Executive Summary

This knowledge synthesis report examines the question*: How does the "social licencing" stage of major resource development projects honour Indigenous rights, experiences and aspirations towards development, and provide an opportunity for positive engagement between Indigenous and non-Indigenous Canadians?*

The report provides a synthesis of existing research knowledge relating to "social licensing" and corporate-Indigenous relations and its role in supporting responsible resource development projects in Canada's North. The research also relates the Canadian experience within the broader context of the social license and major resource development internationally. Based on this synthesis of knowledge I identify knowledge gaps relating to "social licensing" and corporate-Indigenous relations and its role in supporting responsible resource development.

Research and economic projections indicate that Canada, in fact, continues to be one of the world's most active mining countries, ranking among "the top five global producers for several major minerals and metals" (US Geological Survey, 2011:5.1). The Government of Canada, forecasts that "over the next 10 years, hundreds of major [resource development] projects representing over $650 billion in potential new investment are planned or currently underway in Canada" (Canada, 2014). Indigenous engagement in the review of these projects is now a regulatory requirement in Canada before development can proceed and a cornerstone of Canada's new policy on Responsible Resource Development (Canada, 2014).

Unlike the specific Aboriginal legal and regulatory context in Canada associated with major resource development—such as the "duty to consult" —the "social licence" is not specific to Indigenous communities. However, Indigenous communities continue to be deeply intertwined with resource development projects that largely occur in their traditional territories or close to their communities (Mining Association of Canada, 2011). And the corporate sector (CS) now understands that they need to also work "beyond compliance" to the regulatory context in order to build trust and co-create healthy relationships with Indigenous communities directly impacted by resource development projects. Many Indigenous communities are realizing that building mutually beneficial partnerships with the corporate sector can create sustainable long-term benefits while encouraging reconciliation and positive engagement between Indigenous and non-Indigenous Canadians. This "social licensing" stage of responsible resource development is an important and understudied area of investigation.

Indigenous Engagement and Responsible Resource Development in Canada

Over the last decade Canada's policy on responsible resource development emerged in parallel to a robust legal framework in support of Indigenous rights and title. The Federal Government's duty to consult with Aboriginal peoples was first introduced in its modern form in a series of Supreme Court of Canada cases in 2004 and 2005 (*Haida Nation v. British Columbia* 2004; *Taku River Tlingit First Nation v. British Columbia* 2004; *Mikisew Cree First Nation v. Canada* 2005). While the scope and content of the required consultation depends on specific factors related to a particular resource development context, the legal framework now requires the Crown to participate in consultation and negotiation and,

when required, to accommodate Indigenous interests as part of the requirements for the establishment of a major resource development project. Crown consultation must be "meaningful and maintain the honour of the Crown, while balancing the broader interests of Canadians with those of Aboriginal peoples." (Fidler, 2008: 2.) This process also guides the requirements laid out in Canada's *Environmental Assessment Act*. (Fidler, 2008*:* 2; Issac, 2004: 214-215; AANDC, 2011; Ginger and O'Faircheallaigh, 2010: 30).

The requirements of duty to consult, however, are still an ongoing learning process for the CS, Indigenous communities, and government policy markers. While the Crown maintains a duty to consult, it can delegate procedural elements of the process to industry. If a corporation fails to demonstrate that they have consulted with Indigenous communities, government may refuse to issue, or in some cases even revoke, development permits under challenge by Indigenous communities. The Supreme Court of Canada's (2013) recent Tsilhqot'in decision established a much higher standard in terms of what is now required of the Crown to justify an infringement of Aboriginal title –the trigger for consultation and accommodation. This means that governments and industry proposing to use or exploit land within Indigenous territories, either before or after a declaration of Aboriginal title, must now obtain the "consent" of the interested Indigenous group prior to development (SCC 2013: 9). The compelling and substantial objective of the government to use those lands must also be considered from the Indigenous perspective (SCC 2013: 49-52). These legal frameworks continue to inform Canada's policy for Aboriginal consultation under its policy for *Responsible Resource Development* (Canada, 2014).

"Social Licensing" and Corporate-Indigenous Relations: Beyond Compliance?

Obtaining a "social license to operate" (SLO) is not a legal requirement. Gunningham, Kagan, and Thornton (2004: 308) define the corporate social license as "the demands on and expectations for a business enterprise that emerge from neighborhoods, environmental groups, community members, and other elements of the surrounding civil society." They further point out that in "some instances the conditions demanded by 'social licensors' may be tougher than those imposed by regulation, resulting in 'beyond compliance' corporate environmental measures even in circumstances where these are unlikely to be profitable" (2004: 308). In order to reduce the risk of potential challenges to their major resource development projects, the CS in Canada is proactively managing relations with Indigenous communities and addressing accommodation requirements by first obtaining a "social licence" to proceed with the development.

Impact Management and Benefit Agreements (IMBAs) between the CS and Indigenous communities in Canada have emerged as the standard "social licencing" artefact associated with resource development in Canada. IMBAs are confidential, bilateral agreements negotiated between corporations and Indigenous communities. These agreements continue "to support equity in terms of sharing resources and responsibilities and sustainability in the sense of integrating Aboriginal input into the social, environmental and economic decision making processes" (Fidler, 2008: 28). IMBAs provide Indigenous consent or support for a project to proceed and provide the CS with a "social licence" to proceed with development. The agreements outline an action plan for mitigating potential socio-economic and biophysical impacts and enhancing potential opportunities brought about by major development projects. (Fidler, 2008: 3; Keeping, 1998: 5; Ginger and O'Faircheallaigh, 2010*:* 10).

Modern land claim agreements are increasingly incorporating requirements for IMBAs into their framework. These land claim agreements now include a detailed outline of the types of benefits required, as well as the specific regulations intended to mitigate the impact of development. In some instances, industry must first negotiate and complete IMBAs with a regional Indigenous government as part of the approval process for its major resource development project (Fidler, 2008: 26; Ginger and

O'Faircheallaigh, *2010:* 32). In Nunavut, for example, IMBAs are mandatory aspects of any proposal to develop natural resources on Inuit-owned lands. Article 26 of the 1993 *Nunavut Final Land Claim Agreement* details the principles required to guide development of IMBA negotiations and arbitration for proposed mega projects in the territory (Nunavut Land Claims Agreement, 1993). In other cases, Indigenous communities and governments have local policies that require consultation and agreements in order to secure community approval for proposed projects (Ginger and O'Faircheallaigh, 2010: 35).

Ultimately there are no consistent legal frameworks or regulatory policies in place to guide Corporate-Indigenous relations and the negotiation of IMBAs in Canada, or to clarify the official role of corporate "social licensing" in relation to the Crown's legal duty to consult (Ginger and O'Faircheallaigh, 2010: 35). In some instances, this lack of consistency has necessitated the intervention of a federal minister (Bielawski, 2003: 45). And in spite of this emerging and complex policy domain, major resource development projects in Canada continue to be deeply enmeshed in highly polarized national and international resource politics: Indigenous communities continue to rally against government and corporate resource development initiatives; environmentalists continue to challenge the Canadian state's record on environmental mitigation; and nation states continue to oppose each other with regard to the very legitimacy of proposed and existing major resource development projects.

This research seeks to intervene in these polarized discourses by examining the "social licencing" aspect of resource development as an empowering process. Moving beyond the discourse on corporate social responsibility, this research will pay particular attention to unravelling how these "social licensing" engagement processes are honouring Indigenous rights, experiences and aspirations towards development. It will also explore how these engagement processes are a key element in contributing to sustainable benefits for Indigenous communities, entrepreneurs and businesses; and ultimately provide an opportunity for positive engagement between Indigenous and non-Indigenous Canadians.

Emerging Recommendations

This knowledge synthesis research is not yet completed. However, some initial gaps in the research have been identified. The following recommendations are based on this emerging synthesis of knowledge:

1. Further research is needed to better understand how governance and regulatory contexts shape SLO processes and outcomes;

2. Moving away from the common and limited legal and business interoperations of SLO to better understand the concept through an interdisciplinary approach. For example, how can collaborative participatory research methodologies and the current theoretical work on Indigenization within post-secondary education provide a lens to understand and position the emancipatory potential of SLO;

3. More efforts to understand the benefits of SLO as an opportunity for organizational culture change and transformation in approaches to sectoral leadership; and

4. Re-evaluating the role of SLO as in-direct community development aid and re-directing the conversation back to Governments to take responsibility for their role in supporting sustainable community development.