantaga First Nation in Thunder Bay on January 23, 2020 to discuss, debate and refine the models. The discussion was audio-recorded with permission, transcribed and coded. From there, the team finalized our recommendations and began drafting this report.

### **Key messages**

The key messages communicated to us by knowledge holders, elders, and leadership in the community engagement sessions included:

- The people in the communities are the real authority; the grassroots and the elders must be heard for any process to be legitimate;
- The appropriate Indigenous Governing Authority (IGA) must be a collective of affected First Nations, rather than one of the existing tribal councils or regional organizations, such as NAN or Matawa (on the basis of ecological connectivity and socio-cultural impacts related to probable infrastructure locations);
- An Elders Advisory Council should be an integral element at all stages of decision-making;
- The ongoing state of social emergency must be addressed first, before new projects can be adequately considered. Communities must be satisfied that any potential new projects or infrastructure will mitigate the crises, and enhance long-term social, cultural and ecological sustainability; and,
- Any regional approaches need to provide a framework that can effectively guide project-level assessments and approvals, which in turn lead into community-level consent processes, in line with local protocols.

### **Results**

The recommended model includes a semi-permanent Ring of Fire Commission to be established by agreement between the federal Minister of Environment and Climate Change and an Indigenous Governing Authority made up of impacted and interested First Nations. The Commission, in conjunction with an Elder Advisory Council, should develop a framework for cumulative effects; baseline data (including on the ongoing social emergency); criteria for a modified 'positive contribution to sustainability' test; and a regional plan. Under the umbrella of the Commission, we recommend a joint panel review process for making subsequent decisions about individual projects proposed for the region, within the parameters established by the Commission. Decisions on individual projects will subsequently be made independently by each relevant governing authority.

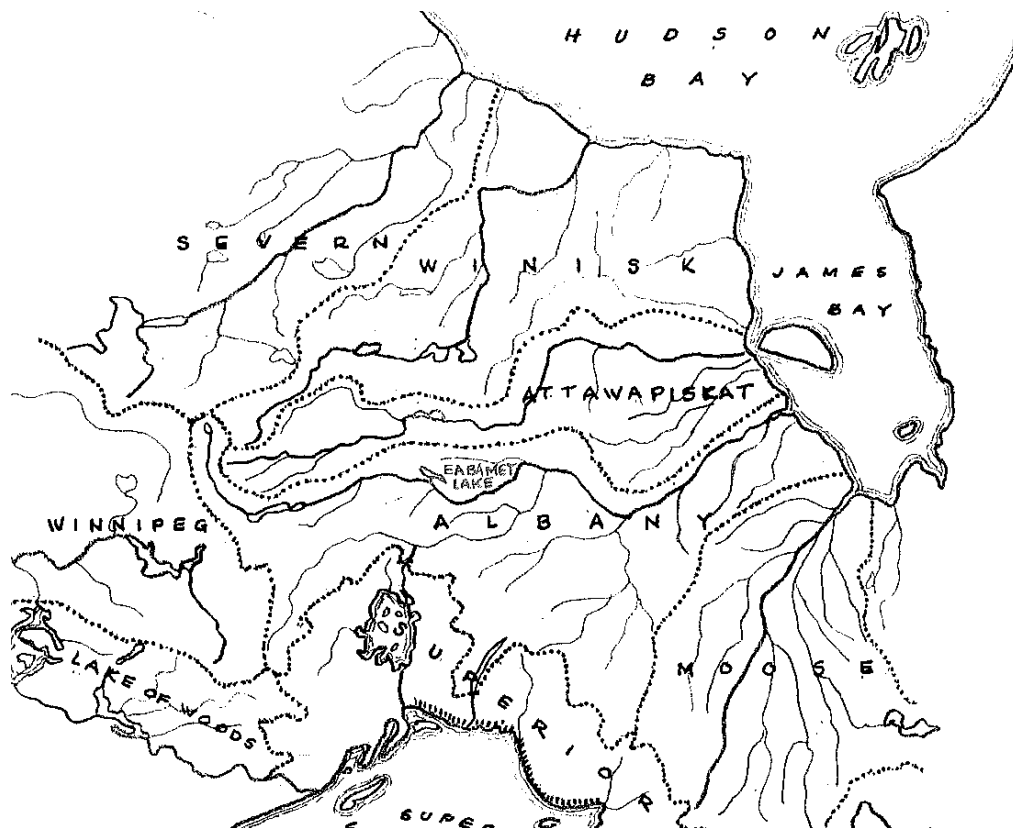
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## Background

The Ring of Fire is a large, crescent-shaped deposit of minerals in the vast swampy lowlands in the far north of Ontario, about 550 kilometers northeast of Thunder Bay, in the territory now known as Treaty 9. Significant deposits of chromite, copper, zinc, nickel, platinum, vanadium, and gold have been found, and a great deal of staking has taken place in the region since 2007. At one point, the Ontario Ministry of Northern Development and Mines (MNDM) generously estimated the Ring of Fire to contain \$60-billion worth of minerals, and envisioned it as a multi-generational economic opportunity, enthusiastically billed as “Ontario’s oil sands” (Tencer, 2013).

The deposit is said to be the first discovery of commercial quantities of chromite in North America (Hjartarson et al., 2014) and the fourth largest reserve in the world after South Africa, Zimbabwe and Kazakhstan (Sudol, 2015). Chromite sometimes appears on lists of “critical minerals” that will be important in the post-carbon transition (Fife, Chase and Leblanc, 2019). But despite the immense reported value of resources in the region, the Ring of Fire remains undeveloped. With the exception of the now-closed DeBeers open-pit Victor diamond mine near the James Bay coast, Ontario’s far north has been largely closed to industry (Gorrie, 2010). The largest chromite holding changed hands in March 2015 from Cliffs Natural Resources to Noront Resource Ltd. for a major loss and all activity remains highly speculative (Younglai & Marotte, 2015) at least in part because the area has no historical or current industrial activity, and also, no road or rail access. Recently, industry experts have pointed out that the potential value of the region is uncertain and very likely grossly overestimated (McGee & Gray, 2019).

The proposals for mines and related infrastructure in this resource-rich, inaccessible and ecologically-sensitive area have generated significant controversy and conflict because the potential for wealth generation is accompanied by potential for significant and possibly serious net negative lasting cumulative effects, and poorly distributed benefits and risks (Chetkiewicz & Lintner, 2014). The broader region that houses the Ring of Fire is stewarded by Anishinaabe and Anishinii/Oji-Cree peoples. It is proximate to five remote First Nations communities, Webequie, Nibinamik, Neskantaga, Eabametoong and Marten Falls, and four other First Nations that have road access to the south, Aroland, Long Lake 58, Ginoogaming and Constance Lake. Together, these First Nations make up the nine-member Matawa Tribal Council (Matawa First Nations Management, N.d). There are also other First Nations communities outside of the Matawa region that will be affected by the proposed developments, including those within the Attawapiskat river watershed and those with long standing relationships with communities within the Matawa region.



**Figure 1.** Northern Ontario's Major Watersheds, Ontario Resources Atlas, 1982, p.9.

The Ring of Fire region is part of Ontario's ecologically significant far north, which contains the world's largest area of boreal forest that is free from large-scale human disturbance. The Ring of Fire is also in the James Bay Lowlands – part of the Hudson Bay Lowlands, which form the world's largest peatland. Jointly, the boreal forest and the James Bay Lowlands serve as a crucial carbon sink for Canada and the world (Chong, 2014; Environment and Climate Change Canada, 2019). Ring of Fire mining and infrastructure development would alter the regional landscape and ecosystems significantly with impacts including habitat fragmentation affecting rare species, potentially serious release of pollutants and effluents into watercourses, possible impairment of carbon sequestration functions, increased hunting and fishing pressures facilitated by easier access, and probable introduction of non-native species, among other concerns (Chetkiewicz & Lintner, 2014; Chong, 2014; Wildlands League, 2015; WWF, 2017).

The pressing need for economic development, employment opportunities, and adequate *community-based* infrastructure and services (especially drinking water, wastewater systems and sufficient housing) in these remote Indigenous communities have also been major factors in deliberations about the potential contributions of mining in the Ring of Fire. People are experiencing an ongoing social emergency: a youth suicide epidemic is the most obvious manifestation of that, but poverty, addiction, overcrowding and unemployment are persistent challenges (Blizzard, 2010; Driben, 1983; Sudol, 2016; Scott, 2020 February 19). In this context, the proposed mining development has left many communities divided and many individual

community members feeling conflicted. The need for livelihood sufficiency is sometimes positioned as in tension with the need to maintain the culturally and economically foundational access to and reliance on traditional lands for hunting, fishing and trapping. For these communities, maintaining their way of life, harvesting practices, and jurisdiction on the land have been identified as crucial “valued components” to be protected as any development proceeds. The fear of socio-economic and cultural disruption associated with mines and roads exists alongside the desire for more opportunities for education, employment and effective health services in remote centres for present and future generations (Driben, 1983; Kleinfelder & Yesno, 1984).

As far back as 2012, former Neskantaga Chief Peter Moonias made it clear that the primary concern with developing the Ring of Fire is making sure “any development will benefit the long-term health and well-being of our people, including future generations, rather than hurting us” (Moonias affidavit, 2012). Moonias also raised concerns in 2012 about a road disturbing burial sites, crossing the Attawapiskat River and harming life on the river. He raised concerns about the roads opening up the territory to many more hunters and fishers, leading to depletion of limited resources on the land and interference with members abilities to fulfill their responsibilities to protect the territory. He mentions pollution being of huge concern. He states that the communities are already experiencing the adverse effects associated with mineral exploration. Outside of the environmental impacts, former Chief Moonias raised concerns about the social impacts of roads and mines, specifically related to drugs and alcohol coming into the communities.

Negotiations between Ontario and the Matawa Tribal Council from 2013-2018 attempted to craft wide-reaching agreements on major challenges such as inherent jurisdiction, revenue sharing and environmental assessment. While those talks have now broken down and shifted to confidential bilateral negotiations between the province and “mining-ready” First Nations in the area, the challenges remain (Prokopchuk, 2019; The Canadian Press, 2019; Jeffords, 2019).

Last year, two Matawa communities, Marten Falls First Nation and Webequie First Nation became proponents for the purpose of environmental assessment for road projects that would, in the Marten Falls case, connect the community to the provincial highway network, and in the Webequie case, connect the community to the mine site (see for example, MECP, 2019). Then, very recently on March 2, 2020, the province announced that the government had struck deals with the same two communities to study the “Northern Road Link” or what many had been calling the missing “Phase 2” portion of road that would connect the provincial highway system to the proposed mine site and provide a way for the extracted ore to make its way south for processing (Gray and McGee, 2020). Ontario said the “critical road infrastructure ...would provide reliable, all-season road access to potential mine sites and connect First Nation communities to Ontario's provincial highway network” (Office of the Premier, 2020).

In the dominant, settler legal tradition in Canada we have for several decades employed environmental assessment as a key regulatory tool for anticipating and planning for the effects of industrial development. However, traditional assessment methods are woefully inadequate

for considering the potential regional impacts of the Ring of Fire on the land, waters and communities. The roles and responsibilities that Indigenous peoples take on as ecological stewards, in tandem with their spiritual and cultural connection to the land, are poorly understood and generally have not been integrated into federal and provincial project level assessment mechanisms. Conventional, project-level assessments are insufficient to identify and address cumulative effects, and cannot provide an adequate base for determining whether proposed developments are likely contribute to lasting well-being and sustainability for the people of the region.

It is imperative that a new vision for partnership and collaboration, enabled by the concepts embedded in the new *Impact Assessment Act* be developed and implemented in order to find an acceptable way forward in the Ring of Fire. In the context of contemporary legal developments, it is simply not possible for the federal and provincial governments to proceed with such a major initiative in Treaty territory without incorporating a meaningful assessment of cumulative impacts, and engaging in joint-planning informed by the applicable Indigenous legal orders.

A failure to do so would be particularly troubling in the current moment, as some communities in the region struggle to deal with the ongoing social emergency. As such, we make the argument in this report that a broader and more positive approach, one that uses the opportunity presented by a Regional Assessment for the Ring of Fire, should be oriented towards finding pathways to durable, positive contributions to sustainability for the region and viable, prosperous futures for its inhabitants in line with their own visions and priorities.

In furtherance of this goal, we have brainstormed together various models for conducting regional-level examinations of cumulative effects, related future considerations and options, and appropriate action in anticipation of them. Where, as in this case, multiple past, present and reasonably foreseeable undertakings will affect a region, an anticipatory regional response is needed. Regional assessments, especially those meaningfully undertaken by multiple partner jurisdictions as we recommend here, need sufficient scope, authority, access to information and arrangements for meaningful public engagement to ensure credible analysis covering wide-ranging cumulative effects, examining broad implications, comparing future scenarios, and considering multiple alternatives (Arts et al., 2005; Gunn & Noble, 2009; Gillingham et al. 2016).

## Objectives

For many years, analysts have been calling for a regional IA for the Ring of Fire region due to the complexity of the development, the potential for lasting negative impacts, and vast cumulative effects (Atlin & Gibson, 2017; Chetkiewicz & Lintner, 2014). These studies have demonstrated that individual project-level IA is woefully inadequate for addressing the multi-layered complexities of large-scale development in this region. In addition, we believe that an individual project-level approach is very likely to generate litigation raising compelling Treaty rights concerns. However, models of employing co-led regional assessment in Canada are in



short supply, particularly for areas like the Ring of Fire. For these reasons, we set out to synthesize the existing knowledge on regional, Indigenous-led and sustainability informed IA, and to apply it to chart a way forward for Ontario's Ring of Fire region. The primary objective was to formulate the basis of a model for regional assessment for this region, drawing insights from people in the communities, experts, best practice internationally, and informed by the overall objectives of next-generation assessment practices and respecting the [United Nations Declaration on the Rights of Indigenous People](#) (UNDRIP).

The objectives of this research include:

- To outline the broader context of doing regional strategic assessments in ways that link coherently with project-level planning and assessment;
- To synthesize the current state of knowledge about Indigenous-led IA, that is, IA that is guided by the Indigenous social, political and legal orders specific to the territory on which the project is proposed;
- To consider how sustainability-based IA and Indigenous-led IA can work together;
- To describe how federal, provincial and Indigenous authorities could work together to jointly undertake IA processes;
- To explain how regional/strategic, sustainability-informed Indigenous-led IA demands a gender-based analysis and to demonstrate how such a lens could be applied in this specific case; and
- To synthesize the knowledge in each of these areas and apply it to the example of Ontario's Ring of Fire, producing a workable plan for how such an approach could be adopted in the specific context of Ontario's Far North.

## Methodology

Our team includes a Primary Investigator (PI) Dr. Dayna Nadine Scott, a socio-legal scholar based at York University with expertise in environmental law, Indigenous rights, and gender-based analysis; and co-applicants Dr. Cole Atlin, a postdoctoral researcher at Memorial University and expert on "next-generation EA" whose dissertation considered the Ring of Fire context specifically, and Dr. Estair Van Wagner, also of York University, who has expertise in natural resources and mining law, Indigenous rights and property relations, and treaty tribunals in New Zealand. Our collaborators included Chief Chris Moonias of Neskantaga First Nation; Dr. Robert Gibson of the University of Waterloo, an internationally recognized expert on the design of environmental assessments for sustainability; and Peter Siebenmorgan, a lands and resources advisor to Eabametoong First Nation. We also benefitted from the advice and direction of a diverse group of experts.<sup>1</sup>

We began with a period of background preparation and literature review. This generated a state-of-the-knowledge understanding in the areas of Indigenous-led impact assessment (IA), regional IA, and gender-based analysis plus (GBA+) as it applies to IA. As a team, we were also



following the developments in the region over the fall months, including the progression of the project-level assessments that were being conducted at the federal and provincial levels for the [Marten Falls Community Access Road](#) and the [Webequie Supply Road](#).

Our team made commitments to implementing a research approach based on mutual aid and reciprocity with our community partners. Our research protocol was crafted on the understanding that engagement with elders and other community-based knowledge holders is vital to charting a way forward that will be accepted by affected communities. New developments, political shifts and dynamics in the region made it impossible for us to implement our original vision of conducting workshops in both communities of Eabametoong First Nation and Neskantaga First Nation. Nevertheless, as adaptability is the primary characteristic of effective community-grounded research, we pivoted in the early fall to a new plan which centered the relationship with leadership in Neskantaga.

The PI visited Neskantaga First Nation in November 2019 and facilitated a community workshop and discussion, as well as some interviews, about the potential Ring of Fire developments, potential new roads and the various impact assessment processes underway. Those discussions opened up the topic of regional impact assessment in general terms, amongst other pressing topics including the ongoing boil-water advisory and mental health challenges in the community. Subsequent to that visit, the team collaboratively prepared three draft models for how a regional IA could be implemented in partnership with an Indigenous Governing Authority (IGA) in the region. In order to refine the models, we consulted with a variety of experts with knowledge on Indigenous administrative law and procedure, the Ring of Fire region, and environmental assessment beyond our own team (see list at note 1).

We convened a day-long meeting in Thunder Bay on January 23, 2020 to discuss, debate and refine these models. We invited community representatives from Neskantaga, their advisors and various team members and regional experts. We put diagrams on slides for everyone to examine the potential design of a regional assessment process and to examine relationships, decision-making, and proposals for areas of shared or exclusive jurisdiction etc. The discussion was audio-recorded with permission. Fourteen community members from Neskantaga First Nation, including leaders and elders, participated in that day-long workshop that focused on a specific set of questions. Participants were very engaged, and the session was eventually drawn to a close over an hour after it had been scheduled to end.

Discussion centered around the following questions:

- Who would be the appropriate Indigenous Governing Authority for a Regional IA in the Ring of Fire? Would “joint” decision-making be possible? How should it work?
- What kind of process would be legitimate in the community’s view?
- What kinds of things do you want to know more about before important decisions are made about access to the region? Who should conduct those studies/inquiries?

Following the workshop, we prepared notes which were returned to the Neskantaga leadership for review and further comment. The audio recording was transcribed and reviewed in full by the PI and three students. We then developed a list of ten codes or themes from the transcript to aid in distilling the key messages.

## Results

Community members from Neskantaga state repeatedly that the Attawapiskat River system is the 'lifeline' or 'lifeblood' of their people (Moonias, 2012; Lissner 2012, Kleinfelder & Yesno 1984; Workshop Transcript, Thunder Bay, 2020 ("TB")). Elders described to us how, during pre-contact times, the people would camp together in the summertime and fish, hunt and gather to sustain themselves. As winter approached, they would divide into family groups and move north to hunt large animals such as moose, caribou and bear (Driben & Trudeau, 1984; Kleinfelder & Yesno, 1984). School attendance was optional until 1945. Until that point, the basic way of life in the boreal forest remained substantially unchanged. Band members of the Fort Hope band, who had lived in Fort Hope (Eabametoong), Webequie, Lansdowne House (Neskantaga) and later Summer Beaver (Nibinamik), were still living off the land and traveling along the Attawapiskat river for fishing, hunting and trapping. Elders shared fond memories of their childhood when they lived off the land and traveled seasonally along the river.

In 1945, the Family Allowance Payment became tied to children attending school until the age of 16, resulting in community children being sent to southern Protestant and Catholic run institutions. The odds of children dying when they attended residential school was 1 in 25, just slightly worse than the odds of a Canadian infantry soldier dying in World War II, at 1 in 26 (Truth and Reconciliation Commission, 2015). This mandate created irreversible changes to Indigenous ways of life by separating children from their family and culture, and by eventually fundamentally changing the structure of these societies: "For over three centuries, Indian people, their culture and their economy had managed to survive despite disease, booze and attempts to stamp out "paganism" ... But government policy dictated that no one escaped the net of education" (Kleinfelder & Yesno, 1984, 3–55). Protests by parents and families to the Indian Agents resulted in the building of a local schools in the mid-50s and 60s. As a result of the schools, village life became the primary structure for people to live within. Band members wished to spend time with their families, reunited after the challenges of residential school. Their children could either join them on traplines or the families would have to alter their social structure. People were also threatened with having their family allowance cheques stopped if children did not return from the land to attend the local schools (Driben, 1983, at 26). As a result, band members were drawn into village life, even as they were reticent to give up their ways and limited opportunities existed for them aside from government subsidization.

## Literature Review

### i) Regional Assessment and Sustainability

Within the field of IA, a significant body of work has emerged on the concept of ‘sustainability assessment’. This approach to IA shifts from a focus on ‘mitigating significant adverse effects’ to requiring ‘positive contributions to sustainability’ and avoiding adverse effects. Individual and project level assessments are often centered on mitigation of negative effects and getting projects approved. These assessments by design focus on the specific project which leads to lack of consideration of broad and cumulative effects as well as possible alternatives (Gibson et al., 2016). Adequately considering sustainability also demands a broader lens in order to address the cumulative regional effects of multiple projects and associated infrastructure (Gibson et al., 2016). Whereas individual project-level IA places the burden of identifying and evaluating project impacts on the project proponent, regional IA spreads this responsibility amongst multiple governing authorities working collaboratively.

It is clear that the current environmental and impact assessment regime is insufficient for dealing with the contemplated developments for the Ring of Fire. With the recently announced [Regional Assessment of the Ring of Fire Area](#), a possibility exists to address these important considerations that project-level assessment does not. Scholars have been considering regional assessment for some time. As such, these scholars have developed frameworks and have outlined the components that make up effective regional assessments.

One of the crucial components of an effective regional assessment is its consideration of cumulative effects. “Cumulative impacts are the successive, incremental and combined impacts of one, or more, activities on society, the economy and the environment. Cumulative impacts result from the aggregation and interaction of impacts on a receptor and may be the product of past, present and future activities” (Atlin & Gibson, 2017). While cumulative effects assessment is required under project-level assessment in federal law, it has not have yet been effectively implemented. Further, in some provincial assessment regimes, cumulative effects assessment is not a requirement. Ontario is one of those regimes.

Research suggests that even if project-level assessment did require cumulative effects assessment, it would not be the vehicle to undertake this very important process, especially in remote locations (Parkes 2016). “Conceptually and practically, it is unrealistic to expect to capture the overall interactive impacts of developments in an area or a sector through a project assessment that is assigned to the proponent of a single new undertaking and is centred on project approval” (Atlin & Gibson, 2017).

The other critical component of regional assessment is sustainability. The *Impact Assessment Act*, in section 6, lists the number one purpose of the Act as to ‘foster sustainability, which should come as no surprise, as researchers have been calling for regional assessments to be ‘sustainability-based’ for some time (Gibson et al., 2016). This requires the development of

sustainability criteria to ensure that the best option or alternative is selected amongst a range of scenarios considered (Gibson et al., 2016).

Sustainability and “next-generation” assessment scholars Cole Atlin and Robert Gibson suggest that a regional assessment should be based on five characteristics, namely a regional assessment should be: multi-dimensional, long term, credible, authoritative and accountable.

- **Multi-Dimensional:** In order to fulfill this requirement, a regional assessment must take into account the cumulative effects of all undertakings - past, present and future. This process is more productive if undertaken by the multiple jurisdictions who have interests in the areas (Atlin & Gibson, 2017).
- **Long Term:** An important component of an effective regional assessment is the consideration of future and alternative scenarios. These scenarios allow the tracking of multiple possible paths for future development as well as the consideration of various effects of different scenarios. Regional assessments provide a large scale, broad picture of the possibilities, risks and objectives of development plans. “Scenarios and scenario learning are highly applicable to mid and long range futures studies where there are considerable levels of both predictability and uncertainty. Scenario planning attempts to compensate for two common errors in decision-making: under prediction and over prediction” (Atlin & Gibson, 2017). By undertaking a regional assessment that includes scenario and alternatives assessment, future project planning, assessment and decisions can be informed based on the information gained.
- **Credible:** Regional assessment should have clear processes available for evaluating alternatives and scenarios. These processes should be open and available to the public and all others impacted by the process and the decisions (Atlin & Gibson, 2017).
- **Authoritative:** Regional assessments work best if their methods and conclusions are anchored in the authority of legislation. An important part of this component is the idea of tiering. A regional assessment should allow for integration between the broader framework and criteria and the project-level assessments. Tiering must be based in law and authoritative (Atlin & Gibson, 2017). Without this component, it is difficult to require that regional assessment results are used to guide future project-level planning and assessment (Gibson et al., 2016).
- **Accountable:** Project-level assessments are often seen as not very accountable processes. This view comes from weak consideration of certain effects, such as cumulative effects. As well, often project-level assessment is too focused on project approval and the assessment can end up being done quickly, inadequately and without robust participation or buy-in from impacted parties. Regional assessment needs to offer opportunities for engagement from all interested parties including governments, public, Indigenous peoples and environmental groups. Further necessary components of an accountable regional assessment are interaction between governments and

interested parties, as well as impartiality and transparency in decision-making (Atlin & Gibson, 2017; Gunn & Noble, 2009). Further, it is absolutely imperative that any accountable regional assessment process include a proper regime for monitoring and enforcement. History has shown that monitoring and follow-up in environmental assessment is poorly done, if at all (Gibson et al., 2016).

On top of these guiding components of what a regional assessment should look like, the literature also confirms that a good regional assessment needs to be sufficiently broad. This ensures that all components of sustainability are achieved. Broad assessment ensures that the regional assessment “covers the full suite of considerations that affect the potential for progress towards sustainability and facilitates identification of options, designs and implementation practices that deliver the best, most feasible undertakings in the long-term public interest” (Gibson et al., 2016). By narrowing the scope of the regional assessment, it is possible that certain effects will be missed as well that some alternatives and scenarios will not be considered. For example, many Indigenous peoples in the region will recall the environmental assessment process conducted for the DeBeers Victor Diamond mine in the early 2000s. Restrictive scoping, especially on socio-economic issues, led to many important issues being ignored in the assessment, which quickly lost credibility with affected communities (Whitelaw et al. 2009). Impacts related to population dynamics, barriers to employment, drugs, violence and security, and suicide rates were excluded. It later became clear that complex ecological impacts affecting fish harvesting in the Attawapiskat River watershed, specifically mercury mobilization, were also not effectively assessed (Wildlands League, 2015).

#### *Setting the Pace and Scale of Development*

Based on observation of prior attempts at regional strategic environmental assessments in a few places across Canada, Jill Harriman Gunn and Bram Noble concluded that “the seminal contribution of regional SEA may be to influence the nature and pace of regional development, in light of conservation and/or sustainable development goals”(Harriman & Noble, 2009). They state that regional assessment processes are “primarily about helping to set an appropriate pace for regional development based on knowledge of ecological, social and economic thresholds, values and capacities. This includes determining an appropriate or acceptable mix of types of development, and taking measures to influence both the positive, by enhancing, and negative, by mitigating or avoiding, the cumulative effects of development on the environment” (Gunn & Noble, 2009). Further, while predicting cumulative effects is important, Gunn and Noble suggest that regional assessment “should ultimately place less emphasis on predicting cumulative impacts with a high degree of precision, and place more emphasis on setting targets for regional environmental protection and development” (Harriman & Noble, 2009). Finally, Gunn and Noble also emphasize that the information gathered in, and conclusions of, regional assessment must be applicable in future project planning, assessment and decision-making. Regional assessment must be timely in order to effectively interpellate with other decision-making processes (Harriman & Noble, 2009).

*Experience with Regional Assessment at the Federal level to date*

Recently, a [Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador](#) (“Offshore Assessment”) was completed at the federal level. To many analysts, and indeed to the Committee who conducted the Offshore Assessment themselves, the assessment suffered from many structural flaws. Criticisms of the assessment include that it was scoped too narrowly, not given enough time, and that it did not conduct a comprehensive assessment of cumulative impacts (see Sierra Club Canada, 2020; World Wildlife Fund Canada, 2020 ).

The Committee that conducted the Offshore Assessment attempted to implement a scenario approach to determine whether there would be significant concentrations of drilling in particular areas, but concluded that “the inevitable uncertainties associated with predicting these outcomes suggests that a planning, rather than a predictive modelling approach, is a more useful one if potential adverse effects are to be avoided or minimized – an approach which needs to begin early in the offshore exploration life cycle” (at x). This experience is a valuable one for the design of an appropriate Regional Assessment for the Ring of Fire, since development is at an early stage and thus a planning approach is possible. Notably, the Committee that conducted the Offshore Assessment pointed to the tenure process as an optimal place to “consider the spatial and temporal distribution and intensity of future activity...” (at x), which would raise interesting questions about the outcomes of a regional assessment process and the provincial permitting power in the Ring of Fire context.

ii) Indigenous Partnership and Engagement

In recent years, we have witnessed an explosion of interest and expertise in place-based, Indigenous-led impact assessment models across Canada. From coast to coast to coast, Indigenous communities have been developing and engaging with alternative approaches to impact assessment in response to proposed developments within their traditional territories. These approaches are grounded in each nation’s own social, political and legal orders and can exist in parallel with, or completely independently of legislative processes under Canadian or provincial law (Morales, 2019; Spitzig, 2019). A recent report prepared for the Gwiichin Council International states that Indigenous-led impact assessment processes “rely on and protect Indigenous culture, language, and way of life in ways existing government legislated systems have either never contemplated or are still not accommodating” (Gibson et al., 2018).

Recent cases challenging the application of conventional modes of project-level impact assessment and consultation-oriented approaches to it have clogged Canadian courts and delayed many major projects. Further, recent commitments towards reconciliation and the adoption of the UNDRIP have fuelled the conviction that more than mere ‘consultation’ or ‘engagement’ is required where Indigenous rights and interests are in play (Morales and Nichols, 2018). Specifically, the emerging consensus is that Indigenous peoples possess inherent jurisdiction and significant governing authority over their homelands (RCAP, 1996; McNeil 2007, 2016), and that reconciliation requires the active restoration of that jurisdiction (Morales and Nichols 2017). This provides compelling authority for enhancing Indigenous



control over decision-making in their homelands, especially in areas such as environmental assessment.

Indigenous-led IA has been defined in the literature as “a process that is completed prior to any approvals or consent being provided for a proposed project... conducted with meaningful input and an adequate degree of control by Indigenous parties – on their own terms and with their approval. In Indigenous-led IA, the Indigenous parties are involved in the scoping, data collection, assessment, management planning, and decision-making about a project” (Gibson et al., 2018). These assessments are unique in that they are grounded in the unique legal traditions of each individual community or Nation, and are therefore able to highlight local realities, capacities, challenges, priorities, practices, and cultural values. Numerous models for Indigenous-led IA have emerged across Canada, each responding uniquely to the challenges with the proposed development at hand (Bruce & Hume, 2015; Metlakatla First Nation, 2015; Stk’emlúpsenc Te Secwépemc Nation, 2017; Tseil-Waututh Nation, Treaty, Lands & Resources Department, 2015; Clogg et al, 2016).

Indigenous knowledge (IK) systems are very important, valuable sources of knowledge when conducting assessments of developments that may impact the land and community (Eckert et al, 2019). However, IK knowledge was not just deliberately excluded from many environmental assessments in the past, along with the decision-making capacities of Indigenous nations, but communities have also stopped trusting the system enough to contribute their IK (Ibid). This is because their traditional knowledge has in the past been “extracted” and taken out of context, misinterpreted, or deliberately misused (McGregor et al. 2019; Usher 2000). The use of IK in the federal environmental assessment process has been seen by some as “continued colonization and exploitation” (Paci, Tobin & Robb 2002 at 117). Research documenting the experiences of Indigenous communities affected by environmental assessments of oil sands projects in Alberta has found that “[Indigenous participants] are tired of expressing the same concerns and telling the same stories, which seem to have no effect on the course of development...” (Baker and Westman 2018 at 145). Communities will need to regain trust in the assessment process. Rather than just “integrating” IK, and trying to simplify and somehow fit it into an unfamiliar structure, Indigenous communities are now much more likely to apply their IK if they control how it will be used, and what it will mean to the overall assessment.

The literature demonstrates that there are fundamental, epistemological differences between the values and ideologies that inform the standard impact assessment processes under settler law and those guiding Indigenous-led processes. One example of this is from the Tsilhqot’in Nation during the Prosperity Mine EA, where the cultural importance of an impacted fish species was completely ignored. Impacts on the fish were defined in a purely biological sense, with no regard for its meaning to people of the Tsilhqot’in Nation (Hoogeveen 2016 at 363). Evidently, the values that inform the differing systems are not always compatible. The literature indicates that having Indigenous communities as partners in designing the assessment may be able to avoid some limitations that have been faced by First Nation communities affected by EA processes in the past, where they have had limited knowledge about the way the process worked, and did not have the resources to get help. Often, the proponents’ ‘engagement’ of



Indigenous peoples in the EA comes far too late to make any difference (Noble and Udofia 2015).

According to Bram Noble (2016), benefits of Indigenous participation in the environmental assessment process include improvements to the design of projects, the integration of new knowledge about impacts that the project might have, finding ways to make the project less harmful to the environment, giving rise to opportunities for future collaboration, and adding a level of legitimacy to the project. For example, in the case of the Orca sand and gravel mine that is located in the traditional territory of 'Namgis First Nations in British Columbia, the proponent Polaris started working with the 'Namgis three years before the assessment started. They created an agreement that gave the community the power to veto the project until a certain stage, involved 'Namgis in drafting the terms of reference for the assessment, and allowed them to hire consultants to undertake the technical assessment, creating a valuable partnership between the proponent and the First Nation (Noble 2016 at 12).

In the *Great Sand Hills Regional Assessment (Southwest Saskatchewan, 2005-2007)*, the provincial government created a Scientific Advisory Committee comprised of six experts to conduct a regional assessment in response to concerns about the cumulative effects of continued resource development (see Gunn & Noble, 2009; Government of Saskatchewan, 2007). This committee partnered with the Qu'Apelle Tribal Council, and sought assistance from an advisory group of elders, to conduct a First Nations use and culture assessment. The committee also carried out a variety of engagement measures with members of potentially-impacted First Nations communities in Treaty 4, 6, and 7, including focus groups, cross-cultural interviews, and participatory mapping sessions, which helped establish current values and uses of the land as well as identify culturally and spiritually significant areas (Gunn & Noble, 2009).

*The Strategic Assessment of Wood Buffalo National Park (Northern Alberta/ NWT, 2016-2018)* effectively combined international standards for world heritage sites, Parks Canada guidelines and Indigenous knowledge from 14 different communities to generate a comprehensive analysis of industrial development-induced impacts upon the Park. Importantly, this assessment was initiated by the Mikisew Cree through a petition to UNESCO to have the Park's world heritage status designated as "In Danger". This avenue was undertaken after 30 years of requests for additional attention to the worsening ecological conditions of the Park, particularly the Peace-Athabasca Delta. The assessment was an exercise in collaboration between scientists, Indigenous knowledge holders and consultants, with guidance from federal and international authorities.

Past experience demonstrates that meaningful partnership is achievable, as has been demonstrated by other examples, such as in the environmental assessment process for the *Voisey's Bay Nickel Mine (Voisey's Bay, Labrador, 1997-1999)*, implemented through a memorandum of understanding ("MOU") with the Innu Nation and the then-Labrador Inuit Association ("LIA") (which later became the Nunatsiavut Government) (CEAA, 2016; Noble, 2016). Notable strengths of the Voisey's Bay process were that it gave full consideration to traditional knowledge, whether written or presented orally, and that it adopted a sustainability-

based approach (CEAA, 2016; Noble, 2016). The MOU also set out a scoping exercise that was carried out in several communities to explain the assessment process, identify key issues, receive feedback on the draft guidelines, and seek views about obtaining, using and evaluating traditional knowledge (CEAA, 2016; Noble, 2016). These inclusions demonstrate the crucial importance of engaging Indigenous communities in “developing baselines, predicting impacts, and determining the significance of the project’s effect” (Gunn & Noble, 2009; Gibson et al., 2016).

Above all, it comes up time and time again that proponents and the government must be willing to truly listen to communities, and share decision-making power, rather than merely engaging in a “consultation” as if it is a check-box to be ticked. There must be a recognition that incredibly important values, including the health and livelihoods of people, are on the line. There has to be less focus on approving a project, and more willingness to forego a project if its impacts are too severe, or if it does not positively contribute to sustainability and to the community (Gibson et al. 2018).

#### *Some lessons from the District Inquiry Approach – Waitangi Tribunal, NZ*

The Treaty of Waitangi is a standing commission of inquiry in New Zealand established by the Treaty of Waitangi Act, 1975 to provide a legal process by which Māori Treaty claims could be investigated. It makes recommendations regarding alleged breaches of the Treaty of Waitangi. Tribunal inquiries contribute to the resolution of Treaty claims and outstanding issues between Māori and the Crown, including in relation to specific regions or natural resources. In 2001, the Tribunal adopted the District Inquiry approach, which is designed to hear a range of claims brought by Māori communities from particular areas in a single inquiry. The Tribunal adopted a specific process which aimed to achieve the fastest possible progress, while ensuring fairness for the parties. This included a comprehensive research phase, followed by an interlocutory phase where issues are identified and refined, a hearing phase, and a reporting phase (Waitangi Tribunal, 2005). There are several lessons we have drawn from this international exercise in legal pluralism.

The District Inquiry is structured for a hearing process that takes place over months (rather than years). The Tribunal aims for

“a balanced approach that is practical, efficient and economical. Research, multiple claimants, and a fair hearing will always take time – and time is a necessary characteristic of a process that is transformative. But it cannot be allowed to take too long. The challenge is to [achieve a] balance” (21).

The Tribunal is bicultural in its composition and operation. That is, the District Inquiry applies multiple legal orders. Several of its members are Māori or steeped in Māori law and language. It is committed to respect for, and commitment to the local Indigenous legal order, tikanga Maori. “It is difficult to be categorical about how issues of tikanga might arise in hearings, or how they should be dealt with when they do....Tribunals must continue to be flexible, and adopt processes dictated by tikanga whenever such circumstances arise” (21-22). The Inquiry’s

process is more inquisitorial than adversarial, and includes processes for resolving intra-group and inter-group differences. It includes relaxed rules of procedure, with cross-examination highly managed, and permitted only by leave prior to a witness appearing. Tribunal witnesses are led by the Tribunal staff, and cross-examination is treated more leniently to allow opportunities to ask questions and draw out themes from evidence. The Tribunal's approach is to ensure that all witnesses, and especially kaumatua (elders) are accorded utmost respect. There are "Joint Coordinating Committees" for all of the parties' researchers and for all of the lawyers, in order to ensure that the non-adversarial mandate of the Inquiry can be maintained.

The overarching goal of Indigenous-led IA is "that the affected Indigenous communities themselves are empowered to make prudent, well informed, and precautionary decisions about major projects, with the best possible available information and data, using a culturally appropriate decision-making framework" (Gibson, Hoogeveen and MacDonald 2018 at 6). Thus, one pressing priority for communities has been determining how to design their own assessment processes and how to effectively interpellate them with federal and provincial assessments.

Over the same period of time that these developments in Indigenous-led IA have been occurring, Indigenous peoples around the world have been gaining considerable agency in sharing resource-development plans on their lands through increased recognition and government incorporation of the UNDRIP into law and practice (Papillon and Rodon, 2017). The right of free, prior and informed consent (FPIC) that is enshrined in the UNDRIP has been central to the contestation in Canada. According to Papillon and Rodon (2017):

"Free, prior, and informed consent is rooted in the recognition that Indigenous peoples, as self-determining collective actors, should be empowered to make decisions over their future and that of their traditional lands. They must therefore consent to economic development projects that may have a major impact on their lands and communities" (2016).

Unfortunately, 'consent' as it has been practiced in Canada, has often boiled down to a question of whether the affected Indigenous community and the proponent can come to terms on an impact-benefit agreement (Kielland, 2015; Scott, 2020; Papillon and Rodon, 2017). This presents further complications for environmental assessment as negotiations often occur during early information-gathering phases in which communities are just beginning to understand potential impacts, which of their valued components might be at risk, and how they might protect those. Indigenous-led impact assessment, where it can be incorporated in a way that puts affected communities in a position to provide FPIC, or where it can be meaningfully supported through joint decision-making, will provide major advantages over the current system. In this respect, it is important to realize that there are creative, effective models that exist and are in operation in various places, as well as to note that the far north of Ontario is a unique case that demands a tailored approach.

### iii) Gender-based Analysis Plus (GBA+)

Gender Based Analysis Plus is “an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives”... in light of other identity factors, like race, or ethnicity, etc. (Status of Women Canada, 2018). This method of analysis emerges from a recognition that gender is always already complicated by social location: each individual person’s experience is shaped by processes of racialization, ethnicity, age, sex, class, sexuality, citizenship and ability, etc. Gender is understood to have a profound effect on determining the risks and benefits a person will face as a result of social upheaval—in addition to a myriad of other factors including education, social status, employment history, support networks, health status, and cultural practice. The literature that has produced GBA+ has connections to, amongst many other influences, Kimberle Crenshaw’s theory of “intersectionality”, which posits that gender and various other factors including race, class, sexuality and citizenship, all work together to shape women as both individual and social actors. For Indigenous women in remote communities it is perhaps especially important to position gender within an intersectional framework to get a full picture.

GBA+ can also highlight the interconnections between reproductive and environmental justice issues (Hoover et al 2012; Wiebe and Konsmo, 2014). This includes attention to the limits to physical reproductive capacity that can be brought about through ecosystem contamination that affects ‘country foods’, but also threats to “social and cultural reproduction as traditional or sacred sites for coming-of-age or rites-of-passage ceremonies [brought about] by pollution and industry” (Scott et al 2015 at 15; Konsmo and Pacheco, 2016). Threats to a community’s ability to culturally reproduce through the passing on of traditional ways of life, harvesting practices and exercises of jurisdiction are critical to consider. As Hoover et al (2012) state, we must “expand the definition of reproductive justice to include the capacity to raise children in culturally appropriate ways. For many Indigenous communities, to reproduce culturally informed citizens requires a clean environment” (at 1648).

Under the pressure of historic and on-going colonialism, Indigenous women have proven resilient and represent a key to the survival of their community and culture (Findlay & Wuttunee, 2007). Indigenous women are recognized as playing “a critical role in the survival of families and communities and in healing the effects of social trauma, maintaining cultural vitality and fighting for recognition of Indigenous rights” (O’Faircheallaigh, 2013). As Rauna Kuokkanen (2011) has show, women’s subsistence work and other economic activities have formed the foundation of community sustenance in Indigenous communities for generations (2011). However, sometimes Indigenous women’s work towards their communities’ well-being and economic development goes unacknowledged (Findlay & Wuttunee, 2007). Barriers women face include the invisibility of their work, undervaluing of formal and informal labour, lack of cultural acceptance of strong women leaders, under-resourcing of their initiatives and conflicting demands on women to satisfy a range of community and family needs (Findlay & Wuttunee, 2007). Simply ignoring the “specific ways in which Indigenous women know” serves to undermine their participation in “complex socio-environmental community processes”

(Kermoal and Altamirano-Jiminez, 2017). As Brenda Gunn argues, Indigenous women have specific knowledges that must be respected (2017).

The impacts of mining, in particular, have been shown to hinder the capacities of women to contribute to community well-being in a way that upholds their responsibilities to care for water, the environment and to provide food and sustenance (Horowitz et al. 2018). As Sarah Morales explains, Indigenous women affected by mining report that they experience the associated ecological destruction *as violence* (2017; our emphasis). These kinds of impacts are rarely taken up in impact assessment processes (Lahiri-Dutt and Ahmad, 2011), which fail in particular to account for women's participation in traditional harvesting activities (Kennedy Delseg et al. 2018).

These roles and capacities are dynamic, complex social positionings shaped by gender (Horowitz 2017). The functions that Indigenous women perform for their communities, including in mining development negotiations, are crucial for community well-being and development. However, while research on how to support that role remains limited (Anderson & Lawrence, 2003; Koutouki, Lofts, & Davidian, 2018; McGregor, 2010), it has been understood for some time that major extractive projects pose profound risks to Indigenous women and girls (KAIROS, 2014; Women's Earth Alliance and NYSHN, 2016). The recently-released [Final Inquiry Report into Missing and Murdered Indigenous Women and Girls](#) (2019) ("MMIWG Report") states explicitly that governments must "do a more thorough job of considering the safety of Indigenous women and children when making decisions about resource extraction on or near Indigenous territories" (at 584).

Recent research by Levac and Manning finds that impact assessments should include mandatory factors for consideration (such as the intersection of gender and identity), should ensure that women have a voice and their experiences are considered, and that more genuine efforts are given to link western science and Indigenous knowledge (Levac & Manning, N.d.). The way that women participate in governance processes within their communities can be complex. We heard from participants in our workshops that we should question the generally accepted premise that women are excluded from decisions and negotiations, simply because they are not seen to be part of the elected leadership of a community, as an example. Women should not be assumed to be the 'passive recipients' of decisions made by male leaders without looking deeper into the deliberative processes with elders and within families that inform the decisions brought forward by the leadership (see also Morales, 2017). These processes are informed by political and legal orders not necessarily visible to or understood by outsiders.

### *Gender and the Extractive Industry*

It is well established that women face particular challenges when their conditions change due to a sudden influx of mining in or near their communities (Stienstra, Manning, Levac and Baikie, 2019). As Seck and Simons describe (2019):

“The relationship between women and resource extraction is complex and multifaceted. Women may work within the extractive industry or in jobs that support or service the industry. They may be part of a community affected by resource extraction and suffer differentiated impacts to those of men, which are either linked to, among other things, their gender roles within the community, their intersectional vulnerability to violence, or as activists and leaders resisting resource extraction. Their roles and identities in their communities may change due to resource extraction, and they may suffer inequalities in relation to accessing the benefits of extractive projects” (at i).

Internationally, there is an abundance of evidence that resource extraction projects, especially in previously remote areas, bring a significant risk of violence for women, including gendered and sexual violence (Seck & Simons, 2019; Simons & Handl, 2019; Czyzewski et al, 2014; Nienaber, 2013; Oxfam Australia, 2013). In Canada, the MMIWG Report confirmed that resource extraction projects exacerbate violence against women, with disproportionate adverse impacts on Indigenous women. The Report discusses issues related to transient workers, harassment and assault in the workplace, substance abuse, and economic insecurity. It concludes that it is necessary for governing authorities to consider the safety of Indigenous women in all stages of a project’s life, from planning to management.

The research shows that there are serious risks for women in particular associated with an extractive industry entering a community. They include an increase in sex work and human trafficking, increased risks of addiction and substance abuse, gendered violence and assault, and homicide (Coumans, 2005; Pauktuutit, 2012). The risks derive mainly from the sudden influx of high numbers of male workers from outside the community housed remotely away from their families for weeks at a time in industrial or “man camps” (Adamson, 2017; Deer and Nagle, 2017; Cox and Mills, 2015). According to Sarah Deer and Elizabeth Kronk Warner (2019), the “presence of such camps puts Native women in the region at extreme risk of exploitation” (20). Victoria Sweet (2014) argues that this is due to the fact that they “are not invested in the wellbeing of the community or community members” (1165). In the U.S. context, the trafficking of Indigenous women and children has been documented to rise with the introduction of man camps, and the rates at which local women take up sex work because of poverty, addiction or substance abuse has been observed to increase directly with the ‘boomtown’ expansion (Deer and Kronk Warner, 2019).

Research also gives rise to reasons to consider the road projects as presenting distinctly gendered risks completely independently of the mining projects as well (Sweet 2014; Bowes-Lyon, Richards and McGee, 2009). Roads are known to increase the rate at which drugs and alcohol enter remote communities, for example (Campbell, 2007) but also present other risks. In Canada, the long, remote stretch of road from Prince George to Prince Rupert known as the ‘Highway of Tears’ is notorious. Over the past half century, at least eighteen and probably more than forty women and young girls, mostly Indigenous, have been murdered or have disappeared from this section of the highway. Sweet finds that “poverty, alcohol abuse, lack of education or other opportunities have all been identified by researchers as factors that make



community members vulnerable...If a history of outsiders not respecting or valuing or understanding the culture and concerns of these communities exists, then these outsiders won't be respectful when dealing with community members" in the context of a new extractive project (1166).

Most of the research in this area finds that mining has far-reaching negative impacts on women in affected communities, and even if there are benefits, they are largely distributed unequally with regards to gender (Koutouki et al., 2018; Manning et al., 2018). The primary benefit comes from an increase in employment opportunities, although it is true that there are fewer skilled and high paying jobs available for women than men. While it is true that impact-benefit agreements (IBAs) with resource companies now typically include provisions providing opportunities for education and training, sometimes with specific targets for women, the degree to which companies actually meet these targets is a matter of ongoing debate (Graben, Cameron and Morales, 2019; Fidler and Hitch 2007; Scott 2020; Hania 2019). Nightingale et al. present findings from Pauktuutit, an Inuit Women's organization that collected evidence about effects of a newly developed gold mine, indicating that the opening of the mine has led to reduced economic stress, pride from financial independence, and higher material well-being, but also notes the risks and burdens of the extraction as well (Nightingale et al., 2017). In fact, McCreary, Mills and St. Amand (2016) find that as impact assessment legislation moves towards more streamlined, 'efficient' and proponent-driven models, Indigenous communities are less able to force attention to lasting economic benefits from the projects into the assessment processes.

It is clear that both the positive and negative potential impacts of the roads and the mines are gendered. In order to avoid essentializing the expected impacts on women in the communities, GBA+ will require that the category of women be broken down further by Indigeneity, on- or off-reserve status, age, education, socio-economic status, etc. (Manning et al., 2018). Finally, it is not yet clear the extent to which incorporating GBA+ into impact assessment practice will have meaningful effects on decision-making. Cox and Mills (2015) examined an EA done for the Voisey's Bay mine in Labrador in the 1990s, that attempted explicitly to integrate submissions by Inuit and Innu women. "Women were active participants...[and] organized collectively and submitted documents throughout the process" (Cox & Mills, 2015). As well, there were two women on the joint EA panel. But in comparing the submissions made to the EA panel to the final recommendation, as well as the employment-related provisions in the impact benefit agreements, the authors found that results were less clear. The women's organizations requested a comprehensive program to hire and train Indigenous women, but interviews done during the project showed that women working at the site experienced the same barriers as women working in other mines. Despite women's 'engagement' during the EA, the conditions on the ground once the project was approved did not reflect their expressed priorities.

While the *Impact Assessment Act* (2019) has created more space for GBA+ to be included, it remains to be seen how that may play out on the ground. Gender discrimination is ongoing and systemic in our societies. IA criteria and decisions should protect and enhance the status of



women's knowledge, take account of their expressed priorities and the gender-specific impacts, in line with the specific governing Indigenous social, political, and legal orders.

## DESIGN OF A REGIONAL PROCESS: RESULTS FROM THE WORKSHOPS

The key messages communicated to us by knowledge holders, elders, and leadership in the community engagement sessions are the following:

- The people in the communities are the real authority; the grassroots and the elders must be heard for any process to be legitimate;
- The appropriate Indigenous Governing Authority (IGA) must be a collective of affected First Nations, rather than one of the existing tribal councils or regional organizations, such as NAN or Matawa (on the basis of ecological connectivity and socio-cultural impacts related to probable infrastructure locations);
- An Elders Advisory Council should be an integral element at all stages of decision-making;
- The ongoing state of social emergency must be addressed first, before new projects can be adequately considered. This is made even more obvious by the current COVID-19 pandemic, which has stretched the capacities of the communities to their limits. Communities must be satisfied that any new projects or infrastructure will mitigate the crises, and enhance long-term social, cultural and ecological sustainability;
- Any regional approaches need to provide a framework that can effectively guide project-level assessments, which in turn lead into community-level approvals, in line with local protocols.

Digesting these insights, and taking on board the challenges that they present for impact assessment practice, our team developed a model that provides a unique solution specific to the Ring of Fire context.

For a graphic illustration of the model, see **Figure 2**.

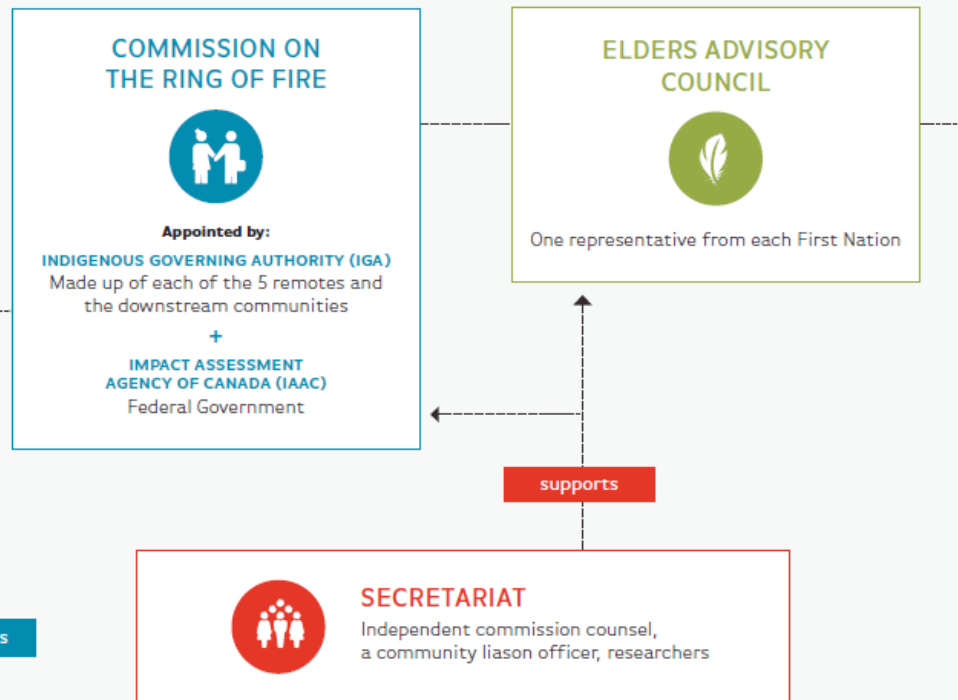
STAGE ONE

# Ring of Fire Commission

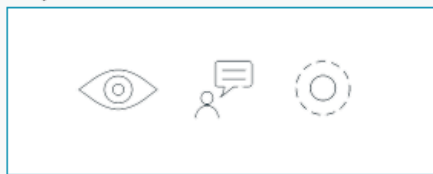
**A.**

## Composition

The Commission and the Elders Advisory Council work in parallel, and the Secretariat provides support to both.



conducts

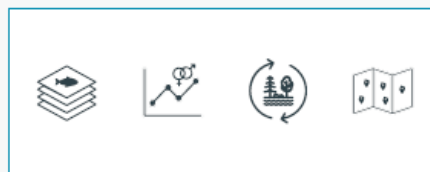


## B. Hearings

The Commission will conduct in-community hearings in language, with ceremony, and without cross-examination.

provides input for

to develop



## C. Terms and Conditions for opening up the North

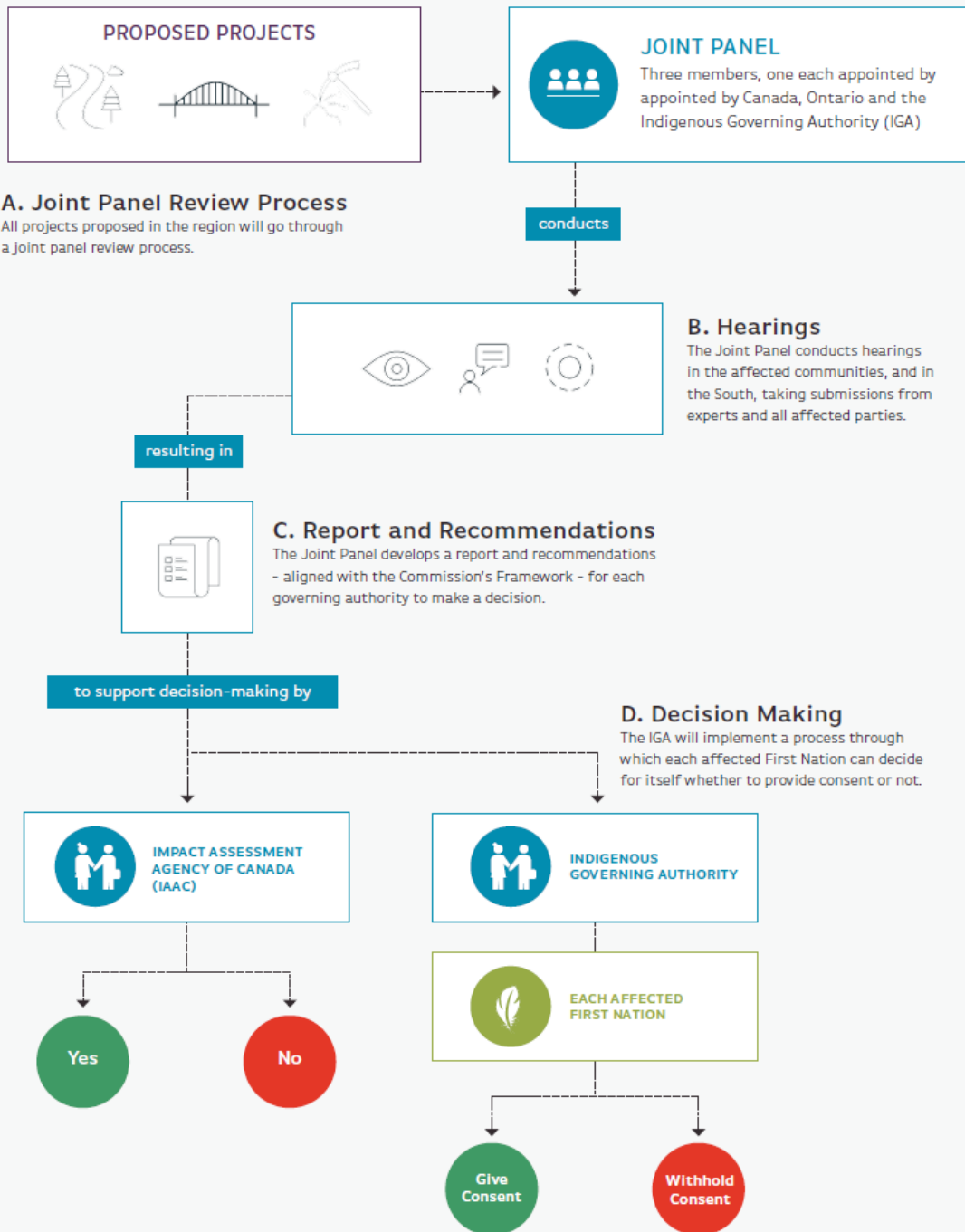
The Commission will develop:

- i) a **cumulative effects framework**, with thresholds;
- ii) **baseline data**, including on the social emergency;
- iii) a 'positive contribution to sustainability test' that outlines criteria for how projects will demonstrate that they will **enhance social and ecological sustainability**; and
- iv) a **regional plan** derived from the comparative evaluation of future scenarios.

has to approve

STAGE TWO

## Impact Assessment Process in the Ring of Fire Region



## MAJOR ELEMENTS OF THE PROPOSED MODEL

### Stage 1

- a (semi)permanent **Commission on the Ring of Fire** established by “agreement” under s.114(1)(e) of the Act between the Minister and an appropriate Indigenous Governing Authority (IGA) as a partner jurisdiction under s.93(1)(a)<sup>2</sup>;
- the IGA will be comprised of a collective of the most-affected First Nations considering both ecosystemic/watershed boundaries and socio-economic and cultural factors related to infrastructure routes;
- the Commissioners will be knowledgeable experts appointed from a roster nominated by and mutually-acceptable to all partner jurisdictions;
- the Commissioners will work in parallel to an Elders Advisory Council made up of a representative from each affected community;
- Both the Commission and the Elders Advisory Council will be supported by a Secretariat comprised of independent commission counsel, a community liaison officer, and researchers;
- The Commission will conduct in-community hearings (in the Anishnaabe or Anishini language, with ceremony, and without cross-examination).

The Commission’s mandate will be to develop the terms and conditions for access to the Ring of Fire region for mining and/or infrastructure and to set a structure for decision-making on future IAs, including:

1. A **cumulative effects framework**, including how traditional knowledge (TK) will be incorporated;
2. **Baseline data**, including on community well-being and the social emergency;
3. A **positive contribution to sustainability test** (including criteria, and a consideration of how various options and alternative visions for the region may demonstrate a potential to improve well-being, protect valued components, and mitigate the social crises); and
4. A **regional plan** and policy guidance derived from comparing future scenarios.

The Commission’s report must be approved by the Elders Advisory Council and will be released publicly.

## Stage 2

- All individual projects proposed in the region will then go through a Joint Panel review process (with 3 members appointed that are mutually acceptable to the partner jurisdictions of Canada, ON and the IGA);
- The Joint Panel review process is nested under the framework developed by the Commission and must apply the terms and conditions developed there and approved by the Elders Advisory Council;
- The Joint Panels will conduct hearings in the affected communities, and in the south, and will hear submissions from all interested parties;
- The Joint Panels will render a report and recommendations for each governing authority to make a final decision on – Canada, ON and the IGA; and;
- The IGA will implement a process through which each affected community can decide for itself whether it will provide or withhold “consent” to the project.

## Rationales for Key Elements of the Model

The Anishinaabe and Anishinii communities that stand to be most impacted by development in the Ring of Fire are remote communities accessible only by air and winter roads. Indigenous peoples are the region’s sole occupants. They are the long-term stewards of the lands, and therefore they have the most at stake in both the short and long-term changes in the region. They stand to be the most affected by development and infrastructure as they interact with the land on a regular basis on multiple levels, including culturally, spiritually, socially and economically. They depend on the ongoing ecological integrity of the region to meet livelihood needs, through activities such as hunting, trapping, fishing, and gathering (Moonias affidavit, 2012, para 10). But as stewards, the Indigenous Peoples of the area also bring crucial knowledge otherwise unavailable to impact assessment proceedings.

### *Partnering with an Indigenous Governing Authority: A Joint Decision-Making Model*

To Canada and Ontario, Treaty 9 signified a surrender of Indigenous sovereignty, the creation of a paternalistic relationship between the Crown and Indigenous signatories, and unregulated access to lands and resources in the far north. To the Indigenous leaders of the time and their descendants, however, the Treaty was supposed to have entered their people into a political and legal nation-to-nation relationship with the Crown, “based on the principles of friendship,

mutual respect and shared agreements” (Moonias, 2010; Yesno, 1984; Long, 2010). Although Indigenous communities in the far north agreed to share their territories with the newcomers, they maintain that they neither ceded their lands nor their inherent rights to use and protect their lands and resources. They believed, as the Matawa Chiefs Council puts it, that they would receive “protection and assistance” in exchange for “a land sharing and resource sharing arrangement” (Matawa First Nations Management, N.d). This is consistent with John Long’s (2010) research findings that the people of Treaty 9 expected the treaty to regularize the fur trade model of co-existence, a modest sharing of the land and its benefits. They signed the treaty understanding that it would protect their relationship to the land, and the rights and responsibilities they exercise according to their own laws by stewarding it.

In this context and in light of Canada’s stated commitments to reconciliation, to UNDRIP, and the evolving jurisprudence, we conclude that a Regional Assessment in the Ring of Fire cannot be credible or authoritative unless it is conducted in a genuine partnership of joint decision-making with the affected Indigenous peoples, in recognition of their enduring presence, inherent jurisdiction and governing authority on their traditional territories.

Even if the inherent jurisdiction of the Treaty 9 communities is not accepted, it is very clear that as a result of rights that are constitutionally protected under the settler legal order, Indigenous Peoples are owed a Duty of Consultation and Accommodation. The established jurisprudence indicates that the duty is a constitutional obligation, whereby the honour of the Crown is at stake (*Haida Nation v British Columbia*, 2004). In our view, achieving meaningful accommodation of the significant Indigenous interests affected by the irreversible decision about whether to open this territory up to development will also require some form of partnership with Indigenous governing authorities on a Regional Assessment. Meaningful accommodation will require a consideration of alternative options and scenarios, so as to determine which projects should go forward, how they should be sequenced in time, and how adverse impacts can be minimized, not just on a project-by-project basis, but overall, on a cumulative level. As they have been stating for many years, the Indigenous peoples of the region must control the pace and scale of development.

Participants in the workshops re-iterated time and again that they hold inherent jurisdiction on the lands and responsibilities to protect it. As one participant stated *“My way of thinking is always the rights that we’re born with. It has to start [from there].. What I believe is we have inherent jurisdiction rights”* (TB at 3). Participants made it clear that they will not be satisfied in a “consultation” role in which they provide information or “traditional knowledge” and government authorities structure the process and make the decisions. Another participant, drawing on a long history of leadership in the community stated, *“people are sick and tired of just listening and giving recommendations”*, only to be ignored. He continued, *“the people have to be part of a process put in place to be part of the decision-making”* (TB at 2).

Further, one of the former Chiefs of Neskantaga stated in respect of the now-defunct Regional Framework Agreement process:

*“We want to come to the table and make that decision together and that's how we have to set our governance structure. Once we have the governance structure... I call it Nation-to-Nation, a government relationship where the Crown and the First Nation, a sovereign nation, comes to the table together with the government, and that's the way it's going to work. Even this thing here. If we don't have that, the government is going to make a final decision... And I just wanted to mention that because, you know, we came close to that [in the RFA process]. We came very close to achieving that. If we [had] achieved that, the government would have been sitting down [with us] today in Matawa communities... I believe that is the way that we should set ourselves as Neskantaga people” (TB at 3).*

He continues,

*“Why are they afraid to give us that authority? We're not trying to take anybody's land. We're not trying to take anybody's property or anything. We're just declaring clearly that the land of the First Nations people has principles to follow and that's why we have to set ourselves that way” (TB at 3).*

Our findings confirm that an effective mechanism for a Regional Assessment, in this case, must consist of a joint process, in partnership with the impacted and interested Indigenous peoples. As one participant stated, *“We're not saying “stop the project” or “stop everything”, but it's time to develop something, a model that we will use as ...a First Nation governing structure... So at least a joint-process...where the governments are equal with the First Nations. Because that's what the treaty is about. Supposed to be about” (TB at 4).*

#### *Canadian Experiences with Joint Decision-Making Models*

In the *Environmental and Social Impact Assessment (ESIA)* process negotiated between Canada, Quebec and the James Bay Cree and Inuit in 1975, the parties established a co-management regime for environmental assessment and monitoring. It consists of a tri-partite “Evaluating Committee” (2 representatives of the Cree Nation, 2 representatives of Quebec, and 2 representatives of Canada) that makes recommendations to the relevant authority for the final decision. In the ESIA process, the relevant final decision-maker varies, depending on the category of land: in some cases it is the Cree Nation Administrator (above 55th parallel), and in some cases it is a federal or provincial Minister.

More recently, the Voisey's Bay review panel was established under federal, provincial, Innu and Inuit authority and can provide an example of a multi-jurisdictional arrangement for an environmental assessment in partnership with an IGA. Through an MOU, the governments of Canada and Newfoundland and Labrador, and the presidents of the Labrador Inuit Association (LIA) and the Innu Nation established a joint review panel to harmonize provincial and federal assessment processes and to acknowledge the overlapping land claims in the area. Initially, the Inuit and Innu authorities established that the undertaking would have an impact on the land



claim negotiation process and that the project should not be authorized until the land claims had been agreed upon with Canada and the province. Additionally, impact-benefit agreements could not be negotiated until the project impacts were assessed and finalized. The Indigenous authorities prioritized government-to-government decision-making, tiered and linked decisions based on acknowledged impacts to their capacity for self-government, utilized alternatives and scenarios to further negotiations, and de-prioritized company to community agreements until the impacts had been identified through the assessment (Gibson, 2006). The Indigenous authorities retained significant jurisdiction over their lands, ensured that the land could have beneficial use in the future, and in Voisey's Bay, reaped employment and monetary benefits. One significant result of the joint decision-making model was that project approval was conditional on reducing the capacity of the proposed concentrator from 20,000 tonnes per day to 6,000 t/d to extend the life of the mining operation and increase possibilities for building local capacities that would serve livelihoods for regional communities after mining ended (Gibson, 2006).

The Mackenzie Valley Environmental Impact Review Board is one of several co-management boards established in a region of the Northwest Territories covered by modern treaties negotiated between the Sahtu, Gwich'in and Tłı̄chǫ First Nations and Canada in the 1990s. The Review Board has a mandate to conduct environmental assessments, broadly conceived, considering all significant impacts of proposed projects from the biophysical to the social. The membership of the Review Board comprises nominees of both settler and Indigenous governing authorities pursuant to a federal statute established in accordance with the terms of the treaties. The federal government provides the funding for the Review Board, which reports to the Minister of Indian and Northern Affairs. A full review of how this Board operates is beyond the scope of this report, but it is relevant to note that in September 2005, the Board began a process of engagement towards designing an effective social and environmental impact assessment (SEIA) process. According to Sari Graben,

“[The Board] canvassed developers, government departments, consultants involved in SEIA and other parties in focus groups. It also spent a good deal of time canvassing the residents and communities of the Mackenzie Valley. The Review Board undertook extensive community visits and meetings to discuss socio-economic impact assessment. The Board reported having conducted over 50 meetings with approximately 550 people in 13 different communities. Their stated goal was to speak to front-line workers: those dealing with social, economic, and cultural impacts everyday. This included nurses, social workers, health and social services agencies, interagency committees, economic development officers, renewable resource committees, impact advisory groups, social and cultural institutes, land corporations, drug and alcohol counselors, community leadership, elders and youth groups. Characterizing the totality of the information it received through these visits as community feedback, the Board summarized the

information in a report titled, “Community Visits 2005: Raising the Bar for Socio-Economic Impact Assessment, A Report on What Communities Told Us” (207).

More recently, as the Firelight Group (2018) has highlighted, the Tłıchq Government acting under the Tłıchq Land Claim and Self-Government Agreement undertook a collaborative environmental assessment of the Fortune Minerals NICO Mine with the Government of the Northwest Territories. In this case both governments exercised independent authority and reached their own decisions on the proposed project. This ensured that Tłıchq culture, language, and way of life were central to the analysis of the project and that the Tłıchq were able to carry out their responsibilities into the implementation and monitoring phases.

The now-dissolved Regional Framework Agreement (“RFA”) negotiated between the previous Ontario government and the nine Matawa First Nations demonstrates that remote Indigenous communities that will be affected by future development in the region have both an ongoing interest in, and the capacity to play a formal role in, decision-making processes (Ontario Ministry of Energy, 2014). We recognize that, since the dissolution of the RFA process, at least two of the Matawa First Nations have entered confidential bilateral negotiations with Ring of Fire mining company Noront Resources Ltd. and Ontario. These negotiations have produced various arrangements, including economic stakes for at least one of the communities in future mining.

However, the fact that some of the affected Matawa nations are now proponents of projects in the region does not diminish the case for a regional assessment. It simply demonstrates the complexity of the issues at stake, and the need for a broader regional visioning process to guide the coming developments and assist in ensuring that all future agreements integrate foreseeable regional impacts. As Atlin and Gibson have demonstrated, regional assessment offers the best framework for bringing together *interested and impacted* parties to consider all scenarios and alternatives for development (2017, our emphasis).

In 2013, the Matawa nations engaged in a community-driven regional process of negotiation related to mineral development in the Ring of Fire. In this process it was recognized that the Matawa nations would become partners in an “enhanced participation” process for environmental assessments and would jointly design processes for long-term environmental monitoring. Ontario provided funding to support the Regional Process, including logistical, coordination, communication and project management support. There is plenty to learn and build on from that experience, for establishing a Commission for the purposes of Regional Assessment.

Atlin and Gibson (2017) found that a regional assessment in the Far North must include federal and provincial governments as well as First Nations communities *as decision makers* (2017). Further, the federal government’s own Expert Panel appointed in 2016 to review environmental assessment processes, found that:

“Should Indigenous Groups without modern treaties wish to undertake their own IA processes, they should be able to do so, and co-operation arrangements with these Groups should be negotiated. Federal IA governance structures and processes should support Indigenous jurisdiction” (Expert Panel Report, 2017, 5).

This has only become more obvious in the intervening years, as escalating resource conflicts across the country have shown, from the TMX to the Coastal Gas Link pipeline examples, that when Indigenous peoples *do not* control the development of their territories (and work out their differences themselves), conflict and disruption will follow. It is for the impacted and interested First Nations themselves to establish a process for working together once the Minister extends the invitation. As the Expert Panel further recommended, “When there are overlapping claims and uncertainties with respect to who is impacted by a project, these uncertainties should be resolved by Indigenous Groups themselves in accordance with their own laws and traditions” (29-30).

For these reasons, our conclusion is that partnering with an Indigenous Governing Authority to establish a Ring of Fire Commission is not only legally necessary, but also provides the most informative, expeditious and efficient way to assess the impacts of the multiple projects proposed for the Ring of Fire. The Impact Assessment Act enables a new vision for partnership and collaboration that should be embraced openly. We encourage the Minister to take the opportunity to demonstrate leadership in establishing meaningful government-to-government relations by creatively considering how an effective governance structure for the Regional Assessment can be crafted within the structure of the existing legislation.

#### *Who is the appropriate Indigenous Governing Authority (IGA) for the Ring of Fire?*

Much of the discussion in our community workshops centered on the question of who an appropriate Indigenous Governing Authority (IGA) would be for the purposes of partnering with the Agency to establish a process for Regional Assessment in the Ring of Fire. The participants were asked explicitly to consider various options. These included existing regional organizations such as the Nishnawbe Aski Nation (NAN), a large political territorial organization representing all 49 First Nation communities in Treaty 9 (and the Treaty 5 communities located in Ontario) and Matawa Tribal Council, a voluntary grouping of 9 First Nations that provides advisory and program services through the corporate structure of Matawa First Nations Management. As mentioned, the Matawa First Nations formed the collective that negotiated under the Regional Framework Agreement process with Ontario from 2011-2018.

Participants in our workshops unanimously agreed that neither of these organizations are well-suited to serve as the IGA for the purposes of a Regional Assessment for the Ring of Fire. Many participants viewed the organizations as ‘too politicized’ or ‘not accountable’. Some participants stated, referring to Matawa, that “*the local processes are left on the wayside there, on the sideline, because everything seems to be coordinated or will be decided at the political level...and that's a very problematic issue for the community if in fact the community.... you can't assume that the communities are just going to agree to what you're proposing*” (TB at 5).

While all of these points are valid, the most compelling rationale provided for rejecting the regional organizations such as Matawa and NAN, in our view, is that their membership does not map well onto the communities that have the most at stake in this decision. In NAN's case, membership includes many communities well outside of the Ring of Fire region and very differently situated. Even Matawa includes communities not likely to be affected in the same ways or to the same degree (ie. because they are already connected to roads, as an example) and at the same time excludes communities who *are* likely to be affected, such as Attawapiskat and Fort Albany (see Figure 3).

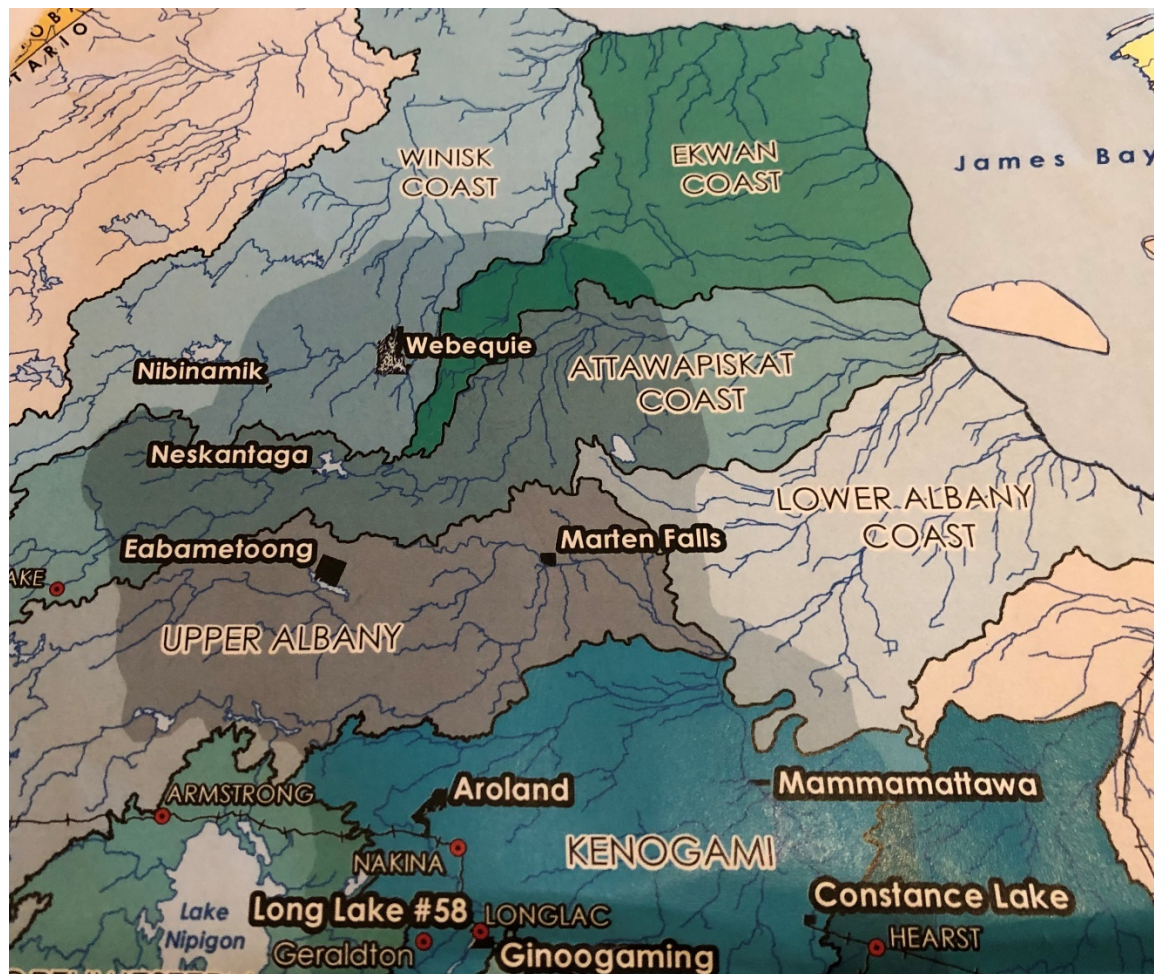


Figure 3. **Watersheds Within the Matawa Homelands and Traditional Territory**, Matawa First Nations Management and Four Rivers Inc. (2014, revised 2020). The shading indicates the extent of the Matawa homelands and Traditional Territory.

In our view, the IGA for an effective Regional Assessment in the Ring of Fire should be constituted by a collective of the *most-likely to be significantly interested and impacted* communities, taking into account both ecological connectivity and the social, cultural and economic impacts expected as a result of specific proposed infrastructure routes.<sup>3</sup> We expect



that adverse impacts of the proposed mining may be shared across the Attawapiskat River watershed, such that downstream communities will experience effects on their way of life, harvesting and jurisdiction. On the basis of our consultations and the workshop results, we expect that several remote communities will be disproportionately and differently impacted socially, cultural and economically.

Stemming from this analysis, our recommendation is that a collective of the five remote communities in the Ring of Fire region (Marten Falls, Neskantaga, Eabametoong, Webequie and Nibinamik) plus the downstream communities of Attawapiskat, Fort Albany and Kashechewan form the IGA. These communities, in our view, will experience impacts on their use and occupancy of lands, and impacts on their ways of life, harvesting and jurisdiction stemming from the proposed mines and road routes. In other words, we are recommending that the Minister seek partnership with an Indigenous Governing Authority that encompasses both *interested parties* (proponent communities) and *impacted parties* (their neighbors). In our view, it should be for the communities themselves to determine a process for establishing the IGA, once the Minister indicates a willingness to partner.

### **Elders Council**

The participants in the workshops agreed that any credible decision-making structure in their legal orders must incorporate elders. *“You're going to need people also...the land users... actually the people who use the land... to be in that structure because they can be the advisors, or share the knowledge”* (TB at 1). The process will need to incorporate *“all the experts that will understand First Nation people like the elders and the land users...”*(TB at 2).

The participants emphasize the way the elders are incorporated into the decision-making structures of the communities themselves, and how those views shape the values protected through the decisions:

*“Because our people, our community view that everything is interrelated, interconnected. You cannot just decide on a certain part and hope that the other part is okay. That's how our elders, some of our community members have always talked about how everything is interrelated. It has to encompass everything. It has to encompass your way of life, your harvesting, your social issues, everything”* (TB at 5).

In conversations with the experts and advisors we consulted on the Commission's structure we concluded that an Elders Council should be constituted of one representative of each community and that they should meet occasionally to consider the proposed plans for the community hearings etc., but they would not travel to the various communities as this would impose too much burden. The Elder Council representative from each community would be present for their own community's hearings.

The Elders Council would govern through consensus, including in its relationship with the Commission in the approval of the regional framework. The concept of governing through

consensus is well-established in Anishinaabe communities, and it holds in-built mechanisms of accountability that are maintained through long-standing relationships and social cohesion.

The inclusion of a parallel Elders Council, in combination with the open in-community meetings is a way of actively trying to center Indigenous modes of governing, mitigating the power of the Band Councils who some members worry may be unduly influenced by state governments. Many community members worry about the extent to which centralizing decision making power and control within Band Councils entrenches colonial power relations. This is in line with the Yellowhead Institute's recent articulation of a notion of building the 'restorative' aspects of consent that promote "the revitalization of authentic governance practices and institutions" (2019 at 21).

### **Secretariat**

Participants in the workshops emphasized the need for expertise and staff support for the Commission. Based on our consultations and advice, and review of similar processes, we recommend that the Secretariat include Commission counsel, researchers and a community liaison officer.

### **Tiered Structure**

On the basis of the literature review, it is clear that an effective regional assessment must be able to provide a framework into which individual project-level impact assessments will be nested. We have framed the core of the question for Regional Assessment, to be taken up by the Stage 1 Commission on the Ring of Fire as: what are the terms and conditions for opening up the north? The four components of the Commission's work (a cumulative effects framework, comprehensive baseline data, criteria for a positive contribution to sustainability test; and a regional plan) are necessary *prior to* any processes that might be applicable on a project by project basis. This is especially true for a region, like Ontario's far north, where there is not a complete set of community-based land use plans (Scott, 2018; Ontario, 2019). Decisions such as these, that involve the implications of opening up an entire region to new development, demand a process to compare future scenarios in order to evaluate opportunities and challenges arising from a broad diversity of perspectives and with a long-term lens.

Our proposal for a tiered structure that begins with a semi-permanent Commission on the Ring of Fire allows for the Commission to establish:

1. A cumulative effects framework, including how traditional knowledge (TK) will be incorporated;
2. Baseline data, including on community well-being and the social emergency;
3. A positive contribution to sustainability test (including criteria, and a consideration of how various options and alternative visions for the region may demonstrate a potential to improve well-being, protect valued components, and mitigate the social crises); and

#### 4. A regional plan and policy guidance.

This work will set the ‘terms and conditions’ for opening up the far north that can be applied to individual project assessments. Expected projects that will require impact assessment in the future include: further road proposals to connect the mine sites to the provincial highway network, including the “Northern Road Link”; future mines, such as Noront’s Eagle’s Nest, that will either be subject to impact assessment through Ministerial designation or be of a large enough scale to trigger the IAA on their own; and expected future hydro-electric corridors, amongst other projects.

The development of a framework for assessing cumulative effects, sound and comprehensive baseline data, criteria for sustainability broadly conceived, and a regional plan will be crucial for informing future project planning and development. Without this kind of nested structure, project approvals will tend to allow for ‘death by a thousand cuts’. This phenomenon has been demonstrated in British Columbia, where a huge volume of individual permits and approvals for industrial development were issued without a regional analysis of the cumulative effects (West Coast Environmental Law Research Foundation, 2016). As a result, the province is now immersed in a court case brought by Blueberry River First Nation, who claims an infringement of their treaty rights to hunt, trap and fish by approving this volume of development within their traditional territory without a mechanism for assessing the cumulative impact (*Yahey v British Columbia*, 2017). The case is part of a wave of litigation now coming forward under the banner of a “meaningful right to harvest” (Imai, 2017).

Participants in the workshops also supported this structure – in fact, seemed to indicate that a Regional Assessment would only be credible if the tiered structure was in place:

*“There’s very little acknowledgement or recognition of how you’re going to protect the way of life, the harvesting, protecting the next generations. How do you do those things? It [a regional assessment] could work if there is a set of principles or values that are, say, binding in some way [on future project-level assessments], it would work. But with the current state, that’s not a possibility” (TB at 3).*

With respect to the four elements of the Commission’s work:

First, it will not be possible to safeguard the rights, responsibilities and interests, particularly the meaningful right to harvest in the territory, without taking into account the **cumulative effects** of all proposed and anticipated developments in the region. This must be done by applying a framework developed in advance of any project level assessment. The cumulative effects framework jointly developed by the Commission may include areas of independent authority or exclusive jurisdiction for the IGA, where Indigenous knowledge holders are the most appropriate experts to conduct the studies.



Second, in the community workshops participants made it clear that many of the interested and impacted communities are experiencing an **ongoing state of social emergency**. Participants used the language of an “ongoing genocide”, referencing the National Inquiry on MMIWG’s recent conclusion (TB, 2020)<sup>4</sup>. Youth suicide is occurring at an alarming rate in the communities. This is on top of, in Neskantaga, a boil water advisory that has persisted for twenty-five years (York, 2019). The message loud and clear from participants is that any impact assessment process, if one was to occur, would have to make sure these pressing social emergencies were at the forefront. This consideration informs both the collection of **baseline data**, which must be very broadly scoped so as to be able to encompass not just the usual ecological, biophysical and human health indices, but also social and cultural wellness, including mental health issues and the community infrastructure deficits that contribute to them.

Third, the **positive contribution to sustainability test**, as it would apply in this case, must encompass community and social sustainability or stability, as well as ecological. It should identify measures of long-term community well-being as measured by indicators that are salient in the social, political and legal orders of the interested and impacted peoples. Recall that this idea has been a demand of people in the region for some time. As far back as 2012, former Neskantaga Chief Peter Moonias stated that any development must “benefit the long-term health and well-being of our people, including future generations, rather than hurting us” (Moonias affidavit, 2012). Our recommendation is that proponents be required to demonstrate that their projects will actually mitigate rather than exacerbate the social emergency. Without this orientation, a regional assessment process is not likely to be accepted by communities in the region.

Fourth, the Commission will produce a regional plan and policy guidance. The sustainability criteria developed above, as the literature makes clear, depend on an appreciation of the sustainable future(s) to be sought. To translate those into project implications for Stage 2, the Commission will likely need to engage in an exercise of comparing and evaluating desirable and plausible future scenarios. These will need to detail what “prosperity” entails for the communities (Kuokkanen, 2011). The Commission must develop a clear vision of what the impacted and affected peoples would like their future to look like, in order to ensure that the end result is compatible with that vision (Spitzig, 2019). This work will generate a regional plan which sets policy guidance for the management of the pace and scale of development, the distribution of revenues including between generations (e.g., through trust funds), the needed community infrastructure, etc.

To conclude this section, our recommendation is that the Commission must produce an authoritative set of documents to guide future assessments, with clear implications for projects. We suggest that the Commission’s deliverables must include clear, credible and authoritative guidance for future project-level assessments within the Ring of Fire region.

### **In-Community Hearings**

One recurring point brought up by workshop participants was the importance of maintaining their oral culture and ensuring the use of Anishinaabe and Anishini languages during all

proceedings. In a 2012 affidavit by Chief Peter Moonias regarding the project proposed for the Ring of Fire by Cliffs Natural Resources, he details the role of the oral culture in the community's legal order, explaining how they hold meetings in person to discuss issues when they arise, rather than using paper documents (Moonias affidavit, 2012 at para 4). He also reports that all community meetings are held in the traditional language as well as English, and that this is how the community makes decisions (at para 54). He said that when conducting a study, translating the results into traditional language and communicating them orally to the people is of high importance to them (Ibid).

In our own workshops, participants re-iterated these ideas: *"And so, this is what I think... there should be - that governing body should be working with the people..not only Neskantaga but across [the affected peoples]. You know, so they have a say in the process. ..."* (TB at 7). Another participant stated:

*"...community level decision-making [is] required for any activity or development that will impact our rights, our lands, our way of life. It always has to revert back to the community...the assertion of the jurisdiction, it does lie with the people. It lies with the community, it does not lie with one person, the chief, the counsel, an elected official, or a senior adviser. It lies with the community as a whole"* (TB at 20).

Our recommendation is that the Commission hold in-person meetings in each community as an integral part of their work. Community meetings should be: accessible to the entire community, with a particular effort to include and hear from elders; be broadcast simultaneously so that other community members and off-reserve members are also engaged; and be conducted in both languages.

We have attempted to strike a balance in our recommendations between a process that is 'close' enough to community to enact effective listening, and one that is overly complicated and bureaucratized such that it places an unacceptable burden on the small communities in the region. Speaking of Yukon Territory co-management boards, Paul Nadasdy remarks that "[t]here is some justifiable fear among First Nation people that co-management processes of this sort might be preventing rather than fostering meaningful change by ensnaring participants in a tangle of bureaucracy and endless meetings" (2005, at 223). The process must not extend on indefinitely: people want to be on the land. It must be timed appropriately as to season, and it must not tie up critical community resources, namely their members, beyond a reasonable period of time.

### **Community Consent**

It was communicated clearly to us in the community workshops that the people of the region believe that each community must follow their own process to determine whether their free, prior and informed consent can be given to a project in their territories. They stated that their right to provide or withhold consent must be taken seriously, and that they must have a final say in the decision. Many members voiced this during the community meeting. One member of

the community said, *"I mean the message we heard pretty strong [today] is that community members want a nation-to-nation joint decision-making model"*(TB at 31). Another stated, *"We may not agree on everything. There are sometimes heavy discussions that take place at the local level, but ultimately the opportunity to allow people to be decision-makers, to be part of an informed process, is very critical if you're going to build a process that allows for free, prior, informed decision-making to be provided"* (TB at 5). Similarly, yet another stated:

*"[It should] allow people to make joint decision-making on their land, on their areas where they have harvested for generations... Why would you not support that? And that would also give certainty to the business community, because that is ultimately what [inaudible] if you are looking at it from a business perspective, they want certainty. They want to be sure that they can access that area. But if you're going to have a company that is not recognizing or respectful of your processes, then it's going to be difficult. Those days of just going in and accessing lands without recourse... they're gone, those days. More of our people are more aware now. They're not going to be subjected to policies or assimilations, or co-opted approaches by the government or industry. It's different now"* (TB at 6).

As the literature on Indigenous-led IA makes clear, each community will have protocols and processes for decision-making that can be applied to protect their own "valued components" according to their own social, political and legal orders (Spitzig, 2019). Indigenous protocols for deliberating must be respected (Gunn et al, 2017). In the Squamish Nation process, the last step was for the assessment team to submit a final report with the impacts that the proposed project would have on the community's identified valued components to the Chief and Council, and allow them to assess whether it would be acceptable to proceed, and on which conditions (Squamish Nation at 14).

Further, there is support for this model in the federal government's Expert Panel for the Review of Environmental Assessment Processes Final Report (2017). The Expert Panel stated: "free, prior and informed consent (FPIC) is not necessarily a veto but a process of mutual respect, trust and collaborative decision-making grounded in the recognition of Indigenous Peoples as equal partners" (28; see also Christie, 2017). Similarly, in the submission of the Manitoba Metis Foundation to the Expert Panel, they describe the notion of "collaborative consent" that is increasingly employed across the country as Indigenous-led IA processes proliferate. "Collaborative consent' is an integral concept for ...environmental assessment...in the context of nation-to-nation agreements set out by mutually agreed-upon frameworks". In the context of our recommended model, the Commission process can set the framework, and the Joint Panel review process can be relied upon to provide avenues for each party to provide or withhold consent. As the Expert Panel concluded, next-generation "should be fundamentally based on collaborative consent, with Indigenous Peoples on par with other levels of government" (30).

## Discussion and Implications

For industrial development proposals of any nature to receive more positive reception in host communities and regions, they will need to be planned, reviewed and approved in ways that ensure they contribute to more sustainable regional futures (Gelinas et al., 2017). This is likely to be even more the case where those developments are proposed for regions that are occupied almost exclusively by Indigenous peoples who are actively stewarding their homelands. The impacts of uncoordinated mining and associated industrial development are widespread and often irreversible. They include habitat fragmentation and loss, and long-term ecological legacies of improper decommissioning, etc. They also include boom and bust economies and accompanying risks, particularly for Indigenous communities and women as has been explored.

The need to take a new approach to assessment in the Ring of Fire is not simply an academic construction. The Government of Canada acknowledged the growing distrust among the public, NGOs, Indigenous communities and others in the environmental assessment process when they established an Expert Panel in late 2016 to initiate an assessment law reform process mandated to rebuild that trust (Gelinas et al., 2017). In fact, the first true Regional Assessment established under the new regime is for the Ring of Fire (Wilkinson, 2020). Therefore, we urge the Minister to make this Regional Assessment count: make it credible and authoritative, by implementing it in partnership with Indigenous Governing Authorities, and orienting it around long-term ecological, social and economic sustainability as defined by those stewarding the lands now and into the future.

For Indigenous peoples, the day to day struggles of living on the margins of society with limited control over what happens on their own homelands and shapes their own futures is exhausting and disheartening:

“They [*indigenous peoples*] believe that the impacts of industrial development are allowed in their critical lands to a large extent because they are economically disadvantaged, a distinct cultural group with non-western values (i.e. values not understood or respected by Canadian society), that they are far away from the majority of the non-indigenous society which benefits from resource extraction and that because of their disadvantages in economic or political clout they can be bullied by the federal and provincial governments promoting industrial resource extraction activities” (Booth & Skelton, 2011, p. 697).

Research of this kind assists in providing concrete new forms for decision-making for Indigenous people to strive for when engaging in assessment and planning. It can assist in better facilitating the exercise of Indigenous jurisdiction over decision making, through the co-development of objectives, criteria, alternatives, and assessment outcomes. It also stresses the importance of improved relationships and trust-building, which are crucial considerations for reconciliation and decolonization. Sustainability also can provide a better frame for dialogue and for the consideration of Indigenous interests and knowledge. Other approaches, such as

strategic cumulative effects assessments, could benefit Indigenous communities through the improved consideration of the legacy impacts and complex socio-cultural and ecological changes that development presents, as could more time for capacity building and careful deliberation. However, all of this depends on time, respect, and the capacity for Indigenous authorities to make their own choices.

The most difficult element to achieve from the literature on effective regional assessments is the element of “tiering” that is backed by law (Atlin and Gibson 2017). Integrated relations among the different layers of assessment and planning is crucial so that the guidance from one level to the next is authoritative (Arts, Tomlinson, and Voogd 2005). It is difficult to see how, under the current legislative structure, the Commission’s work can be made “authoritative” over subsequent project-level assessments without new regulations or agreements.<sup>5</sup> We would also encourage the partner jurisdictions to set out commitments, in the agreements establishing the Commission, to commit to decision-making within their respective jurisdictions (such as on permitting, as an example) that will respect the parameters set down by the Commission’s process. This would obviously make for a more credible and authoritative Regional Assessment if the province were also a partner jurisdiction.

Without this tiered structure, the Commission’s work is not likely to be accepted as a legitimate base for project assessment and approval. But if the Commission is authoritative and credible, the guidance developed, including the regional plan would provide clarity and certainty of expectations for proponents of individual undertakings and remove much of the burden these proponents carry under current regimes to do the cumulative effects assessment themselves (Gibson et al., 2010). Under our proposed structure, much of the task facing a proponent participating in a project level assessment would be to ensure the character of the proposed undertaking, its effects, and their associated potential for contribution to regional cumulative effects would comply with the requirements and expectations of the regional plan. The regional plan may also link to national or international obligations, such as climate change commitments, or specific community expectations, such as adhering to local planning designations. Therefore, for regional purposes, the primary objective of the project assessment process would be to ensure its compliance with the Commission’s work.

One of the largest problems in project level cumulative effects assessment is that the responsibility for assessing cumulative effects is placed on individual project proponents. Such proponents, especially those in the private sector, rarely have the motivation (beyond legislated obligation), authority, capacity, potential credibility, or information base (at least about other anticipated projects) to do good cumulative effects assessment in a way that addresses the core needs and rising expectations of the public, Indigenous authorities, and proponents for better decision making. Project-level proponents may be able to identify the likely range and potential importance of cumulative effects, but it is unreasonable to expect them to examine their implications in light of desirable and undesirable future scenarios, consider and assess broad alternatives, and point to the best options for action (Adger & Jordan, 2009; Duinker & Greig, 2006; R. B. Gibson et al., 2005).

Thus, project proponents would benefit from the Commission's work to the extent that it addresses these overarching issues and provides credibly developed and authoritative guidance for project planning. The immediate and long-term concerns and aspirations surrounding project proposals now often extend well beyond the individual project – especially where there have been and/or will be multiple undertakings with uncertain overall future effects. Where the projects involved include mines, with their limited life expectancies, uneasy combination of opportunities and risks, and often adverse legacies, proponents have much to gain from good cumulative effects assessments to clarify and smooth the path for project planning and approval (Gibson 2014, Gratton 2016). Such assessments and associated benefits would seem much more likely to be delivered by careful attention to cumulative effects in sustainability-oriented anticipatory regional planning and associated policy and program initiatives than by project level cumulative effects efforts.

Finally, we should not expect that the implementation of cross-cultural arrangements or plural legal systems will be smooth or easy. Lorne Sossin (2012) states that there is a “commitment to pluralism...at the heart of Canadian administrative law”, but continues to point out that “while the principles of administrative law are arguably universal (e.g. to ensure that all public decision-making is fair and just, and does not exceed the authority of the decision-maker), the application of those principles will be and should be, deeply contextual” (629). In respect of emerging ideas in Indigenous administrative law, he asks: “Can these new institutions and structures permit Indigenous values to penetrate administrative decision-making? Can they “transform regulation to reflect local values”? (600). Some scholars, such as Paul Nadasdy (2005), are not optimistic, writing that there is a persistent incommensurability of Indigenous and non-Indigenous knowledges. To Nadasdy, Indigenous people's knowledges and experience often cannot be actualized through institutional processes of the state. If the ultimate road chosen for the regional assessment, as has been the trend in impact assessment in Canada, is to try to “incorporate” knowledge of the affected communities without actually extending the power to make their own decisions about projects, the process is not worth engaging in (Hunsberger and Awâsis, 2019; Mascher, 2019). Any process adopted must respect the applicable Indigenous law. We agree with Kris Statnyk (2016) when he states that “the efficacy of traditional knowledge is dependent on respect for the underlying force and weight of the Indigenous legal traditions that are an integral aspect of the indigenous knowledge systems” (8). As Hannah Askew has observed, “settler governments committed to implementation of UNDRIP, and to the broader project of reconciliation, must ... be prepared to invest significant amounts of time and resources into substantive engagement with Indigenous legal orders” (2017, 85; see also Borrows 2010; Clogg et al 2017). In order to be effective, essentially, this project must be transformative. Following Nadasdy, it must be a “real *alternative* to existing structures and practices of state management” (2005, 216).

## Conclusion

Making a decision of such a magnitude – whether to open up a region to industrial development and access roads to the south – must involve careful evaluation of the consequences of the decision for various interests. Ensuring equitable consideration of



consequences is important because often those parties who benefit the most are not the same as those who stand to lose the most – as the discussion about the specific gendered risks to Indigenous women and girls makes clear. Where past approvals of large industrial projects have demonstrated an absence of comprehensive assessment of how risks and impacts are distributed among different groups within society (*i.e.*, economic over cultural and historic, which has occurred disproportionately for Indigenous communities, as well as other equity-seeking groups) (McLeod-Kilmurray, 2010), a Regional Assessment in the Ring of Fire offers a critical opportunity to do so. Comparing alternative scenarios put forward against transparent criteria allows future trajectories to be evaluated against widely understood valued components. Looking farther into the future, there are several promising models of collaborative, joint-management of landscapes between Indigenous and settler governments emerging that have potential for foregrounding Indigenous stewardship responsibilities and governance. One example is the Great Bear Rainforest (GBR) Agreements concluded in 2016 that are “yielding agreement on the exercise of Aboriginal rights across an intact landscape, funding and priority access for First Nations’ ventures as part of a conservation economy, and enhanced roles in decision making” (Curran 2017).

Our aim in suggesting this model for Regional Assessment is to foster the necessary respect and reciprocity that can bring potentially impacted communities into substantive, open, and continuous dialogue about visions for the future, rather than being locked into closed, static and routinized processes that deliver approvals for projects instead of sustainable outcomes.

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<sup>1</sup> **A NOTE ON AUTHORSHIP.** While the analysis and recommendations presented here represent the work and contributions of the entire research team, Dayna Nadine Scott and Cole Atlin are the primary authors of this report. The research would not have been possible without the collaboration of Neskantaga First Nation, under the strong leadership of Chief Chris Moonias and council. The participation of the people of Neskantaga drove the direction of this report, as they applied their extensive expertise and wisdom to the broad set of questions that are critical to their collective futures. Elders and members who participated in the workshop and interviews in Neskantaga will remain anonymous, but we would like to thank Wayne Moonias, Kelvin Moonias, and Allan Moonias in particular for working closely with us to support the research and to refine the positions taken in this report. Chi Miiigwetch.

We would also like to extend our gratitude to the following individuals for generously providing our team with expert advice and assistance at various stages of the research: David Peerla, Kim Stanton, Andrée Boisselle, Jennifer Wabano, Cheryl Chetkiewitz, Jeffrey G. Hewitt, Jacqueline Hookimaw-Witt, Scott Hamilton, Sam Hunter, Deborah Cowen, John Cutfeet, Donna Ashamock, Shiri Pasternak, Hugh Benevides, Anna Johnston, Meinhard Doelle, and Vern Cheechoo. We would also like to extend our



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gratitude to the many students that assisted with the research, including University of Toronto graduate student in geography Khalood Kibria, York University graduate students Jenna Davidson and Laura Tanguay, and Osgoode JD students Gabrielle Pellerin, Patrick McCaugherty, Madhavi Gupta, Edith Barabash, Christie McLeod, Isaac Twinn, Graham Reeder and Christian Laidlaw. Miigwetch to all.

**A NOTE ON ENDORSEMENT.** Not everyone who participated in this research project will necessarily agree with all of the positions and recommendations put forward in this report. This is even more the case due to the fact that this report is being submitted in the midst of the global COVID-19 pandemic, and as such members of the research team, and certainly many more of the research participants, are unable to review the final draft as they are completely preoccupied with more pressing matters of survival in this moment.

<sup>2</sup> We are aware that, for an Indigenous Governing Authority in Treaty 9 to meet the definition of “jurisdiction” in the Impact Assessment Act, s.2, the Government will have to finalize the *Indigenous Cooperation Regulations*, which are at the time of writing listed as “planned/anticipated” according to the “Forward Regulatory Plan” (Government of Canada, 2020). Partner jurisdictions can participate in the “joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted” (s.93(1)(a)(i)).

<sup>3</sup> This report does not endorse the idea that simple proximity from the mineral deposits is an effective determinant of the depth of impact, or the extent of consultation obligations of the Crown. Our position is that a complex matrix of ecological, social, cultural and economic factors must be taken into account to determine the extent of expected impacts.

<sup>4</sup> The Final Inquiry report found that the colonial intent to destroy Indigenous peoples in Canada “was implemented gradually and intermittently, using varied tactics against distinct Indigenous communities. These acts and omissions affected their rights to life and security, but also numerous economic, cultural and social rights” (Supplementary Report of the Inquiry, at 9). Contemporary failures to tackle ongoing social emergencies, in the areas of child welfare, human trafficking, police brutality, coerced sterilizations of Indigenous women, and underfunding of essential human services, are all considered to be a part of the ongoing genocide.

<sup>5</sup> We encourage the Minister to finalize regulations on Regional Assessment that will confirm that subsequent project-level assessments within the defined region must apply the framework, principles and guidance developed in the Regional Assessment process.

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