

RECENT EXPERIENCE WITH INDIGENOUS-LED ASSESSMENTS: A BC PERSPECTIVE

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1. INTRODUCTION

Both the new federal *Impact Assessment Act* and the recently passed British Columbia *Environmental Assessment Act* depart from previous legal frameworks by anticipating that First Nations may conduct all or part of assessments of projects. These assessments may function as the primary basis for decisions on a project.

Indeed, this has already been occurring in British Columbia, where First Nations are increasingly engaging in impact assessment by developing their own assessment documents that are applied in Crown assessments, or by conducting their own project assessments. Two examples of Indigenous-led assessments comprise this case study – the Stk’emlupsemc te Secwépemc Nation (“SSN”) project assessment of the KGHM-Ajax-Abacus Mine Project and the Squamish Nation (“Squamish”) assessment of the Woodfibre LNG Project.¹

The two case studies in this report are recent and robust examples that directly informed Crown government decision-making. In both of these cases, each Nation’s decision with respect to the project was adopted by the Crown government – SSN rejected the KGHM-Ajax-Abacus Mine project and thereafter the federal and BC governments also rejected the proposed mine; and Squamish approved the LNG project which was then also approved by both the federal and BC governments.

There are other Indigenous-led assessments that are either currently under way or have recently been concluded. Two other examples include the Tseil Waututh’s review of the Trans Mountain Project², and the Carrier Sekani Tribal Council’s Aboriginal Interest and Use Study for the Enbridge Northern Gateway Pipeline Project.³

This study has involved desk reviews of materials associated with the SSN and the Squamish assessments, and interviews with community representatives. This study reviews the approaches and key characteristics of each assessment, and then identifies common themes, which can help inform approaches to future Indigenous-led assessments.

A. OVERVIEW OF CROWN LEGAL FRAMEWORKS

i. Canada’s new *Impact Assessment Act*

The *Impact Assessment Act* authorizes certain Indigenous jurisdictions to undertake an impact assessment. Indigenous jurisdictions that would be able to do so include those who have powers under federal or provincial legislation, co-management regimes, land claims agreements, self-government agreements, or

¹ We are grateful to both Councillor Jeanette Jules and Otis Jasper of Stk’emlupsemc te Secwépemc Nation and Aaron Bruce of the Squamish Nation for their permission to share this information, and their contribution to this report.

² See www.twnsacredtrust.ca

³ <http://www.carriersekani.ca/current-issues/auis-enbridge-pipeline/>

those who have agreements with the Minister.⁴ In these cases, the jurisdiction would be able to conduct all or part of the assessment.⁵

The legislative framework envisions that there may be a single assessment process that will meet the requirements of all of the jurisdictions – federal, provincial and Indigenous. It is expected that the new Impact Assessment Agency of Canada would work collaboratively with Indigenous groups to develop an Indigenous Engagement and Partnership Plan with respect to a project, which could map out the relationship between the Impact Assessment Agency and the Indigenous group, and their roles and responsibilities, throughout the assessment process. The goal of this process would be to obtain the consent of the Indigenous group.

ii. British Columbia's new *Environmental Assessment Act*

BC's Bill 51 was passed by the provincial legislature in November 2018 and will come into force in fall 2019. The law provides that the BC Environmental Assessment Office is to support the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, and to recognize the inherent jurisdiction of Indigenous nations and their right to participate in decision-making by representatives chosen by themselves.

The BC Environmental Assessment Office similarly has the goal of collaborating in the course of assessments.⁶ Where an Indigenous nation notifies the Environmental Assessment Office of its intent to carry out an assessment, the process order is to provide for this, and aspects of the environmental assessment process can be varied through agreements to enable substitution for some or all of the standard environmental assessment process.⁷

iii. Environmental Assessment Process Substitution

Since 2013, there has been an environmental assessment substitution agreement between Canada and BC.⁸ It establishes a process whereby Canada and BC may agree to substitute the BC environmental assessment process to meet federal assessment requirements. When this agreement was concluded, it did not engage First Nations in BC as parties or partners, nor does it envision inclusion of Indigenous peoples beyond obligations related to Aboriginal consultation.

In order to give effect to the principle of one-project/one-assessment and in light of the new legislative regimes that anticipate all or part of an assessment may be Indigenous-led, it will be important to develop an agreement or protocol that establishes a basis for Crown recognition of Indigenous-led assessments, whether by renegotiating the existing Canada-BC assessment substitution agreement on a tripartite basis or negotiating equivalent, parallel agreements between the Crown governments and Indigenous governments.

⁴ *Impact Assessment Act*, SC 2019, c 28, s. 1, Part 1, s 2, definitions of "jurisdiction" and "Indigenous governing body".

⁵ *Impact Assessment Act*, SC 2019, c 28, s. 1, s 31. See also Canadian Environmental Assessment Agency, "Indigenous Collaboration in Impact Assessments, Workbook for Initial Planning Workshops with Indigenous Peoples", March 2019.

⁶ *Environmental Assessment Act*, SBC 2018, c 51, s 2(2)(ii)(A) to (D).

⁷ *Environmental Assessment Act*, SBC 2018, ss 19(4) and s 41.

⁸ Memorandum of Understanding between the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office on Substitution of Environmental Assessments (2013) [online](#).

iv. Role of the United Nations Declaration on the Rights of Indigenous Peoples

Finally, both the *Impact Assessment Act* and BC's new *Environmental Assessment Act* refer to the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration"), thereby reflecting commitments by both Crown governments to implement the UN Declaration. Working to partner with and enable decision-making by directly affected Indigenous peoples is an important component of reconciliation. The UN Declaration expressly states that Indigenous peoples have the right to participate in decision-making on matters which affect them; to develop their own indigenous decision-making institutions; and to do this through representatives chosen by themselves.⁹

2. SSN REVIEW OF KGHM-AJAX-ABACUS MINE PROJECT

The Stk'emplupsemc te Secwepemc Nation ("SSN") is a governance group of the Secwepemc Nation, situated in their traditional territory around Kamloops Lake. Formalized in 2007, SSN consists of the Tk'emlúps te Secwépemc and Skeetchestn Indian Band, one of the seven historic "Divisions" of Secwepemc Nation.¹⁰ The Tk'emlúps te Secwepemc Band consists of approximately 1,350 members living both on and off the reserve.¹¹ The Skeetchestn Indian Band has approximately 600 members.¹²

The Proponent KGHM sought to build the Ajax Mine Project, an open-pit copper and gold mine and an enrichment plant. The proposed project site was situated on and through SSN territory, outside of Kamloops. Notably, the site was situated on Pípsell (Jacko Lake and surrounding area), which is a sacred place for the SSN and their ancestors who have inhabited the territory since time immemorial.¹³

The SSN developed a Project Assessment Process and conducted their own review of the proposed mine in 2014. As a result, the SSN rejected the KGHM-Ajax-Abacus Mine Project in March 2017. Subsequent to this, both Crown governments rejected the project as well – the BC government rejected it in December 2017 and the federal government rejected it in June 2018.

A. BRIEF SUMMARY OF THE PROCESS

Largely in response to the KGHM-Ajax-Abacus Mine Proposal, the SSN designed a project assessment process which is intended to be conducted in parallel with – and where appropriate, collaboratively – with Crown assessment processes. The SSN Project Assessment Process incorporates the "intangible" aspects of land use that are not adequately considered in Crown-led processes.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, Article 18, [online](#).

¹⁰ "Honouring the Vision of our Ancestors," Stkemplupsemc te Secwepemc Nation Website, 4-page introduction to the SSN Project Review Process for KGHM-Ajax ("SSN Introduction"), accessed online: https://stkemlups.ca/files/2013/11/SSN_4Pager-v13-12.02-WEB.pdf

¹¹ "About" SSN website, accessed online: <https://stkemlups.ca/about/>

¹² "Skeetchestn" First Peoples Language Map of BC, accessed online: <http://maps.fphlcc.ca/skeetchestn>

¹³ Stkemplupsemc te Secwepemc Nation, Honouring Our Sacred Connection to Pípsell, p.5 ("Honouring Our Sacred Connection to Pípsell,") accessed online: https://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary_0.pdf

The process is built on the “Principle of Walking on Two Legs” and emphasizes Secwépemc knowledge and worldview while also considering “western” knowledge that is developed through European-derived societies.¹⁴ The framework for this process is broader than environmental assessment; it is to consider cultural, community and other values in a way that respects SSN knowledge and perspectives. The “Walking on Two Legs” process also incorporates SSN indigenous legal principles that are grounded in the specific site:

The relationship of the Secwépemc people to the territory, which includes the Project site, cannot be understood in a piecemeal process. The land and territory, Secwépemcul’ecw, must be considered as a whole. It contains the laws, stories, sustenance, culture, and history of the Secwépemc people. The connectedness of the physical elements of the site to each other, to the people, and to the cultural significance of the site as a whole, all must be considered.¹⁵

The SSN Review Process was developed by the SSN Joint Council, which is comprised of leadership from the Skeetchestn Indian Band and the Tk’emlups Indian Band.¹⁶ A core component of the review was a Cultural Heritage Study and Preliminary Mitigation Report regarding the project, which were developed in 2014. Thereafter, there were independent expert reviews of various matters of specific concern to SSN.

The community played a key role in the process. An SSN Review Panel was created, consisting of the elected Chiefs and Councillors, as well as two representatives from each of the 13 families in the communities. Additionally, the Panel included Elder and Youth representatives, for a total of 42 Panel members, who were involved throughout the assessment process and reported back to their respective families and the community. The Review Panel held a 5-day hearing in May 2016, and received evidence and submissions from over 80 presenters sharing knowledge from both the Western and Indigenous experts (Knowledge Keepers).

After the hearing, the Review Panel evaluated the material provided by the community and experts, and deliberated for 9 months on the potential impacts of the proposed mine on SSN rights and values.¹⁷ The Pípsell Report, which summarized the process and findings, was presented to the SSN Joint Council in February, 2017.¹⁸

¹⁴ “SSN Introduction”. See also 2017, May 16, Stk’emlupsemc te Secwépemc Nation, SSN Pípsell Report for the Proposed KGHM-Ajax-Abacus Project at Pípsell, p 6 (“SSN Pípsell Report”), accessed online: <https://drive.google.com/file/d/0B92rPs-T5VkgWVpacENEWTM5MDA/view>.

¹⁵ SSN Pípsell Report, p 18.

¹⁶ 2017, February 23, Stk’emlupsemc te Secwépemc Nation, SSN Panel Recommendations Report for the proposed KGHM-Ajax-Abacus Project at Pípsell, pg. 4.7, (“SSN Panel Recommendations Report”), accessed online: <https://drive.google.com/file/d/0B92rPs-T5VkgZVNIbzhuzOVhMk0/view>

¹⁷ 2016, December 22, Stk’emlupsemc te Secwépemc Nation, Lessons from the Land: Written Submissions, pg. 15, (“Lessons from the Land: Written Submissions,”), accessed online: http://eareview-examenee.ca/wp-content/uploads/uploaded_files/dec-22-ssn-lessons-from-the-land-ceaa-expert-panel-report.pdf

¹⁸ “Lessons from the Land: Written Submissions,” pg. 11.

The SSN Joint Council adopted the Pípsell Report, SSN Review Panel Recommendations and the SSN Decision, which comprised the SSN Decision Package to reject the Ajax Project.¹⁹ Following SSN’s decision, the project was later rejected at the conclusion of both the federal and BC assessment processes.²⁰

B. KEY HIGHLIGHTS

Because of the nature of the Secwépemc connection to the land, the SSN Project Assessment Process for the KGHM-Ajax-Abacus Mine was developed not only to be consistent with their own Indigenous governance and Indigenous knowledge, but it incorporated the role of Pípsell as a cultural keystone place. Thus, future applications of the SSN project assessment process would need to be adjusted to ensure that it reflects the SSN relationship to the site in the context of another project.

The SSN assessment made the most of family connections in the community by using family representatives whose participation placed a strong emphasis on youth and Elder engagement. The Review Panel held a 5-day hearing that offered the community-at-large an opportunity to share their concerns and perspectives regarding the mine project. The emphasis on cultural heritage supported SSN in creating a process that took a “long view” of SSN’s relationship with the land and was able to address community concerns while asserting Aboriginal rights.²¹ SSN produced a number of documents, reports and videos that provide a detailed overview of their process and experience with the environmental assessment process, which are available publicly on their website.²²

The SSN did experience some challenges, such as coordinating logistics and timelines, and accessing sufficient funding to participate in Crown processes, while at the same time developing and implementing their own review.²³

SSN intends to continue to conduct its own assessments for future projects and will use the experience with the KGHM-Ajax-Abacus Mine Project as a baseline to consider refinements to its approach.

3. SQUAMISH NATION ASSESSMENT OF WOODFIBRE LNG PLANT

The Skwxwú7mesh stelmexw or Squamish People (“Squamish”) reside in the area now described as the Lower Mainland of British Columbia. Most members reside on several urban reserves in the city of Vancouver, North and West Vancouver and the municipality of Squamish, B.C. Over 60% of the 3,600

¹⁹ 2017, March 4, Decision of the SSN Joint Council on the proposed KGHM-Ajax-Abacus, pg. 7, (“Decision of the SSN Joint Council”), accessed online: <https://drive.google.com/file/d/0B92rPs-T5VkGWGNgeWRfLWtQZUE/view>. See also SSN Panel Recommendations Report, pg 24.

²⁰ 2018, June 27, Government of Canada, “Government of Canada Announces Decision on Ajax Mine Project,” accessed online: <https://www.ceaa-acee.gc.ca/050/evaluations/document/123179?culture=en-CA>; and <https://projects.eao.gov.bc.ca/p/ajax-mine/detail>

²¹ “Lessons from the Land,” pg. 10.

²² For SSN’s website and more information: <https://stkemlups.ca>; for videos: Pípsell – a Secwepemc Nation Cultural Heritage Site from Stk’emlúpsemc te Secwepemc Nation on Vimeo: <https://vimeo.com/stkemlupsemc>; Honouring Our Sacred Connection to Pípsell- SSN Pípsell Decision Video from Stk’emlúpsemc te Secwepemc Nation on Vimeo: <https://vimeo.com/stkemlupsemc>; Stk’emlúpsemc te Secwepemc Nation on Vimeo: <https://vimeo.com/stkemlupsemc>.

²³ SSN Pípsell Report, pg. 19.

members live on reserve. Squamish people have existed since time immemorial and are Coast Salish people. Squamish is and always has been a society with complex laws and rules governing all forms of social and economic relations.²⁴

Woodfibre LNG proposed a liquefied natural gas (“LNG”) processing and export facility at the former Woodfibre pulp mill site. The site is located at the ancestral village site of Swiyat.²⁵ Woodfibre LNG is licensed to export about 2.1 million tonnes of LNG per year for 40 years.²⁶

Squamish opted to conduct its own assessment of the proposal, which ultimately recommended approval of the LNG project. Both Canada and BC granted an approval for the project in 2018.²⁷ Notably, the environmental assessment for this project was conducted under the 2013 Substitution Agreement described above, so the Crown assessment was coordinated as between Canada and BC.

A. BRIEF SUMMARY OF THE PROCESS

The Squamish assessment process is designed to achieve Squamish consent for proposed projects and enable shared decision-making by Squamish and Crown governments. It is intended to ensure that Squamish are able to make informed decisions regarding projects proposed on their lands based on rigorously-analysed information, community feedback and expert advice. Squamish’s process is meant to create certainty for the community, proponents and Crown governments. As with the SSN process, the Squamish process was developed largely in response to the proposed LNG project but is likely to be adapted for future proposals.

The Squamish process reflects the Squamish’s inherent right to govern. It anticipates the development of a standard framework agreement (“Framework Agreement”) with the proponent which operates independently from Crown assessment processes and sets out the conditions for project proponents participating in the Squamish process. It is intended to be concluded before project related discussions take place with Crown governments, and thus can inform Squamish negotiations with Crown governments.

The Framework Agreement establishes six stages for the Squamish process:

Stage 1: Introduce proposed project: a neutral third party will initially present information about the project to help the community understand the industry.

Stage 2: Technical information collection: Squamish participates in Crown processes to collect information and can request additional information from proponents as needed.

²⁴ “The Nation Today,” Squamish Nation website, accessed online: <http://www.squamish.net/about-us/the-nation-today/>.

²⁵ “Squamish Nation Process, Woodfibre LNG Update” Squamish Nation Newsletter Update, Issue 4, Squamish Nation website, accessed online: http://www.squamish.net/wp-content/uploads/2016/11/SN_Newsletter_V3_26Oct2016-01288844.pdf.

²⁶ “About the Project,” Woodfibre LNG Website, accessed online: <https://www.woodfibrelng.ca/the-project/about-the-project/>.

²⁷ “Decision Statement Reissued under Section 54 of the Canadian Environmental Assessment Act, 2012” Government of Canada, March 7, 2018, accessed online: <https://www.ceaa.gc.ca/050/evaluations/document/121695?culture=en-CA>

Stage 3: Define interests and scoping assessment: community members rely on a variety of resources including land use plans and traditional use and occupancy studies to consider land uses and reliance on the territory involved in the project.

Stage 4: Assessment: the assessment is conducted based on Squamish Nation laws, methodology, and values, reviewing impacts and generating conclusions resulting in an Environmental Assessment Report.

Stage 5: Present results to community chiefs and council: the results are presented at an open community meeting. The review team can use the feedback to draft revisions and potential conditions of project approval.

Step 6: Final Squamish decision making and conditions: the report sets out the impacts and any conditions for the Chief and Council's consideration, who vote to accept or reject a project. If accepted, the proponent enters a legally binding agreement with environmental conditions, including mechanisms to ensure compliance ("Environmental Assessment Agreement").²⁸

Where the Squamish assessment recommends project approval, as was the case with Woodfibre LNG, Squamish issues an Environmental Certificate, which appends the Environmental Assessment Agreement. Together, both comprise the legally binding approval. This approval ensures that the terms and conditions for project operation are binding upon the proponent. Because long term compliance is an important component of project activities on the territory, the Squamish certificate contains requirements that where conditions are not met, Squamish can revoke the Environmental Certificate – and thus their consent for the project.²⁹ This contractual provision engages Squamish governance. With respect to the LNG project, it included proponent contributions to provide capacity support for Squamish to conduct their review.

Squamish's assessment process began in July 2014 and involved many community engagement events, including community hall-type meetings, focus group meetings and individual interviews. In June 2015, Squamish set out 25 conditions for the both LNG facility and pipeline proposals.³⁰ One month later, Woodfibre LNG publicly announced that they would meet the conditions that were applicable to them as the proponent. Thereafter, in October, 2015, Squamish Council approved the Agreement for the project and issued an Environmental Certificate to Woodfibre LNG.³¹

²⁸ Bruce, Aaron and Emma Hume. "The Squamish Nation Assessment Process: Getting to Consent," Ratcliff & Company LLP, p 15 ("Getting To Consent") accessed online: <http://www.ratcliff.com/sites/default/files/publications/The%20Squamish%20Nation%20Process.%20Getting%20to%20Consent%20A%20Bruce%20and%20E%20Hume%20November%202015%20%2801150307%29>.

²⁹ Getting to Consent, pp 9-10.

³⁰ A full list of the Squamish conditions can be found in the Addendum of the Squamish Nation Newsletter Update, Issue 4. http://www.squamish.net/wp-content/uploads/2016/11/SN_Newsletter_V3_26Oct2016-01288844.pdf. These conditions addressed both the Woodfibre LNG Project and its associated Fortis pipeline, which were assessed together by Squamish Nation, but separately by the federal/provincial governments. Squamish Nation ultimately issued two separate Environmental Certificates and Assessment Agreements for the Woodfibre LNG facility and the Fortis pipeline. The Fortis pipeline was approved June 2016.

³¹ Getting to Consent, p 9-10.

In November 2018, Squamish Council approved three benefit agreements regarding the Woodfibre LNG Project. Over the long term, Squamish is committed to ensuring the conditions are met throughout the term of the Woodfibre LNG Project.³²

B. KEY HIGHLIGHTS

The Squamish process is shaped by Squamish values, governance and the principle of community consent. While Squamish do not formally participate in a Crown assessment, the process recognizes some practical elements of Crown assessments. It seeks to run in parallel with Crown assessments in order to provide more process certainty. It also seeks to avoid duplication by using technical information submitted in the Crown processes. However, Squamish retain the ability to seek out their own or additional information.

There are also a number of other unique characteristics. First, the process contains a contractual aspect in the engagement with the proponent. Squamish uses a contractual framework with project proponents to ensure compliance with both the Squamish process and the environmental conditions that may be associated with the project.

Second, the Squamish process emphasizes confidentiality requirements with proponents to protect Indigenous knowledge and ensure that the proponent does not provide any information about Squamish rights and title in their submissions to Crown governments without Squamish consent.³³

One of the key issues in this review was the type of cooling technology that would be used for the project. The Environmental Assessment Agreement between Squamish and the proponent obliged the proponent to accept Squamish's decision that the project use an air cooling technology. This was an important factor in Squamish support for the project, and the arrangement was structured such that Squamish could revoke its Environmental Certificate or terminate the Agreement if this requirement is not met.³⁴

4. GENERAL CHARACTERISTICS OF INDIGENOUS-LED ASSESSMENTS

There is no standard form approach to an Indigenous-led assessment – each will be designed to be consistent with the governance system and legal framework for each nation or community of nations. An Indigenous-led assessment process will be tailored to reflect the particular values and culture of each nation or community.

This section provides a brief commentary on some general characteristics that can be considered by nations in designing, leading or participating in impact assessments. There are distinguishing features or considerations that may be helpful as other Indigenous jurisdictions seek to develop their own approaches to Indigenous-led assessment.

A recent study of Indigenous-led assessments in Canada has identified some common characteristics to be:

³² "Squamish Nation Council approves agreements with Woodfibre LNG project," Media Release, Squamish Nation website, November 23, 2018, accessed online: <http://www.squamish.net/squamish-nation-council-approves-agreements-with-woodfibre-lng-project/>

³³ Getting to Consent, p 9.

³⁴ This issue is described in Squamish Nation Newsletter, Issue 4, at http://www.squamish.net/wp-content/uploads/2016/11/SN_Newsletter_V3_26Oct2016-01288844.pdf.

- Explicit assertion that the process and decisions are an element of that nation’s governance and stewardship;
- Deep and ongoing community engagement in a manner that is culturally appropriate;
- Indigenous laws and norms are at the centre of the process and decision-making;
- Indigenous knowledge as a foundation for decision-making;
- Broadly defined cultural values considered with a view to promoting and protecting culture land language;
- More timeline and process flexibility;
- More focus on oral discussion and less on paper-driven process steps; and
- A greater willingness to consider a future without the project if the costs are deemed to outweigh the benefits.³⁵

This list is a valuable guide that can be used to design good processes for those considering Indigenous-led assessments. Some of these characteristics are examined below in the context of the SSN and Squamish case studies.

A. ROLE OF INDIGENOUS GOVERNANCE IN PROCESS DESIGN AND DECISION-MAKING

Foundational to the development of an Indigenous-led assessment is that the process be designed to incorporate and give meaning to Indigenous governance and values. One of the important contributions of Indigenous-led assessments is the ability to ensure that culture, language and way of life are central values in a review in a way that the legislated assessments have not been able to do to date.³⁶

In creating or designing a process, Indigenous jurisdictions may want to consider how to best ensure that Indigenous legal principles are reflected in a process, as the process itself can be a helpful tool to assert and define Indigenous laws and values.

Indigenous jurisdictions may also view the development of an Indigenous-led assessment as a modern expression of title, rights, and governance and enable it to apply traditional decision-making in a manner that may parallel Crown assessment and decision-making processes. Indigenous governance can be woven into an Indigenous led assessment in two main ways – the process and the decision making structure.

For example, SSN provided a role for families to participate in the review process – family members were appointed to the SSN Review Panel, which created its own process and ultimately decided to reject the mine project. The Squamish process entailed detailed community engagement, including presentation of the final report to the community prior to Council’s vote to approve the project.

Decisions in both cases were made on behalf of the community through elected councils based on extensive family and community input.

Finally, it may also be that a project assessment process will need to consider not only the Indigenous governance, but also the Nation’s relationship to place, as another source of Indigenous laws. In the SSN

³⁵ Gwich’in Council International, *Impact Assessment in the Arctic, Emerging Practices of Indigenous-Led Review*, April, 2018, p 13.

³⁶ *Impact Assessment in the Arctic, Emerging Practices of Indigenous-Led Review*, p 5.

case, the project assessment process was designed to take into account SSN's unique relationship with Pípsell, a culturally significant place.

B. ROLE OF COMMUNITY

Both the SSN and the Squamish processes expressly provided that there be a significant role for community input and in many ways ensured that the community perspective was the basis for the ultimate decision with respect to each project. In the SSN process, the panel membership was designed to ensure that the families in the two communities were fully represented on the panel and in the decision – each family put forward their own representatives, and the result was a panel that included a cross section of community members. Notably, the family representative approach in the SSN review process permitted families to switch out family members to ensure that representation on the panel was fully engaged.

The Squamish process is clear that community engagement is a cornerstone of the process and it creates a two way flow of information between the community and the review team.

C. APPROACH TO INFORMATION GATHERING AND USE

In order to overcome one of the limitations of Crown assessment processes, Indigenous-led assessments use a broader approach to information gathering and science. Whereas Crown assessments rely heavily on western science, Indigenous-led assessments are likely to rely primarily on traditional laws and Indigenous knowledge as a means to better define and protect the community heritage and culture.

For example, the key study that formed the basis for the SSN assessment of the mine project was a cultural heritage study; Squamish relied heavily on a Traditional Use and Occupancy Study in its review of the LNG project.

Community input that can be gathered through meetings or hearings is another key way to gather information in a review. Given that the conventional emphasis in an impact assessment relies largely on “western” science, it is important that Indigenous knowledge and perspectives be prioritized as part of an Indigenous-led assessment.

The Squamish process has adopted the “valued component” concept from the BC assessment process and defined it to reflect its perspective on land management – Aboriginal Rights and Title is a single valued component that is an umbrella for a number of interconnected guiding topics which Squamish then used to consider project impacts.³⁷

D. ISSUES RELATED TO TIMING

The *Impact Assessment Act* generally establishes a 300 day limit for the conduct of an assessment, though this is extended to 600 days where a project is referred to a panel review.³⁸ These limits are intended to

³⁷ Getting to Consent, p 12.

³⁸ *Impact Assessment Act*, SC 2019, c 28, s 1, s 28(2) and s 37(1) provides 600 days where the project would be referred to a review panel.

provide some certainty regarding the process, and it may be helpful for nations to consider these timelines in the design of an Indigenous-led assessment.

The Squamish assessment process considered the timing of the Crown assessment in order to coordinate some of the technical elements of its review. At one point during the SSN project assessment, the BC Environmental Assessment Office “stopped the clock” and suspended time limits for the 5 days of the SSN hearings in order to respect their process.³⁹

Once a review is completed, however, it may be that an Indigenous jurisdiction can make a decision more promptly than a Crown government. Indeed, it was the experience of both SSN and Squamish that they were prepared to announce their decisions with respect to the project prior to the Crown governments. Representatives of both communities indicated that they would have preferred for there to be greater coordination with respect to announcing decisions with respect to the projects.

E. ISSUES RELATED TO CAPACITY

With both the federal and provincial governments’ recent legislation, the practical reality is that capacity and support for nations to participate in or conduct assessments will need to be made available. In both of the cases in this study, the nations secured resources in part from the project proponents, but this resourcing was not adequate to fully cover the efforts of the communities. Designing, administering and engaging in impact assessments required deep commitments from the communities, and each worked extensively to conduct and complete their reviews. For SSN, their technical resources were allocated between a federal review, a provincial review, and their own Indigenous-led assessment. SSN experienced serious capacity issues as a result of these multiple processes.⁴⁰ The Squamish assessment was a priority for the community, and resources were found, but it too presented challenges.

Both Nations are of the view that now that the initial effort has been expended to develop and operate an assessment process, it will likely be easier to do so in the future, particularly since the frameworks are now in place. Substitution may be a means to address this challenge, particularly where the results of the assessment will subsequently be adopted by Crown governments.

F. CONNECTION TO CROWN ASSESSMENT PROCESSES

In both of the examples used in this study, Crown assessment processes continued while the Indigenous-led assessment was underway. And in both cases, the Indigenous-led process was largely independent of and indifferent to the Crown assessments – neither of the Indigenous reviews relied heavily on information used in the Crown assessments.

One study has concluded that an Indigenous-led assessment can benefit from “shadowing the legislated impact assessment process”.⁴¹ This makes sense, and notably, the Squamish process design enables it to coordinate information gathering with respect to a project. While this may be one way to develop an approach to Indigenous-led assessments, Indigenous jurisdictions would be well advised to focus first on

³⁹ SSN Pípsell Report, p 19.

⁴⁰ SSN Pípsell Report, p 19.

⁴¹ *Impact Assessment in the Arctic, Emerging Practices of Indigenous-Led Review*, p 5.

making sure that the assessment satisfies community cultural values and reflects Indigenous legal principles. Thereafter, and particularly where an Indigenous-led assessment may be substituted for a Crown assessment, it may be that “shadowing” the legislated process may help to meet the impact assessment requirements in respect of a particular project.

5. CONCLUSION

Both the SSN and the Squamish experience with Indigenous-led assessments can help inform efforts by other nations and communities to implement their own assessments of major projects. That Canada’s *Impact Assessment Act* now recognizes the role of Indigenous jurisdictions to conduct assessments is an important development toward strengthened recognition of Indigenous governance and reconciliation. It is hoped that more nations increasingly develop and use this tool as a means to evaluate proposed projects on their lands.