

# Building Trust, Addressing Uncertainty: Developing Aboriginal Consultation Practices for Mineral Exploration Companies

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## ABSTRACT

This thesis examines how mineral exploration companies in the Thunder Bay region are consulting with Aboriginal communities. The research is based on new regulations put forth by the Ontario Ministry of Northern Development and Mines (MNDM) which, as part of a new plans and permits regime, require mining companies to consult with Aboriginal communities prior to any exploration occurring on their traditional lands. Historically, Aboriginal peoples have been left out of resource development decision making, but with increased recognition of Aboriginal and Treaty rights, they have begun demanding prior consultation, and have become influential in natural resource development. For background information and better understanding of the new regulations, interviews were conducted with two representatives from the MNDM. Next, in order to examine what effect these new regulations have had on the mining industry, I interviewed representatives of 15 companies from April 2013 to December 2013. To quantify aspects of this research, this study evaluated companies using Cultural Intelligence (CQ) and Dynamic Capabilities (DC) frameworks. My analysis of interview data yielded 21 prominent themes, 7 of which were queried while 14 occurred spontaneously. The most common themes that occurred were „concerns with government“ and „operational difficulties“. CQ scores ranged from 50% to 89.3% and DC scores ranged from 14.3% to 82.5%. The results show that many companies were already consulting with Aboriginal communities before it became mandatory, but are still facing challenges. The main issues that companies are facing as a result of the regulations are: lengthened project timelines, lack of capacity and resources to properly consult communities, communication with Aboriginal management, unregulated community expenses, uncertainties of role responsibility, and lack of government involvement. I explain the usefulness of the CQ and DC scales in this study and how they are excellent tools for comparing companies that have had successful engagement experiences with those that experience unproductive engagement. I believe that companies are consulting with communities as best they can with the resources they have, but consultation must not be just between company and community; the government must play a stronger role in such proceedings.

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## CHAPTER 1: INTRODUCTION

The inclusion of Aboriginal input and participation in the Canadian mining industry has increased significantly in the last few decades. Prior to the 1970's, Aboriginal northerners received few economic benefits from mines, faced discrimination in hiring practices, suffered through environmental degradation, and had minimal political control over mining practices (Huseman and Short 2012; Keeling and Sandlos 2009). Foundational court rulings of *Haida Nation v. British Columbia*, *Taku River Tlingit First Nation v. British Columbia*, *Mikisew Cree First Nation v. Canada*, and *Kitchenuhmaykoosib Inninuwug First Nation (KI) v. Platinex* began to change this norm. They established the precedent that before going on traditional Aboriginal lands to conduct mining activities, the peoples of those lands must first be consulted by the government and by all mining proponents involved.

In Ontario, Aboriginal consultation is a relatively new term in the mining industry. The system of “free-entry,” which had governed the actions of mining proponents since the mining act was introduced in 1869, is no longer socially acceptable. In order to address the need for increased recognition of Aboriginal and treaty rights, the Government of Ontario passed the *Mining Amendments Act* (Modernized Mining Act) in 2009 (MNDM 2013b, 1). In the past some industry proponents (ex: mineral exploration companies) took it upon themselves to contact Aboriginal communities if they would be operating on their traditional land, but this was on a voluntary basis. As of April 1<sup>st</sup>, 2013, consultation with Aboriginal communities became mandatory and must take place before any mineral exploration occurs. The literature indicates why Aboriginal consultation is important, but it does not address how companies are dealing with the consultation requirements, or what challenges arise during the consultation process.

## RESEARCH QUESTIONS

This study examines how companies are consulting with Aboriginal communities in Ontario. It focused on how mineral exploration companies in the Thunder Bay region are participating in the mandatory consultation process and examined the challenges they are facing. To quantify aspects of this research, this study evaluated companies using Cultural Intelligence (CQ) and Dynamic Capabilities (DC) frameworks. The four main questions of this study were as follows:

1. How are companies coping with the new rules of Aboriginal Consultation?
2. How are companies enhancing their capacity to engage Aboriginal communities?
3. How are companies operationalizing their engagement strategies?
4. What relationships are there between a company's approach to dealing with the new regulations and that company's scores on the CQ and DC scales?

Impacts that mining companies have had on Aboriginal communities has been documented quite frequently, as is evident in Chapter 2, however, very little literature has focussed on the consultation hardships experienced by mining companies, specifically during periods of changing regulation. By choosing to focus on the impacts of the new consultation regulations on companies instead of on Aboriginal communities, I offer a different perspective from that usually only seen in small news reports, not in academic literature. Impacts that mining companies have had on Aboriginal communities has been documented quite frequently, as is evident in chapter two, however, very little literature has focussed on the consultation challenges experienced by mining companies and their responses, specifically during periods of changing regulation. This

study examined the issues and experiences of Aboriginal consultation from a company perspective. The CQ framework measures how culturally intelligent a company is. I was interested in how this cultural intelligence correlates with consultation and engagement practices; because if a correlation exists, framework could be used as a comparison tool between companies in future studies. The DC framework measures how much companies have had to change in response to the mandatory consultation regulations. I hypothesize that CQ will be high and DC will be low for companies with good engagement experience and practise. These companies are culturally intelligent and have not had to change very much in response to the new regulations.

To gain an understanding of how companies are dealing with the new mandatory consultation regulations, I interviewed companies that were the most immediately affected. Due to difficulties of recruitment and the exploration season coinciding with the timeframe for my study, I was only able to interview representatives from 15 companies from April 2013 to December 2013. My sample was composed of 12 junior mining companies, one senior mining company, one drilling company, and an aviation service company that does primarily indigenous work and consultation. In order to gain the knowledge and reasoning behind the implementation of mandatory consultation, I first interviewed two officials from the Ministry of Northern Development and Mines (MNDM). The information they provided allowed me to form pertinent questions for the exploration companies. All interviews were semi-structured and the names of respondents will remain anonymous. I relied heavily on the interview data to analyze how companies are responding and dealing with the new regulations. By analyzing the main themes, I was able to generate a list of recommendations for the government and for companies.

## RESULTS AND IMPORTANCE OF RESEARCH

The results section consists of seven core categories that, collectively, amalgamate 21 themes that were identified by coding interview transcripts. This section will show that the majority of respondents are struggling with mandatory consultation. Even though many companies were engaging with Aboriginal communities prior to the enforcement of consultation, they believe that the lengthened project timelines (due to the newly introduced plans and permits regime) and a lack of government support present a significant challenge to the operation of their companies. The seven core categories addressed are: Company Opinions of Consultation Regulations, Education, Community Interaction, Operational Difficulties, Money and the Stock Market, Concerns and Uncertainties, and How Companies have Changed the Way They Consult.

In addition to the large amount of qualitative data amassed in the quotations throughout Chapter 5, this study also evaluated how culturally intelligent and dynamically capable each company is. CQ is a person's capability to function effectively in cross-cultural situations; and DC represents a company's ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments. Because of the small size of the exploration companies, this study will treat the company representative as a reflection of the corporate perspective. This study examined how a company's CQ score is related to its efforts and progressiveness regarding engagement and consultation with Aboriginal communities. I used the DC framework to examine how much companies have had to change the internal structure and operation of their company under the conditions of changing regulations. In the discussion section I examine the usefulness of the CQ and DC theories and how effective they were in this study.

The findings of this study are important because little research has been done on the effectiveness of the new Ontario mining regulations. The government and mining companies do not know how well they are working, what sorts of issues companies are experiencing during consultation, what improvements must be made in order for the consultation process to work smoothly, what uncertainties are forced upon companies and Aboriginal communities as a result of this policy implementation, or how to improve the new regulations. There is a lack of academic research surrounding Aboriginal-Company relations; this thesis will add information to the literature on the consultation process and its effectiveness. With high levels of interest in the Ring of Fire mineral deposits in northern Ontario, as well as increased recognition of Aboriginal rights through traditional land claims across Ontario, Aboriginal relations with the mining sector and the government are more turbulent and dynamic than ever before. This thesis addresses some of the major interactions that take place between Aboriginal groups and the mining industry.

This thesis provides recommendations for the companies and for the government. It will provide information about the effectiveness of the new regulations and on what still must be addressed and improved. This research can bring attention to larger issues surrounding relationships between Aboriginal peoples and industry. It can also assist in fostering discussion and decision making between the government and Aboriginal parties. It can contribute to more informed policy decisions and help bridge the gap in government-Aboriginal social relations.

## THESIS STRUCTURE

This thesis is divided into 6 Chapters. Chapter 2 provides the historical context of the relationship between Aboriginal peoples and the mining industry in Canada. It addresses the

original court rulings that confirmed the necessity of Aboriginal consultation, as well as explaining the new consultation regulations for Ontario. Chapter 3 describes the assessment scales of cultural intelligence and dynamic capabilities. Chapter 4 describes the methodologies used in this study. Chapter 5 presents the results from the study, including the quantitative data associated with the assessment scales and the seven different theme sections that highlight company quotations. Chapter 6 discusses and summarizes all information from the results, while relating it to the assessment scales. This section also highlights the limitations in the use of the two scales and provides recommendations for companies and for the government. Chapter 7 concludes the study by examining how well the study answered the hypotheses regarding the two scales and the research questions, how the use of the assessment scales may be better applied, and how the findings can be applied in a broader context.

## CHAPTER 2: LITERATURE REVIEW

The industrialization of Canada's North, an area that encompasses all the territories and northern sections of the provinces, has steadily increased throughout the twentieth century and into the twenty-first century. Mining companies began significant exploration and development activities in the 1950's and 1960's and have since been a major economic driver in the Canadian North (Gibson 2006; Keeling and Sandlos 2009). With the advent of new mineral and fuel discoveries in the North, many companies find it economically feasible to develop mining facilities, oil drilling stations, and oil and gas pipelines. The development of new mines at communities such as Rankin Inlet, Lupin, Port Radium, and Nanisivik spurred settlement growth and caused an increase in local population and incomes (Ironside 2000; Keeling and Sandlos 2009). Such growth directly affects the Northern population, the majority of which is Aboriginal.

Aboriginal northerners have historically received few economic benefits from mines, faced discrimination in hiring practices, suffered through environmental degradation, and have had minimal political control over mining practices (Huseman and Short 2012; Keeling and Sandlos 2009). However, since the 1970's, new legislation and treaties have served to strengthen Aboriginal rights and provide Aboriginals with the political strength necessary to play key roles in resource development (Fitzpatrick 2007; Mills 2011).

The court cases of *Haida Nation v. British Columbia*, *Taku River Tlingit First Nation v. British Columbia*, *Mikisew Cree First Nation v. Canada*, and *Kitchenuhmaykoosib Inninuwug First Nation (KI) v. Platinex* have demonstrated that historic patterns of land use planning and

natural resource development are no longer tenable. It is quite evident from examining the four case studies that the “free-entry” system of prospecting, exploring, and mining is no longer acceptable to Canadian society due to the concerns of Aboriginal peoples. Over the last couple of decades there has been a shift in Canada towards increased consultation and relationship equality between Aboriginal peoples and the Crown, particularly in how constitutionally protected Treaty and Aboriginal Rights are addressed in relation to natural resource development. Many mining companies realize that in order to have a healthy relationship with Aboriginal communities, the communities must be consulted and included in the project from the beginning (AANDC 2011). This literature review will examine the social relations between the mining industry and Aboriginal communities, Impact and Benefit Agreements, social impacts on Aboriginal peoples, Aboriginal employment in the mining sector, the free-entry system, the foundational court rulings that have forced a change in consultation, and the new consultation regulations that are now in effect.

## **1.0 Mining and Aboriginal Social Relations**

Social relations between Aboriginal groups and mining companies have become increasingly stressed over the past decades and there continues to be ongoing conflict over resource extraction (Huseman and Short 2012; Keeling and Sandlos 2009; Mills 2011). Traditionally, resource extraction companies and the Canadian government have used an interpretation of the treaties to access land without consultation. According to Huseman and Short (2012), when government negotiators were sent out to ratify treaties in the early 1900’s the negotiators told the „Indian“ communities that they would be able to retain their way of life even

in the face of resource extraction; this has not been the case. Many of the Native communities did not know what the treaties meant to the Euro-Canadians and had no concept of exclusive ownership rights to land in the Western sense (Huseman and Short 2012). Much of the Aboriginal way of life is intrinsically tied to the land through food foraging and subsistence and commercial fur-bearer hunting. When the resource extraction companies increased their activities in the 1950's and 1960's many communities faced increased difficulties in accessing the land and its resources for traditional economic activities. For example, in 1964, open-pit mining destroyed traplines and diminished hunting and fishing opportunities in the Chipewyan Dene community of Fort Resolution (Keeling and Sandlos 2009). Before the 1970's Aboriginal peoples sustained many of the costs of development, but received few of the benefits (Keeling and Sandlos 2009; Mills 2011). Because Aboriginal populations were not recognized occupiers in the land under development, they were typically ignored by mining companies. Huseman and Short (2012) also report how large-scale development of the Alberta tar sands has alienated Native peoples from the land and contaminated the environment with toxins. These issues began in the 1990's and persist in modern day. The high level of social injustice experienced by Aboriginal peoples caused them to demand improvements which have led to the creation of Impact and Benefit Agreements.

### **1.1 The Development of Impact and Benefit Agreements (IBA's)**

Since the 1970's Aboriginal peoples have attained greater recognition for their rights to resources, self-government and co-management of their lands and resources, and more benefits

to their communities through IBA's (Fitzpatrick 2007; Mills 2011; Simeone 2008). The federal government initiated the Comprehensive Land Claims Policy in 1973; this enabled Aboriginal communities to benefit from the mining on their lands and to take back control of resources by claiming portions of land as their own (Ironside 2000). This policy allowed Aboriginals to have more control over their land and attain more benefits from resource extraction. Some of the major land claim agreements made in the North are the 1993 Nunavut Land Claims Agreement and the 2007 Nunavik Inuit Land Claims Agreement (Simeone 2008). There are also land claims occurring in Ontario, such as the Algonquin Land Claim which is still being negotiated. Land claim agreements have additional benefits through cash settlements that can foster economic development and contribute to the growth of revenue-sharing enterprises in a community (Fitzpatrick 2007). Land claim agreements allow Aboriginal organizations to play co-management roles in resource extraction operations; this enables Aboriginal peoples to have more political power in decisions concerning the environment and employment. Because this approach of co-management is not always the most economically feasible to large multinational companies, the mining sector has viewed the co-management process as a barrier to economic development (Bowman 2011).

Impact and Benefit Agreements are bond-based partnerships between an industry and Aboriginal communities that provide a package of benefits and tools for long-term planning and coexistence on the land (Fidler and Hitch 2007; Fidler 2010; Sosa and Keenan 2001). According to Fidler and Hitch (2007), the increased frequency of IBA's signals recognition that historic mining practices are no longer acceptable and that a modern business normally involves consultation and accommodation with Aboriginal peoples. IBA's have many positive aspects, including that they formalize the relationship between an industry and an Aboriginal group that is

crucial for building trust, respect, and long-term certainty (Fidler 2010). Because IBA's are negotiated between the Aboriginal communities and the mining companies, they benefit both the Aboriginals and the mining companies through settling such previously contentious issues as guaranteed employment and acceptable land development, and by allowing space at the negotiating table for differing cultural opinions and worldviews. According to Sosa and Keenan (2001), IBA's are beneficial because they contribute to good public relations that can help garner local support and reduce social risk. The frequency of IBA's has increased dramatically since they first began; data collected from the Mining Sector Performance Report 1998-2012 revealed that there are approximately 260 active IBA's in Canada (NRCan 2013). Even though IBA's have provided many incentives and benefits to Aboriginal communities, the mining sector still has a large social impact on the Aboriginal way of life.

## **1.2 Social Impacts on Aboriginals**

Resource development activities in Canada have major impacts on Aboriginal individuals and communities, contributing to a loss of traditional activities, psychological problems, and alcohol and drug abuse (Angell and Parkins 2011; Gibson and Klinck 2005; Ironside 2000; Mills 2011). Nonetheless, according to Mills (2011), many communities support resource development because it is often the only viable way to have a wage income; this income can then be used on subsistence activities which support cultural and social relationships in the community. However, the sudden access to a steady monetary income and a larger selection of goods and services has decreased traditional activities of hunting and the social and cultural activities that accompany them. This is not to say that traditional hunting is disappearing, in fact

40-50% of Northern Aboriginal families' incomes are spent on acquiring country food, and researchers have seen a continuity of traditional activities and cultural practices despite high wages (Angell and Parkins 2011; Elias 1997; Ironside 2000). Nonetheless the impact has been felt. According to Gibson and Klinck (2005), 71% of Aboriginal mine workers reported spending less time on the land and their hunting trips had to be shorter due to shift schedules at the mine. The interference of wage work on hunting opportunities is a major struggle in many communities as they adapt to the new mixed economy while seeking to preserve their culture and traditions (Ironside 2000). Many Aboriginals have had to adapt to the mining lifestyle by moving to where there is work and adjusting to the high turnover rates; this is calculated by observing any employee movements that create vacancies on site. There are typically higher turnover rates in northern mines because employers from competing companies offer incentives, such as higher wages, to bright and talented workers that draw them away to different mining jobs (MiHR 2010). Moving to different jobs every few years can greatly affect an Aboriginal worker's subsistence activities, often forcing them to choose between traditional lifestyles of hunting and wage employment. According to Gibson and Klinck (2005), the turnover rate for Nanisivik mine in 1979 (calculated annually) was 106% for northern males; this caused many miners to become global nomads, with some families moving more than 21 times in 19 years.

Psychological disorders and drug and alcohol abuse have become paramount issues in many mining communities in Canada. Because many Aboriginal and non-Aboriginal workers are not used to shift work, specifically two weeks on, two weeks off, they have had to deal with excessive mental stress. According to Gibson and Klinck (2005) and Shandro et al. (2011), depression is very high in miners and can be attributed to roster schedules, high concentration and job demands, lack of family interaction, and risk of job loss. This was evident in 1998 when,

following a national pit closure, 52% of unemployed former miners faced psychological disorders (Gibson and Klinck 2005). Due to high-wage employment, disposable incomes, and fractured social relations, many communities face serious problems with drug and alcohol addiction. These problems with addiction and abuse have been present in Aboriginal communities for decades; for example in the 1970's and 1980's in Alberta when oil royalties were distributed among the Stoney and Hobbema reserve residents, alcoholism increased, cocaine arrived, and suicides skyrocketed (Angell and Parkins 2011). According to Gibson and Klinck (2005), binge drinking can be encouraged by newly acquired earnings; this is obvious in the Northwest Territories where the percentage of heavy drinkers in 2001-2002 was over 40%, more than double the national average. Miners are usually single males with a lot of disposable income; these factors attract the drug trade. In earlier decades it has been problematic for mine productivity, but it is getting even worse in today's society because drugs are becoming increasingly addictive and dangerous. According to Shandro et al. (2011), drug problems were not as severe in the 1980's to 2000 because there was not the appearance of crack or methamphetamine. Increasing drug problems affect the miners and the mining community as a whole, as well as the nearby communities. For northern mines, these communities are typically Aboriginal.

## **2.0 Employment in the Mining Sector**

Employment in the Canadian Mining sector is substantial. In 2013, nearly 235,000 workers were directly employed by the Canadian mining industry, 22% of whom were employed in mineral exploration (MiHR 2013). This number is significantly lower than in 2007 when the Canadian mining and mineral processing industry employed 363,000 workers and contributed to

3.5% of Canada's Gross Domestic Product (GDP) (MiHR 2009). The number of workers has decreased due to the 2008 economic recession and current stock market that deflated metal prices, but is currently on the rise.

Ontario is Canada's leading province in mining productivity and employment. Among Canada's 222 producing mines, 43 are located in Ontario, 90% of which are in the northern portion of the province. Of these 43 producing mines, 28 are metal mines (nickel, gold, copper, zinc, platinum group metals), 14 are major industrial mineral operations (salt, gypsum, talc, calcium carbonate, nepheline syenite), and one is a diamond mine (MiHR 2009; MNDM 2008). Direct employment in Ontario's mining industry has fallen in recent years from 19,400 in 2008 to 16,000 in 2011; this is also due to the recession (Dungan and Murph 2012). Women are severely under-represented in Canadian mining at 16% of the workforce (MiHR 2013, 6). Even though employment in the mining sector has decreased in recent years, Ontario still accounts for 28% of Canada's mining employees, directly and indirectly employing over 100,000 Ontarians (MNDM 2008).

Aboriginal employment in the mining sector has grown substantially over the decades as resource extraction companies strive to employ and accommodate Aboriginal workers (Elias 1997; Fitzpatrick 2007; Mills 2011; Missens et al. 2006). Many mines currently set high employment quotas for Aboriginal miners. Two such mines are Diavik Diamond Mine and Voisey's Bay Nickel Mine that set goals of 40% for Aboriginal hires (Gibson and Klinck 2005; Missens et al. 2006; Werniuk 2004). Due to the higher frequency of Aboriginal employment, mines such as Diavik have become more accepting of Aboriginal cultures by serving traditional

foods in dining rooms, and adopting First Nations languages for all community meetings (Missens et al. 2006).

Canada not only has a massive mining workforce, but hosts the highest number of exploration companies in the world. According to MAC (2011, 39), the aim of exploration companies is to “locate large, high-grade reserves with minimal disturbance to ground and environment.” Exploration companies have thrived in Canada, with exploration spending at \$2.6 billion in 2010 and expected to reach \$3.2 billion in 2011 (MAC 2011). Canada has remained the global leader in mineral exploration, accounting for 19% of global expenditures. Most Canadian companies operate in Canada, but almost 1,000 companies have shifted to operating in the United States or overseas (MiHR 2009). Most of these exploration companies are active in Ontario, many with offices located in Toronto. According to MNDM (2008) there are over 500 senior and junior mining and exploration companies currently active in Ontario with approximately 400 of these companies headquartered in Toronto (MiHR). Many Canadian mining and exploration companies are exploring in the northern sections of provinces and territories. This activity in northern regions directly generates potential employment for Aboriginal individuals.

With more mines setting quotas for Aboriginal employees to fill, Aboriginal miners are increasing in frequency. According to Natural Resources Canada (2009), Aboriginal employment in mining throughout all of Canada has grown from 3.6% in 1996 to 7.5% in 2006. In 2006, 4515 Aboriginal people worked in the mining extraction sector; 1535 of these Aboriginal miners were employed in Ontario (MiHR 2009; MAC 2011). Because mining companies now have hiring targets for both northern residents and Aboriginal people for both the

construction and operational phases of the mine there will be much more wage labour available to northern communities (Fitzpatrick 2007). The hiring of Aboriginal peoples is a major step forward for better communication and understanding between resource extraction companies and the Aboriginal populace. The potential for Aboriginal employment in the mining industry has risen alongside the recognition of Aboriginal and treaty rights.

### **3.0 Consultation and Free Entry**

Prior to the *Mining Act Amendment* in 2009, consultation was not widely recognized or practiced in Ontario by individuals in the mining industry. The duty to consult with Aboriginal groups stems from section 35(1) of the *Constitution Act* (*Constitution Act* 1982; Newman 2009; White et al. 2004). This section of the Constitution recognizes and affirms Aboriginal and treaty rights, and the role the Crown has in protecting those rights. As will be shown in the case studies, “the courts have interpreted section 35 to require the government (both federal and provincial) to consult with Aboriginal peoples before authorizing activity which would have an adverse impact on lands or resources where Aboriginal title to, or rights associated with, the land or resources remain unresolved, or where such actions have implications for „rights dealt with in treaties”” (Simona and Collins 2010, 197). Ontario’s *Mining Act* was first passed into law in 1873, six years after confederation (Carter-Whitney et al. 2008). This Act largely disregarded the rights of Aboriginal peoples for well over a century. It focused primarily on mining production by any means necessary and did not include any consultation practices with surface owners or Aboriginal groups. This lack of consultation largely stems from the free-entry system that was embedded in the *Mining Act*.

Mining companies and prospectors have employed a free entry regime for over a century. According to Pardy and Stoehr (2012, 2), “free-entry is a method used to transfer the ownership of publicly owned minerals to mining companies”. Barton (1998) and Hart et al. (2012) state that free-entry provides access to a large area of land, permission to access these lands for prospecting, and the ability to claim land with no consultation. With a claim comes the exclusive rights to conduct exploration work and to extract and sell minerals found in the claim. The Ontario government encouraged this system in previous years because it allowed prospectors to extract minerals on their claimed lands and sell them, creating both resources and profit. Prospectors and exploration companies have enjoyed the free-entry system because it did not require them to inform the government of their activities before a claim was recorded (Reitberger 2011). It allowed prospectors to stake claims on privately held land, without any consultation or communication with the surface owner. Traditionally, once a claim is registered there is not much that can stop a mining company exerting their rights to explore and mine the area (Hart et al. 2012). This free-entry system led to high level of resource exploration in Ontario, and the creation of new mines.

“Past resource development occurred in an era when traditional activities, village economies, and the significance of Aboriginal and Treaty Rights were either misunderstood or perceived to be outside the domain of usual business practices” (Dagostar et al. 2012, 48). Increased infringement upon Aboriginal constitutional rights forced consultation practices into the spotlight. The Ministry of Northern Development and Mines (MNDM) encouraged companies to participate in consultation practices with potentially affected communities and individuals before exploration began, but before April 1<sup>st</sup>, 2013 it was not mandatory (MNDM 2013a). Many companies did not partake in consultation practices because it was too expensive,

time consuming, and confusing. Because there were no set consultation guidelines for companies to follow with regard to Aboriginal communities, there were a lot of inconsistencies and uncertainties regarding approaches and outcomes (Dagostar et al. 2012). Many prospectors and mining companies have not practiced consultation with Aboriginal communities in the past and the results from lack of consultation have been wide-ranging.

#### **4.0 Foundational Court Ruling Case Studies**

There are many situations where mining companies and Aboriginal communities have had disagreements, because the Aboriginals were not consulted about resources being extracted on their traditional lands. Although this thesis focuses on consultation in Ontario, the court rulings throughout Canada have had a significant impact on the formation of Ontario's policies. The main cases where courts ruled in favour of consultation are *Haida Nation v. British Columbia*, *Taku River Tlingit First Nation v. British Columbia*, *Mikisew Cree First Nation v. Canada*, and *Kitchenuhmaykoosib Inninuwug First Nation (KI) v. Platinex*. These decisions paved the way for increased Aboriginal consultation, clarified the roles and responsibilities of government, and changed Ontario's consultation regulations (Fidler 2010).

##### *Haida Nation v. British Columbia (2004)*

The Supreme Court of Canada (SCC) case between the Haida (Haida Gwaii) and British Columbia originated from the province allowing Weyerhaeuser Company Limited to harvest timber from an area of the Queen Charlotte Islands in 2002. The Haida had asserted their Aboriginal rights and title to the area that Weyerhaeuser wanted to harvest, but had not yet

proven their claim. The Haida people proclaimed that the Crown and Weyerhaeuser had a legal obligation to consult prior to giving logging permission on lands where they have ongoing claims (AANDC 2011; Cobb 2010; SCC 2002). The SCC stated that good faith consultation, in turn, may lead to an obligation to accommodate Haida concerns for Weyerhaeuser's harvest of timber. The court ruled that the province of British Columbia had failed to engage in any meaningful consultation with the Haida. The SCC stated that the honour of the Crown requires that consultation must occur even if the Aboriginal group holds no proven title to the land (AANDC 2011; Cobb 2010; Morellato 2008; Pardy and Stoehr 2012). It also ruled that the duty to consult fell only to the Crown, and does not extend to third parties. According to Pardy and Stoehr (2012), "the Crown may delegate procedural aspects of consultation to industry proponents seeking a particular development, but the Crown alone remains legally responsible for the consequences of its actions and interactions with third parties that affect Aboriginal interests...The honour of the Crown cannot be delegated" (8). A similar ruling derived from the next case study.

*Taku River Tlingit First Nation (TRTFN) v. British Columbia (2004)*

The Supreme Court experienced the same consultation issues when it handled the *Taku River vs. British Columbia* case. In this case Redfern Resources Limited was given approval by the provincial government to re-open a mine and construct a 160 km access road through territory that the First Nation claimed, but had not yet proven (Newman 2009). The TRTFN did not want this access road created because it would open up the pristine wilderness to outsiders. The Band members in Taku River stated that the approval certificate was issued without regard to the Crown's constitutional and fiduciary obligations to the TRTFN (Morellato 2008). The

Crown appealed on the basis that it had satisfied its duty to consult. The Court found that the engagement process by the Crown under the Environmental Assessment Act fulfilled the requirements of its duty to consult and accommodate because the Tlingit were part of the Project Committee, and participated fully in the environmental review process (AANDC 2011; Cobb 2010; Morellato 2008). This case was important because the SCC realized that this project would have negative impacts on the TRTFN, and stated that the First Nation was entitled to more than mere minimum consultation under the circumstances. This case is built upon the previous case of *Haida Nation* because there was a duty to consult even with the absence of a proven land claim.

*Mikisew Cree First Nation v. Canada (2005)*

Another case of insufficient consultation took place between Mikisew, a Treaty 8 Nation, and the Canadian Government. This is the first case that was decided by the SCC that applied the reasoning in *Haida* regarding the duty to consult and accommodate, in the context of treaty rights (Morellato 2008, 37). This conflict resulted from the Crown's decision to approve the construction of a winter road through Wood Buffalo National Park, Alberta, without consulting the Cree of that region. After protests from the First Nation, the road was re-routed around the boundary of the reserve, still without any consultation (Cobb 2010). The Mikisew had given large tracts of land to the Crown under Treaty 8, in exchange for continued hunting, trapping, and fishing on those lands. Because the road would negatively disrupt their hunting grounds and traditional subsistence activities, the Mikisew wanted consultation (Newman 2009). The SCC found that the road's construction was a breach of the Crown's duty to consult. Morellato (2008, 38) explains that the SCC concluded that "the duty to act honourably included the obligation to

consult and, if appropriate, accommodate treaty and Aboriginal interests.” As such, the duty to consult and accommodate applies to surrendered lands under treaty.

*Kitchenuhmaykoosib Inninuwug First Nation (KI) v. Platinex (2006)*

The most recent resource development conflict was *Kitchenuhmaykoosib Inninuwug First Nation (KI) v. Platinex*. The conflict stemmed from KI, a signatory of Treaty #9, declaring a mining exploration moratorium on their traditional territory. Platinex began drilling in 2006, but Chief Donny Morris delivered an eviction notice to the drillers for them to withdraw from the area. Platinex filed an injunction against KI to prohibit them from any future interference and sued them for \$10 billion in compensatory damages (Ariss and Cutfleet 2011). The two parties went to court and KI built its defence around “an outstanding land claim, the project’s threats to KI’s lands, culture and spirituality, and the failure of Ontario to meet its constitutional duty to consult KI prior to Platinex’s drilling commencing” (Peerla 2012, 2). KI won this injunction and drilling was suspended for five months while consultation with KI and Ontario took place.

The consultation extended beyond the initial five month period, forcing Justice Smith to demand that KI and Platinex resolve the issue in two weeks. After two weeks Smith imposed a memorandum of understanding (MOU) on KI and allowed Platinex to resume drilling. According to Peerla (2012, 3), this left KI with three options: “1) accept the court ordered consultation protocol and memorandum of understanding and let Platinex on the land to drill; 2) appeal the decision, or; 3) withdraw from the process and defend their land.” KI residents decided to continue to be defiant towards Platinex and were found in contempt of court. Because they were unable to pay the fine, six representatives from KI were sentenced to six months in jail. This jailing received significant media attention and after two weeks an appeal was filed

and the KI residents were eventually released after serving two months in jail. The court concluded that “KI has the right to be consulted when any of its rights protected by section 35 of the Constitution Act, 1982, are likely to be affected by proposed government action” (Ariss and Cutfleet 2011). This court case acted as the major catalyst for change in the Ontario mining sector and altered how the government engages in consultation with Aboriginal groups. Two important issues were raised: the degree of consultation required to satisfy the Crown’s duty to consult and the obligations of third parties in respect of the Crown’s duty to consult (Isaac et al. 2007). The attention that this case brought to the issues surrounding mining development and Aboriginal rights spawned Ontario’s Far North Act (Hunter et al. 2012). This Act seeks to protect Aboriginal interests in fifty percent of Ontario’s far north, as well as modernize the Mining Act to formally recognize of Aboriginal and Treaty rights (Peerla 2012; Simona and Collins 2010).

These four case studies represent the foundational court rulings that have forced significant change in our understanding of the Duty to Consult and Accommodate. There were conflicts and disagreements between companies and Aboriginal communities before these court rulings occurred, but *Haida First Nation vs. British Columbia* represents the first real change towards increased consultation practices. It recognized that true consultation stems from meaningful consultation. “Meaningful consultation will result in the affirmation of Aboriginal rights by their inclusion into Canadian legislation” (Herbert 2009), and that is the aim of the *Modernized Mining Act*.

## 5.0 Introduction of Consultation Regulations

For years prior to the Ontario Government implementing consultation in the *Modernized Mining Act*, necessary changes had been identified in the literature. It has been clear to many researchers that better communication between the government, mining companies, and Aboriginal communities was needed, and Aboriginal communities required proper consultation in order to be consistent with the increasing recognition of Aboriginal and treaty rights. Carter-Whitney et al. (2008) and Newman (2009) identified many of the needed amendments to the *Mining Act* before the modernization process took place. Among many other suggestions, they recognized that the duty to consult is necessary in respecting Aboriginal and treaty rights, and that this duty could be easily triggered in many different circumstances. The Canadian Boreal Initiative (2008) stated that instead of allowing mineral rights to be acquired through staking, the government should establish a permit regime whereby prospectors are given the rights only if they satisfy environmental, economic, and social objectives. Fidler (2010) identified some of the benefits of consultation. She stressed that companies that consult Aboriginal interests at the exploration stage, and build relationships with communities by earning a social license to operate, are more likely to proceed successfully to the development stage due to high community support. Consultation allows a much better working relationship between companies and Aboriginal groups because it allows both parties to come to a mutual understanding. It is necessary for relationships between industry and Aboriginal communities to be founded on “respect, meaningful engagement, and mutual benefit” (Fidler 2010, 234). Because historic mining practices of the free-entry system and voluntary consultation are no longer acceptable in present day society, the MNDM has acted by developing new regulations.

## 5.1 Current Mining Regulations

Amendments to the *Mining Act* (MNDM 2013a; MNDM 2013b) have been developed by MNDM in response to previous cases of conflict and insufficient consultation. These changes reflect key components of the *Mining Amendments Act* that the Ontario Government passed in 2009 to promote mineral exploration and development in a manner that recognizes Aboriginal and treaty rights, is more respectful of private landowners, and minimizes the impact of mineral exploration and development on the environment (MNDM 2013b, 1). The consultation practices are changing radically because since April 1<sup>st</sup>, 2013, the final phase of new regulations under Ontario's *Mining Act* took effect.

According to the MNDM (2013a), as of April 1<sup>st</sup> 2013 four main changes came into effect:

- **Consultation is now mandatory** for exploration plans and permits **prior** to any work commencing.
- There must be withdrawal from prospecting, staking, sale and lease of **certain identified sites of Aboriginal cultural significance**.
- Aboriginal **consultation must take place prior to submitting a certified closure plan** or certified closure plan amendment.
- Prospectors must complete the online *Mining Act Awareness Program* prior to applying for or renewing a prospector's license.

My project will apply indirectly to all of the above mentioned changes, by focusing on the consultation aspect. These new Ontario regulations offer new challenges for exploration

companies; this project addresses the mandatory consultation processes and the issues associated with them.

## **5.2 Issues with New Regulations**

Before beginning interviews and examining themes for this study, it is pertinent to explore what consultation regulation issues are already addressed in the literature. The existing issues, as shown below, did not affect the formation of the questions that were asked to exploration companies for this thesis.

Even though these new regulations are meant to improve consultation practices, recognize Aboriginal and treaty rights, and have a positive impact on the environment, they will not be easy to follow. For years the MNDM has loosely used the terms “consultation” and “engagement,” but many companies have no clear understanding of what the terms mean. Engagement is especially ambiguous as it encompasses a broad range of activities related to contact, discovery, cooperation, communication, and mutual understanding (AETG 2008). Even though the duty to consult is the Crown’s duty, courts have confirmed (through cases such as *Haida Nation v. British Columbia*) that the Crown may delegate “procedural aspects” of consultation to third party proponents (MNDM 2013a). One of the biggest tasks for companies since the new consultation regulations began in April, 2013 is to determine the degree to which they must consult before plans and permits are approved by the MNDM. According to Dagostar et al. (2012, 49), “the lack of familiarity by industry regarding legal complexities and definitions has led to confusion as to who the players are and who has the authority to speak on behalf of communities.” Another major issue facing companies is that the extent of consultation will vary

with each problem and circumstance (Lawrence & Macklem 2000; MNDM 2013a; Morellato 2008). Because every Aboriginal community has a different culture and there are different agreements in different treaty areas, it is impossible for companies to follow a standard set of consultation criteria. According to Pardy and Stoehr (2012), this will cause a significant degree of legal uncertainty for both mining companies and northern residents, and a patchwork of different rules and guidelines.

Another problem that both companies and Aboriginal communities face is their capacity to deal with the consultation regulations. Most small exploration firms and Aboriginal communities do not have the monetary or educational resources available to extensively participate in this mandatory consultation process. According to Global Business Reports (2012), the further North you go in Ontario, the less exposure First Nations have to mining companies and exploration; they do not have a broad understanding of what mining companies do. Many First Nations communities that companies will be dealing with do not speak English as a first language and lack extensive formal education (Whitelaw et al. 2009). These communities have limited incomes so they will have difficulty hiring experts to examine documents. According to Dagostar et al. (2012, 51), negotiating agreements are “time consuming, costly, onerous, and demanding. Little, if any, discretionary funding is available in Aboriginal communities to participate in consultations with industry.” Mining companies will face additional expenses from consultation, which will be difficult because mining is recognized to be a high-risk, low-reward enterprise in which the exploration stage was (and still is) expensive, speculative, and usually unsuccessful (Pardy and Stoehr 2012, 4). O’Faircheallaigh (1995, 8) reflects on the expense of consultation to mining companies by stating that “legal, economic and negotiating expertise must be obtained; fieldwork conducted; legal proceedings

undertaken; and travel expenses incurred in bringing Aboriginal people and their advisers to negotiating sessions.” It will be very expensive and onerous for both sides to properly follow the consultation regulations.

## **6.0 Summary**

Over the past decade, the century-old Ontario mining industry has been forced to evolve from a free-entry system to one that acknowledges, accommodates and meaningfully consults with affected Aboriginal communities. This process has been especially pronounced in Ontario’s North where mineral resource development is a prominent industrial activity, and where the predominately Aboriginal population remains partially dependent upon the traditional subsistence economy, and has strong cultural/spiritual ties to the land. These developments, led by landmark court cases, have forced recognition of Aboriginal claims to traditional lands and have forced industry leaders and First Nations to interact in order to determine mutually beneficial agreements.

New regulations that have just recently come into effect challenge the relationship between the government, the mining industry and Aboriginal communities. Throughout the history of mining in Canada, mining companies and Aboriginal peoples have had stressed relationships concerning mineral development of traditional land. Aboriginal peoples have typically received few benefits from mining and little to no consultation. Due to court rulings, consultation practices have become more commonplace and are viewed as a business requirement. The Ontario government has responded to the need for consultation by creating the

*Mining Amendments Act*; this act requires mining companies to consult with Aboriginal communities prior to any mineral exploration occurring on their traditional land. Some issues with the new regulations have already been identified in the literature and may arise again as part of this study. Some of these issues are: lack of familiarity with consultation, legal uncertainties, company and community capacity, education, cost, and affected project timelines. The literature suggests that even with these new regulations there will be no simple solutions to the vast array of issues that surrounds the mining industry and their relationship with First Nations. In order to assess the kinds of issues that companies are finding with the new regulations, I want to assess the companies themselves. In order to assess where each company is developing in this new corporate culture, scales to measure cultural intelligence and dynamic capabilities will be applied. My research will shed some light on how the exploration companies in the mining industry are responding to these new regulations, what new consultation strategies they are adopting, and how culturally intelligent and operationally flexible they are.

### **CHAPTER 3: CULTURAL INTELLIGENCE AND DYNAMIC CAPABILITIES**

Two scales were used to assess aspects of the companies that were studied in order to compare their behaviours and attitudes towards the new regulations. The Cultural Intelligence scale was used to compare the cultural sensitivity of the companies while the Dynamic Capabilities scale was used to assess how much the companies had changed relative to each other as a result of the new regulations. I hypothesize that CQ will be high and DC will be low for companies with good engagement experience and practise. These companies are culturally intelligent and have not had to change very much in response to the new regulations.

#### **Cultural Intelligence Theory**

The concept of Cultural Intelligence (CQ) has been used for about twenty years to examine the multi-cultural work environment. CQ is an important personal attribute for those who are working with people from different cultural, ethnic, and demographic backgrounds (Carranza and Egri 2010). Such capacities have become increasingly important because, according to Carranza and Egri (2010), advances in communication and transportation technologies have allowed small and medium-sized enterprises to gain entry into cross-cultural negotiations that were not common previously. CQ has also recently become more important for mining and exploration businesses as they increasingly conduct more cross-cultural work with First Nations in Ontario.

There are many different definitions of cultural intelligence; however they all have similar meanings. Cultural intelligence reflects a person's ability or capacity to be adaptive in a new cultural environment (Duff et al. 2012). Thomas and Inkson (2004, 182-183) and Crowne

(2013, 6) define it as “multifaceted competency consisting of cultural knowledge, the practice of mindfulness, and the repertoire of behavioural skills”. The definition that will be used in this thesis is: an individual’s capability to function and manage effectively in culturally diverse settings (Ang and Inkpen 2008; And et al. 2007; Ang & Van Dyne 2008; Carranza and Egri 2010; Crowne 2008; Earley and Ang 2003). CQ is a trait that must be exhibited by employees of companies if those companies hope to be positively received in a cross-cultural setting. Duff et al. (2012, 2) describe a cross-cultural encounter as an “interaction between two or more individuals from different cultural backgrounds, which may include verbal and nonverbal communication, virtual communication, and ongoing working and/or nonworking exchanges”. It is a capability that allows individuals to understand and act appropriately across a wide range of cultures (Crowne 2013). Having CQ is widely considered a vital requirement for all managers and staff; this is shown by company CQ being positively related to corporate reputation and employee commitment (Carranza & Egri 2010; Zirak and Ahmadian 2012).

CQ is beneficial for both international business, and also within Ontario itself. Many mining companies in particular are exploring and drilling on the traditional land of various First Nation (FN) communities; this is particularly true in Northwestern Ontario (NWO). Not only are there different cultures to understand, but language can often be a barrier of communication. In order to conduct successful business and participate in meaningful consultation, mining companies must have high levels of CQ. By having higher levels of CQ, companies have a greater probability of positive community relations, productive consultation, and therefore more opportunity for exploration.

There are numerous scales with which to measure CQ, including those focused on paper-and-pencil inventories, role play exercises, self-monitoring scales, intercultural communication inventory tests, and numerous questionnaires (Alon & Higgins 2005). The most widely accepted scale was developed by the Cultural Intelligence Center (CIC) in 2005. The CIC scale measures four common aspects of CQ: Motivational CQ (drive), Cognitive CQ (knowledge), Metacognitive CQ (strategy), and Behavioural CQ (action). Together, these factors can be measured using a Cultural Intelligence Scale for individuals, as seen in Figure 1. Responses are measured along a 7-point Likert scale, ranging from strongly agree to strongly disagree. The higher the score an individual receives, the greater their level of personal CQ is.

#### Cultural Intelligence Scale (CQS) – Self-Report <sup>a</sup>

Read each statement and select the response that best describes your capabilities.

Select the answer that BEST describes you AS YOU REALLY ARE (1=strongly disagree; 7=strongly agree)

CQ Factor	Questionnaire Items
<b>Motivational CQ: (CQ Drive)</b>	
MOT1	I enjoy interacting with people from different cultures.
MOT2	I am confident that I can socialize with locals in a culture that is unfamiliar to me.
MOT3	I am sure I can deal with the stresses of adjusting to a culture that is new to me.
MOT4	I enjoy living in cultures that are unfamiliar to me.
MOT5	I am confident that I can get accustomed to the shopping conditions in a different culture.
<b>Cognitive CQ: (CQ Knowledge)</b>	
COG1	I know the legal and economic systems of other cultures.
COG2	I know the rules (e.g., vocabulary, grammar) of other languages.
COG3	I know the cultural values and religious beliefs of other cultures.
COG4	I know the marriage systems of other cultures.
COG5	I know the arts and crafts of other cultures.
COG6	I know the rules for expressing non-verbal behaviors in other cultures.
<b>Metacognitive CQ (CQ Strategy):</b>	
MC1	I am conscious of the cultural knowledge I use when interacting with people with different cultural backgrounds.
MC2	I adjust my cultural knowledge as I interact with people from a culture that is unfamiliar to me.
MC3	I am conscious of the cultural knowledge I apply to cross-cultural interactions.
MC4	I check the accuracy of my cultural knowledge as I interact with people from different cultures.
<b>Behavioral CQ: (CQ Action)</b>	
BEH1	I change my verbal behavior (e.g., accent, tone) when a cross-cultural interaction requires it.
BEH2	I use pause and silence differently to suit different cross-cultural situations.
BEH3	I vary the rate of my speaking when a cross-cultural situation requires it.
BEH4	I change my non-verbal behavior when a cross-cultural situation requires it.
BEH5	I alter my facial expressions when a cross-cultural interaction requires it.

<sup>a</sup> © Cultural Intelligence Center 2005. Used by permission of Cultural Intelligence Center.

Figure 1: Cultural Intelligence Scale- Self Report (Source: Cultural Intelligence Center 2005)

Together, the four dimensions of CQ make up an individual's CQ. According to Ang and Van Dyne (2008), meta-cognitive CQ refers to an individual's level of conscious cultural awareness during cross-cultural interactions. Ang et al. (2007) believe that meta-cognitive CQ refers to "the control of cognition: the processes individuals use to acquire and understand knowledge" (337). Meta-cognition represents strategy of the mind, and requires the individual to be mindful that sub-cultures and societies differ in their values and beliefs. Individuals with very strong meta-cognition have much higher levels of self-reflection. According to Ang and Inkpen (2004), these individuals will consciously question their own cultural assumptions, adjust their cultural knowledge when interacting with those from other cultures, and reflect during interactions.

Cognition is similar to meta-cognition, but examines other aspects of understanding, specifically the structures of a culture and general cultural knowledge. "While meta-cognitive CQ focuses on higher-order cognitive processes, cognitive CQ reflects knowledge of norms, practices and conventions in different cultures that has been acquired from educational and personal experiences" (Ang & Van Dyne 2008, 5). Cognitive CQ refers to the cultural knowledge an individual has, notably knowledge about cultural similarities and differences (Ang et al. 2007; Crowne 2008; Duff et al. 2012). This knowledge is important to an individual's CQ because knowledge of culture can have major influences on people's thoughts and behaviours. By understanding the components of a specific culture, individuals can better appreciate the systems that shape and cause specific patterns of social interaction in that culture (Ang and Inkpen 2008).

Motivational CQ is critical to individual CQ because it is a source of drive. It triggers effort and energy directed toward functioning in novel cultural settings (Ang and Inkpen 2008). Motivational CQ is a main influence for properly adjusting in intercultural environments. Duff et al. (2012) and Crowne (2008) state that motivational CQ refers to the extent to which individuals are intrinsically motivated to be interested in the cultural backgrounds of others. Ang and Van Dyne (2008) expand on this by stating that motivational CQ reflects the capability to direct energy and attention toward learning about and functioning in situations characterized by cultural differences. According to Crowne (2008, 392), there are three primary motivators in the motivation aspect of CQ: enhancement (wanting to feel good about oneself), growth (wanting to challenge and improve oneself), and continuity (the desire for continuity and predictability in one's life). These primary components motivate individuals to learn and become more interested in different cultures, increasing their overall CQ.

When interacting with people from other cultures, verbal and nonverbal behaviour is extremely important in forming relationships and building trust; this is why the final component of Behaviour (action) is so important to overall CQ. Duff et al. (2012, 5) explain that "behavioural intelligence allows a person to be highly adaptable through the modification of one's behaviour, either in acting in ways which optimize the interaction, or by minimizing cultural blunders which might otherwise compromise the interaction." Behavioural CQ is particularly important for managers and company presidents to have during sensitive negotiations with Aboriginal groups. Ang and Inkpen (2008) speak specifically about managers by stating that behavioural CQ refers to their capability in exhibiting appropriate verbal and nonverbal actions that take place while interacting with people from different cultures. Even though language may be a communication barrier in many cross-cultural interactions, many

cultures rely on what they can see and hear in the other person's vocal, facial, and other outward expressions.

Even though the concept of CQ has been used for several decades, it is still not accepted by some academic researchers. Many of these researchers point out gaps in the concept and dispute the idea that it can be measured for real people in the real world. According to Crowne (2013), there is still much that is missing in the measurement of CQ at an individual level. She states that there is a gap in the literature because it does not appear that any past studies assess cultural exposure in any great detail, and that this aspect is vital in determining a level of CQ. Matsumoto and Hwang (2013) believe there needs to be further psychometric testing done of the CQ test methods themselves; they state that there is a lack of evidence for test-retest reliability and parallel forms reliability in different languages. Blasco et al. (2013) are major critics of the concept of CQ; they believe that most testing actually measures cultural *un*intelligence, making it a hypothesis at best. They believe that as testing currently stands, the culturally intelligent person represents "an ideal or mythical figure, constructed in response to the perceived needs of international business" (242). They do not provide any superior test method to the scale represented in Figure 1, but they urge that CQ be treated as a hypothesis rather than a well-proven construct.

Cultural intelligence is an extremely important trait to have when participating in any type of cross-cultural interaction. I chose to use the cultural intelligence scale developed by the Cultural Intelligence Center for this thesis because it allows a simple measurement of individual CQ. In this thesis I modify it to apply to company CQ in the specific situation of mining exploration companies engaging with Aboriginal communities. I hope that it will highlight

companies that have good relations with Aboriginal communities, and thus help to understand some best practises in how the new mining regulations are being implemented. I review its effectiveness for this task in the discussion chapter.

### **Dynamic Capabilities Framework**

This thesis research seeks to discover how the company officials interviewed have recently changed in order to deal with the new regulations. I sought to study this using a theory/framework that addresses dynamic capabilities (DC). According to Ambrosini et al. (2009), the concept of DC has evolved from the resource-based view (RBV) of the firm. The RBV is the idea that competitive advantage can be gained through the firm's resources and capabilities (Janssen et al. 2012). It states that a firm gains competitive advantage if it is able to use its resources effectively, for example by reassigning resources as needed instead of assigning them after their usefulness has passed. DC was initially developed from a concern that the RBV applied primarily to firms in essentially static environments. Because a firm's ability to create, adapt, and reconfigure its resources are strategic in situations of unpredictable events and unanticipated discontinuities in dynamic environments, DC are a necessary extension on the RBV (Ambrosini et al. 2009). DC research studies the activities of firms or companies during turbulent or changing administrative environments. Representative of DC is strategic flexibility in operating procedures as well as timely internal responses in adapting to environmental uncertainties.

There are many different definitions of DC that have been developed over the years. Barrales-Molina et al. (2012) have developed a chart that represents the most commonly used definitions; this is shown in Figure 2. The definition that will be used for the purpose of this study is: “DC represents a company’s ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments” (Teece et al. 1997).

Definition	Study	Emphasis
The firm’s abilities to integrate, construct and reconfigure internal and external competences and thus to respond to competitive environments rapidly	Teece, Pisano and Shuen (1997)	Purpose and specific role
The firm’s processes that use resources – specifically the processes of integrating, reconfiguring, gaining and releasing resources – to match and even create market change; dynamic capabilities are the organizational and strategic routines by which firms achieve new resource configurations as markets emerge, collide, split, evolve and die	Eisenhardt and Martin (2000)	Purpose and specific role
A dynamic capability is a learned and stable pattern of a collective activity through which the organization systematically generates and modifies its operating routines	Zollo and Winter (2002)	Generation and specific role
Dynamic capabilities can be disaggregated into the capacity (1) to sense and shape opportunities and threats, (2) to seize opportunities and (3) to maintain competitiveness through enhancing, combining, protecting and, when necessary, reconfiguring the business enterprise’s intangible and tangible assets	Teece (2007)	Specific role
A dynamic capability is the firm’s potential to systematically solve problems, formed by its propensity to sense opportunities and threats, to make timely and market-oriented decisions, and to change its resource base	Barreto (2010)	Specific role and purpose

Figure 2: Definitions of Dynamic Capabilities (Source: Barrales-Molina et al. 2012)

DC is a framework that is very much based on business models and was designed to examine competitive business. According to Teece (2007, 1320), the “ambition of the dynamic capabilities framework is nothing less than to explain the sources of enterprise-level competitive advantage over time, and provide guidance to managers for avoiding zero profit conditions.” DC

theory is well-suited to the study of organisational innovation which is one of the main reasons it is being utilized as part of this thesis. There are two other reasons: first, there is no special focus on technology, and second, the innovation process may just as easily relate to the development of new products as it can to new processes, systems, or even business models (Lawson and Samson 2001).

It is difficult to properly measure a company's ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments, and it is therefore difficult to measure DC, especially at a company scale. The DC scale used in this study is adapted from the scale used to measure the enhancement of dynamic capabilities through knowledge management. This scale was created by Sher and Lee in their 2004 study on how information technology facilitated DC through knowledge management; it can be seen in Figure 3.

Enhancement of Dynamic Capabilities	Not Much						Very Much
Enhanced learning effectiveness of new knowledge	1	2	3	4	5	6	7
Enhanced decision quality	1	2	3	4	5	6	7
Enhanced capabilities of communication and coordination	1	2	3	4	5	6	7
Enhanced responsiveness	1	2	3	4	5	6	7
Enhanced integration in new product development	1	2	3	4	5	6	7
Enhanced accumulation of knowledge	1	2	3	4	5	6	7
Enhanced capabilities of resource deployment	1	2	3	4	5	6	7
Enhanced customer relationship	1	2	3	4	5	6	7
Enhanced trust with vendors	1	2	3	4	5	6	7
Enhanced unimitability of strategic asset	1	2	3	4	5	6	7

Figure 3: Dynamic Capabilities achieved through knowledge management (Source: Sher & Lee 2004)

The scale in Figure 3 assesses changes that companies have recently made, and how those changes affect each one of the 10-component measurements that compose the first column. These 10 components are: enhanced learning effectiveness of new knowledge, enhanced quality of decisions, enhanced capabilities of communication and coordination, enhanced responsiveness, enhanced integration in new product development, enhanced accumulation of knowledge, enhanced capabilities of resource deployment, enhanced customer relationships, enhanced trust with vendors, and enhanced unimitability of strategic assets. Studying responses on a 7-point Likert scale provides a good range of answers for measuring DC for individual companies. According to Janssen et al. (2012, 12), “choosing a 7-point Likert-scale ranging from „strongly disagree” to „strongly agree” is a common practice in DC research.” By combining the use of a Likert scale and face-to-face interviews, I will be able to judge respondents’ DC scores with much more accuracy and understanding.

Many authors believe that there are different levels and types of DC in the DC framework itself. In order to better understand the nature of DC, many authors argue the need to differentiate among the types of specific processes and routines available in firms (Cepeda and Vera 2007). Ambrosini et al. (2009, 2) believe that there are three levels of DC perceived by managers of companies. At the first level there are *incremental* DC which are concerned with the continuous improvement of the firm’s resource base, at the second level are *renewing* DC that refresh, adapt and augment a resource base, and at the third level are *regenerative* dynamic capabilities that affect, not the firm’s resource base, but its current set of DC. Barrales-Molina et al. (2012, 5) also examine different aspects of DC by specifying that there are four different types of DC to overcome internal and external contingencies; these are external observation and evaluation, internal resource renewal, external resource acquisition, and resource

reconfiguration. Even though there is a general lack of agreement about the nature of DC in the literature, Cepeda and Vera (2007, 427) state that there is a consensus regarding a need for a hierarchy of capabilities, taking into consideration four central aspects: “(1) capabilities are organizational processes and routines rooted in knowledge, (2) the input of dynamic capabilities is an initial configuration of resources and operational routines, (3) dynamic capabilities involve a transformation process of the firm’s knowledge resources and routines, and (4) the output of dynamic capabilities is a new configuration of resources and operational routines.”

Although many academic researchers use the DC theory in their studies and have thoroughly researched the various components of it, there are still some weaknesses in the theory and many who criticize it. According to Macher and Mowery (2009) the literature on DC consists mostly of conceptual and theoretical discussions and is lacking direct empirical tests of hypotheses. Arend and Bromiley (2009, 75) expand on this criticism by stating that there are three major problems that limit the potential contribution of the DC: “(1) lack of coherent theoretical foundation, (2) weak empirical support, and (3) unclear practical applications.” It is also difficult to study which resources in a firm account for effective performance. Lawson and Samson (2001) state that resources are complementary, so it is actually the system of resources that matters, not the individual component. Many of the main critiques of DC can be seen in Figure 4. Many researchers are still unsure how to apply the DC theory to real-world business issues, hopefully this thesis will add more information, understanding, and direction to this predicament.

Concerns	Reference
<i>Existing Critiques</i>	
Inconsistencies of usage of the DCV concept	Zahra et al. (2006)
Problems in defining the DCV:	
• Tautological or circular definitions	Williamson (1999) Winter (2003) Zahra et al. (2006) Levinthal and Ocasio (2007)
• Definition overly inclusive, elastic	Williamson (1999)
• Definition mixes firm characteristics with context	Zahra et al. (2006)
Contradictions (general)	Zahra et al. (2006)
Infinite regress – capabilities come from capabilities, etc.	Collis (1994)
DCV lacks operational implications	Williamson (1999)
Insufficient concern for competition	Williamson (1999)
Prescription underdeveloped (e.g. how and when to reconfigure capabilities unspecified)	Williamson (1999)
Lacks underlying theory at micro-level	Salvato (2003)
Unclear what universal constructs it offers.	Collis (1994)
Definitions appear overly dependent on ill-defined local conditions	
Post hoc identification of dynamic capabilities in empirical work	Zahra et al. (2006)
DCV is a theoretical dead end (organizational adaptation)	Levinthal and Ocasio (2007)
<i>Unanswered questions</i>	
Is there a relationship between DCV and entrepreneurship?	Helfat and Peteraf (2003) no, Teece (2007) yes
What conditions bound the DCV?	Eisenhardt and Martin (2000)
Is the DCV consistent with related diversification or unrelated diversification?	Teece et al. (1997)
What are the fair examples of the DCV? (e.g. IDEO, Dell, Cisco, GE Capital, Intel, Yahoo!, Excite)	Eisenhardt and Martin (2000)
What causes a firm to develop and use dynamic capabilities?	Zahra et al. (2006)
What are the full costs, benefits and risks associated with dynamic capabilities?	Lavie (2006)
What is the best evolutionary path to create dynamic capabilities?	Helfat and Peteraf (2003)

Figure 4: Main critiques and open question of DC (Source: Arend and Bromiley 2009)

## CHAPTER 4: METHODOLOGY

### Study Context

This study seeks to examine how companies are consulting with Aboriginal communities. It focused on how mineral exploration companies in the Thunder Bay region are participating in the mandatory consultation process and examined the challenges they are facing. To quantify aspects of this research, this study evaluated companies using Cultural Intelligence (CQ) and Dynamic Capabilities (DC) frameworks. The four main questions of this study were as follows:

1. How are companies coping with the new rules of Aboriginal Consultation?
2. How are companies enhancing their capacity to engage Aboriginal communities?
3. How are companies operationalizing their engagement strategies?
4. What relationships are there between a company's approach to dealing with the new regulations and that company's scores on the CQ and DC scales?

I chose to focus on the impacts of the new consultation requirements for mining and exploration companies in the NWO area, specifically around Thunder Bay. This study utilized several methods of research which include: exploration of the literature for topic-related background material; conducting informational interviews with MNDM officials to help frame relevant questions for companies; selected and modified CQ and DC assessment scales; conducted interviews and the scalar evaluations; and analyzed themes from interview data to identify trends, commonalities and contrasts in how companies are responding to their rapidly changing business environment.

## **Interview Respondents**

Interviews conducted with Ministry of Northern Development and Mines (MNDM) officials are formal and informal in nature. MNDM interviews were conducted before approaching the exploration companies in order to both ensure that the questions posed to companies are useful, and that I understand the new regulations and intentions of the MNDM. Interviews with MNDM officials provided data that is used primarily as background knowledge. This study only considers the exploration company data. Interview questions used for MNDM officials can be seen in Appendix 1. Interviews conducted with exploration companies are semi-structured, but shorter in duration compared to the MNDM interviews. These interviews provide the main information to be analyzed in my thesis. Examples of questions can be seen in Appendix 2.

## **Semi-Structured Interviews**

I conducted semi-structured interviews using a list of discussion topics in the Northwestern Ontario region of Thunder Bay with the aim of being able to document companies' views of the new consultation regulations, their capacities to engage Aboriginal communities, and their engagement strategies. I aimed to interview people who were heavily affected by the changing regulations. My background data sources for regulation information include executives from the MNDM. The primary data sources include representatives from mineral exploration companies operating in Northwestern Ontario and. I interviewed 2 executives from MNDM (one formally and one informally), and 15 representatives from exploration companies. Interviews ranged from 20 minutes to 80 minutes in length.

Semi-structured interviews are conducted using prepared questions that cover basic topics and themes but allow for extensive probing for more information (Barriball and While 1994; Britten et al. 1995; Cohen and Crabtree 2006; DiCicco-Bloom and Crabtree 2006). There are many advantages of using the semi-structured interview; Barriball and While (1994, 329) state that it is well suited to the exploration of attitudes, values, beliefs and motives, and it has the potential to overcome the poor response rates of a survey. Cohen and Crabtree (2006, 2) write that semi-structured interviews also allow informants the freedom to express their views in their own terms. The nature of semi-structured interview allows new concepts to emerge because the focus of the questions encourages depth and vitality (Dearnly 2005). By using the semi-structured method, I was able to learn more and more about exploration and junior mining companies and exactly how they operate; this enabled me to phrase questions better in each interview thereafter. Another benefit of using these interviews is that they allow leeway to probe the respondent for more information which ultimately results in clearer and more concise answers (Barriball and While 1994; Kingsley et al. 2010).

### **Secondary Data**

Secondary data consisted primarily of news reports on the mining sector and direct observations. By studying the effects of new mining regulations on exploration companies I had to constantly stay abreast of the current political climate in Ontario's mining industry. I had to daily check news sites such as Republic of Mining, The Northern Miner, Northern Life, Wawatay News, and other newspapers. Many interview respondents discussed current mining news with me so I had to know what they were talking about in order to fully understand the situation.

Direct observations were a very useful source of data as well because it allowed me to observe how company presidents and Aboriginal leaders share their views and opinions regarding consultation and land claim issues. Such background preparation allowed me to better understand my interviews, and identify when and how to ask supplemental questions. I participated in three conferences in which mining executives and Aboriginal leaders were both in attendance and shared their perspectives. The first was the 2013 Grow Greenstone Expo that ran March 25-26. This expo brought together speakers and businesses from around Ontario to discuss issues surrounding the mining industry. The second was the 2013 Northwestern Ontario Mines and Minerals Symposium which ran April 2-3 in Thunder Bay. Here I watched mining presentations and was able to meet with various companies on the showroom floor. The most recent conference I attended was hosted by Lakehead University's Centre of Excellence for Sustainable Mining and Exploration; the title of the conference was "The Role of Government Policy in Sustainable Mining and Exploration." In this conference mining companies and Aboriginal community representatives shared their thoughts on sustainable mining and possibilities for policy change. Political figures such as Bob Rae, chief negotiator for the Matawa First Nations (Ring of Fire) and other MNDM representatives were in attendance.

### **Quantitative Analysis**

In order to evaluate the exploration and junior companies researched for this project, two assessments were carried out using Likert scales to allow comparison between the companies and assess their adoption of the new regulations. The two scales used were Cultural Intelligence (CQ), which measures a person's capability to function effectively in cross-cultural situations,

and Dynamic Capabilities (DC), which measures a company's ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments. This study hypothesized that companies that score high on both scales will have more promising engagement plans. Because of the small size of the exploration companies, this study treats the individual respondent as a reflection of the corporate perspective. I hypothesize that if a company is more culturally intelligent and has taken the time to be highly progressive in engaging and consulting Aboriginal communities, they will likely participate in more meaningful engagement. This is also true for companies that exhibit high scores of dynamic capability. By being more efficiently able to change the internal structure of their companies to conform to the new consultation demands, these companies will likely have promising engagement and consultation strategies.

#### CULTURAL INTELLIGENCE (CQ)

According to the Cultural Intelligence Center, CQ is a person's capability to function effectively in cross-cultural situations. It is a critical capability that enhances employee, manager, and organizational effectiveness. It was not appropriate for this study to measure the CQ of the individual employee. Instead, the scale was modified to assess the company's CQ. There are four common aspects of CQ: Motivational CQ (drive), Cognitive CQ (knowledge), Metacognitive CQ (strategy), and Behavioural CQ (action). This scale was modified for this study by framing the questionnaire items from a company perspective and by making the context plural, instead of individual. Responses are measured along a 7-point Likert scale, ranging from strongly agree to strongly disagree. Table 1 shows the CQ scale I developed from the individual

scale. I will be asking the questionnaire items and get the company to rate their responses on the 7-point scale. The higher the overall score for companies, the higher their CQ scores will be.

**Table 1:** Cultural Intelligence scale

CQ Factor	Questionnaire Items	1= Strongly Disagree 7= Strongly Agree
Motivational CQ	We look to hire culturally sensitive employees	1 2 3 4 5 6 7
	We provide training to employees to deal with First Nations issues	1 2 3 4 5 6 7
	We enjoy interacting with people from different cultures	1 2 3 4 5 6 7
Cognitive CQ	Our company recognizes and respects the cultural values and religious beliefs of other cultures	1 2 3 4 5 6 7
	We know the legal and economic systems of other cultures	1 2 3 4 5 6 7
	We know the etiquette rules and proper behaviours when interacting with First Nations peoples	1 2 3 4 5 6 7
Metacognitive CQ	We are conscious of the cultural knowledge we use when interacting with people with different cultural backgrounds	1 2 3 4 5 6 7
	We recognize the need to learn new behaviours when interacting with people from a culture that is not familiar to us	1 2 3 4 5 6 7
	We check the accuracy of our cultural knowledge as we interact with people from different cultures	1 2 3 4 5 6 7
Behavioural CQ	We change our verbal behaviour (e.g., accent, tone) when a cross-cultural interaction requires it	1 2 3 4 5 6 7
	We use pause and silence differently to suit different cross-cultural situations	1 2 3 4 5 6 7
	We select employees to lead interactions with different cultures based on their knowledge of that culture	1 2 3 4 5 6 7

## DYNAMIC CAPABILITIES (DC)

DC research studies the activities of firms or companies during turbulent or changing administrative environments. It measures a company's ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments.

Representative of DC is strategic flexibility in operating procedures as well as timely internal responses in adapting to environmental uncertainties. This project used an assessment scale to evaluate DC of exploration companies. By using a 7-point Likert scale to measure respondent answers; this project used the responses of exploration companies to add quantitative data to the study, allowing a comparison of companies' engagement with First Nations Communities.

The scale used in this project is adapted from a DC study carried out in 2004 by Sher and Lee (Figure 3). This scale has been changed slightly in the context of this study. Because this scale represents how much a company has changed, it is being slightly altered for this study to represent how much a company has changed in response to the new consultation regulations outlined in the Mining Act Amendment. The revised table that will be used in this study is represented in Table 2. The criteria in this table examine the changes that have occurred in companies in response to the new regulations that require Aboriginal consultation. The different criteria presented in Table 2 will be very similar to the types of questions I asked companies during the interview process. By asking questions similar to the criteria of the DC scale, I collected explanations for the criteria as to how the company has changed (i.e. how the company enhanced customer relationship by now being required to consult). After I verbally established how the companies changed in response to the new regulations, I measured the change through the use of the Likert scale in Table 2. The companies filled out the scales themselves to assess how much they believe they have changed.

**Table 2:** Measuring Dynamic Capabilities using Consultation Criteria

Changing company structure criteria	Not Much	Very Much
Enhanced learning by being more aware of Aboriginal concerns	1 2 3 4 5 6 7	
Enhanced decision quality	1 2 3 4 5 6 7	
Enhanced capabilities of communication and coordination with Aboriginal communities	1 2 3 4 5 6 7	

Enhanced responsiveness to consult	1 2 3 4 5 6 7
Enhanced accumulation of knowledge	1 2 3 4 5 6 7
Enhanced capabilities of resource exploration	1 2 3 4 5 6 7
Enhanced customer relationship	1 2 3 4 5 6 7
Enhanced trust with communities	1 2 3 4 5 6 7
Enhanced consultation capacity	1 2 3 4 5 6 7

Cultural Intelligence and Dynamic Capabilities” Theories allowed a quantitative comparison of data between each individual company. This allowed for a visual representation of scores in companies by comparing where each company is situated in their DC score compared to their CQ score, as seen in Table 4.

### **Ethics**

Before I began my interviews and data collection I applied for and received ethical approval from the Lakehead University Board of Ethics. As part of this process, I also completed the “Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans Course on Research Ethics.” This certificate can be viewed in Appendix 3. Initially I mailed out my project description to 35 mineral exploration companies in the Thunder Bay region; this description can be seen in Appendix 4. About a month later I followed up with emails, faxes, and phone calls to all of the same companies with the same project description; only three companies initially responded. After repeated phone calls for a period of six months I was able to interview all 15 companies.

Prior to each interview, the respondent was required to fill out a consent form (see Appendix 5). The consent form explained the confidential nature of the interview and explained to the participants that they could back out at any time during the study. It also provided the personal contact information of each participant. Some respondents agreed to reveal their

names, however, most did not, so all information is presented here anonymously. Many company representatives were concerned that their strong words may bring negative repercussions to themselves and their company so I deemed it safer and more ethical to remove all company and individual names. Instead, each exploration and junior company was assigned a letter as a code (e.g. Company A).

### **Data Collection**

The final changes to the Modernized Mining Act became effective April 1<sup>st</sup>, 2013, and I began research for my thesis around that same time. I conducted my first interview in April 2013 and continued conducting interviews until December 2013. Throughout this time I spoke with presidents, vice-presidents, and exploration managers of 15 exploration companies. For the purpose of this thesis I refer to all companies under the umbrella term „exploration companies“. My sample composed of 12 junior mining companies, one senior mining company, one drilling company, and an aviation service company that does primarily indigenous work and consultation. I acquired a list of exploration companies from the MNDM and contacted approximately 35 companies, though only 15 became the study population and consented to an interview.

Choosing a sample size that would adequately address the qualitative aspects of this study is often difficult because it must be large enough to allow all themes to be explored, but it must also not be too big and result in informational redundancy (Sandelowski 1995). According to Francis et al. (2010), sample size is often justified on the basis of interviewing participants until data saturation is reached. Data saturation is the point in data collection when no new information is found and themes stop emerging. Typically, sample size for semi-structured

interviews can range between 4 and 20 participants. It is not very useful to have over 12 interviews because at this number 97% of important codes have usually been identified (Francis et al. 2010). This study aimed to interview a minimum of 12 exploration companies in order to capture the important themes. Even though I informally spoke to many individuals from the MNNDM at expo's, symposiums, and conferences, they all recommended I speak to one MNNDM official; therefore I only formally interviewed one participant because he represented the best source of knowledge. Even though I received a list of companies to contact from the MNNDM, I also got the names and phone numbers of company presidents from my initial interview respondents. Many of the company presidents I spoke with were recommended by presidents of other companies.

During the interviews I used a voice recorder so that I could transcribe verbatim the words of the participants. Fifteen out of the 16 individuals I interviewed agreed to be recorded. The other interview was recorded by hand during the interview. After transcribing the interviews I amassed a qualitative data set consisting of single spaced 151 pages. These interview transcripts were the basis of my analysis.

## **Analysis**

In order to analyze the interview data I read each transcript multiple times and identified the various themes that began to emerge. Themes concerning capacity, challenges, and benefits were built into the questions that I asked each respondent, but most other themes emerged spontaneously. These themes are shown in Table 3. A total of 21 individual themes were derived from the interview data and organized under 7 overarching core categories. The core categories are: „company opinions of consultation regulations“, „education“, „community

interaction“, „operational difficulties“, „money and the stock market“, „concerns and uncertainties“, and „how companies have changed the way they consult“. Whenever I came across a theme I cut and pasted the representative quote into a separate document in order to organize themes in a comprehensive manner. By organizing each theme in its own document I was able to examine the different thoughts and concerns from each company on that particular theme. This generated many different viewpoints for each theme.

In order to analyze the scalar data I used Microsoft Excel 2010 to total the CQ and DC scores for each company. I converted these scores into a percentage for easier comparison between companies. In the discussion chapter I provide examples of quotes from high and low scoring companies. This comparison will reveal if high or low scores are related to types of responses.

## CHAPTER 5: RESULTS

The purpose of this study was to evaluate how mineral exploration companies are coping with the rapidly changing reality of Aboriginal consultation and how they are consulting with Aboriginal communities. I specifically examined how companies are responding to the Mining Act amendments that make consultation mandatory for exploration plans and permits. The interview data exposed the difficulties of Aboriginal consultation and various issues that companies must face. By coding the interview transcripts, I identified 21 themes that are highlighted throughout this section. For organizational purposes I assimilated these themes into seven core categories. These are:

1. Company Opinions of Consultation Regulations
2. Education
3. Community Interaction
4. Operational Difficulties
5. Money and the Stock Market
6. Concerns and Uncertainties
7. How Companies have changed the way they Consult

Within this results section I have included many quotes from the 15 company representatives. All quotes have not been changed or edited in any way and portray company beliefs and values. I use several quotes to portray the themes because I think it best conveys the opinions and views of the respondents. While some of the themes in this study were queried, many of them were spontaneous. Table 3 below summarizes the themes which were queried versus those that were spontaneous:

**Table 3:** Queried vs Spontaneous Themes

<b>Queried Themes</b>	<b>Spontaneous Themes</b>
Sentiments	Community Education
Benefits of Mandatory Consultation	Learning/Learning Curves
Physical Consultation Practices	Community Willingness
Productivity	Community Governance
Challenges	Trust
Company Consultation Capacity	Community Capacity
External Resources	Community Involvement
	Timelines
	Additional Communities and Overlapping Claims
	Stock Market Hardships
	Community Expenses
	Concerns about Government
	Uncertainties
	Definition of Consultation

The most common theme that was identified throughout all interviews (15) was Concerns about Government. As is evident in Appendix 2 and Table 3, I did not specifically query concerns about the government at all; this theme was spontaneously introduced by the respondents. The second most frequently occurring theme was Operational Difficulties and was identified in 14 interview transcripts. When I directly asked the respondents' opinions of the new consultation requirements: 4 thought they were a good thing, 3 viewed them as neither good nor bad, and 6 viewed them very negatively. The opinions regarding the Aboriginal consultation regulations did not, however, reflect how the company operated or how much consultation work they carried out.

### Cultural Intelligence (CQ) and Dynamic Capabilities (DC)

As mentioned in the previous chapter, CQ is a person's capability to function effectively in cross-cultural situations; and DC represents a company's ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments. Scores for both of these factors were calculated based on the ratings respondents gave themselves.

Likert scores were totalled and then divided by the total available points available in each scale.

The total CQ and DC scores for each company are located in table 3 below.

**Table 4:** Cultural Intelligence (CQ) and Dynamic Capabilities (DC) Scores

<b>Cultural Intelligence (CQ) and Dynamic Capabilities (DC) Scores</b>			
<b>Company</b>	<b>Interview Date (2013)</b>	<b>CQ Score (%)</b>	<b>DC Score (%)</b>
<b>A</b>	July 25	83.3	71.4
<b>B</b>	July 12	81.0	71.6
<b>C</b>	July 5	50.0	25.4
<b>D</b>	July 10	61.9	39.7
<b>E</b>	August 8	67.9	55.6
<b>F</b>	July 11	66.7	82.5
<b>G</b>	August 7	89.3	54.0
<b>H</b>	July 24	82.1	77.8
<b>I</b>	July 31	85.7	33.3
<b>J</b>	July 29	79.8	71.4
<b>K</b>	June 27	69.0	76.2
<b>L</b>	November 5	69.0	74.6
<b>M</b>	July 23	88.1	14.3
<b>N</b>	November 20	77.4	14.3
<b>O</b>	December 11	85.7	28.6
	<b>Low</b>	<b>50.0</b>	<b>14.3</b>
	<b>Median</b>	<b>79.8</b>	<b>55.6</b>
	<b>High</b>	<b>89.3</b>	<b>82.5</b>
	<b>Average</b>	<b>75.8</b>	<b>52.9</b>

The CQ scores ranged from 50% to 89.3%. A low score indicates that a company has a relatively low cultural intelligence. This suggests that they have not played an involved role in learning about, or building relationships with the Aboriginal communities they come in contact with. When a company has a CQ score that is close to the average of 75.8% it means that they have a relatively strong cultural intelligence. These companies generally know more about Aboriginal beliefs and how to interact well in cross-cultural situations. When a company has a CQ score that exceeds 85% then they have a high level of cultural intelligence. These companies typically have much better communication, relationship-building skills, and are much more likely to be involved in the communities that they consult.

DC scores in this study ranged from 14.3% to 82.5%. If a company has a low score then they have not changed the structure of their company or the way they consult since the instalment of mandatory consultation regulations. When a company has a DC score close to the average of 52.9% that company has not changed a great deal in response to the new consultation regulations. They may have become more aware of Aboriginal concerns and enhanced their trust with communities, but have not undergone drastic change. Companies that have DC scores in the high 70's and low 80's have changed a lot since the instalment of the new regulations. These companies have greatly enhanced their Aboriginal learning, knowledge, trust, and relationships with communities.

Although companies may have a high CQ score, this does not mean that their DC score will be high as well. A low DC score is actually better for companies in some circumstances because this means that they have not had to change much about their company in order to comply with the new regulations; they were already heavily engaged with communities and

conducting meaningful consultation before it became mandatory. Therefore, companies that have high CQ and low DC scores are likely the ones that are most engaged and have the best relationships with communities. They have high cultural intelligence that enabled them to form relationships and actively participate in Aboriginal community consultation before it became a requirement to do so.

Even though a low DC score is often positive in reference to consultation efforts, it can be represented negatively when it is combined with a low CQ score. If a company has a low CQ score *and* a low DC score the company has not played a large role in consulting Aboriginal communities and educating themselves about Aboriginal culture; they have not changed their company to be more aware of Aboriginal concerns or built trust with communities. Companies that score highly in CQ and DC have adjusted quite well to the new regulations. Their high cultural intelligence has allowed them to properly change their company to comply with the consultation regulations and build relationships with communities.

## **1.0 Consultation Regulation Sentiments**

Throughout the interviews, respondents shared many of their feelings and opinions concerning the mandatory consultation regulations. Their opinions on the matter ranged significantly, from downright loathing of the regulations to viewing them in a very positive light. This topic was divided into two sub-categories which portray:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Sentiments	9	CQ 50-86 DC 14-78
Benefits of Mandatory Consultation	7	CQ 67-83 DC 14-83

## SENTIMENTS

All of the companies that were interviewed had different opinions and feelings about consultation, specifically in regard to the plans and permits application process. Some believe they have had to shoulder a burden of responsibility that their company is simply not prepared to deal with, some believe it is an added expense that slows productivity and plays havoc with their timelines, and yet others believe it is a step in the right direction to a more progressive way of conducting business. Because junior exploration companies primarily spend money on exploration and don't actually make any money, some don't believe that they should be responsible for consultation and view it as a burden and an unnecessary expense. They believe consultation should not be mandatory in such early stages of exploration, where land disturbance is minimal and chances of finding a mineable mineral deposit are extremely low. Companies A and D believe consultation is simply an extra expense that they should not be responsible for.

They said,

They are an added bureaucracy, more paperwork that really most of us didn't need to deal with. It slows us down. It slows down a bit with added paperwork, time, and money to deal with it. So it's costing us more money, it's costing us more time. If it gets any worse, and right now it's a bad time, but people will get laid off because it's costing us too much money and we'll do less work. So everybody will lose which is unfortunate (Company A, CQ 83%, DC 71%).

We don't like them, we think at the junior level, at this level when we're really just prospecting and grassroots exploration that it should just be a government

cheque in the box, not a company cheque in the box. We think it's the government who should be doing it and not us. We get "no you can't, this is traditionally sensitive area, or we want a portion of your budget". Like I said, it puts a red flag up on something that really shouldn't even have one; you almost don't want people to know you're working because it raises issues.

We don't want the headache of tons and tons of legal issues with First Nation groups and some may just be fine, but some may not. There should not be any reason to even be having any major discussions with First Nation groups until it's in a very advanced exploration stage where you're looking at economic feasibility of a project (Company D, CQ 62%, DC 40%).

Company J believes that with increased consultation and regulation during exploration, it will cause less mining to occur in later stages. They said,

So the new plans and permits have thrown just another obstacle in the way of the juniors so Ontario continues to make it less and less attractive for exploration dollars by doing this. People say the mining act hasn't been updated in a century, that's not true, it's been updated continually. There was a large update in the 90's. The most recent one, y'know it is like more of the other provinces, it makes sense with the plans and permits model. But it's just one more nail in the coffin kind of an affair for us. So we've seen a decrease in business because of it.

You didn't really do anything until you got to a more advanced stage whereas now we increasingly have to at a much earlier and earlier stage. That is having a direct consequence. At the early stage you're not that committed to a project; if there's resistance, you leave. So, the effect of the consultation is to cut out the early stage of the business, which eventually causes the latter stage to dry up (Company J, CQ 80%, DC 71%).

Other companies have more negative views of the consultation requirements and have been affected to a greater extent; these are expressed by Companies C and M. They said,

I think it's caused a lot of problems and it's really hurt my company. I had eight drills turning last year and this year in Canada I have nothing (Company C, CQ 50%, DC 25%).

Besides being illegal? If they were contested in hard court they'd fall apart. The companies just want a set of rules to play by. The new changes to the mining act in formalizing relationships with the First Nations doesn't help, because the real issues haven't disappeared (Company M, CQ 88%, DC 14%).

Even though there are negative and positive opinions concerning mandatory consultation, some companies meet in the middle and look at the situation as simply one more requirement of doing business in their industry. They identify that there are positive and negative aspects of consultation, and also, that it will not be easy adapting to the new regulations. Company I states,

It's a part of doing work right, so you know it's like this out in B.C., it's like this in the territories in terms of you have to deal with the Aboriginal Communities. So it's nothing new except people have a lot of push back because it is something new. And it just means more work for people, but it's part of doing business.

Just it's a way of life and it's the way it's gonna be, it's not going away. Ontario is still a good place to explore and it's not like... All the other provinces have the same thing in terms of the permitting process so it's just one extra step that something people aren't accustomed to (Company I, CQ 86%, DC 33%).

One of the respondents believed that it will be difficult to adjust to increased consultation with FN communities, but it must be done because FN groups will no longer tolerate mining and exploration practices that were practiced in previous decades. He said,

Well I think it's a double-edged sword. I think it's important to consult the First Nation groups and to understand their survey of the land and how they manage and how they see themselves and their ownership and stewardship of the land. And that perception needs to be seen and respected. That's one part of the answer. The other part is those customers whom I supply service to, and they look at the consultation process as a difficulty because of the way it's structured.

I think we've reached sort of a fulcrum in the First Nation group where there's enough understanding, education, movement and power that they will not tolerate being handled like had possibly occurred in the previous decades. They wish to find and do genuine engagement and this genuinity must be portrayed in order for them to continue, so to simply put it by saying that: the First Nation groups will only proceed when it's actual factual true and prosperous for them. So that will determine the speed at which they engage (Company H, CQ 82%, DC 78%).

Two companies believed that the new consultation regulations are a good idea and look good on paper, but that the actual application of these regulations is difficult and doesn't have enough government support in order to make them work smoothly. They said,

So I think that they are great in paper, in reality I see that there's some real challenges. I think that the industry is interpreting them so far as an effective veto. Its good in concept, makes a lot of sense, good on paper, and risk-averse bureaucrats are fucking it up. Pardon my French (Company L, CQ 69%, DC 75%)

I think the idea behind them was good, but I'm seeing that there's some lack of follow-through. They're getting responses from First Nations and when we as the company go and say "well what are we supposed to do about this response?" They just say well you're supposed to consult...so we're back at square one.

No, no I like the structure of the permits, I like the fact that you've got to say here's what our intentions are, here's where we intend to work. And I like the idea that a First Nation can say "well here's my use of the land and how it conflicts" (Company O, CQ 86%, DC 29%).

## BENEFITS

Companies have different opinions on the new consultation regulations and the fact that they must consult with Aboriginal communities prior to doing any work in the area, with many companies viewing these regulations in a negative light. This is slightly contradicted though when I asked companies if they think their company has benefitted from consultation. Seven of the companies were straightforward in their responses; five companies said YES, while only two companies said NO. The main reasons that the respondents believe their company has benefitted is through their growing relationships and trust with communities. They believe that getting to know the communities you're working near and how your work is affecting them is a benefit in itself. When asked if their company has benefitted they said,

Yes, it already has. The best thing you can do is get to know the people that are affected by what you're doing. If you don't do that you're not doing your job. So we've already benefitted and hopefully will benefit more (Company A, CQ 83%, DC 71%).

I think we've benefitted. You hear companies talking about earning a social licence to operate, that's something that we, through our core values as a company, that we value the support of local and regional communities and governments for the operations (Company B, CQ 81%, DC 72%).

I believe it has because Aboriginal people are being recognized as people that have to be dealt with and here we are, we're an Aboriginal company (Company E, CQ 68%, DC 56%).

Yeah absolutely. If people aren't out talking to each other how are you gonna break down these barriers? I mean you gotta get people together and if there's a defined process then all three parties have to deliver on it, but you're never going to...if there are barriers there or something that's preventing what needs to be done from getting done, or maybe you decide in the end that it doesn't need to be done, that's fair enough (Company N, CQ 77%, DC 14%).

One company stated that they would not benefit simply as an individual company, but as the consultation process becomes more streamlined and better understood everyone will benefit because there will be less conflict in the long-run. They said,

Well I think the industry will benefit from it. Individual company wise, possibly. People will benefit from consultation because there will be less conflict in the long run. So it'll help define where exploration is easier and where it isn't easier. Then at the end game, everyone benefits from that.

So you're going to be able to go out there, you're not gonna end up with a blockade or problems like that. So you've built up a net benefit to the province once you know where you're not welcome and where you're welcome (Company F, CQ 67%, DC 83%).

Even though some companies think that consulting with the Aboriginal communities in regions where they are working has benefitted them, other companies have the opposite view. Two of the companies do not believe the new regulations will benefit their company, they are able to conduct consultation, but do so out of the fact that they must. Consultation is viewed as a hindrance. The said,

We benefit from the fact that we are not bad at it, I mean we have our connections with various First Nations so coming into those areas we already have pre-existing connections. That can help. I can't see us actually having benefit from this. We are able to do it, and we'll do it for a larger company, but no this is not a net benefit situation. This is a net hindrance, something else we have to do that interferes with the business of what we do which is mineral exploration. Yeah it does not help (Company J, CQ 80%, DC 71%).

No. It's just something we have to do. Our site, our main project is possibly gonna be an open pit under a road. I mean there're no burial sites under a road, there's no hunting that happens in the middle of the fricking town near the road. I mean it's basically a way for the provincial government to download some of its responsibilities to the private industry. So no we're not gonna benefit from it (Company L, CQ 69%, DC 75%).

## 2.0 Education

Different aspects of education were a reoccurring theme in almost all interviews. Most comments focussed on a lack of education in Aboriginal communities as being a hindrance to exploration productivity. I have broken education into the two following sub-themes:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Community Education	6	CQ 50-89 DC 25-76
Learning/Learning Curves	8	CQ 67-89 DC 14-75

### COMMUNITY MINING EDUCATION

One of the biggest issues that exploration companies were experiencing when consulting with Aboriginal communities is that the communities had very little understanding of what the exploration stage entails and how exploration companies function, especially from a monetary standpoint. Many communities believe that when a company consults with them, that company has millions of dollars in the bank and will be making a mine soon. There is a lack of education and understanding on the fact that exploration is merely looking for mineral deposits and that it rarely leads to a producing mine. The following quotes address this misunderstanding:

Part of the problem is that most of the communities and people involved have no understanding of the industry at all and the difference between mineral

exploration and mining. There's also a lot of groups, a lot of people, and this isn't just native groups, people have a misunderstanding that the only reason you're working an area is because you're gonna mine it. It doesn't work that way (Company A, CQ 83%, DC 71%)

We need to distinguish what's an exploration program that's grassroots to what is a mine. So you can go and you can poke holes and they want money but a junior doesn't make money. They spend it, so you're spending it in those communities where they can employ people. As opposed to a mining company that has a revenue, so there's a big difference (Company C, CQ 50%, DC 25%).

There's a real misunderstanding of how exploration works, we're not a revenue generating type of industry. We raise money and we spend money. We don't make money (Company D, CQ 62%, DC 40%).

So we have to educate the community on what our obligations are when it comes to being listed and being a corporation in Canada. And I think communities once they are informed of that go okay we get it now, that we aren't just a money pit and when we spend our money we spend it on finding that next mine so that the community can participate at a much longer project timeline, then just an exploration project which may run for ten years or so and then close up and go home (Company G, CQ 89%, DC 54%).

They don't know, they don't know what it is we do and it's something new to them so they have to try and educate themselves as well. And they have to go back to the community and go back to the elders and go back to council and stuff like that and discuss all that.

And a lot of it is about education as well. Something I really try and highlight when I'm talking to the First Nation communities is- mining has a bad stigma back from the 40's, 50's, and 60's, a really bad stigma, and a lot of them perceive mining as being bad. You know rappers of the earth and whatnot. – so you know it's also a part of our mandate to try and educate them in terms of the new regulation, in terms of what we do, in terms of what we do when we're done, the closure plans, if you put something in production, the water monitoring, all that stuff (Company I, CQ 86%, DC 33%).

Although some companies state that the communities they consult with are uneducated in regard to mineral exploration, Company K believes that it may be best to educate them through employment in the exploration stage itself. They said,

So yeah it seems like if a mining company is going there to stake a claim that all of sudden they've got millions of dollars in the bank. Well no, it's all speculation right. Until anything.....like they can't expect to get these big financial kickbacks

at early stages because these companies don't even know if there's anything there. It's all speculation.

So really I'd say in the early stages you could try offering employment or training as your best avenue as a company trying to do work because those are real things that you could probably train people, whether its prospecting or basic fieldwork. But you know down the road maybe you'll have an actual established program that you can prove that there's some resource there...that where I understand more consultation with financial kickback and stuff because there's something tangible that you can actually give them some kind of money (Company K, CQ 69%, DC 76%).

Training Aboriginal workers to assist in the exploration phase would be beneficial towards their education, but Company A states that they can only work for them if they get education from educational institutions first, otherwise they cannot hire them. They said,

So our work is very technical and until the First Nation people, the education most of them have is upgraded, they're not gonna get the higher paying jobs. So they have to train, have to go to school, have to go to university or go to something where you've got a training or skill that is useful. Education is key (Company A, CQ 83%, DC 71%).

## LEARNING / LEARNING CURVES

The concept of learning and the existence of a learning curve in the consultation process was a dominant theme throughout many of the interviews. Because these mandatory consultation regulations are so new (in effect as of April 2013), companies, Aboriginal communities, and the government have all experienced a challenging learning curve. The companies, however, are facing the steepest learning curve because some of them have never even communicated with a First Nation community, yet alone formed a relationship with them. This learning curve includes how to properly consult, what the expectations are, and learning by observation. A couple of the respondents explained how everyone is still learning about the consultation regulations; they said,

Everybody's learning it this year so there's a lot of—with the government people, with us, and with the native groups,- there's a lot of well what do we do here, why are we doing that, why don't we do this? It's a learning process for everybody; we're a small company we're trying to figure out...we haven't got any protocols written down (Company A, CQ 83%, DC 71%).

There's a learning curve on both sides y'know so you've started something new, industry is very adverse to new so they're kinda slow on the uptake. The main thing is that's it's only been in place since November and empowered since April 1<sup>st</sup>. I think over time it'll get refined and I think it will work as not a bad process. It'll just take time. That's the biggest thing, people don't like change and it's drastic change. We've been acting this way since...and all of a sudden you're telling us we have to do this differently. But that happens (Company F, CQ 67%, DC 83%).

Companies have had much learning to do when it comes to conducting genuine consultation and building trust with Aboriginal communities. Some companies realized they had learning to do and remedied this by attending cultural awareness training programs, being more knowledgeable of the Aboriginal history in their areas, creating awareness on racism, and visiting communities for a hands-on experience of Aboriginal lifestyles. This learning is shown in the following quotes:

We're basically charting new territory here.

We went through all the office staff and operational staff have been through cross-cultural awareness training programs. People are probably a little bit more aware of the reality and history and background of Aboriginal people in Canada and some of the challenges they've faced over the last several decades, the last century. So that was an initiative the company put together. And I think we're learning a lot more about, the management and everyone is learning about the perspectives of the communities, in particular their history with the government of Canada and things like that. How it plays into their approach to this type of development (Company B, CQ 81%, DC 72%).

The company on the other hand has learning to do as well. We have three First Nation people here in this office who are managing our consultation part and we're educating our own staff here and in Toronto about how best to engage with communities in a way that is respectful and responsive to not only the communities, but also to the corporation.

We have had round table discussions in our office. In Toronto whenever we get an article on First Nation issues that we feel is relevant we share that with the rest of the team in Toronto. And up in camp we have cultural awareness because at one point we had about 50% of our staff were First Nation or Aboriginal people. So we had to create awareness on racism, gender issues, so that people are aware what is correct and what is incorrect when it comes to workplace harassment and so on. Not that we've had any issues but we just want to make our staff aware of some of these potential concerns that we could have (Company G, CQ 89%, DC 54%).

We also took in some of the information sessions so I think that made it a lot easier. Where a lot of people I think they didn't. So when it comes time to do the applications or whatever I think they don't realize that it probably takes at least a month and a half to get your permit if there are no problems (Company I, CQ 86%, DC 33%).

It's beneficial to go to the community, to see what these people are living with, to understand their lifestyles and get a sense of what's important to them and what's not and what their expectations are. And that's the only way you can do it. So when you go through that process it's a huge learning process. And I think at the end of the day I think you have a much greater appreciation of the issues that these people face, and they're difficult (Company N, CQ 77%, DC 14%).

Companies have also had to learn that these consultation regulations and mandatory interactions with communities are not going to disappear. With the introduction of new regulations, some companies have been slow to respond, with many learning by observing the consultation activities of other companies. This is shown in the following comments:

So the guys that aren't good at, that don't have management that are good at it, are probably taking a step back, and are gonna watch other companies live and learn and make mistakes and then they're gonna figure if Ontario's a safe market to come back into. So that's kinda how we've seen it.

The mining industry, we're a very conservative industry, no one likes to go first (Company L, CQ 69%, DC 75%).

A lot of people, they try and push back on it, and they get a bit upset about it but that's not really doing any good because it's here. It's not like they're gonna take it away so the sooner people deal with it the better things will become. And the more accustom all the Aboriginal communities get used to dealing with us, the more streamlined things will get as well (Company I, CQ 86%, DC 33%).

I have already mentioned that there is a lack of education on mineral exploration in Aboriginal communities, and this is because they are also experiencing a learning curve where consultation is concerned. One respondent highlights that a community they deal with asks a lot of questions, not for the sake of dispelling any exploration that may occur, but because they are in their own infancy when it comes to learning about consultation regulations. She said,

The problem is, not just from our perspective, but obviously as a consultant I see other companies as well, we're seeing other companies where First Nations don't necessarily understand the process. So they aren't causing a lot of grief, but they're taking up a lot of time and energy with a lot of questions, a lot of requests for more information, and the government has tried to help us and has tried calling the First Nation to explain that we have done everything we are required to do. But it will either take time or I think my concern is that there will eventually be lawsuits. And I'm not sure who they'll be against, whether they'll be against the companies or the government.

I've called the government and the government's been pretty good on this particular issue and they've said "yes, this First Nation is struggling with this concept, we've been there a lot, and we called them when we had your permit, but we knew that this might be an issue" (Company O, CQ 86%, DC 29%).

Companies and the government are well aware of the fact that Aboriginal communities are struggling with the concept of mandatory consultation and the increased paperwork it entails for plans and permits. Aboriginal communities, just like the companies, are still learning how to deal with consultation and mineral exploration.

### 3.0 Community Interaction

In this section I address all sub-themes that occur through interaction by the companies with the Aboriginal communities. This section had the most reoccurring themes and they are:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Physical Consultation Practices	12	CQ 62-89 DC 14-83
Community Willingness	4	CQ 68-81 DC 56-76
Community Governance	8	CQ 50-88 DC 14-76
Trust	7	CQ 69-89 DC 14-78
Community Capacity	5	CQ 67-86 DC 33-83
Community Involvement	5	CQ 50-86 DC 25-71

#### PHYSICAL CONSULTATION PRACTICES

Exploration companies use a variety of methods to meet with, consult, and build trust in Aboriginal communities. There are a variety of different means at their disposal during consultation, however not every option is available in all circumstances. Companies typically phone, mail, email, fax, or visit, but it is different for each community and situation. While starting out many companies prefer to mail, email, and phone communities to establish a line of communication; this usually results in them visiting communities for a more face-to-face interaction. Face-to-face interaction is usually preferred by the community because it represents the building of a relationship, and not simply as business. The following companies tell of their consultation practices through phone, mail, and email:

So for our main project we've been talking all along on a regular basis with lots of meetings. And some of our marginal projects out farther from Thunder Bay we send regular updates by letters so that they know what we're doing and we're in the area (Company A, CQ 83%, DC 71%).

We've sent registered letters and we've faxed if we can find a fax number. We do registered letters so we know that they signed for it and we just say we're planning on doing an airborne survey, we might be doing some soil sampling, just being specific to the program. We're not looking for permission, we're just advising (Company D, CQ 62%, DC 40%).

A hurried study as an example we would be calling the communities, emailing the communities, and faxing the communities the information of what was going on to make sure the leadership was aware of it and whoever was the liaison officer was aware that this is what needs to be done. So our guidelines are get in early and often. We continually have dialogues with the communities. My staff are on the phone everyday with the communities. Absolutely every day and sometimes we hit every community at least once a week. Through phone calls, we can't always go up to the communities. We're respectful of not trying to overwhelm them with requests for meetings; we're trying to balance out our needs with the community's concerns of having too much on their plate (Company G, CQ 89%, DC 54%).

Personally, this is just my philosophy in business in general; I like emails because it's a written record of what people think. And you do have to meet in person periodically, but in this day and age it's much cheaper to write an email than spend a lot of time driving a whole crew of people around the province, and people can get their thoughts out and have it in writing to refer to, which I prefer in most business dealings.

I mean you always need to meet in person to sort of gauge who you're working with and what they're like, but I don't think every meeting needs to be in person at all (Company O, CQ 86%, DC 29%)

Other companies conduct their physical consultation through numerous meetings with community members, whether it's in the community or in their company offices. Almost all company representatives have no training in consultation so many of them do as best as they can with the knowledge they have. Some of their comments are below:

They come here to our office and we meet here. We've done it that way. Sometimes we'll do it in the morning and then have lunch afterwards. I'm doing the best I can right now without having any training in it (Company A, CQ 83%, DC 71%)

We've been out in the communities for over ten years talking about this project and we still just have patented mining claims, we've done some line cutting, we've taken a bulk sample (Company E, CQ 68%, DC 56%).

We consult through multiple visits. We visit the communities multiple times. It involves a few stages and they're not always identical. So there's like an introductory request. We've engaged a First Nation liaison who is a First Nation member and so he works here to assist in the engagement and to explain if there's misinterpretation. Sometimes there's a language technical uncertainty in the interpretation of what we're looking for and what we bring and the intent of the agreement. So the First Nation liaison officer that we have here brings engagement and certainty to their understanding so it allows us over the long-term to meet the terms of the agreement (Company H, CQ 82%, DC 78%).

We would go to the community; we would meet with the chief and the elders, and the representatives of First Nation. We would do a presentation to them; we would do a presentation to the community. We would provide that information in advance, we would work through the process where we would have an IBA, and you know we would also involve the government to keep them informed of what we were doing, but we also recognized that, under the law, they had the responsibility to consult (Company N, CQ 77%, DC 14%).

When I asked respondents whether they followed any guidelines or any type of framework during consultation with a community, the majority of answers were a resounding "no". Only three companies mentioned frameworks or guidelines and they are as follows:

The only ones that we have that guide us right now is our MOU, and that basically sets the stage for how discussions will occur and it basically says it will be based on respect and sharing of information and whatnot. We haven't even gone so far as to actually work through the legal documents. It's more like an agreement to sit down and raise issues (Company E, CQ 68%, DC 56%).

There are no templates right now and a lot of these communities- there's no record in the industry or the ministry of how this is working. I know the communities that I've dealt with where companies have been working there a long time, you can talk to them and find out from their mistakes so I think that's why in the future it's gonna get easier (Company F, CQ 67%, DC 83%).

We don't really have any set guidelines; it's more sort of a gut thing. There's a couple mentors that we do have that have a lot of consultation experience that are pretty successful working with some of these northern communities so he's sort of brought us under his wing a little bit. He's one of our clients so he's kinda helped us, greased our wheel, and we've helped him as well. I think the more personable you are, the more real you are, the more genuinely they're going to believe,

they're not gonna get the perception that you're following set guidelines for consultation 101 (Company K, CQ 69%, DC 76%).

Some exploration companies don't necessarily view consultation as a relationship building activity, but have a more business-like perspective. They don't believe how companies interact with communities is consultation at all. They believe that consultation is the act of going to a community to cut a deal with them in order to do work on their land. Even though some companies may view consultation as "making a deal," this does not negatively affect their CQ scores. They are well versed in building relationships with communities; they just interpret the term „consultation“ differently. One particularly vivid quote that a respondent said is the following:

It's not consultation, it starts with a deal. It's not at all about consultation. The First Nation wants to be a partner on the deal. It's actually consultation and accommodation. All it is is let's make a deal. Not just talking and promises.

There are no problems if companies reach an agreement and are willing to pay for it, then it goes. Nobody goes to consult, everybody goes to make deals. Deals may not be fair/legal. An election is a power shift. The way they understand power is how they deal with outsiders (Company M, CQ 88%, DC 14%).

One of the large problems with the introduction of the mandatory consultation regulations is that companies don't know how to initialize consultation or where to start. The first stop many of them make is to the MNDM office where they are given starting guidance as to what communities they must talk to. The following quote describes how a company first started their physical consultation:

What we did was when we started from ground zero we went over and talked to the MNDM, we asked them which communities that we had to talk to. So they kind of gave us a list. So we took the patient approach because we kinda knew early on that we don't necessarily have to rush things because that wasn't our main project. We knew that we could kind of take our time and I think it really paid off for us in the long-run (Company I, CQ 86%, DC 33%).

From all the comments on physical consultation, only two companies mentioned best-practice approaches to take. They said to be patient, even though it is difficult for an exploration company that is time-dependent, and to keep negotiations informal. They said,

Patience. Patience ends up winning out. You know you hear a lot about the companies out there that you know they go in, they slam their hands down on the table and say okay we wanna get in there right now so come on let's get an agreement. And it doesn't work that way (Company I, CQ 86%, DC 33%).

The more informal you can keep it, the better off you are. The best way you do it is to spend a bit of time to get to know that group. Have some meetings; lay out your projects for it. If you have a checklist then...the last thing you want is for them to hire consultants as well and then it goes downhill very rapidly. So we tend not to have a set procedure. We'll come in, we'll go up, sometimes for a fishing trip or two, you know this kind of thing. You have to build a personal relationship. And that is necessary.

We call the First Nation that's in that area and arrange a meeting, quite often the band council first, or even just the chief or an individual councilman. We do a first discussion of what we want to do, the area, try to figure out where their sensitive areas are, where their traditional boundaries are. Most First Nation will give you an idea of where they are, once you start talking to them. So you open discussions, you get some of their concerns back, you see if you can live with them. You come back, then make another meeting up, put forward your proposals basically and generally by the second or third meeting you start talking about some of the terms, and that can be some back and forth as well. That's really how it goes (Company J, CQ 80%, DC 71%).

## COMMUNITY WILLINGNESS

When interviewing companies about the consultation work they did, many companies felt the need to highlight that dealing with each Aboriginal community is completely different depending on what area of the province you are in. They explained that some communities are familiar with the mining industry while others are having a harder time adapting to mineral exploration. They especially highlighted that there are zones of willingness and zones of

resistance. Many companies do not view Ontario as one province, but instead as broken down into many different overlapping zones that represent Aboriginal traditional territory. Therefore, companies must address zones of willingness, while also accounting for traditional territory overlap. Respondents stressed that each community has their own level of how easy they are to consult and negotiate with. The companies explain that there are unwritten „go“ and „no-go“ zones for company acceptance throughout Ontario. Two companies explained some accepting communities:

You will have different needs from each community. They“ll have different wants from a project in their area, and things like that, and that“s natural. None of my colleagues have said they“ve had a hard time in communities. They don“t tend to get a lot of that (Company B, CQ 81%, DC 72%).

The communities we“ve dealt with are a lot more progressive because they“re all drive-in communities. They“re not isolated like some of the northern ones are (Company E, CQ 68%, DC 56%)

The next two respondents stress how each community is unique and describe the overlapping claims that are causing a patchwork of traditional areas that they must address. They also mention that if there is too much resistance to their exploration activities they will simply go elsewhere.

I mean some areas are really good like we have up at Mishkeegogamang, good relationship with that group. There“s one area too where it“s all one traditional area so that makes a big difference. Same with Tanaka, Lac Seul and Wabigoon, it“s also good there. But you get into some areas like GERALTON for instance where you could have a whole pile, or in the ring of fire you have multiple overlapping claims and you have groups that are not particularly friendly, then things can get ugly in a hurry.

So that“s really one of the issues, is the patchwork in Ontario and you have to know where you are in order to know what success you“ll have in negotiating an agreement. You won“t see anyone touching the ring of fire much these days, and for instance there“s an area around Trout Lake that“s just a no-go zone. Right where the government basically bought out God“s Lake Resources. And those are just no-go zones. The industry just knows not to fish and not to go there. There

are a few other ones that are also tough. So you have to know where you should go and that's something that I think the government should do better on. They do it unofficially, they'll tell you that this area's a little more difficult, but it's all under the radar.

So as I said you have to know where to work so we haven't had a huge issue with it. That isn't to say that I don't know some of my colleagues in the business haven't already, depending on where they are. So once again where you are, it's not one province anymore.

So that's what you'll see quite a bit is that projects, as soon as there's resistance with a junior, you just have to move to the other one, unless it's an extremely high value property (Company J, CQ 80%, DC 71%).

I think every project is gonna be different depending on where it is and what community. Certain communities are much more vocal and involved whereas other communities, such as around Fort Frances as an example, they're not as vocal and they're used to industry and stuff there; you know forestry and whatnot. But if you have a northern reserve where it's a fly-in community like Webequie well they're gonna know what's going on up there. People are doing work in their backyard, they're gonna know about it because everybody's flying into their community as the access point (Company K, CQ 69%, DC 76%).

Companies have had to discover for themselves where it is politically expedient to explore for mineral deposits, based on the willingness of the communities to interact with them.

## COMMUNITY GOVERNANCE

Respondents had many comments relating to the organization of Band Councils and how tricky it is to consult with communities, sign legal agreements such as MOU's, but then have a different council and chief in two years. Many companies have done extensive consultation with a chief and council, but then they believe all of their efforts were fruitless because what relationship they may have in place could disappear with the next election. Some companies commented that it was vital to form a relationship with the new chief as soon as possible in order to continue working. They said,

We have to make sure that every time there's an election and there's a new chief, that we meet the new chief because they may not think the same way as the old chief. And usually a new chief means a new council. Sometimes the old chief gets back in so the old council gets back in. So even though you've got an agreement you've gotta make sure that they understand and they know about what you're doing, otherwise you could have issues (Company A, CQ 83%, DC 71%).

So one chief may be really nice to deal with so you've got 2 years where you're gonna be okay but after that there's that uncertainty so therefore there has to be some concrete decisions made. There's got to be guidelines so that when the next guy comes in you're not gonna lose your claims (Company C, CQ 50%, DC 25%).

Three of the companies highlighted that when a new chief and council comes in, their previous legal agreements will not be upheld. They said,

When council changes what may have been signed or agreed to with one council may not carry over to the next council. When a deal is made at a table you expect both sides to be able to carry that out and there's a perception out there, and I'm not saying this will happen with every group, there's a perception that when there's a change in council that that agreement is null and void and it won't be followed through (Company D, CQ 62%, DC 40%).

I think one of the biggest challenges for sure is how the chief and councils change every two years. It's really hard to develop a relationship with a given reserve and spend all that time and effort and then 2 years later they have another election and potentially everyone changes and then you're almost starting from scratch, potentially a clean slate again. So that's one problem (Company K, CQ 69%, DC 76%).

Chief and council change; this is the only time in my life I've ever encountered the sort of scenario where when chief and council change due to election and they say well the old agreements that were legally signed, don't count. It happens all the time. Aboriginal consultation is the only time where you have the goalposts moving on you (Company L, CQ 69%, DC 75%).

Other companies report that they have encountered corruption. They explained that the money they gave to the community never actually reached members of the community; instead it is used mostly by the chief. One respondent said,

Most monies go straight to the chief and never reach the community (Company M, CQ 88%, DC 14%).

One company highlighted difficulties for the community with the constant change of chief and council. They made the comment that a council will become educated on what it is companies do and how to handle the consultation process, but when they are replaced during an election all that capacity is lost. They said,

Chief and councils change and there's not a lot of capacity that will be transferred over the years (Company E, CQ 68%, DC 56%).

Companies encounter all types of individuals when consulting with Aboriginal communities.

They often have very positive encounters, but they sometimes run into individuals that are more difficult to form a relationship with. One respondent said,

In one case I had a great relationship with a chief; he could see beyond a small issue here, he could see that if in fact this was done right it could indeed provide long-term benefits for people in the community who didn't have that opportunity.

I dealt with another chief at another community and he was young, on sort of a power trip, and it was a very difficult situation to deal with. And that's what you get into, and that's human nature (Company N, CQ 77%, DC 14%).

## TRUST

One of the most important traits of the consultation process is the building and maintaining of trust between the company and the Aboriginal community. Every company in their interview mentioned how important it is to have a level of trust with a community.

Through consultation activities, companies have realized the importance of building a relationship with the individuals and communities that they have contact with. By building a relationship and maintaining trust it allows consultation negotiations to proceed with far fewer issues than otherwise might be experienced through purely business-like negotiation. The following quotes highlight the need for trust:

Sometimes don't even do any business, just get to know the people then over time get more and more detailed with what you're doing. You've got to get to know the people before you can actually start working together properly. There's gotta be trust both ways and sometimes it isn't there until you get to know them. And that's how it started out with us; we basically treated them like we would like to be treated. So far it seems to work out reasonably well (Company A, CQ 83%, DC 71%).

To me it's, and I'm not sure if it's the right approach, because it's like a marriage, our relationship with communities is like a marriage. You go in and build trust and you build this relationship that eventually joins through some legally bound agreement.

And they have always said this at the Prospectors and Developers Association of Canada, don't wait for regulations or guidelines to come out, you know, everybody knows what needs to be done, and go and do it. And the ones that don't, well they run into problems and we've seen that in the news and we hear of it quite often where companies aren't able to advance their project because they have zero trust coming from the community. For their project or for their offices that are working there. We can't assume that they're gonna be supporting us 100%. We have to develop that support through building trust and by working with them, and by working with them consistently, often, in their communities, and speaking very open and transparently about the project (Company G, CQ 89%, DC 54%).

So it's more of a personalized arrangement between the parties. And the most important thing is build up a level of trust, discuss issues with them, deal with them fairly because you're gonna be dealing with them for a long time probably.

Yeah, no I mean its people. When you strip away all the layers that people pile up it still comes down to a personal relationship. I work with a community in Manitoba and we had a great relationship. And I've worked with other First Nations and that's the first thing, if there's no trust then all these regulations won't really matter too much. I mean they're there, they have to be there, etc, but it's fundamental human relations that is critical, and that's true around the world (Company N, CQ 77%, DC 14%).

One company explains that the best way to build trust is to visit the communities face-to-face and to be patient with them. Visiting face-to-face and addressing concerns they may have all build a stronger relationship. They said,

So I've found that they've been very receptive to us going up. And that's the main thing I find a lot of the time, they don't really want to deal with you by

email or by phone, they want to see you face to face and they want to get to know you. So it's almost like building a relationship.

But there are questions that they have and there's probably a little bit more of a frustration level that they have, but I think in the end they certainly appreciate that you go up and see them face to face and try and be honest with them and upfront.

I think that's the big part of it, actually going up and having face to face, and it's not really that far, it's only five hours from here so it's nothing for us to go up and hold these meetings.

You try not to push too hard, I always find that's the best approach. I find the harder you push, the more they're gonna push back in terms of not doing something. So again it's all about relationships, so if you build up trust with them then I find things go a lot better (Company I, CQ 86%, DC 33%).

One company states that if you always live by your word and do what you say; you will gain the trust of a community. They said,

We don't just say we're gonna provide jobs, we actually did it, stuff like that, so that was kinda where we started building relationships (Company K, CQ 69%, DC 76%).

Two challenges that companies mention are: having good faith efforts on both sides and building trust. There are many companies that approach consultation in a very business-like manner, but that will not build the level of trust that is often necessary in order to have good relationship.

They said,

Realistic timelines and good faith. And that's both sides. And that's not to say that the industry isn't also gonna try to hoodwink and what have you, but there has to be good faith efforts from some of these communities and that's not always the case (Company L, CQ 69%, DC 75%).

The biggest challenge I've stated a little bit and that is to gain the trust of the group and to gain the trust of the group you have to approach each individual and you have to obtain respect from that individual. And that's the biggest challenge, to gain respect you have to act consistently. And if you're inconsistent it will make the consultation process meaningless, ineffective, possibly will cease. And so to gain that, mining and exploration groups –and there are a couple that are doing it and they're quite successful I'll tell you that- but generally the other 80% of exploration groups they do not understand that. They believe that they have

through the original terms of the mining act full and active control of crown land, and that is an area of contention in the mining act. So they behave in that they are not required to consult.

But as we now know without consultation, and this will become more clear as time goes by, I suggest that the 80% or so of exploration companies that I was mentioning will shrink to something more like 40%. The others will learn it, but it's going to take that amount of time. It's not going away (Company H, CQ 82%, DC 78%).

Companies have found that trust and relationship building is based primarily on absolute transparency about a project, being honest and delivering on your word, and visiting with the communities face-to-face to address their concerns.

## COMMUNITY CAPACITY

With an increase in consultation activities, Aboriginal communities are receiving more paperwork than ever before. This paperwork is coming mostly from companies wanting to do work on their traditional land, such as exploration companies. The companies, although they want to get their work done in a timely manner, know that communities struggle with all the paperwork and severely lack the capacity to quickly process it. Their understanding is revealed in some of the following comments:

The chiefs and their people they work with and their councils are extremely busy people, amazingly busy. I'm amazed that they do as much as they do, some of the more active groups (Company A, CQ 83%, DC 71%).

If it's something new they have to get some sort of capacity to understand what the industry is about in some cases. And then they may get a lot more consultation happening than they've ever had before so they have to figure out how they're gonna, on the Aboriginal side, how they're going to build up to that volume of consultation. Usually they were used to consultation on bigger projects. Now they're getting consultation on a greater scope (Company E, CQ 68%, DC 56%).

The new Plans and Permits were created to allow the First Nations to comment. First Nations don't have the capacity to deal with the new paperwork so it throws

off timelines. Maybe 1 out of 20 First Nation communities have the capacity (Company F, CQ 67%, DC 83%).

Other companies explain that there's a big gap between the capacity of communities and the level that the outside world is already operating at. They also believe that their capacity will get better with time as they get more accustomed to dealing with exploration plans and permits.

They said,

My view on that is that the First Nation groups, they need assistance or should seek assistance, and I can't direct as to whether it would be medical, educational, life skills I guess, but there's a gap between their capacity and what the outside world is already active at and the levels they're active at. There's a significant difference (Company H, CQ 82%, DC 78%).

As the Aboriginal communities build their capacity I think you'll see less need to hire external people because the Aboriginal communities will be used to someone sending a permit or calling them up and wanting to talk to them about what they're going to do (Company I, CQ 86%, DC 33%).

Companies have a difficult time accepting the slow timelines that they have endure while consulting with Aboriginal communities, but many realize there's not much they can do about it due to the limited capacity of the community.

## COMMUNITY INVOLVEMENT

Often when an exploration company engages in consultation activities with Aboriginal communities they will utilize the resource pool of that community by hiring workers and offering training incentives. Instead of flying workers into remote communities to run drill programs in search of mineral deposits, many companies hire their workforce from the local community.

While consulting with the community on the exploration project, some companies will include the hiring of local Aboriginals as part of an agreement between themselves and the community.

Some communities will ask for financial assistance during the consultation phase, but instead

many companies prefer to hire and train locals to build their skill sets, and act as an alternative benefit to the community. The following quotes are examples of how companies provide jobs and training to some communities:

Although we pay better than most. We don't pay minimum wage for labourers, probably at least twice that. So at least they get paid better in our industry than you would if you were out there doing the labourer's job for a local contracting company (Company A, CQ 83%, DC 71%).

We trained them and then I hired them. And I believe that that's the right stepping stone. So I think we support the First Nations in giving them jobs, I support them by training them. That's how I support the First Nations.

We haven't really encountered problems because we work with communities so when I go into an area I will go and contact the local employment center or find out who has done the helper course and hire those guys and train them. Whatever I have to do to engage that local reserve so they know we're there and try and hire as many as we can (Company C, CQ 50%, DC 25%).

There are 4 communities that we dealt with and we actually tried to hire one from each community. The last thing we want is to go up there and hire two from one community. and none from the other ones and that'll I think upset the apple carts so we deliberately tried to hire one from each community (Company I, CQ 86%, DC 33%).

Some companies even sponsor children from the communities so they can participate in sports.

They said,

We try to sponsor at least 1 Aboriginal kid from the communities when we can. We always hire Aboriginal summer students from the communities (Company E, CQ 68%, DC 56%).

One particular company is working very diligently with communities near their project and are deeply involved in the community. They strive to enhance education for high school students, offer training programs, and have councillors to deal with various social issues. They said,

We were very very proactive in dialoguing with communities, engaging with communities, looking for opportunities for them to train and inform them of the potential and also the possible work they could be involved in.

So we actually are developing a plan right now that will actually have educational tutors at the camp for people that want to upgrade their...we don't have a baseline entrance for our projects...you gotta have grade 12. We understand there are a lot of skilled workers that don't have their high school. We wanna help them get their high school so that they can then take advantage of trades or some sort of advanced opportunities so that they can become more skilled and have a more involved career in our project. And we believe that will keep them in our projects. We've trained them then we'll keep them and retain them. As opposed to train someone and they'll go somewhere else for whatever reason. We've seen that in a lot of projects where we've worked around the world.

So what we're trying to do is create a loyalty that we help people. So we're helping them with their education. We'll have tutors and educators that will be on-site. We also are planning on having councillors, not only at the site, for helping people dealing with issues like addictions and so on, but we'll have programs set up in the community to help the families that are left behind, so to speak. On how to help with kids, dealing with the two weeks away from one of their parents, whether it's the father or mother, to help them adjust through that (Company G, CQ 89%, DC 54%).

Although many companies do provide training programs and hire Aboriginal employees from local communities, many of the companies simply do not have the capacity and funding available to do so even if they wished to.

#### **4.0 Operational Difficulties**

Many mineral exploration companies are responding quite well to the new consultation regulations, mainly because they were in contact with communities before it became mandatory to consult on April 1<sup>st</sup>, 2013. However, the level of consultation required under the new regime is much higher than what most companies were doing previously. This has caused several issues to arise for exploration companies, leading to operational difficulties. In this section the following themes will be discussed:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Productivity	11	CQ 50-89 DC 14-83
Timelines	10	CQ 50-89 DC 25-83
Challenges	9	CQ 62-89 DC 29-83
Company Consultation Capacity	11	CQ 62-89 DC 14-76
Additional Communities and Overlapping Claims	6	CQ 62-86 DC 33-83

## PRODUCTIVITY

With the introduction of the new plans and permits regime, companies have had to change the way they conduct their exploration activities. By having to consult with communities until MNM believes sufficient consultation activities have been carried out, many companies have had to restructure the timelines of their exploration season, and this has decreased the productivity of their company. The following companies decided to conduct work outside Ontario where they could forego consultation activities and spend more of their time drilling:

We've moved out of Ontario, we're no longer exploring here. Simple as that. We moved to California and Newfoundland. We have those projects that we're actively drilling right now. We have a number of projects in Ontario that have absolutely no money budgeted to explore right now. We are spending money, we've got a good treasury and we are choosing to spend it in Newfoundland and choosing to spend it in the United States (Company D, CQ 62%, DC 40%).

Well it has a direct effect on the bottom line. If our clients can't access the ground to do work then we don't do work either so we're increasingly trying to find business outside of Ontario. Purely because of this factor here. So it has a direct impact on us, us and our clients. You know the more difficult they make it; the more companies will flee the area. And unless they have an advanced project they're committed to it's very easy to sever the tie (Company J, CQ 80%, DC 71%).

Due to the slow nature of the permitting process and the lack of progress in consultation negotiations with some communities, some companies' projects have had to be put on hold.

They said,

The lack of progress in the processes that are in place here has significantly affected the progress of this project. It has basically all but been put on the shelf until these issues can be resolved (Company B, CQ 81%, DC 72%).

We had a couple programs stalled because we didn't have a permit. You won't find many people with active projects right now (Company M, CQ 88%, DC 14%).

The mandatory consultation regulations have slowed down the productivity of companies too and caused a decrease in workload. They said,

If it gets any worse, and right now it's a bad time, but people will get laid off because it's costing us too much money and we'll do less work. So everybody will lose which is unfortunate. It's a slow time for us, so even though it's costing us a little more because we're not working pure and simple on projects, it hasn't made that big of an impact. If we were really busy, it would really make an impact because of the time it would take to do it (Company A, CQ 83%, DC 71%).

I think in the short term, there's not a lot of work going on right now because it's pretty depressed but, in the short term it's gonna slow productivity down obviously. But once everybody gets on board it'll be a part of the business practice and things will kind of level out (Company F, CQ 67%, DC 83%).

It's had a significant effect. So even though our day to day productivity is still sound, the volume of work has dropped off by 70% and that has to do with the unfamiliarity, the out of pace and out of phase-ness that I mentioned, sort of the dissimilarities between Toronto/Vancouver mining sector owners and the reality that takes place in the ring of fire in the First Nation communities of Northwestern Ontario. All of Northwestern Ontario, Manitoba, and Quebec are the same. I mean we have offices in Labrador, in Goose Bay that deal with the Innu First Nation group there with the same concerns about transparency, honour, respect, understanding, engagement, fairness, growth, prosperity (Company H, CQ 82%, DC 78%).

Other exploration companies view it as simply an increase in workload that they did not have to do before. They state that the time which a project will take is out of their control. They said,

All I wanna do is put a few drill holes, that's all I wanna do. But then there's this whole process well you gotta plan this out months in advance. Time is of the essence and this is not productive (Company C, CQ 50%, DC 25%).

It's just increased workload that's all. I mean we've lost control over the process. I mean the timelines are somebody else's (Company L, CQ 69%, DC 75%).

Some companies believe that the introduction of the consultation regulations has actually eased concerns over working in certain areas of Ontario; by having to consult, there is no question of whether they'll be welcome in a particular area or not. Another company's productivity has been relatively unaffected by the regulations. They said,

I think it has helped in the sense that where we have applied for permits and gotten permits with no problems, it's eased concerns. And so it's made the process somewhat simpler (Company O, CQ 86%, DC 29%).

We've hit every target and timeline so far but we're coming up to much more rigorous events now, like the permitting of our project so we need to have our environmental assessment and environmental impact statements completed by the fall and then have them reviewed and approved. That is going to be the benchmark that we're moving towards (Company G, CQ 89%, DC 54%).

The productivity of most companies has been affected to some degree by the plans and permits regime. One of the largest challenges that they face, however, is the changes to project timelines.

## TIMELINES

Time and money are the two most important elements in the mineral exploration business. When companies have difficulties with one of these elements, it directly affects the other. With the plans and permits regime now in place, companies must wait at least 30 days after their exploration plan is circulated to communities before they commence any exploration

activities. Typically it takes a longer period of time if the communities have feedback on the plan or if additional information is required by the communities. Many companies view these time constraints very negatively; some of their comments are below:

It takes time to put these things together; it's a bit of a pain. It took about a month for us to put together all the plans and permit applications because we know what we want to do, but we don't always know if we're going to be able to do it – budgets and everything like that- but we still have to do the plans and get the permits. If we're going to be drilling or line cutting or something that needs a permit, it means we can't go ahead and do the work until the permit's been signed. They said 30 days was going to be the time frame; it hasn't been 30 days, it's been 3 months, so it was 90 days. So if the permit doesn't come through until November then you can't do it. Now permits are good for three years but the money you set aside may not be there next year to do it (Company A, CQ 83%, DC 71%).

Now I gotta wait another 40-50 days for this job to start, until she gets all the paperwork in. You know what I mean? To me it's bull...(Company C, CQ 50%, DC 25%).

What we have is 30 days. And then there's a 30 day window. And time is money in our industry right? Big time. So what if you were the proponent and I was the Aboriginal group and I dragged my feet for two weeks and that's fine but you'll have to pay for me to come down for the meeting and you have to pay for my food. When all you wanna know is just my opinion on whether there's any times of the week that aren't a good time for me to talk to you. It's kind of flipped all the power and the relationship. I mean, and again, in a context sense there's historical issues, but the pendulum has almost gone too far the other way (Company L, CQ 69%, DC 75%).

Many companies realize that getting plans and permits approved will take longer than 30 days, so they apply for them months ahead of time. Companies are still learning how the permit system works; this has often come as a shock because in their previous exploratory practices these permit timelines did not exist. They said,

There are timelines that affect our engagement now that we have to be aware of. I think that's probably the most critical thing that has to change for us, is that now we have to have a lead-time on engagement practices or information sharing with communities on certain activities that we didn't have to do before like exploration and advanced exploration. That was all based on just having a good relation with

the communities. There wasn't a timeline associated with it before then (Company G, CQ 89%, DC 54%).

There have just been minor things that we've changed. We do have to apply for permits now 6 months in advance (Company E, CQ 68%, DC 56%).

I guess our feeling is that you've just got to budget more time and just look down the road a little bit more in terms of preparations that you might wanna do, but it's just the way of doing things. We have a permit in place and the reason we have a permit in place is because we're proactive in terms of taking the patient approach with the First Nation communities and just with a bit of foresight if you wanted to apply. They wanted our application April 1<sup>st</sup>, we submitted our application at the end of January (Company I, CQ 86%, DC 33%).

It's not that they've said we don't want you working; they haven't said we object to it, they've just questioned a lot of stuff and wanted a lot of our time. But time is expensive and with everybody because this is so new it makes us nervous (Company O, CQ 86%, DC 29%).

Through consultation activities, companies have learned that the timelines they operate on and desire do not match those of the Aboriginal community that they are consulting. Companies want paperwork filed and agreements reached at a much quicker pace than communities can handle. Therefore, companies are struggling with the realization that when they want things done immediately, most Aboriginal groups simply can't operate in those timelines. The following statements highlight the differences in perceived timelines:

Most businessmen are used to making a couple phone calls and moving forward and when you're dealing with a community it's not quite as simple, things don't move quite the same. Different time scale and different understanding levels really (Company F, CQ 67%, DC 83%).

I believe the First Nation have a different concept of time and that is that- it's been stated to me numerous times is that the chromite or the copper or the zinc has been in the ground for eons, so it doesn't really matter if it comes out of the ground now (Company H, CQ 82%, DC 78%).

The only problem I've only encountered, and it's not really a problem, is that as a company we want things done at a certain pace and it's not always done at that pace. It's a lot slower than probably a lot of people would like but it's just the way of doing business right (Company I, CQ 86%, DC 33%).

Yeah I'd say the problems for us is really the pace thing, we're in white man's world and we wanna get stuff done and get it approved and let's get going, let's do this right now. I guess the word pace would really mean a different life view. They're not in a hurry. First Nations bands we've been dealing with aren't in a hurry. They really have to think through stuff, there are a lot of different levels in the community that these ideas have to get bounced around at. There are the elders, there are the councillors. We've been working to try and get some deals signed with some of these communities for over a year and a half and it still hasn't happened. We want it to happen ya know let's just do this, let's get it done, but it's so slow and that's the frustrating part (Company K, CQ 69%, DC 76%).

## CHALLENGES

Although productivity and timelines can be viewed as challenges for the mining industry, in this section respondents answered specifically what they thought the biggest challenges of consultation were. Surprisingly, almost all of the respondents had different answers. They ranged from overcoming old attitudes to who to contact in communities. Contacting communities to set up meetings can be an onerous task for many companies. In starting out they do not know who the best person to speak to about their project is, how to get the community members together for a meeting, or how to bring the consultation to the point of making a decision. The following comments describe these challenges:

There are many challenges. Contact in First Nation groups is very difficult even to...you know we had one experience where you send in a letter, it's signed for, you go there and they tell you that you never consulted with us. Well we have a signed letter. Well they can't find the letter, they don't know where the letter is. These communities can be remote so it can sometimes be difficult to actually contact them. And then the continuity of who's at the band office or who's at the reserve office (Company D, CQ 62%, DC 40%).

What you run into in consultation is you consult the wrong person, that could happen. The other end is that so you're told that you should be talking with the chief of the community, just on the First Nation side anyway. So you talk to the chief and you find out afterwards that you should have been talking with chief and council or the more you find out it's actually a community driven community, so you need to talk to the community. So you may spend a bit of time getting to know who you should be consulting with (Company F, CQ 67%, DC 83%).

Getting people together. It's extremely difficult getting three groups living in three different areas together for a meeting (Company A, CQ 83%, DC 71%).

So I think basically getting in, bringing consultation to the point of decision making is one of the largest challenges I think that we face (Company B, CQ 81%, DC 72%).

One company stated that the biggest challenge for them was getting their board to realize that Aboriginal consultation was actually a real thing, or else they could not raise any money. They said,

Money. Because it's another one of those things that's gotta be done. It took five years even convincing our board that Aboriginal consultations were real. Government has been able to run roughshod over First Nation's since they got here in 1592 or whatever and there's still that attitude of we'll just get them out of the way. Or we'll offer a couple of them a job and then that's all that's required (Company E, CQ 68%, DC 56%).

Another company stated that the biggest challenge would be building the capacity and education on both sides, in order to properly follow through with consultation activities. They said,

The biggest challenge is going to be the building of capacity on both sides so the Aboriginal communities understand what we do and as Junior companies they understand there's no income in a junior company, so it's not a cash machine. It's the opposite. It's a cash-out machine is what junior companies are. And on the other side of it is just the understanding that you have to consult with First Nations and understand the way you have to consult (Company F, CQ 67%, DC 83%).

Other companies believe the challenges are political and economic. They believe that communities use companies to bring political attention to themselves. They said,

Some of the challenges are political. Communities will stand up and say they don't want some things to happen because they're pressuring the province and the federal government to make changes. Sometimes it's economical. They want money from us to do a certain project related to our project or not. And asking us to fund it in whole or in part. So whether it's a suboxone program or whether it's an environmental studies program or traditional knowledge studies program that may or may not have anything to do with our project, but they want funding for it (Company G, CQ 89%, DC 54%).

A challenge that a company was very unnerved about was if a community was to deny them access to land they wanted to explore, and block them from coming back. They had this to say:

The biggest challenge I think, and we haven't come across it, the biggest challenge is if they didn't want us there. And how do you overcome that? And in the end I think that's where you'd have to get the government to kinda step in and show the way in terms of how to mediate that situation. Because in the end it is supposed to be the government's role, or duty to consult (Company I, CQ 86%, DC 33%).

Other companies viewed the lack of government involvement and lack of enforceable frameworks as a significant challenge. There is obviously a discrepancy between how companies interpret the treaties and how the communities interpret the treaties. Communities believe that they can completely deny an exploration company from coming on their traditional land; they believe they have to grant consent. Companies believe that they don't require the consent from a community, even if they have to put forth the effort to consult. They believe these are their challenges:

That there are no enforceable frameworks. There are these new consultations that basically said consult better. And when things don't go well they blame that we weren't adequately consulted, so this is the most abused term out there. And really at the end of the day the First Nations are demanding consent, whereas in the treaties it's not consent. It's that they need to be consulted and then compensated for impacts. It's not consent. They don't necessarily have a veto but they've been granted veto informally (Company J, CQ 80%, DC 71%).

I think the biggest challenges will be if the government chooses to back down again and say that it's gotta be between the First Nations and the companies and that we have to come to a resolution on our own. We've already seen several companies move out of the province, and in these times we'll see more. It's a perfect storm, realistically, with the mining downturn and with uncertainty of how First Nation relations are going to go (Company O, CQ 86%, DC 29%).

The MNDM was well aware of the issues that occur regarding the discrepancies in understanding of the treaties, and they know some communities will be welcoming whereas other communities will try and restrict all outsiders from their traditional lands. They said,

We know that there are communities that span the whole spectrum from those who would almost roll out the red carpet in hopes that they can have a continuing source of employment at some level for some of their people who want to be involved in providing the services that exploration companies need.

And the other end of the spectrum there are communities, for jurisdictional or other reasons, who simply don't want to see anything happen in their traditional lands without their express permission.

We don't require express permission. And there will be people who, because of the track record of companies and communities in the past, simply won't go and acquire ground, simply won't talk to some communities (MNDM, April 25, 2013).

Many of these challenges will solve themselves with the passing of time. Because the plans and permits regime has only been in existence for such a short time, it is still a learning process for every party involved.

#### COMPANY CONSULTATION CAPACITY

I previously mentioned that the majority of Aboriginal communities do not have the capacity to handle extensive consultation and paperwork; this is also true with the exploration companies I interviewed. Most of these companies are only composed of a few people, such as a president, vice-president, or manager. Many of these companies do not have anyone who is trained in consultation practices or who has extensive experience communicating with Aboriginal communities. With the introduction of the mandatory consultation regulations, many respondents (who are typically geologists) have had to chart new personal ground by learning how to create and maintain Aboriginal relations. The only experience many companies have in Aboriginal consultation has only recently been acquired through visiting communities as part of their consultation efforts. Most companies hire geologists and drillers to do mineral exploration; very few have staff and budgets dedicated to community consultation. The following comments show how some companies have little to no capacity to administer extensive consultation.

We're not negotiators; we're not community relations people. We used to have someone on staff but she moved to Sudbury so we lost her. Then we had 2 people in Australia that were dealing with it, one left and went to another company and the other got laid off. So we ended up with no one doing it in the company (Company A, CQ 83%, DC 71%).

We have zero capacity. We hire geologists and we go to the government and we have stakers that go and acquire land for us based on geological information and we stake it (Company D, CQ 62%, DC 40%).

Well to be honest with you Aaron, we don't right now. We're really short-staffed in the sense that there's myself and my co-worker who are sort of the mining manager guys, but like I mentioned earlier consultation is expensive and it's very slow. So right now we don't have that support, we need it, and we're trying to find funding for it (Company K, CQ 69%, DC 76%).

I'm the capacity, ME!! (Company L, CQ 69%, DC 75%)

No. It's just me. And we spend millions of dollars a year. Just me and the president are the capacity (Company M, CQ 88%, DC 14%).

We don't have the capacity; we're a company with two directors that aren't paid at all, we do all of the administrative work for free. We don't have the money or the time and energy to be going to visit the First Nation every time we want to be doing work (Company O, CQ 86%, DC 29%).

Many companies spend all of their money on physical exploration activities or on reports. They try and spend as little as they can on the actual consultation work. One company said,

We do have certain people designated for it but because of where we're at in the advanced exploration we gear up when we raise some money and then we spend it on engineering studies and assessment work and drilling and even our reports. Every time you want to do something it's a \$100000 report for this, that, and everything. So very little is actually set aside for First Nation consultation (Company E, CQ 68%, DC 56%).

Some companies commented on how little experience they had in consulting with Aboriginal communities. They also stated that it is difficult to attract someone who has experience to join your junior company because those types of individuals are rare and would be more attracted to the job security of a larger company. They said,

Yeah, time and resources, and also the expertise aren't there. Both of us are just too young and inexperienced with it. So we need to find somebody out there that has the experience that's willing to kind of work with us to help us achieve what we want (Company K, CQ 80%, DC 71%).

That's the biggest issue. 1- being able to afford to have someone full-time because you're always strapped for funds, and 2- ensure that person has that level of expertise.

It is really difficult because larger companies can offer some security of employment; a smaller company we're always going to market for funds. And recently, the funds have not been there. So a person who has educational background, the experience, everything you need to be effective, they're not attracted so some employment that may be uncertain. For example I may work this year, but not next year, so there's an issue there. And the other thing is that in general there's not a lot of experience beforehand, this is something you have to gain by doing it. You can read and go to courses and attend, but the bottom line is you really learn it by doing it. And to find people that have that background, it's not easy (Company N, CQ 77%, DC 14%).

Only a few companies thought that they had the capacity to handle extensive consultation work.

These companies either have a team to work on the consultation, or most of their consultation is done with band leaders meeting in their offices and not in remote communities. They said,

I believe we are reasonably well positioned to deal with it and we as a company have sufficient resources to be able to meet the need of whatever process comes about (Company B, CQ 81%, DC 72%).

Well we have a team in place. They've given me the leadership in the consultation side of things and I have two people who work directly for me and some other people who work kind of on the side and they're based out of Toronto and they help me out here. We juggle our roles a bit (Company G, CQ 89%, DC 54%).

We have a fair amount of experience in terms of dealing with all these issues, historically, and nowadays. So we do it all in-house and I think that's where it benefits you long-term. You do it in-house and you get to know all these people and they get to know you (Company I, CQ 86%, DC 33%).

Having the capacity to conduct genuine consultation varies with each mineral exploration company. The larger the company, the more they are able to have the funds allotted to consultation work, maybe even have a team dedicated solely for that purpose. For a small junior

company however, there is little to no capacity and very little money that can be spent on consultation activities.

## ADDITIONAL COMMUNITIES & OVERLAPPING CLAIMS

In order to properly consult with Aboriginal communities that may be affected by their exploration project, companies are told by the MNDM which communities they should contact. They usually have to contact all communities whose traditional territory falls on the planned exploration area. Because traditional territories overlay each other, companies may have a high number of communities to contact, even if those communities are far away from the exploration area. Some of the time companies also learn about communities that expect consultation from them, even if the MNDM did not originally list them as communities they should consult. What communities to consult, and how many communities to consult, is a complex and confusing aspect of consultation for many companies. The following quotes describe how confusing it is for companies to deal with overlapping land claims and numerous communities:

It's not always easy and there are so many different groups that have overlapping claims, they sometimes get pretty complex (Company A, CQ 83%, DC 71%)

I think the biggest challenge is that you have to go and you have too many different reserves and one project could have 8 different reserves that they have to consult with. And the guy could be so far away, oh yeah but we've hunted there so that's our territory too so they're overlapping and the mining companies, the juniors don't know who to contact (Company B, CQ 81%, DC 72%).

We have more communities now. We have communities that the government has asked us to consult with that we thought were a long ways out of our area of undertaking (Company E, CQ 68%, DC 56%).

Many of the companies don't know who to contact. The MNDM gives them a list of communities, but the companies say that it is really a best-guess scenario. They said,

The MNDM do tell us who to contact, but it's still very grey because you're dealing with groups where it is traditional territory and groups where their actual reserves are on it so it's a best case scenario they give us (Company D, CQ 62%, DC 40%).

The other consultation piece that you get into trouble is that you don't consult with all the groups that you're supposed to consult with because you didn't know; the government wasn't able to tell you who you should speak with. So you end up talking with one or two communities and as you move into the exploration phase someone shows up and says what about us?

A couple other juniors that I know of have gone into it where they physically can see the First Nation from where they're working, figuring that's the right one but as they progress down the working path they find out that there's another one, there's another one, and there's another one (Company F, CQ 67%, DC 83%).

Companies may be given large lists of communities they have to contact, but sometimes if they sit down with representatives from the communities or from Treaty 3, they can usually narrow the list down. This happened in the next example:

From that point MNDM gave us a list of communities that they thought we should consult. So we were given that list of 8, and Treaty 3 I thought was pretty good to deal with, and sitting down and talking with them. I think we saw eye to eye in terms of where we want to go.

We felt as a company that probably 8 is a little bit much in terms of dealing with the communities so we actually kinda discussed that with them and considered that some of them weren't really in our area. And they actually agreed with that and then we paired it down to 4 (Company I, CQ 86%, DC 33%).

There are many difficulties and unknowns about consulting with Aboriginal communities, and knowing who and how many communities to contact is definitely one of them.

## **5.0 Money and the Stock Market**

The survival of every junior exploration company depends on their ability to raise money on the stock market; this means they have a responsibility to their shareholders to spend the money wisely. Shareholders expect the money to be spent on exploring mineral deposits and

searching for the next big mine, not necessarily on Aboriginal consultation. The following sections examine how difficult consultation can be, especially during the time of a mining downturn, and how and where money is spent can make or break consultation negotiations. In this section the following themes are examined:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Stock Market Hardships	5	CQ 50-86 DC 25-72
External Resources	7	CQ 68-89 DC 14-72
Community Expenses	9	CQ 50-89 DC 14-83

## STOCK MARKET HARDSHIPS

The ability of an exploration company to provide genuine consultation depends in part on having enough funds to spend on visiting communities and hosting events as part of consultation proceedings. When it is difficult to raise money on the stock market their funding is significantly reduced; causing some companies to go out of business. By having less money, combined with the new plans and permits requirements, companies are struggling to balance the amount of money they spend on exploration and the amount spent on consultation. The following quotes give examples of how the stock market affects junior exploration companies:

A lot of the middle of the road companies like ours are having problems, and the big problem is that big companies are just having massive write-downs. It'll eventually come out of it; the cycle is usually 4 or 5 years. You'll have a big high where everybody is working, all kinds of projects are going ahead, lots of exploration is going on, and lots of development projects are going on. After that commodities drop, the ability to raise money disappears, the exploration comes to a standstill, the junior companies, a lot of them will disappear because they all depend on raising money on the stock market, and development projects will get shelved or completely canned. And we're in the middle of that right now. It's the

worst one is 25 years, so it's really scary. We're lucky to be working here (Company A, CQ 83%, DC 71%).

The markets are terrible so all these factors make Ontario NOT a good place to work in (Company C, CQ 50%, DC 25%).

Considering we're in a major downturn we've actually abandoned one project (Company O, CQ 86%, DC 29%).

One company explains how their company does not actually make any money; all they do is spend it. They said,

So you're looking at an incredibly high risk, low yield, incredibly expensive process. We spend money and don't make a thing. This company here, this subsidiary of our parent company, we're an exploration company, and we have no income. Our money comes from cash flow or from the market. The exploration budget is half of what it was last year (Company A, CQ 83%, DC 71%).

Other companies view consultation as a difficult expenditure and irresponsible spending of their shareholder's money. At a junior level they don't think they should be responsible for consultation because they view it as an expense they cannot afford. They said,

So taking what is a fairly small enterprise and suggesting that they should now spend a lot more money just on consultation is much more of a burden to them than something like this which is a multi-billion dollar investment and spend only ten million dollars on consultation. It's a whole different scenario (Company B, CQ 81%, DC 72%).

We could spend hundreds of thousands of dollars on consultation and we haven't put a drill in the ground yet? That's not responsible spending. Shareholders are gonna be mad.

My understanding is that it's about money. I know there are some cases where there are burial grounds and what-not. I know of companies that have hired archaeologists when they're very advanced and there's economic viability. There's no way at our level, if they told us they wanted to hire an archaeologist, we'd probably pull out of the job and say you know what economically that's not responsible spending of our shareholder dollars, we'll abort the project (Company D, CQ 62%, DC 40%).

The current stock market downturn, combined with increased expenses for consultation activities, clearly has many companies frightened and has forced them to spend much more time budgeting funding for consultation activities that they have not previously had to budget for.

## EXTERNAL RESOURCES

As part of the interview process I asked companies if they have hired any external resources to assist in consultation activities; many have hired consultants, but many have not. Quite a few companies hire consultants to mostly deal with the paperwork and report-writing that is associated with consultation and permit applications. Other companies do not hire anyone because they cannot afford it, or do not want a consultant representing their company in community negotiations. Because most exploration companies were already doing consultation work, they have been hiring consultants for years; it is not necessarily a change brought on by the new regulations. The companies that have hired external resources have this to say:

We have in the past yes. We used to have someone who was our front desk person, office manager, was also doing community liaison because she had some training in it and she was good at it. So that morphed into being most of her job at one point (Company A, CQ 83%, DC 71%).

Yeah we do it with consultants. I think we would've done that anyway- again it's not triggered by the change in regulations (Company B, CQ 81%, DC 72%).

Well one expert that we have hired; he has worked with Aboriginal issues and helped deal with governance issues and consultation and what-not in the past. So he's looked over the guidelines. He's the one who coordinated the whole project description being developed and the Ontario government's terms of reference (Company E, CQ 68%, DC 56%).

We also hire a consultant to help us with the consultation. Now they're not doing the work, we're still doing the work. They help us collect the data and put it into some sort of report that is readable and manageable (Company G, CQ 89%, DC 54%).

The following quotes are from companies who have not hired anyone to help in consultation.

They believe consultants are expensive and the chiefs do not want to talk to them. They said,

Haven't yet but going to yeah, gonna have to. I mean consultants aren't the answer to the problem right? Consultants are expensive, they're not in house, and fundamentally I can't have a consultant representing my company at chief and council. So there's very little that consultants can do. They can help give you advice, strategy, shit like that. Consultants can't actually do the heavy lifting, that's me. That's me and my staff, well my staff is one person (Company L, CQ 69%, DC 75%).

It doesn't work. The chiefs only want to talk to them. Maybe if you were a huge company (Company M, CQ 88%, DC 14%).

No, we can't afford that (Company O, CQ 86%, DC 29%).

## COMMUNITY EXPENSES

This theme is one of the most dominant in every interview I administered; it is also likely the most controversial. Because negotiations and agreements with Aboriginal communities are mostly confidential and because there are no laws restricting this, many companies report that communities demand money from them to access their traditional lands. Frequently the money is a cheque from the company, no questions asked; other times, companies pay for events in the communities. This monetary amount that is given to communities can be in the form of a percentage of their exploration budget, or a designated payment for every meter that is drilled. Companies dislike this demand for money, with some even calling it extortion. They dislike having to pay money to a community that may or may not be near where they are exploring, especially when they do not know if the money will actually benefit the community as a whole. Companies have difficulty dealing with this situation because many of them see it as the fact that they can pay a bit of money and drill all season, or not pay the money and possibly get no exploration work done. This is where many companies view the consultation regulations acting

as an effective veto by the Aboriginal communities. Only a few communities make monetary demands, others want jobs for their residents, and some don't ask for anything in return; it is very community-specific.

Many companies have been asked for a percentage of their exploration budget in order to go on the land. Some companies try and avoid this demand for money and any unethical behaviour by making all of their agreements public. They said,

And then there's the idea that some of the communities you're dealing with want something from you, dollar-wise, before you can go on the land. And that's the hardest part. In certain tribal council areas it's understood that they want x-% which is usually around 2% of your exploration budget. So that scares a lot of people but I mean there are a lot of companies out there that are paying it.

Some places it's by the drillhole, they want to be paid by the drill-hole or by the metre. And other times it's a percentage of your exploration budget (Company F, CQ 67%, DC 83%).

So companies- a standard thing that's going on is basically a 10% kickback on all exploration programs. So when you're a junior mining company, if you wanna go work in a band-access territory the only way you're gonna get up there is if you work with their approval, is if you give them money, a kickback of 10% of everything. So if you're an investor in that company, you own shares in company X, how do you feel that 10% of your investment right off the top is going to a landlord up there...just because. It's a tough pill to swallow so I think the government really needs to set some rules.....

Like I'm definitely not a really conservative kind of guy, but I do agree that something more, more clear policies about.....and defined numbers have to be developed and set as a rule across the board for all First Nations. Rather than letting these First Nations dictate their own terms (Company K, CQ 69%, DC 76%).

And one of this biggest issues as I'm sure you're aware of the foreign corruption legislation, like bribery. If you were to apply that to some of the domestic stuff going on it would look rather ugly. And so this is where you need to be very much in the open so we make sure with our groups that our agreements are public. A lot of them want it to be private. I disagree with that entirely, it all needs to be out in the air. Because right now there's a patchwork of very different deals done everywhere.

For instance one company had 2% of exploration expenditures, that is not universally adapted, and really I think is a rather bad way of doing it because it's basically cash, no questions asked goes to the community. That deal was done shortly after the KI decision where a judge said that 2% was a reasonable amount (Company J, CQ 80%, DC 71%).

Many deals do not happen between a company and a community without the exchange of money. There are also communities that won't consider it consultation until they receive some form of payment. This is shown in the following quotes:

Our consultation with one community escalated to the point where they were looking for money and they were giving us fines for going through property (Company D, CQ 62%, DC 40%).

The expectations from different communities are very different. Some of them want jobs and economic development, but with some companies some of them really just want financial kickbacks. I've seen it happen, I've been at a couple of meetings where the deal got done because certain stuff was said we'll give you this for free. Okay that sounds good let's do it. Whereas if that wouldn't have happened they probably wouldn't have gotten the deal done (Company K, CQ 69%, DC 76%).

Multiple Aboriginal communities will have meetings and they'll say "you can't consider this to be consultation until you pay us." And then the ministry will hold off on permitting which is not the intention of the new mining act or the consultation requirements. But there's a risk aversion from the ministry, Aboriginal groups understand that. I'm speaking in general now right. So there's this strategic decision made that it's a negotiation tactic that they can push for more money. I've had that happen to me at least twice now so far.

*Aaron: So they don't consider it consultation unless they get some monetary funding?*

Well I mean it's never couched in language like that, but that's the effective result. So a great example is that I called someone up and then he's like "so let me make this clear, this can't be consultation and I want you to have a record of that" (Company L, CQ 69%, DC 75%).

One of the largest issues companies are facing is that they do not know how to report these company expenses to their investors. All the money they have is supposed to be going into the ground through exploration and drilling, not for paying communities. Companies are not

supposed to pay for services non-rendered, but many of them are and do not know how to report it. If companies have to pay money, they want a defined set of rules so they can properly budget for it and are able to report it as a legal expense. They said,

I don't have any problem with First Nations getting money from revenue-generating exercises, but not from exploration. I don't think that that is right. I don't think it's right to force us to go to investors and tell them that we need money just to pay the First Nations to be able to look for something (Company O, CQ 86%, DC 29%).

The biggest conflict with dealing with First Nations is that when raising money it has to be spent in the ground. Nothing says anywhere about having payments for First Nations. So you can't tell investors. Most companies never tell the money that's being spent greasing negotiations (Company M, CQ 88%, DC 14%).

I think we need to go and set guidelines and because each reserve is separate and they have their own ideas of what they want, and everything else, it makes it very unfair for industry to try and work with that. If there's a set of rules for all of them it's gotta be a set of rules for all of them. No backdoor rules, and that's what the problem is.

The First Nations are protected; there are rules and regulations for the Toronto stock exchange and the rules and regulations that are in play where they cannot pay money for services non-rendered. They are doing it. How do they go and explain that to the shareholders? But yet they've signed a confidentiality agreement. The First Nations do not want the mining companies to expose that they've paid money for services non-rendered (Company C, CQ 50%, DC 25%).

A few of the companies that were interviewed were vehement that they had to endure extortion-related activities when it came to providing communities with money. They state that the mandatory consultation regulations have made their companies more vulnerable to „uncertain legalities.“ They said,

By pushing the companies to consult with First Nations you're opening the door to legal extortion. Some First Nations won't say that they've consulted until they get what they want. Many companies have left because they don't want to be exposed to the extortion and uncertain legalities.

Yes, it stops us from getting jobs done. The regulations don't change the fact that you have to go there and do a deal. Most demand 2% at least of your exploration

budget. The use of the word “consultation” is an insult to what is happening out there. Just a bureaucratic word. Legalized extortion (Company M, CQ 88%, DC 14%).

Many companies refuse to provide any amount of money directly to communities. Most companies would prefer to provide funding for specific projects such as healing centres or job training and education. They said,

I believe in giving them a job, education, giving them a future. I’m working for their future, for them to have a future. Giving them money is not gonna do anything. What does that do, feeds addiction? (Company C, CQ 50%, DC 25%)

The communities expect well, if you’re an exploration company then you’re mining so you have lots of money, and we get that all the time for community event support, whether its pow wows or healing weeks, or healing centres or wilderness retreat camps, school trips (Company G, CQ 89%, DC 54%).

So our personal guideline is that we won’t give any money and that we will always try and hire local First Nations” and we will train them on the job for reasonable things, but we will also fire them if they don’t do the job correctly. We apply the same standards that we do to our own employees (Company O, CQ 86%, DC 29%).

One respondent had a very negative view of providing money to communities. I asked them “*Do you think the FN need the money for capacity purposes to handle consultation paperwork or related activities?*” They responded:

Well I know some First Nations expect a junior to pay for that, and I know of companies that have paid for the First Nation to have a lawyer and have consultants to help them through the consultation process, but that’s very different from asking for a percentage of our exploration funds. In my mind, so no I don’t think that’s why they’re asking for money (Company O, CQ 86%, DC 29%).

A large uncertainty companies face centres around what money they are allowed to spend on consultation activities. Because the money they get from shareholders is supposed to be spent on exploration activities instead of on consultation and community expenses, they do not know how

to disclose these funds. What is more troubling to them is that the government does not back any measures that restrain communities for asking for money. They said,

You have your hard dollars and you have your flow-through dollars. Flow through is a tax deductible dollar that's supposed to be spent on the land. Supposedly we can use flow-through for some of the consultation but it's not really well-defined. And the understanding of what you have to report to your shareholders isn't 100% clear either. So a lot of companies will be making these payments and have an agreement with the community to make a payment of some sort and it's not always disclosed as clearly as you think it should be disclosed (Company F, CQ 67%, DC 83%).

The government didn't really seem to want companies paying communities; however, they are not backing any measures that would allow companies to get out of it either. Or to not allow them to happen. So the funds for access essentially are what this is, and that's where you can get into the racketeering, that's where many of the companies in the States have issues. If you are a director of a company in the states and you have a property up here and make one of these payments you could be taken to jail for racketeering in the states.

This is the thing, it's not all First Nation's are doing that. This is where you have to know where you are. What the main issues are is that there are no repercussions for them for doing so. So if you have a group that's misbehaving this way, there is no way that the current provincial government is ever going to enforce anything. So you're on your own, and that's where a lot of these different deals are being done. And until there's some law that everyone has to follow it's going to continue to be like this. And so, we're having a pretty frank conversation here, so bear that in mind. We need to see a set of legislation that allows for benefits to communities and it needs to be something that a company coming into this area understands. Because you know what, if it's 2% then you know that that's just the cost of doing business in Ontario. You've got another tax 2%. But what you don't know, and when it changes all the time, that's where there are problems (Company J, CQ 80%, DC 71%).

I struggled with the fact that I felt the government had unleashed the burden of responsibility onto companies which is unfair. Especially considering they gave no guidelines and they didn't out and out say that asking for money was illegal. And so a lot of public companies were put in a position where they were having to use venture capital to pay First Nations, which in any other country would be called bribery (Company O, CQ 86%, DC 29%).

One company suggested that by making all community payments public, it would save everyone a lot of time and money because it would settle out all the expenses that companies absorb. By

having it public at least everyone would have to pay the same thing everywhere, and there would not be as many backdoor, confidential deals. They said,

If companies had to report what they were doing it would become more consistent. Because right now the uproar usually is that they're holding me for ransom but the agreement that I have with the community has to be confidential. So you're not sure community to community what you're going to get yourself into.

Whereas if it was all public it would eventually settle out to be all constant which isn't good, like it's not good that we have to pay someone else to get on the land when the province told us we could go on the land because we have the claims. But, it would be a lot better off than staking a piece of ground then later finding out there's a group that won't let you on the land unless you give them 10% of your exploration budget. So how do you justify that to your shareholders? (Company F, CQ 67%, DC 83%).

A couple companies believe that instead of paying communities money to do work on their land, a tax or fee should be applied to the permits that would cover any community expense. In this regard it would allow them to budget their money with more certainty and avoid putting themselves into any unethical situations with community payments. They said,

I think the government could apply a tax to revenue generating activities and give some of that tax to the First Nations, the same as they do with the forest industry. I think asking for money at the point where it is exploration, which is not a revenue-generating exercise, is appalling. I think if the government expects something more than just a respect of that nature then they need to step in and be the go-between. If they ever expect money to be changing hands there need to be hard and fast rules about how much and when, because otherwise we're just working with an unknown and you can't ask a business to operate like that, with an unknown tax (Company O, CQ 86%, DC 29%).

Some of the big problems are the fact that mining companies are dealing directly with first nations. I think they need to separate so one of the things we were saying is that in the permitting stage put a fee on the permits. So instead of the First Nations asking the mining companies for money for certain things it's just here this is what you get. Eliminate that gap so that there's no engagement in that sense (Company C, CQ 50%, DC 25%).

It is clear that the mandatory consultation requirement of the plans and permits regime has pushed many companies into paying communities to work on their traditional land even if they are completely opposed to the notion. The problem is that there are no laws that dictate whether or not it is allowed to happen, and when it does happen, if there are any consequences to either party involved.

## 6.0 Concerns and Uncertainties

Throughout the interviews many exploration companies discussed what they believed the government was doing wrong or what the government needs to be doing more of in regards to the consultation regulations. They also highlighted that with the introduction of the new plans and permits regime, there has also been more uncertainty introduced. Many companies also mentioned that the definition of consultation is ambiguous, and that, when compared to the term „engagement“, they appear to be used interchangeably. These themes will be discussed below:

<b>Themes</b>	<b># of Companies that Discussed each Theme</b>	<b>Range of CQ and DC scores for each Theme (%)</b>
Concerns about Government	8	CQ 50-88 DC 14-78
Uncertainties	9	CQ 62-88 DC 14-78
Definition of Consultation	3	CQ 80-82 DC 71-78

### CONCERNS ABOUT GOVERNMENT

The concerns that companies have over the government are quite numerous, but the main issues that were addressed are that the government is not playing a big enough role in the consultation process, there need to be more guidelines and policies in place to protect the mining

industry, and that a standard fee or tax should be associated with each permit instead of having communities dictate their own fees. Many geologists and miners feel that they have been converted into politicians through their negotiations with Aboriginal communities. Many geologists say that they have had to forego searching for minerals and learn how to function in the political climate of Aboriginal relations. They believe the government needs to be more involved in the consultation process and lead by example. They said,

I think that the government has to take more of a leading role on it where they've been leaving it to the companies and First Nation communities to kinda hash things out. Where you know, I think the government has to lead by example. And I think they've been kind of negligent on that in terms of paving the way. Because say, look at British Columbia. They're probably in the same state that we are now in Ontario say 20 years ago and the government took the stance that we're gonna go, we're gonna negotiate with a lot of the First Nation communities and resolve the issues. So now it's a lot more streamlined process for them because they already have agreements now with them all. Because it's been in place for 20 years now. And that's the point that Ontario's becoming because Ontario is coming to realize that they are not really getting away from this so it's gonna have to get dealt with. A perfect example is the ring of fire. That's not gonna go until the government comes to the plate and sits down and negotiates with some of the First Nation communities.

I really believe the government has to be more involved and I think they've kind of stood on the sidelines. And I think them standing on the sideline has created a lot of, I don't wanna say animosity, but has created more tension that doesn't need to be there. It's all about respect and it works both ways (Company I, CQ 86%, DC 33%).

Some of the companies believe that the government keeps offloading their duty to consult onto the companies. They believe the government keeps standing on the sidelines and saying "try harder" because they are too frightened and risk-averse to figure out issues with communities themselves. Some of the respondents had some strong feelings on the subject. They said,

The duty to consult is the Crown's; the Crown has the right to delegate that duty. The Crown has never decided to use that duty. They have tried to delegate it as fast as they could anyways. So even though that's what's written it's never

actually been optional, however, the current political climate is to state that the government does not really want to handle it so they said the companies need to go do their own deal (Company J, CQ 80%, DC 71%).

Now section 35 is very clear that it's the Crown's responsibility, not the proponent's responsibility. But the provincial government has downloaded some of the operational work to proponents, but we don't consult. We don't represent the Crown in the right of Ontario or the queen in the right of Canada. We represent our shareholders and our company. We can engage with communities, we can't consult. The government, to be crass about it, the government's chicken. They don't want to make the hard decisions right so they avoid it.

The legislation says that we have to consult and engage and whatever. So they'll kind of be like well...until you have something in paper, you haven't. I'd say well we've tried, they'll say well keep trying. That's not an answer right. I've had one community say well we're not gonna sit down with you for another project until you pay for our lawyers, pay for consultants, and bring substantial resources to the tune of millions of dollars to the table. I just want to meet with chief and council.

Communities can change and drag their feet and drag their feet and argue and push. Great example, I went to brief the land and resource coordinator and manager, and 2 council members on a project, and a month later this guy tells me that chief and council still haven't been briefed and as a result they were really upset with me. But their protocol is for me to go through the lands and resources coordinator, so what the fuck am I supposed to do?! If I follow their rules I get screwed and if I don't follow their rules I get screwed.

And MNDM's advice is keep trying. Thanks guys thanks, that works really well.

MNDM is lacking BALLS! Plain and simple. MNDM is lacking balls. MNDM is unwilling to get taken to court, what it comes down to, they don't wanna get taken to court. I mean...public servants are by nature, a more risk-averse population, and Aboriginal consultation and Aboriginal relations are such a hairy hairy hairy.....they're so ugly. I use that like the concepts, not the people right (Company L, CQ 69%, DC 75%)

The fed's put it on the province; the province put it on industry. If we're gonna survive the province has to protect the industry and the province isn't (Company C, CQ 50%, DC 25%).

Other companies believe the government has to make the process more streamlined and set out more guidelines in terms of what exactly the companies have to do as part of their consultation efforts. The companies realize that you cannot follow a standard framework or rulebook when

consulting because every community is different, but they would like some increased regulations concerning the costs of community consultation. They said,

The government needs to streamline it so that the amount of bureaucracy we're dealing with is less. The problem is that the government tends to make more paperwork and bureaucracy than they do with refining it (Company A, CQ 83%, DC 71%).

They have to set out guidelines in terms of what's to be done. In terms of not leaving it to the companies to go in and create our own deals. It shouldn't really be like that. It should be like a standard set of regulations in terms of okay this is the way it is. You know when a company gets put into production, I don't want to say there should be a minimal threshold in terms of employment or whatever, but that's what some companies do. But I think that's the way it should be. I think the government should have certain legislation or certain rules in terms of the permitting process.

And don't get me wrong some of the government people are pretty good but it all starts in Toronto, it all starts in Queen's Park. It's not the local offices up here or whatever because they're all really good people, but it all starts with the Premier's office and the MNDM and stuff like that (Company I, CQ 86%, DC 33%).

Community education has also been mentioned by companies as an issue that needs to be addressed. They think people need to be more educated on what it is that junior exploration companies do. They said,

I think the government needs to step up and be more proactive in educating communities and people, not just first nations groups, but people out there just don't understand junior exploration versus mining. We expect the government to do the consultation, not us (Company D, CQ 62%, DC 40%).

I think the government does need to give juniors some more guidance or at least set some more clear policies because there's so much different interpretation by the different bands too right? I think the juniors have really been left out to sway in the wind right now too (Company K, CQ 69%, DC 76%).

A suggestion that one company had for the government was to have a single mining authority in each community for companies to communicate with and would act as the mining liaison for that community. They said,

If there's anything I'd like to add and that would be surrounding the desire for the First Nation groups, for themselves to continue to coordinate with themselves and form strategic and binding alliances so that there is a specific interface to engage with. It's difficult right now and that is one of the readily seen difficulties from the mining sector is that they don't have a single source to go to. So what I would suggest is that mining authority, so I suggest that might be MNDM in Ontario, create a mining development office, much like they did back in the 40's and 50's where they sent a nursing officer to the community. And that would be called a nurse and/or visiting doctors. I suggest that they do the same and create a mining office possibly in the band office, create a full-time liaison, so that the First Nation people have a First Nation member to go and see with their concern who will liaise with a full time or a visiting MNDM officer for that community only. One per community.

And the reason I say that's important is that if you have one for many communities there will be a distrust as to the evolution or pace or benefit that is imagined about another community with that same officer. So if you have separate individual officers and an office, they can proceed at their own pace and they can liaise back to the Ontario Government and that will allow the mining and exploration groups to interface and talk to. So there's a direct connection right down to the individual and it's a recognized path. From the First Nation member to the mining executive there's a clear pathway.

And I think if I had any suggestions I would urge the mining companies, the government of Ontario, and the First Nation group to see a pathway that provides for that engagement. Over the long term there may be some changes but over the long-term it'll allow the message to go in both directions. And that's what's missing right now (Company H, CQ 82%, DC 78%).

The final concern that companies have about the government is that they are being used as leverage by communities in order to get their concerns to the government. Companies believe that when communities stall negotiations, they are actually trying to attract the attention of the government so that some of their other social issues may be addressed. Companies had this to say:

The mining companies are still being used by the First Nation as leverage to get the government to come and sit down at the table and deal with the issues they really want to deal with. This is point of blockades and because they get ignored. The province isn't living up to its contract in land staking anymore. Government doesn't want to deal these issues and they largely get ignored. The mining companies are used for leverage (Company M, CQ 88%, DC 14%).

I've seen it in other situations where the chief decides to play the political angle and things are held up and nothing happens. And I saw it in Manitoba on one project, we were consulting and the Manitoba gov't did not do their part. The chief was a political animal and he wanted to use that to his advantage and that's exactly what he did. So here you have companies beating themselves up and laying out what to do, the process, and you have the chief who says well I'm gonna play this political angle because the government didn't do their role so nobody consulted us (Company N, CQ 77%, DC 14%).

## UNCERTAINTIES

Mineral exploration proponents despise uncertainty. Ironically, with the introduction of the plans and permits regime that requires Aboriginal consultation, there is more uncertainty than ever before. Companies are uncertain about many things, including, how timelines are affected, what rules govern community expenses, what parts of their budget can be used on consultation activities, and whether they will receive support from the government if they make a good faith effort to consult with a community, but receive no response. One of the biggest uncertainties is the timeline of a project. Projects are weather and season dependent so if companies need to do a project by a certain date, but consultation activities delay that, then companies get very concerned if the project will reach completion in time. Companies want certainty in their timelines, however, by having to consult communities, all certainty vanishes. The following companies commented on uncertain timelines:

The thing that's most important for any resource developer is some degree of certainty or at least reliability on time frame so that seems to be our largest challenge because you can't predict when the process will conclude. Uncertainty is the biggest problem and it's something that comes when you add new features to something like this, you change something, you add new guidelines, the first thing that tends to be compromised is the timeframe. Nobody knows how long it will take to work in a new framework. That itself takes some time to figure out (Company B, CQ 81%, DC 72%).

Companies are not able to guarantee to their investors that they'll be able to complete the program. So that diminishes the investors' confidence, therefore it diminishes the mining exploration companies' ability, therefore mining diminishes. And it's that re-consultation process that I believe needs to be firmed and solidified so that the investor can be told by the mining executive or board that they'll be able to complete their intended program. So that will bring a certainty or expectation of certainty to the investor whereas right now it's uncertain and that is affecting the amount of financing. So that's why you've seen a diminishment in the last 24 months in the ring of fire where we've gone from 35 mining companies to 5. And that's the reason. And I believe that the mining act needs to reflect that (Company H, CQ 82%, DC 78%).

You know what; this is the thing about industry and general but our industry as well right. We want certainty. If you tell me it's gonna take you 50 days, that's fine, I can plan for that. Don't tell me it's gonna take you 50 days and do it in a hundred days. Right? And that's what it is, that's what's going on right now.

Well the supreme court's come out with a whole bunch of rules but it's still so vague and the government doesn't know what they're doing and they're worried about this and that and the other thing. There's a ton of uncertainty and that's what industry hates more than anything else is uncertainty. More than anything else we hate uncertainty. Tell me how long it's gonna be, where it's gonna go, what it's gonna cost me. I need to make my decisions. Don't tell me you're not sure, like you have to think about it. That's where we're at right now (Company L, CQ 69%, DC 75%).

Companies commented that there are no clear rules or guidelines for consultation activities. This can be good and bad for companies. It is beneficial in the sense that companies can consult however they want and change how they do it depending on the community, but it can also be undesirable because there are no rules concerning the money that some companies give to communities. One company added to this by commenting on how there is no map showing where traditional areas are, so companies don't have certainty of whose land they are on. There are also uncertain access rules where some companies believe that they just have to inform the community they are going on their land; the community, on the other hand, believes they must grant access. They said,

For the consultation process we just wanna say “we’re going to be going on this land or in this area to explore, we’re just letting you know.” But there seems to be a perception that the first nations group needs to give us permission to be on the land when in fact we don’t; we just need to let them know and identify the area we are going to (Company D, CQ 62%, DC 40%).

Honestly you’re much better off to go negotiate a deal with various groups that are out there rather than trying to rely on the law essentially. So this isn’t something new. What I would say has happened is the politics of it have changed quite a bit. Before there was a bit more respect for the actual act, whereas now things are very much out in the air. You come into an area all bets are off kind of an affair. You’re best to ally yourself with them and then work with them together and that’s the way the government wants to see it happen but there isn’t a lot of rules that necessarily allow that to happen.

The fact that there isn’t a posted map of all traditional areas in Ontario also makes it difficult for companies to come in and say well I wanna go to this area versus that area.

Once you get to the actual stage of negotiating the MOU then you can start laying out some of the proposed work, this kind of thing, that’s what you can do when it gets a little formal. There aren’t any set guidelines like that. It’s more just being friendly and open. Sometimes part of it is educating them on exactly what you want to do. There’s a great spectrum of how familiar each community is with mineral exploration. So there’s no rule book for it (Company J, CQ 80%, DC 71%).

Exploration companies must consult with Aboriginal communities until the MNDM deems that they have shown enough good faith efforts to acquire an exploration permit. This is ambiguous however, because there is no measurable amount of good faith efforts that must be achieved, it is really based on the opinion of the MNDM. One company had this to say,

We’re working with MNDM to understand, for lack of a better term, when our good faith efforts are considered good faith efforts. Y’know it can be remarkably frustrating. It’s a big black hole (Company L, CQ 69%, DC 75%).

These good faith efforts raise another question for companies of what if the company makes many good faith efforts to consult, but the community does not? Companies need to show that they consulted with communities before they are given an exploration permit; if they cannot show this then they may not be able to work in that area. One company said this,

It's a good idea, a really good idea. It's meant to protect communities from someone just showing up or a fly-by-night to do advanced exploration, leave a whole bunch of bulk samples, y'know clearings, and just leave a big scar on the grass. I get that, I totally get that, on that perspective yeah that's exactly what the Act is supposed to do.

What it does a very poor job at though is...well what if a company makes a good faith effort and the Aboriginal community does not? There's no requirement for the Aboriginal community to consult with us. There's no requirement for them to engage with us right? Well it takes two to tango (Company L, CQ 69%, DC 75%).

Another uncertainty that companies face involves role responsibility. During consultation much of the time companies do not know what they are responsible for, what the government is responsible for, and what the Aboriginal community is responsible for. There are many unknowns. One company said the following:

There's often been a complicating factor in the sense that companies think the government is doing it and the government thinks the company's doing it. And I don't think that's been clearly defined. I think that's an important part of it.

I think the one thing that has been lacking, certainly in my experience and I don't know if it's still the case is a lack of a fair process with definition of roles of government and the companies and how they interact with each other and with First Nation communities, and who has responsibility for certain parts of it and how does that come together. I think that is the biggest issue I've seen. And then there's all this "while you didn't consult". Meanwhile there are companies in there consulting (Company N, CQ 77%, DC 14%).

Because of so much uncertainty in the Ontario mining industry many mining companies are staying out of the province or have left. Most are waiting for issues between the government and Aboriginal communities to be resolved before they consider exploring for minerals again.

We've noticed it, that companies are kind of withdrawing from Ontario because they're trying to figure out what this consultation phase is really gonna look like, how's it really gonna affect them (Company K, CQ 69%, DC 76%).

I won't create a project in an area if there are too many risks. Ontario, because of the First Nations, is a high risk area. Two main reasons a company will pull out-the risk, and they don't want to be exposed to extortion (Company M, CQ 88%, DC 14%).

Yeah less uncertainty and I think that's why some companies leave. Because they can see down the road that if some Aboriginal communities say "okay we don't want you there," what is the government gonna do? Is the government gonna stand on the sidelines and just do the BS they do sometimes? You hear the same thing all the time like "we're working closely with the First Nation or we're working closely with the company," but no they're not. That's just their standard whatever (Company I, CQ 86%, DC 33%).

## DEFINITION OF CONSULTATION

The newly introduced consultation regulations have many companies asking "what exactly is consultation?" The duty to consult with Aboriginal communities is the responsibility of the Crown; however, many feel that this responsibility has been offloaded to mining industry proponents. It seems that there is a general confusion concerning the difference between engagement and consultation. Many individuals use the words interchangeably. Issues arise though when a company is speaking with communities as part of their consultation obligations, but the communities consider it engagement instead, causing the discussions to not count towards the company's exploration permit applications. Some companies believe there is no definition of consultation, they said,

I don't think it's well-defined and I don't think it's well managed on the government side (Company B, CQ 81%, DC 72%).

What's the definition of consultation for instance? There isn't one (Company J, CQ 80%, DC 71%).

One company explained the differences between engagement and consultation. They said,

Consultation is the process where I understand the requirements, the hopes and intentions of what the First Nations expect. And the engagement is how you engage and continue the discussions that occur during the consultation. The engagement is the long-term act and behaviour, and the consultation is the intent and discussion (Company H, CQ 82%, DC 78%).

The representative from the MNNDM had a similar view concerning the differences between consultation and engagement. He said,

For us I think that if a company goes out and talks to a community, and they don't have direction from us, technically it's probably not consultation. It's probably also engagement simply because communities almost invariably when you sit down and talk to them say this is not consultation.

There's a history behind that, I suspect that if you actually look at what the courts consider consultation, engagement probably is the initial step, it's part of the process of information exchange which is the front end of consultation.

So in a real technical sense, I think when we direct a company to go and talk, when we've identified which communities we believe are part impartial of a project, that we're in lands where they undertake their traditional activities, then we've probably started the consultation process. Everything prior to that is probably engagement; I suspect it's a little of both. To a certain extent we use the words interchangeably but there's gonna be a bit of a morphing there (MNNDM, April 25, 2013).

Most companies share confusion on deciding what consultation actually is. They believe the government should have a more comprehensive definition of consultation and play a larger role in the consultation phase.

## **7.0 How Companies have changed the way they Consult**

The vast majority of companies I interviewed were already engaged in consultation activities before the new regulations made it mandatory, so many of them have not changed the way they conduct business at all. Only one of the companies I interviewed had no previous experience in consulting with Aboriginal communities. Most companies view the mandatory aspect of consultation as an unwanted burden because of the increased paperwork associated

with it affects timelines and budgets, forcing companies to think further ahead in their exploration prospects. They said,

What we've had to do is think a little further ahead. Exploration tends to be more fluid; you make quick decisions and react on them quickly. It means that we can't always do that anymore and it's costing us more money. We have to make sure our budgets have the money and time to prepare the plans. And then we have to wait. We haven't changed our policies in any way. We were already doing what they said we weren't doing. The only difference is we have to do the paperwork now. More paperwork for the government and for the native groups. We were already doing it so there was no change in that way (Company A, CQ 83%, DC 71%).

We've been doing this for years. I mean the regulations were imposed this spring of 2013 to bring about a mandatory requirement for mining companies to consult. Well we've been doing this for years. This hasn't changed because of that date so I don't know if I can answer the question as to how it's affected us. I don't think it's affected us except for how the mining exploration companies have seen this as possibly an impediment and then so they've withdrawn.

Well I think most companies were doing a lot of the work that is outlined in the consultation guidelines, the new policy now. But what I think it does is that it helps to coalesce exactly what it is the companies are doing in a formal way. But most of the companies were doing what needed to be done. There are always stragglers, the companies that because of their history, because of the work that they've done in the past, they may have felt that they shouldn't have to do it. But I believe most have budgeted a larger portion of their exploration dollars to community consultation, but they're just looking for ways of doing more effectively and without a lot of grief.

So I think that while it might have had an impact on some companies that are working in Ontario, I think for the most part, for our company we were doing way more than what the regulations require now (Company G, CQ 89%, DC 54%).

One respondent explained that there has been a fallacy that most companies were not communicating with the Aboriginal communities before accessing their traditional land, when in fact most were. They also stated that the regulations are only a large game changer for the companies that never previously did any consultation activities. They said,

A lot of companies were already involved in consultation. That was a bit of the fallacy that was going about it in the beginning is that there was no one doing this,

but there was quite a few companies that were doing it. So now what's happening now is that it's catching a few of them off guard because they were going about their business and not consulting at all so they have to kind of re-trench and figure out how to consult.

A lot of companies that were already working in near communities were already consulting. But now because it's become part of the plans and permits system itself, companies are changing. There are a lot of companies that flew under the radar and didn't consult and now they can't do that anymore so that's the big change (Company F, CQ 67%, DC 83%).

Some companies are annoyed at the new regulations because they were already conducting consultation work, but now there are more layers of paperwork and bureaucracy that they have to deal with. One company said,

We've been at it for a while and frankly MNDM's requirements just create more delays more than anything else. They haven't really changed things. It just takes longer to get the same job done now (Company L, CQ 69%, DC 75%).

Only one of the companies did not have much consultation experience and appeared to be the company having the hardest time adapting to the changing regulations. They dislike the consultation regulations and do not want to have to consult with Aboriginal communities. They said,

Well we started with the letters which was more of an Admin type of situation, making sure that we're on top of that. We've physically gone and visited a community and sat down and tried to get the chief and council to sit down with us, introduce ourselves. We had one of the three chiefs that were in the communities show up. That was one bad experience but that was enough to say thank you very much we don't want to do this (Company D, CQ 62%, DC 40%).

It is clear that most exploration companies have at least a few years of experience in Aboriginal consultation. The most challenging aspect of consultation to them is that they now must formally document and submit paperwork on their consultation activities. This has forced them to plan projects far in advance and has greatly affected their exploration timelines.

## CHAPTER 6: DISCUSSION

Company opinions over the new regulations are mixed, ranging from annoyance and anger to acceptance and delight. Eight of the exploration companies interviewed in this project exhibit annoyance about having to follow the new consultation regulations, six of the companies hold very neutral and reserved views towards them, and only one company sees them in a purely positive light. Annoyance and reservation of opinion does not mean that companies do not view the regulations as beneficial; for example, companies I, H, L and O exhibit annoyance of the regulations, but believe them to be a necessary and progressive step forward for Aboriginal involvement in the mining sector. They mainly view the regulations as an added expense, increased paperwork load, and a hindrance to project planning and timelines. Many companies conduct the consultation work because it is part of doing business and they are required to do so. Some companies believe the regulations have drastically hurt their company's productivity, while other companies state that the regulations are illegal. Even though most companies do not enjoy the increased workload associated with the new plans and permits regime, almost all companies (13/15) do believe that the regulations are a step in the right direction for Aboriginal involvement and a more progressive way of conducting business.

It is quite clear that companies are struggling to follow the plans and permits requirements, but it is evident from the comparatively high CQ scores that they are accepting the idea of consultation. Companies with high CQ and DC scores are learning more about Aboriginal culture to meet the new requirements, and are developing their skill sets to respectfully interact with Aboriginal communities. The more CQ a company has, the more likely they are to view the consultation requirements in a positive light. Companies I, H, and O had

positive opinions of consultation and scored above 80% for CQ. These companies also have low DC scores because they have not had to drastically change their business practices in order to comply with the new regulations.

Companies A, C, D and J have negative opinions of the new regulations (as seen in section 1 of chapter 5). But they do not necessarily have low CQ scores; their scores have a wide range from 50% to 80%. Therefore, if companies have positive opinions of consultation there is a high chance a company will have a high CQ; but if companies have negative opinions of consultation it does not necessarily mean they have low CQ.

Education was a theme in most interviews (12/15). Respondents believe that Aboriginal communities do not understand how exploration companies operate; this reported lack of community knowledge leads to misunderstandings concerning mine creation and its comparison to mineral exploration. Companies, communities, and the government are all experiencing a learning curve with the new regulations. Companies and communities are trying to figure out how to communicate and manage paperwork effectively, and the government is learning how effective the plans and permits consultation requirements are. Many companies are charting new territory by consulting with Aboriginal communities; building relationships with them has been a learning experience for all companies involved in this project. Many of the companies with high CQ scores (such as B, G, and I) participate in cross-cultural awareness programs, round table discussions, and government information sessions to better educate themselves on Aboriginal engagement. These companies have enhanced their knowledge of Aboriginal history and customs in order to communicate more effectively with communities. Some companies are enhancing their capacity to engage with the communities by giving information presentations to

ease any misunderstandings, and by educating community members by hiring them for exploration work.

Companies engage with communities using a variety of methods such as telephone, mail, email, fax, and face-to-face meetings. Each community uses different methods of communication, but face-to-face meetings are usually the community's preferred choice. Each Aboriginal community differs in its willingness to consult with exploration companies; some are quite welcoming and wish to use the exploration company as a source of employment, whereas other communities do not want any companies exploring on their traditional lands at all and dismiss all efforts at engagement. One main issue companies report confronting is that they must work in the political structure of the community. Companies may establish relationships and sign agreements with chief and council, but after two years an election leads to the selection of a new chief and council and all previous agreements may be deemed null and void; this forces companies to re-establish agreements and build new relationships. Companies (such as Company A) that have high CQ scores know that in order to continue work they must meet with new chiefs immediately and inform them of their project. This decreased the likelihood that old agreements will be disregarded. Companies with high CQ scores were likely familiar to the community due to previous visits; this may have allowed them to receive unofficial support from important members of the community. This could have eased company relations during the election of a new chief and council.

Before companies are able to get their consultation requirements approved they must build up a relationship with communities; they are doing this primarily through gaining the communities' trust. By visiting communities, being truthful and open about projects, and

through continuous communication, companies are gaining the trust of communities; this enables them to have a smoother working relationship and unhindered exploration. Companies that scored higher in CQ typically had better approaches to relationship building with communities, some saying that working with a community is almost like a marriage; you build trust and eventually join in a legally bound agreement. These companies with high CQ scores were also more involved in the communities they consulted. Companies with high CQ scores did more hiring of workers from communities, sponsored children for sports teams, sponsored community events, and offered various training programs. The amount of community involvement is dependent on how much money and resources companies have, so even though a company may have a high CQ score, they may lack the resources required for extensive community involvement.

The introduction of the plans and permits regime has forced many exploration companies to restructure their project timelines and has, according to companies, been partially responsible for an industry-wide decrease in exploration productivity in northern Ontario (the other major influencing factor being the global decline in the commodities market). In order to save themselves the time and money associated with consulting Aboriginal communities, some companies have decided to conduct their business in a different province or have moved out of the country altogether. Other companies have had many of their projects put on hold or stalled due to the lack of progress in their consultation negotiations and limited funding. Exploration companies are quite risk-averse when they are dealing with numerous uncertainties, particularly political turmoil. In order to avoid the political climate in Ontario many of them appear to be playing it safe; they either continue working on pre-existing projects or work out of province to wait and see how other companies handle the consultation regulations. Companies that have low

CQ scores (ex. Company D) or have high DC scores (ex. Company J) are typically the companies that either move out of the province until political turmoil between the government and Aboriginal peoples calms down, or sit off to the side to watch and learn how other companies successfully conduct consultation.

Due to the length of time it takes for an exploration permit to get approved, project timelines for companies have been significantly lengthened by the regulations. Companies have learned that they must now plan months in advance in order to allow sufficient time for permits to be approved and for any consultation to take place. Some companies now plan up to 6 months in advance in order to guarantee their exploration projects are able to be completed. By planning this far in advance, companies are forced to budget for exploration projects that may or may not occur; the viability of these projects can be at the mercy of consultation proceedings and the ease of permit acquisition. Most mineral exploration companies do not have the capacity necessary to conduct extensive consultation. The amount of capacity a company has is tied directly to how much money that company has to spend and how large their company is. A company may have a very high CQ score and a very low DC score, but that does not mean that they have the capacity to handle Aboriginal consultation at a truly meaningful level. Many companies consist of only a few individuals, with only one of them responsible for consultation. Some companies have hired consultants to assist in consultation, and the larger companies may have a small team devoted to it, but the majority of companies cannot hire anyone or form a team because they do not have the money or resources to do so. The individual responsible for consultation must build up their own knowledge and capacity for Aboriginal relations, and if they want any training and experience on the matter, they must seek it out themselves.

Over the past year the mining industry has experienced a large downturn due to low commodity prices on the stock market. It has been extremely difficult for exploration companies to raise money, with many either going out of business or having their budgets significantly reduced. With less money and the introduction of the new plans and permits regime at the same time, it has been very difficult for many companies to conduct extensive consultation. It costs money to fly to communities or host meetings with Chief and Council and for the most part companies accept this expense. What expenses they take issue with are when communities demand monetary payment to go on their traditional lands. Many companies are asked for prescribed amounts of cash, others are asked for a certain percentage of their exploration budget. Each company is dealing with these community expenses in their own way, with many setting company policies on the issue. Some companies cut a deal and pay as little as they must in order to explore; other companies have unwritten rules and ethical concerns where they do not negotiate any monetary proceedings and if a community does ask for money, they look for work elsewhere. Companies do not know how to report these expenses to their shareholders because there are no clauses for community expenses; this causes insecurity for companies and broaches the subject of uncertain legalities.

Companies have many concerns about the government about the new consultation regulations. They believe the government is playing a very passive role in the consultation phase. They think that the government needs to be more involved and conduct more consultation themselves, instead of simply offloading it onto the companies to try and figure out. They argue that the government has not provided any guidelines or direction on how to consult, when consultation efforts are deemed worthy of a plan or permit, or what happens if communities refuse all consultation efforts. Companies are very worried that they do not have the

governments" support when consulting with Aboriginal communities. They worry what repercussions there will be if they are denied access to land, if they make good faith efforts but the community does not, if the community demands money from them, and if they report community expenses and „extortion-related“ activity to investors. The government needs to create more regulations that govern all money-related activities that may occur between a mining company and a community. Companies do not want to pay communities anything, but if they must then they want a designated amount for all communities that they can budget for and avoid any backdoor, legally-questionable dealings.

By making consultation mandatory as part of the plans and permits regime, companies have had to make small alterations to the way they operate. Most companies were conducting some form of consultation and engagement activities with communities prior to the empowering of the regulations. For many companies, they have not had to change the way they consult; they have just had to extend all their project timelines in order to allow a sufficient period for consultation and permit approval. Consultation does not come as a shock; it is simply a burden in terms of timelines and other expenses.

## THEORY & FRAMEWORK LIMITATIONS

CQ measures a person"s capability to function effectively in cross-cultural situations; and DC represents a company"s ability to integrate, build, and reconfigure internal and external competences to address rapidly changing environments. It was hypothesized that companies that had high scores in both CQ and DC would have more effective policies for engagement and do more consultation work. For Cultural Intelligence this hypothesis appears to be true. Companies that had higher CQ scores gave more examples of how they were involved in the communities

they consulted, and had more progressive views towards Aboriginal involvement in the mining industry. The companies that had low CQ scores typically did not agree with consultation, were not actively participating in communities, and were consulting at a minimal level compared to those with high CQ scores. Another limitation is the small staff numbers which can create difficulties in accurately assessing the CQ and DC of an entire company. The companies could not hire staff with expertise in this area to help them consult, so they were limited in developing their CQ to training themselves in many cases. One possible weakness in the use of the CQ and DC scales is that respondents determine their own test scores. This could enable the respondent to provide answers that may present their company in a more progressive and positive light by boosting their scores. Although this weakness is available, most respondents appeared quite genuine in their responses.

The DC framework that was applied in this thesis did not prove very useful for testing the hypothesis. The DC framework operates on the notion that a company will only be successful in a changing environment (new mandatory consultation regulations) if that company undergoes change to suit the new environment. It does not, however, factor in that a company may already be doing what it is supposed to be changing to do (Aboriginal consultation). The DC information we gathered in this study did reveal how much some companies had to change, but it did not address those companies who did not have to change because they were already doing it. The framework would label companies that have low DC scores as unsuccessful in changing environments, when in fact they are more successful than the others because they have not had to change. DC did not work very well in this study because this study is a snapshot in time; DC needs to be applied over a much longer timeframe in order to be of any significance.

Even though DC scores were not related at all to company size, a lack of resources presents problems for small companies because they either do or do not have the skills required for consultation. The amount a small company will be able to change and/or have successful consultation, directly depends on the personalities of its few staff members. The personalities and past behaviours of these small companies can better predict their adaptation to the new regulations. If the president and vice-president are able to quickly change and consult with Aboriginal communities (if they have not already been doing so) then it is much more predictable that their engagement and consultation efforts will be successful, meaningful, and beneficial to both parties involved.

## RECOMMENDATIONS

Many of the ways to improve relationships between the mining industry and Aboriginal communities are already known, but have not been acted upon by companies and the government. For consultation to be successful, companies must start engaging with communities as early as possible, and through constant open communication (once a week at least) they must build up trust in that community. Companies should be very forthcoming with all aspects of their projects, listen to and address any concerns that may arise, and be patient with communities. They must represent themselves by standing by what they say and being true to their word if any promises are made. Face-to-face visits are vital for forming personal relationships with communities, but ongoing engagement will work through telephone as well.

The government must also play a larger role as part of their duty to consult and accommodate. They may give companies some direction and are attempting to build capacity in the Aboriginal communities, but they must become more involved. They must influence

negotiations and consultation that occurs between industry and communities by setting out clearer guidelines to what the company and the community have to do. All three parties must work together in order to understand how best to carry out mineral exploration on traditional Aboriginal lands. According to company respondents, the government has not provided enough guidelines or direction for companies and communities in the consultation process. The government, Aboriginal representatives, and the mining industry must work together in order to address the numerous uncertainties that are present in mining sector-Aboriginal relations. They must address:

- Communication issues
- Land claim and traditional territory overlap issues
- Unregulated community expenses
- Insufficient community and company capacity
- Community power to informally veto exploration activities
- Council elections and the honouring of agreements
- Defining consultation and „good faith efforts“

Defining roles and responsibilities and lessening uncertainty and misgivings will only be possible through the collaborative efforts of the government, the mining industry, and Aboriginal band leaders. If one of these parties is left out of the decision-making process, any new policies and regulations will be missing a key element of understanding and input.

## CHAPTER 7: CONCLUSION

The goal of this thesis was to examine how companies are consulting with Aboriginal communities and the challenges they are facing with the mandatory consultation process. Four research questions were utilized to fulfill this goal by examining: (a) how companies are coping with the new rules of Aboriginal consultation, (b) how companies are enhancing their capacity to engage Aboriginal communities, (c) how companies are operationalizing their engagement strategies, and (d) what are the relationships between a company's approach to dealing with the new regulations and that company's scores on the CQ and DC scales. Based on these objectives it can be concluded that, even though companies have had to extend project timelines, spend more money, and process more paperwork, they are coping relatively well with the consultation requirements. Many companies are relatively comfortable communicating and building relationships with communities, even if the process of doing so presents numerous challenges. Companies are not necessarily expanding their capacity to engage Aboriginal communities, but rather are focusing resources on documenting their engagement to fulfill permitting requirements to the provincial authorities. Companies do not have a problem with consultation or working with First Nations groups, but they are unhappy with the flawed process that has been imposed on them by the government. Their paperwork load has increased due to the plans and permits regime, but because most companies lack the resources to hire extra consultation assistance, that just means the same people who have been operating the company for years have a much greater workload. Companies are operationalizing their engagement strategies as best as they can with the resources available to them. Often if a company has more resources, it is much easier to conduct consultation activities. Companies will expend as much effort and money as they can

possibly spare in order to consult with Aboriginal communities, but consultation is viewed primarily as just another part of doing business and an added expense.

Measuring the CQ of a company is very difficult to accomplish using a scale based on individual representation. The scale used in this study provided a good representation of the company's CQ because it was administered mostly to the presidents of very small companies (usually 1-5 employees). If you started to apply this type of scale to large companies (10+ employees) who use many individuals to engage with communities, it should be administered to many more employees from that same company to get a better company-wide CQ representation. The DC scale was a useful comparison tool to the CQ scale in this study, but it needs to be applied to a company over a longer period of time; this study only represented a snapshot in time. Using this type of DC measuring technique would also benefit from having a much more developed Likert scale with which to measure respondents' answers. One criticism of DC that was stated in chapter 3 is that there are „unclear practical applications.“ This study disputes that statement because even though the effectiveness of the scale to measure change within a company is limited, it is a useful tool for providing an overall understanding of how the system of mining company consultation has improved. It reveals that there is change occurring as a result of the regulations; a change that leans heavily in favour of increased consultation and Aboriginal participation in the mining industry.

These regulations are meant to improve recognition of Aboriginal and Treaty rights and allow the Aboriginal communities to be informed of any mineral exploration activity that may occur on their traditional lands. I do think that these regulations and policies will improve exploration company relations with Aboriginal peoples because it forces the two parties to get

together and build a relationship. It helps break down communication barriers that may exist between the mining industry and the Aboriginal peoples. Even though that barrier is slowly dissolving, the regulations and the intent of the regulations are still inherently flawed because one barrier still remains; that barrier is in front of the government. Government participation and regulation is still a missing element in all consultation proceedings. Through the regulations, the government has given rules and policies to companies, but has not given any rules and policies to the Aboriginal communities, even though they represent half of the consultation process. The government is attempting to increase capacity in many communities, but they must regulate interactions and deals that occur between mining companies and communities; they must be at the table as well.

For future research in this field I would recommend a similar study from an Aboriginal community's perspective. It would be beneficial to see how they view the attempts by the mining industry to engage them and what type of roles and responsibilities they have as part of the consultation process.

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## Appendices

### Appendix 1: Interview Questions for MNDM Executives

- Can you tell me about the new regulations and MNDM's role?
- Will the MNDM be providing specific guidelines for exploration companies to follow regarding the consultation process?
- What problems do you expect both Mining Companies and the MNDM will encounter during consultation?
- How has the MNDM had to adjust to accommodate for the new consultation duties?
- What are the biggest challenges of consultation for the MNDM and exploration companies?
- What is the difference between Consultation and Engagement?
- How will the new consultation regulations affect the productivity of exploration companies?
- Do mining companies have the capacity to handle extensive consultation procedures?
- How do you think exploration companies will benefit from consultation?

## **Appendix 2: Interview questions for Exploration Companies**

- What sort of history do you have with Aboriginal communities?
- What do you think of the new regulations?
- Can you tell me about how your company is dealing with the new regulations?
- What amount of capacity do you have to deal with extensive consultation?
- What types of guidelines are you following during your consultation process?
- How does your company physically conduct consultation activities?
- Do you encounter problems during consultation?
- How have the new consultation guidelines affected productivity?
- Have you hired external resources to assist in consultation procedures?
- How must your company adjust to the new consultation guidelines?
- How has this company changed in the way it consults Aboriginal communities compared to before these policies were implemented?
- Have you enhanced your company's learning by being more aware of Aboriginal concerns.
- What will be the biggest challenges of consultation?
- Do you think this company will benefit from consultation, how?

Appendix 3: Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans  
Course on Research Ethics

PANEL ON  
RESEARCH ETHICS

*Navigating the ethics of human research*

**TCPS 2: CORE**

## ***Certificate of Completion***

*This document certifies that*

**Aaron Keffer**

*has completed the Tri-Council Policy Statement:  
Ethical Conduct for Research Involving Humans  
Course on Research Ethics (TCPS 2: CORE)*

Date of Issue: 13 September, 2012

## Appendix 4: Project Description Letter

### Information Letter

Dear Potential Interview Participant:

We would like to invite you to participate in a study we are conducting through Lakehead University, located in Thunder Bay, Ontario. It is called: "Mining Company Perspectives and Adaptation to New Regulations Regarding Aboriginal Consultation".

The objectives of the project are:

1. To investigate how companies are coping with the increased regulation of Aboriginal Consultation.
2. To examine how companies are developing their strategy and capacity to engage Aboriginal communities.
3. To find out how companies are operationalizing the engagement strategy.

To accomplish this goal, we would like to ask you to participate in an interview regarding your involvement in Aboriginal engagement and consultation. Participation in this study is completely voluntary. If you are uncomfortable with a question, please feel free to decline to answer it. You are also free to withdraw from the study at anytime. The interview should take about 40mins -1.5 hours and can be conducted wherever you feel most comfortable. There are no right or wrong answers.

The data from the project will be securely stored at Lakehead University under the supervision of Dr. Martha Dowsley and Graduate Student Aaron Keffer. They will be used as baseline data to evaluate future changes to engagement and consultation practices. As well, we will use the data to write academic papers and presentations. These will be made available to you if you request it.

Your interview transcript will be reviewed with you and you will receive a hard copy of it. The findings of this project will be made available to you at your request upon the completion of the project. Prior to the interview we will ask you to sign a form indicating you understand the project. You will also be asked to decide whether you want to remain anonymous (your name would not be revealed to anyone else in the project or the public) or if you wish your name to be given if any direct quotes are used from your interview. Every effort will be made for complete anonymity, if requested, but there is a risk of being identified through the context of published statements.

This project has received ethics approval from the Research and Ethics Board at Lakehead University. If you would like to participate in the study or have any questions or concerns, please do not hesitate to contact Aaron at [aekeffer@lakeheadu.ca](mailto:aekeffer@lakeheadu.ca) or 807-620-6043. His address is Department of Geography, Lakehead University, 955 Oliver Road, Thunder Bay, Ontario, P7B 5E1. You may also contact the Lakehead University's Research Ethics Board at (807) 343-8283. Or write to them at Office of Research at Lakehead University, 1294 Balmoral Street Lower Level 0001, Thunder Bay, Ontario, P7B 5E1 Phone: 807-766-7289 Fax: 807-346-7749.

Thank you for discussing this project with us and considering participating in it.

## Appendix 5: Consent Form

### Research Participation Consent Form

I agree to participate in a research project for the completion of a master's thesis, through Lakehead University's MES-NECU program.

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I have received explanations about the nature of the study, its purpose, and procedures. I am a volunteer and understand that I am free to withdraw for the research project at any time without any penalty to me. There is no apparent risk of physical or psychological harm. There is the unlikely possibility that a question asked may be upsetting in some way, but I may choose not to answer any questions at any time. The data I provide will be securely stored for five years with the supervising professor.

Please indicate your preferences to the following:

I agree to being photographed to illustrate my activities relating to this project	YES	<b>NO</b>
I agree to being recorded to allow better transcription of my information	YES	NO
I agree that my name will be associated with the data for the project	YES	NO
I agree that the completed project may be used in whole or in part for publication	YES	NO
I would like a copy of the finished thesis	YES	NO

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Name of Participant

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Signature of Participant

---

Date

Contact information of Participant: \_\_\_\_\_

---



---

Signature of Witness

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Date

**Appendix 6: Acronyms**

CIC- Cultural Intelligence Center

CQ- Cultural Intelligence

DC- Dynamic Capabilities

FN- First Nations

GDP- Gross Domestic Product

IBA- Impact and Benefit Agreements

KI- Kitchenuhmaykoosib Inninuwug First Nation

MNDM- Ministry of Northern Development and Mines

MOU- Memorandum of Understanding

NWO- Northwestern Ontario

RBV- Resource-based View

SCC- Supreme Court of Canada

TRTFN- Taku River Tlingit First Nation