

**BEYOND THE DUTY TO CONSULT? ABORIGINAL EQUITY PARTICIPATION
AND REFRAMING CONSULTATION PRACTICE IN CANADA**

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Beyond the duty to consult? Aboriginal equity participation and reframing consultation practice in Canada

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Dedication

To my mother, Norma Joan La Fountain, who instilled in me a compassionate and inquisitive nature, and whose own high school graduation at 66 remains a lasting example of perseverance and lifelong learning.

Abstract

Aboriginal consultation in Canada is a constitutionally grounded process that has generated persistent dissatisfaction among all participating parties (Aboriginal groups, government, and industry), despite procedural compliance. This thesis asks whether consultation goals must be pursued through the formal process or may also be pursued through arrangements developed beyond it. Using frames and framing theory, and extending the Political, Legal, and Economic frames Boyd and Lorefice (2018) derived from organizational documents, the study reads Supreme Court of Canada jurisprudence alongside a hermeneutic case study of the Cascade Power Project, the first transaction supported by a loan guarantee from the Alberta Indigenous Opportunities Corporation. The methodology adapts Günter Figal's new-realist hermeneutics, which preserves the exteriority of the interpreted object and so holds interpretation contestable; this appears to be its first application to Aboriginal consultation. Evidence comprises semi-structured interviews with three professionally situated participants, read against documentary records; the analysis, therefore, addresses institutionally articulated goals rather than community-level experience. It suggests that consultation operates less as a mechanism of reconciliation than as a constitutional baseline that stabilizes obligations and expectations across the three frames without aligning the goals animating them. Extra-procedural arrangements differ in structure: post-*Taku* engagement with environmental assessment pursued one frame's objectives outside the formal process and intensified interaction across the others, whereas the Cascade agreement addressed political participation, economic benefit, and legal stability together, recalibrating those relationships. The thesis derives economic, legal, and political preconditions under which equity participation may function as an outside-the-system mechanism. Its contribution is

interpretive: a participant-centred account of consultation in a field dominated by legal and doctrinal analysis.

Ethics Statement

This research was reviewed and approved by the University of Lethbridge Human Subject Research Committee (Protocol #2021-027). All participants gave informed consent before their interviews.

Uses of Generative AI in this Work

I used Claude, a generative AI model developed by Anthropic, in preparing this thesis in the following ways:

- Copy-editing. After the revised thesis was approved, I used Claude in October 2026 to identify grammatical, punctuation, citation-format, and consistency errors across several review passes. Where it flagged a problem, it proposed revised wording; I accepted, revised, or rejected each suggestion and made every change myself.
- Source checking. I used Claude to locate and check publicly available sources for factual statements added during revision (for example, project-cost figures, regulatory determinations, and program details), and to compare quotations and citations against the source documents and interview transcripts. I verified each cited source myself.
- Reference management and layout. I used Claude to diagnose formatting errors in my EndNote library and to check pagination.

Generative AI was not used to collect, transcribe, or code the interview data or to generate the findings or interpretations. I remain responsible for the content of this thesis, including the accuracy of its facts and citations.

Preface

Thank you for taking the time to read this thesis and for your interest in the topic. This report is an artifact of my decade-long academic interest in Aboriginal consultation. This includes its history within Canada, the processes involved, and how a better understanding of the phenomenon might contribute to the goals of the participating groups and our society at large.

A Note on Positionality

I am not an Aboriginal Canadian, nor do I have Indigenous heritage. Naming that at the outset is not a disclaimer but an ethical obligation, one that Indigenous scholars and research communities have rightly established as an expectation for anyone working in this space. My presence in this research requires an account of how I came to occupy it. That account begins in 2015, when I was working for the Alberta Energy Regulator (AER) and built a system for conducting regulatory hearings remotely. To see that it worked as well in the field as it had in testing, I attended a series of three hearings as a neutral technical observer, focused on the technology, not the substance, and therefore free to have honest, unguarded conversations with everyone present: industry proponents, Indigenous and landowner representatives, government officials, and the hearing commissioners themselves. The system worked flawlessly, and the hearings progressed as they would have in the dedicated hearing room. Something else, however, was unexpected. Every participant was dissatisfied with the process. Not with each other or with any particular outcome, but with the process itself. That observation lodged itself in me. Over the decade that followed, my academic work returned to it repeatedly, through undergraduate papers and projects, through graduate coursework, and finally through this thesis. The sustained nature of that engagement does not dissolve the asymmetry of my position, but it does explain why I am here.

What my position means for this research is something I want to address plainly rather than ignore. I can analyze the Political frame associated with Aboriginal groups, the one that connects consultation to history, relationship, and the ongoing negotiation of sovereignty, but I cannot inhabit it. The conversations I had in those hearing rooms were made possible partly because I was not a party to the dispute; that same distance is both an asset to the research and a limitation of it. The findings, discussion, and conclusions of this thesis lay no claim to understanding from an Aboriginal perspective. This research is intended to be useful to those involved in consultation, but it remains open to the critique that it is written about Aboriginal groups rather than from them. I accept that critique as valid and, through the methodological choices described in Chapter 4, try to mitigate rather than dismiss it. A fuller treatment of these questions, including how the interpretive framework was chosen partly in response to them, appears in Section 4.7, Researcher Positionality.

The same awareness of my position shapes the care with which this thesis handles terminology. Several of the key terms surrounding this topic are contested, historically layered, and used differently across legal, political, and social contexts. In this thesis, *Aboriginal* is used as the primary collective term wherever the analysis engages the legal and constitutional dimension of consultation, reflecting its standing in Canada's Constitution, Charter, and case law (Younging, 2018, p. 62). *Indigenous* is used as the broader, contemporary collective term outside that specific legal register. *First Nations* and *Indian* appear only where a source, document, or participant uses them: Indian in its historical and statutory sense, and First Nations where a community or organization uses it of itself (Younging, 2018). These terms are therefore used contextually and intentionally, following a distinction between legal or doctrinal usage and

general usage, rather than as interchangeable synonyms. A fuller discussion appears in Section 3.1, Terminology and Its History.

Acknowledgements

I would like to express my sincere gratitude to the participants who generously shared their time, experience, and reflections for this study. Their willingness to speak openly about the Cascade Power Project made this research possible. I have tried to treat their contributions with the care, respect, and interpretive attention they deserve.

I am especially grateful to Dr. Camilla Cenni, who provided important guidance at an early and difficult stage of this project. Although her own research is quantitative, she engaged seriously with the questions that shaped this thesis and helped me bring order to a writing process that had become increasingly difficult to manage. Her support helped establish the foundation for the progress that followed.

I am also deeply grateful to Janine Elenko, whose qualitative insight, practical guidance, and steady encouragement were instrumental in bringing this thesis to completion. Her advice was especially important as the analysis was restructured and the thesis became more explicitly centred on interpretation, hermeneutics, and the recursive movement of the hermeneutic spiral.

I would also like to acknowledge Trent Fequet, CEO of Steel River Group of Companies, for recognizing the potential value of this research and helping connect me with the Cascade Power Project case. That connection was essential to the development of this study.

I thank my co-supervisors, Dr. Bradley Olson and Dr. Don McIntyre, for supervising this thesis through its defence and final revisions. Dr. McIntyre's comments on positionality and terminology, and his own scholarship on Indigenous governance, sharpened how this thesis speaks about the peoples and institutions at its centre. I am grateful to Dr. Robbin Derry for her thoughtful comments and constructive feedback during the final stages of the thesis. I also thank

my external examiner, Dr. Kate Wong, whose questions about methodology improved the account of the analysis presented here and will shape the work that follows.

Finally, I would like to thank my family and friends for their patience, encouragement, and support throughout this long process. This thesis was completed over a period of significant professional, personal, and intellectual change, and I am grateful to those who helped me continue moving forward.

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1 Introduction

Aboriginal consultation in Canada is a constitutionally grounded process through which Aboriginal groups, government, and industry are brought into relation when proposed decisions or developments may affect Aboriginal and treaty rights protected under section 35(1) of the *Constitution Act* (Constitution Act, 1982). Yet despite its central place in contemporary governance, the process is marked by persistent dissatisfaction among those involved. This dissatisfaction is not incidental. It suggests a deeper problem in how consultation functions within the broader legal and institutional landscape of resource development. This thesis begins from that problem and examines whether the goals associated with consultation are necessarily achieved through the formal consultation process itself, or whether they may instead be realized through other arrangements.

My interest in this issue developed through conversations with parties involved in several consultation-related hearings, where a striking commonality emerged: despite their different positions, all were dissatisfied with the process that had brought them there. The consequences of that dissatisfaction are substantial. The friction and inefficiencies associated with the existing process can threaten the interests of all involved, whether through project delays, legal uncertainty, strained relationships, or lost opportunities for mutually beneficial outcomes. These consequences are especially visible in the economic uncertainty surrounding major resource projects.

Economically, the investment climate for projects that might previously have proceeded more smoothly has become far more complicated. Projects can be halted or delayed by the courts, by active opposition, or, more often, by the realization that pursuing them is too risky and not worth the money, time, and effort required (Wilson-Raybould, 2022, p. 209). For example,

the Canadian Energy Research Institute (CERI), using a crude oil pipeline modelled on the Trans Mountain Expansion Project as its base case, estimated that a single year of regulatory delay would add roughly \$812 million, or 8.7%, to a \$9.3 billion (2019 CAD) capital cost, and noted that the Trans Mountain Expansion itself took 55 months to approve (Vypovska et al., 2020, pp. 27, 121). The Trans Mountain Expansion's total cost was ultimately estimated at \$34.2 billion (Office of the Parliamentary Budget Officer, 2024), an escalation that reflects many factors beyond regulatory delay.

The process at issue is rooted in the legal interpretation of section 35(1) of the *Constitution Act*. Section 35(1) consists of a single line: "The existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed" (Constitution Act, 1982, p. 63). Although consultation is not explicitly mentioned in section 35(1), judicial interpretation of that provision gave rise to what is now commonly known as the duty to consult doctrine (Newman, 2014, p. 15).

The literature on Aboriginal consultation in Canada is extensive but unevenly distributed. Legal, doctrinal, policy, environmental assessment, and theoretical analyses dominate the field. A smaller body of empirical and participant-centred work does exist, especially in environmental assessment, impact and benefit agreements, and resource-development governance. However, I have found no study that examines a specific consultation-related process by bringing participant accounts into dialogue with the Political, Legal, and Economic frames of Aboriginal groups, government, and industry. Metaphorically speaking, it is like talking to everyone involved in soccer games, realizing no one wanted to play, then finding that everything written about the issue focused on improving the rulebook rather than talking to anyone involved.

This absence constitutes what Swales (1990) terms a research space, a recognizable opening in the field that the present study is designed to address. Furthermore, given the perspective gained over the years since the Constitution's repatriation, the existing literature's broad focus appears ill-suited to meaningfully address the issue. Indeed, the present body of literature aims to create the proper conditions for an equitable legal process rather than focusing on the observed problem, i.e., dissatisfaction with the process.

The limits of the existing literature are therefore not only a matter of what has been studied, but also of how the subject has been approached. They also reflect the assumptions through which Aboriginal consultation has most often been studied. When a body of literature approaches a phenomenon primarily through legal and doctrinal analysis, that orientation shapes not only what is emphasized, but also what remains less visible. In an exploratory study concerned with participants' dissatisfaction, those assumptions cannot remain implicit.

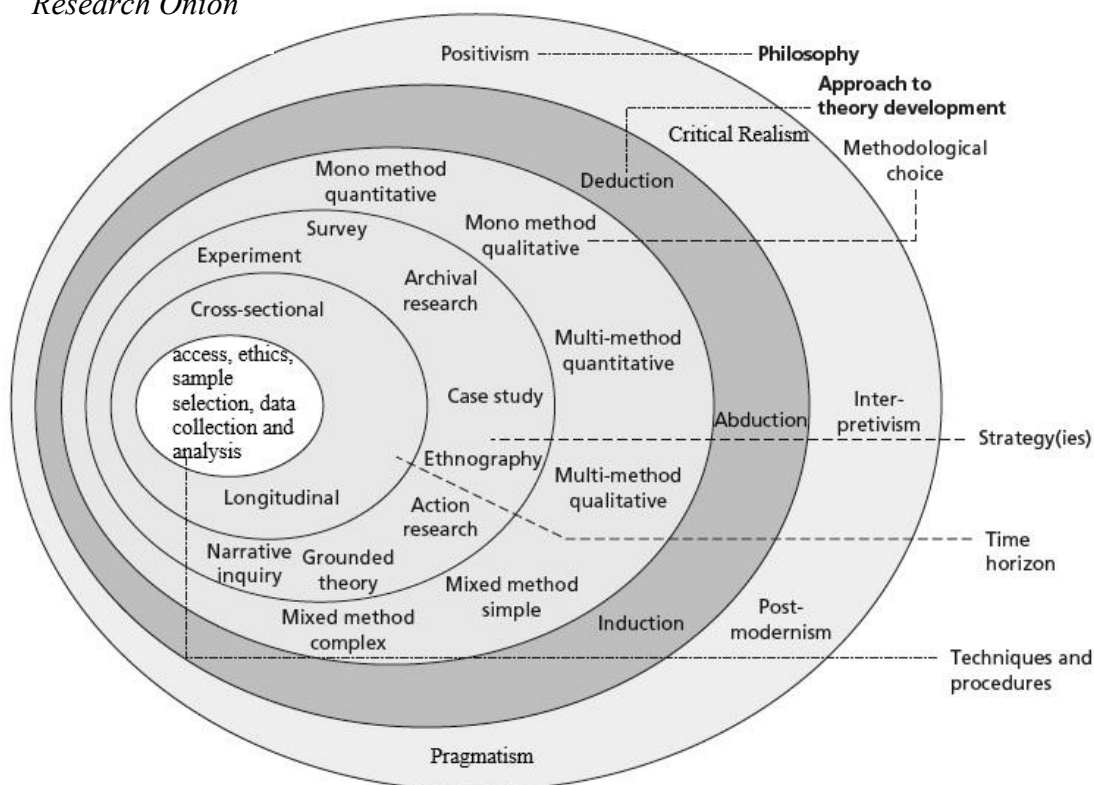
Because this thesis begins with the observed problem of dissatisfaction but does not treat it as the sole object of analysis, it must clarify the assumptions that have informed the study and interpretation of consultation. The path to addressing that issue must pass through philosophy. Research does not begin at the level of method alone. It begins from assumptions about reality, knowledge, and what counts as a satisfactory explanation. Those assumptions are present in all scientific inquiry, even where they are not made explicit. In fields shaped by positivist traditions, they are often treated as settled or backgrounded. For a thesis such as this, however, leaving them implicit would weaken the justification of the research design and the interpretation of its findings.

Making those assumptions explicit allows the researcher to examine the presuppositions that frame the problem and to justify the perspective from which the phenomenon is interpreted.

This reflects a long-standing demand in philosophy that, as Figal (2009, p. 333) puts it, no concept “may remain unquestioned”; every description must make its matter transparent rather than taking it as it first appears. For this study, that demand matters because dissatisfaction is used to open a broader inquiry into how consultation has been understood, one that cannot proceed if the legal and philosophical assumptions organizing prior research remain implicit. This thesis, therefore, examines its own assumptions explicitly to justify its interpretive orientation and clarify how its contribution differs from the dominant literature on consultation.

The research gap can be illustrated using the “Research Onion” in Figure 1.

Figure 1:
Research Onion



Note. Adapted from “Understanding Research Philosophy and Approaches to Theory Development,” by M. N. K. Saunders, P. Lewis, A. Thornhill, and A. Bristow, in *Research Methods for Business Students* (p. 177), 2023, Pearson Education. Copyright 2022 by Mark N. K. Saunders.

The layers represent distinct elements existing in all research, with the items in each layer depicting options rather than mutually exclusive choices. As Saunders et al. (2023) point out, many researchers fail to acknowledge the outer layers in their writing. It is critical to do so when examining phenomena such as Aboriginal consultation. I use the research onion here as a heuristic to show why philosophy cannot be separated from research design. Because it is among the most widely used frameworks of its kind, appearing in what is arguably the most-cited business-research textbook, it warrants closer attention than an introduction allows; the study's philosophical position and its location among the alternatives the onion arrays are developed in Section 4.1.

Much of the literature on consultation in Canada proceeds through legal and doctrinal analysis of how court decisions under section 35(1) should be interpreted, justified, or extended, although some strands draw on broader debates in legal philosophy. Charting that dominant orientation and how this thesis differs from it is crucial to clarifying the contribution this study makes to understanding the observed issue and, by extension, to Aboriginal consultation in Canada.

Ronald Dworkin is a useful reference point, within that orientation, because his work helped shape debates about how judicial reasoning can be explained and justified in hard cases (Buller, 1993; Flores, 2015). His “one right answer” thesis and the allegory of Judge Hercules assume that sufficiently patient and theoretically rigorous reasoning can produce the correct legal conclusion (Dworkin, 1986; Flores, 2015). The broader significance for this thesis is that literature shaped by this orientation tends to remain focused on doctrinal coherence and judicial justification. While valuable for understanding the development of doctrine, that orientation is

less suited to a study that begins from the observed problem of dissatisfaction and asks how consultation goals are pursued in practice.

Court decisions, and hence the literature written about them, concern specific organizations and individuals. While it could be argued that such decisions are useful or instructive to those parties, the organizational groups (industry, Aboriginal groups, and government) are not homogeneous; each comprises a myriad of separate organizations. Each has nuanced needs and goals, thus calling into question the validity of information drawn from anything less than the whole population. Furthermore, the potential combinations of participants in any given consultation are incalculably high, as any consultation can involve one or more Aboriginal communities, one or more industry proponents, and one or more government entities. Instead of toiling at the impractical and impossible task of amassing enough information to arrive at “one right answer” (Buller, 1993, p. 170), what is needed is a theoretical framework that can incorporate the complexities and meaningfully study Aboriginal consultation from the observed dissatisfaction to a broader inquiry. An interpretivist approach enables research to fully address the gap using methods that gather data *from* participants rather than being restricted to writing *about* them.

When seeking a theoretical framework that offers a valid alternative perspective, it is useful to begin with the observed problem of dissatisfaction and the long history of interaction among Aboriginal groups, government, and industry. From this standpoint, consultation can be understood not simply as a legal process, but as a setting in which distinct groups pursue different goals and interpret the process through different frames. A large interdisciplinary body of literature has developed to analyze how such differences shape intergroup tension, particularly

where mutually beneficial agreement is difficult to achieve. Among the most useful for this study is the literature on frames and framing.

This literature is especially relevant to Aboriginal consultation. A mutually beneficial consultation is more likely when the parties form a connection with each other, one that goes beyond the mere sending and receiving of communication. As will be shown, this sentiment is echoed in Supreme Court of Canada (SCC) decisions. It is impractical for this to occur through legal disputes and guidelines delivered in court rulings. The theoretical framework and methods used in this thesis provide a means of accounting for how distinct groups understand consultation and pursue separate goals within it.

This body of literature began with the work of Gregory Bateson and Erving Goffman (Bateson, 1955; Goffman, 1974). Roy Lewicki and his associates have carried it forward, used the theories to study groups involved in several intractable environmental conflicts, and provided recommendations for how they can arrive at mutually beneficial outcomes (Lewicki et al., 2003). Disputes arising from Aboriginal consultation frequently concern resource development and can arguably be termed environmental (Boyd & Lorefice, 2018). This research addresses the research gap by collecting data from an Aboriginal consultation and, from the perspective of the frames and framing literature, considering it alongside historic SCC decisions surrounding Aboriginal consultation. It is exploratory because this is a new approach to studying the subject (Zikmund et al., 2010), designed to clarify issues and questions for further examination in future research. As envisioned by Stake (2005), a case study limits the scope of research to fit within the expectations of a Master of Science thesis while encompassing a particular Aboriginal consultation and a pattern established by court decisions.

Studying SCC decisions relating to section 35(1) of the 1982 Constitution from a perspective informed by the literature on frames and framing will establish its relevance as a theoretical framework and demonstrate its explanatory power in understanding how Aboriginal consultation has changed over time. With the relevance shown, the literature will be applied to a particular case. These findings will then be considered together to provide a contribution with descriptive, interpretive and explanatory elements.

The first research question is:

RQ1 – How, when read through framing theory and Supreme Court jurisprudence, is the evolution of consultation practice evidenced across the Political, Legal, and Economic frames?

With the groundwork laid, the case study for this thesis is the Cascade Power Project, announced on September 9, 2020. Cascade comprises a 900-megawatt power plant southwest of Edson, Alberta, and it was the first project in which Aboriginal equity participation was backed by a loan guarantee from the Alberta Indigenous Opportunities Corporation (AIOC; von der Porten & Podlasly, 2021). A more focused examination of these issues is possible through the project, which involved a new provincial Crown corporation, the AIOC, that supports Aboriginal equity participation through loan guarantees. While the full case description is introduced later, the Cascade project functions throughout the thesis as an instantiation of evolving consultation practices.

As noted above, participant-centred research on consultation exists, and frames and framing have been used to study consultation; what has not been done, so far as I have found, is to read participants' accounts of a specific consultation-related process through this framework. The closest precedent is Boyd and Lorefice (2018), of the University of Calgary's School of Public Policy, who used the frames and framing literature to synthesize documents from 75

industry, government, and Aboriginal organizations into each group’s consultation frame. Their frames were derived from documents rather than participants, and their conclusion proposed, as a next step, “community-based research by working with the groups directly involved in resource development disputes and consultation processes and gaining first-hand accounts of policy frames” (Boyd & Lorefice, 2018, p. 587). This thesis takes up the second part of that proposal: it gathers first-hand accounts from participants directly involved in one consultation-related process, although in a professional rather than a community capacity (see Section 4.8).

The second research question examines the extent to which the Cascade accounts align with, extend, or strain Boyd and Lorefice’s broader findings.

RQ2 – To what extent do the Cascade case findings align with or challenge the consultation goals articulated by Boyd and Lorefice (2018) across the three frames?

The final research question ties the previous two together and forms the basis for discussion.

RQ3 – Under what conditions does Aboriginal equity participation operate as an outside-the-system¹ mechanism that shifts how consultation is practiced across the three frames?

The title of this thesis poses a question, and the sense in which it is asked should be fixed at the outset. *Beyond* is used here in one specific sense and not another. It does not mean that equity participation supersedes, replaces, or discharges the Crown’s duty to consult; that duty is non-delegable, and nothing in the arrangement examined here displaced or diluted it. It means that the goals the parties associate with consultation—namely, the Political frame’s pursuit of

¹ Outside-the-system refers to arrangements beyond formal Crown-directed consultation processes that influence outcomes while leaving the Crown’s non-delegable duty to consult intact and, in this case, arose only after that consultation had concluded. In this thesis, the term is used to analyze potential alignment across the Political (Aboriginal), Legal (Government), and Economic (Industry) frames.

recognition and autonomy, the Legal frame's procedural defensibility, the Economic frame's certainty and viability—may be pursued through arrangements situated outside the formal consultation process. A further constraint follows from the case itself and is carried through the analysis: at Cascade, equity participation became available only after consultation and permitting had concluded, because the capital-access mechanism invested solely in shovel-ready projects. Equity was therefore downstream of, and contingent upon, a consultation process that had completed. The question the title asks is accordingly a bounded one: not whether consultation can be bypassed, but whether the goals it is meant to serve can be pursued alongside and after it, through institutional arrangements of a different kind.

The literature on frames and framing will serve as the theoretical framework for this study.

Chapter 2 reviews the literature on frames and framing and shows why this framework suits the Cascade case. Chapter 3 examines the historical context, from early agreements between communities (Indigenous and Aboriginal) and the British Crown or Canadian government to the enshrinement of the Canadian Constitution in 1982, then reviews the SCC decisions through which the term consultation acquired its meaning and the practice evolved to the present day. Chapter 4 outlines the methodology and describes the case and the data; Chapter 5 presents the findings; Chapter 6 discusses them in relation to the research questions; and Chapter 7 concludes with directions for future research in this misunderstood and overlooked area.

2 Literature Review – Frames and Framing

This chapter outlines the theoretical framework for this research, from its origins to its application to groups rather than individuals, to policy analysis and finally to intractable conflict between groups. From there, Boyd and Lorefice (2018), out of the School of Public Policy at the University of Calgary, connect the branch of the frames and framing literature dedicated to policy analysis and direct it toward the analysis of Aboriginal consultation.

2.1 Frames as Interpretive Structures

Gregory Bateson² coined the term *frame* in the paper “A Theory of Play and Fantasy” (1955). Fittingly for an anthropologist, Bateson’s theory began with observations of primates at the San Francisco Zoo. He noted that aggressive and playful behaviour were, to him, the observer, identical in their basic descriptions. Yet, without explicit signals, everyone (primates, observers) could distinguish between playful behaviour and fighting. He surmised that the monkeys must be using meta-communication to signal “this is play” to one another. His term for the metacommunicative signals was *frame* (Bateson, 1955). The term has remained central to this body of literature despite the range of meanings it has since acquired.³ Bateson’s clinical application is not pursued here. What carries forward into this thesis is the shift in focus itself, which later scholarship developed into the branch of literature that the framework below draws on.

² Although Bateson was an anthropologist, the paper would today be classified as interdisciplinary, drawing on theories from mathematics, psychology, linguistics, communication, and philosophy.

³ Bateson’s contribution was a shift in focus from studying individuals’ perceptions and information processing to examining how these manifest in interpersonal and intergroup behaviour. Bateson applied his theory to the psychotherapy of people with schizophrenia (Bateson et al., 1956), whom he saw as lacking the ability to meta-communicate.

Nearly two decades later, sociologist Erving Goffman drew explicitly on Bateson's "A Theory of Play and Fantasy" in *Frame Analysis: An Essay on the Organization of Experience* (Goffman, 1974). Whereas Bateson focused on the metacommunicative signals through which participants distinguish one kind of interaction from another, Goffman examined the broader principles of organization through which people understand what is occurring. His central question was, "What is it that's going on here?" (Goffman, 1974, p. 8). In this account, frames are not merely cognitive structures located within individuals. They are socially available principles that organize events and participants' subjective involvement in them. Goffman later clarified that the organizational premises constituting frames are sustained both in the mind and in organized activity itself (Goffman, 1974, p. 247).

Goffman's inquiry concerned the organization of experience and the circumstances under which events are experienced as real. Drawing on William James, he asked, "Under what circumstances do we think things are real?" (Goffman, 1974, p. 2). The issue was not primarily the content of particular experiences, but the interpretive organization through which they become intelligible. Goffman's camera analogy is useful here: the analytical problem concerns the camera through which experience is organized rather than only the pictures it records. Frame analysis, therefore, directs attention to how participants identify a situation, become involved in it, and act in accordance with their understanding of what is occurring.

He described frame analysis as circular, as concepts introduced at one point recur and acquire additional significance when applied to later material (Goffman, 1974, p. 11). The concepts centre on what he referred to as primary frameworks. Goffman defined a primary framework as a schema of interpretation that renders an otherwise meaningless aspect of a scene meaningful. Such frameworks allow people to locate, perceive, identify, and label occurrences

and to organize their responses to them (Goffman, 1974, p. 21). Some primary frameworks are highly organized and capable of explicit description, while others operate tacitly as general understandings or perspectives. Goffman distinguished natural frameworks, which interpret events as unguided physical occurrences, from social frameworks, which interpret events as guided actions involving human intentions, standards, and consequences (Goffman, 1974, pp. 21–23).

In his description of the schema, Goffman used the term “strip” to refer to an arbitrary slice or segment cut from the stream of ongoing activity, including real or fictive sequences of events as understood from the perspective of those involved (Goffman, 1974, p. 10). A strip is therefore not a type of frame or the first stage of a framing process; it is the portion of activity selected as a starting point for analysis. Goffman subsequently examined how primary activity may be transformed through keying or fabrication and how framed activity remains connected to the surrounding world. He called this latter relationship “anchoring” of activity. Anchoring does not describe a cognitive stage through which individuals connect events to their previous experiences. It concerns how apparently bounded activities (such as games, performances, ceremonies, dreams, or fabrications) remain dependent on material settings, participants, social roles, institutional provisions, and conventions drawn from ordinary life. Frames are therefore neither wholly mental nor detached from the social and physical organization of activity (Goffman, 1974, pp. 251–253).

Brackets are a set of conventions that distinguish framed activity from surrounding events. They are temporal or spatial boundary markers that signal where an episode begins, ends, or is temporarily suspended. A theatre curtain, a bell, stage boundaries, and a gavel calling a meeting to order are examples of such brackets (Goffman, 1974, pp. 251–253). Goffman

explicitly distinguished this usage from phenomenological bracketing. His brackets are not analytical devices through which researchers suspend their presuppositions; they are observable organizational features through which participants distinguish an activity from what precedes, follows, or surrounds it. Goffman's concepts, strip/anchoring/bracketing, will continue to evolve as the observable elements of framing processes.

As with Bateson's, Goffman's interest in frames is not pertinent to this study. His interest was in deceit,⁴ specifically con artists (Collins, 1980). He used his frame analysis theory to understand how regular people come to believe in schemes whose fraudulent intent seems obvious to later observers. Goffman's enduring contribution is his work on frames' descriptive and explanatory elements, now known as framing, and the extension of the concept from psychological to sociological applications.

2.2 Framing in Policy and Organizational Conflict

The frame concept entered policy analysis through the work of Donald Schön and Martin Rein, professors in MIT's Department of Urban Studies and Planning. Their 1994 book *Frame Reflection: Toward the Resolution of Intractable Policy Controversies* remains the foundational statement of frame analysis in the policy field (Schön & Rein, 1994). Notably, Schön and Rein did not derive their frame concept from Goffman: *Frame Reflection* cites neither Goffman nor Bateson. They developed the concept independently, defining frames as the "underlying structures of belief, perception, and appreciation" on which policy positions rest (Schön & Rein, 1994, p. 23), and grounding their approach in the pragmatist tradition of John Dewey, for whom inquiry begins in a problematic situation. In a companion article, Rein and Schön (1996)

⁴ While crucial in understanding deceit, several of the theory's concepts, such as keying and fabrication, are not used in future developments relevant to this research.

distinguish four compatible images of a frame: an inner scaffolding, a boundary that sets phenomena off from their context, a cognitive schema of interpretation, and a generic diagnostic-prescriptive narrative. They place Goffman's frame concept under the second image and explicitly adopt the fourth, which they associate with Paul Ricoeur and the hermeneutic tradition. The lineage traced in this chapter is therefore a genealogy of the frame concept rather than a chain of direct inheritance: Bateson coined the term, Goffman carried it into sociology, and Schön and Rein independently brought a frame concept (one they themselves situated within hermeneutics) into the analysis of policy controversy. Their self-location matters for this thesis, since it places the theoretical framework of this chapter and the hermeneutic-phenomenological methodology developed later within a single interpretive tradition rather than two traditions joined for convenience.

Schön and Rein grounded their theory in detailed case studies of policy practice (homelessness policy in Massachusetts, early-retirement policy in Germany, and educational computing at MIT), attending to the practitioners who design and enact policy as much as to the documents that surround them (Schön & Rein, 1994). They distinguish policy *disagreements*, which can in principle be settled within shared rules by appeal to facts, from policy *controversies*, which cannot. In a controversy, the contending parties hold distinct frames; because frames determine what counts as a fact and which arguments register as relevant and compelling, controversies resist resolution by evidence and reasoned argument alone (Schön & Rein, 1994). More or better information cannot, by itself, bring the parties closer together, as each side absorbs or reinterprets new information in the terms of its own frame. Importantly, however, Schön and Rein do not conclude that such frames amount to sealed, incommensurable realities. They explicitly reject epistemological relativism, which they call the relativist trap, and

argue that translation across frames, including the potential for reframing, always remains possible: all frames share a common narrative structure, and the contending actors are engaged in a common situation of action (Rein & Schön, 1996; Schön & Rein, 1994). This anti-relativist commitment is what makes the framework usable for empirical research. If frames were closed worlds, an agreement reached between parties holding frames contrary to one another, such as the agreement examined in this thesis, would be theoretically inexplicable.

Two further distinctions carry methodological weight for this research. First, Schön and Rein distinguish *rhetorical frames* from *action frames* by the evidence from which each is constructed: rhetorical frames are constructed from policy-relevant texts produced in contexts of debate, persuasion, and justification, while action frames are constructed from observed patterns in the practice of policy practitioners (Rein & Schön, 1996). The two need not coincide; the frames deployed to win public allegiance often differ from the frames embedded in the agreements, regulations, and procedures that determine what a policy means in action, and the relationship between them in any given case is an empirical question rather than an assumption. Second, action frames operate at three levels of increasing generality and abstraction: policy frames, which structure a specific policy issue; institutional action frames, the more generic beliefs and perspectives of particular institutions from which their policy positions derive; and metacultural frames, the broadly shared cultural systems of belief on which individuals and institutions draw (Schön & Rein, 1994). Both distinctions locate the empirical work of this thesis. The document-based analysis of Boyd and Lorefice (2018), discussed below, constructs rhetorical frames at the institutional and metacultural levels. The interviews conducted for this thesis reach toward the action frames of the practitioners who negotiated an actual agreement—evidence that, on Schön and Rein’s account, cannot be recovered from documents alone.

The route out of controversy that Schön and Rein propose is neither conversion, in which one party persuades another to abandon its frame, nor a remedial exercise in which parties reflect their way to shared beliefs. It is what they call *design rationality*: pragmatic resolution achieved in and through the situated work of policy design (Schön & Rein, 1994, p. 166). Because institutional action frames are hybrid and incompletely specified, the individuals who act from them retain a zone of discretion. In the Massachusetts homelessness case, agency heads holding incompatible frames used that discretion to craft workable guidelines that blended elements of all three frames in play, without any party surrendering its frame (Schön & Rein, 1994). Policy practice becomes frame-reflective when actors not only act from their frames but turn attention back onto the frames themselves; reframing, when it occurs, depends both on exogenous conditions, the policy windows opened by external events, and on the endogenous work of cooperation and reflection (Rein & Schön, 1996). Schön and Rein are deliberately modest about the phenomenon: situated frame reflection is rare, little is known about its anatomy, and they call for fine-grained empirical study of the occasions on which practitioners accomplish it (Rein & Schön, 1996). That call frames the contribution of the present case study, which examines one such occasion in detail.

Among their most durable contributions is the concept of problem-setting (Rein & Schön, 1977), which they distinguish from the more familiar activity of problem-solving. Problem-solving assumes that the nature of the problem is already agreed upon and proceeds directly to solutions; problem-setting is the prior, and usually tacit, work through which a diffuse worry is converted into a nameable problem (Rein & Schön, 1991). It proceeds through what Schön and Rein call naming and framing: features of a problematic situation are selected for attention and named in a way that fits an organizing frame, frequently by means of a generative metaphor;

their canonical example is the characterization of deteriorating urban housing as blight, a disease demanding cure (Schön & Rein, 1994). It is this naming and framing that enables the normative leap from what is to what ought to be done. Because the frames that do this work are typically tacit and go unnoticed, the disagreements they generate can persist indefinitely without their sources ever being examined.

The agreement examined in this thesis was, like all consultation outcomes, produced by individuals acting on behalf of institutions, guided—though not fully determined—by the frames embedded in their institutions’ policies and public documents. Schön and Rein’s framework supplies both the vocabulary for analyzing that setting and a warrant for how it is studied here: the public record surrounding the project yields rhetorical frames, the participants’ accounts of the negotiation reach toward action frames, and the agreement itself stands as a candidate instance of the situated, pragmatic resolution that Schön and Rein hold to be possible but rarely captured empirically.

2.3 Framing as Process

One further development completes the framework that this thesis applies. Van Hulst and Yanow (2016) credit Schön and Rein with putting framing on the policy-analytic table, but find three of the concepts through which framing works—naming, selecting, and storytelling—(Rein & Schön, 1977, 1996) under-theorized, and set out to make frame analysis more dynamic and political. To the three inherited processes, they add two of their own, sense-making and categorizing, yielding a revised account of the work that framing does: sense-making; naming, which encompasses selecting and categorizing; and storytelling (van Hulst & Yanow, 2016). The shift signalled in their title, “From Policy ‘Frames’ to ‘Framing’: Theorizing a More Dynamic,

Political Approach,” moves from frames as static objects to framing as ongoing, situated, and political work.

Sense-making, the addition most relevant here, is the intersubjective process through which policy-relevant participants construct the meaning of ambiguous or uncertain situations; intractable policy controversies are, for van Hulst and Yanow, paradigm cases of such ambiguity (van Hulst & Yanow, 2016).

Naming is the initial organization of raw data and information into a model or theory for the situation, answering the question “what is this” for the individual, equating to what Goffman would call a primary framework (Goffman, 1974). It organizes prior experience and knowledge, and it directs future action (van Hulst & Yanow, 2016). While naming identifies the issue, as Goffman notes, it also excludes information and data by directing attention away from what is not in the framework.

Selecting uses language to choose which aspects, categories, and interpretations are relevant to what is at issue while dismissing or disregarding others, often using metaphors (van Hulst & Yanow, 2016), lining up with the intrinsic (and possibly subconscious) elements of Goffman’s anchors (Goffman, 1974). *Storytelling*, finally, connects features of the selected information into a coherent narrative of the experience (van Hulst & Yanow, 2016). The storytelling stage is what researchers have available to them. The participant interviews used in this thesis target the parts of the framing process that leave empirical traces.

This final storytelling stage aligns with the concrete elements of Goffman’s bracketing (Goffman, 1974), although the supporting rationalizations are usually not made explicit or said aloud. Indeed, as with the earlier stages, they are generally tacit in nature; even though they influence policy at all levels (definition, discussion, and debate), they are not seen as doing so;

thus, the arguments that underlie the disagreements and intractability are not available, explicitly, to be acknowledged and examined without effective research (van Hulst & Yanow, 2016). It is also important to note that the stories we tell ourselves or others (researchers) can go beyond definition into rhetoric aimed at persuasion, whether for ourselves or others.

2.4 Representative Frames in Aboriginal Consultation

To properly apply frame reflection to the general dissatisfaction in Aboriginal consultation processes, one must learn how the groups involved frame the issue. Due to the organizational heterogeneity of each group, it would be impractical to apply Schön and Rein’s method to the problem of general dissatisfaction with Aboriginal consultation processes. However, following the framework established by van Hulst and Yanow, researchers from the School of Public Policy at the University of Calgary determined representative frames for each broad group by examining their policy documents and websites (Boyd & Lorefice, 2018).

Table 1

Correspondence of Framing Acts Across Three Frame-Analytic Accounts

Framing act	van Hulst & Yanow (2016)	Boyd & Lorefice (2018), operational	Goffman (1974) correspondence
Making sense of an ambiguous situation	sense-making	sense-making	the primary framework / “what is it that’s going on here?”
Drawing salient features together, foregrounding some and occluding others	naming (encompassing selecting, categorizing)	selecting	anchoring—how framed activity stays tied to setting and convention
Binding features into a coherent, persuasive narrative	storytelling	storytelling	bracketing / the observable markers of a framed episode

Note. Column 2 gives the three framing acts theorized by van Hulst and Yanow (2016); column 3 gives the corresponding operational categories applied by Boyd and Lorefice (2018, p. 580). The

framing-act descriptions in column 1 and the Goffman correspondences in column 4 are the author's, developed for this thesis; they are interpretive alignments rather than equivalences asserted by the cited authors.

One divergence in the table should be named rather than left unnoticed. Where van Hulst and Yanow treat naming as the superordinate act, encompassing both selecting and categorizing, Boyd and Lorefice operationalize the middle act as selecting alone. The narrowing is defensible on evidentiary grounds. Of the processes grouped under naming, selecting is the one that is reliably available to researchers analyzing text: a policy document shows which aspects of a situation were foregrounded and which were passed over, while the categorizing and naming work that produced those choices remains largely tacit. Their operational category, therefore, tracks what document analysis can recover rather than the full act as theorized. This thesis inherits that narrowing where it applies their frames, but the interview material is not confined to it. Participants asked to account for their reasoning describe the categories they worked with and the names they gave things, as well as the selections they made, which is part of what participant accounts add to a framework derived from documents.

Boyd and Lorefice sought to counter commentators' suppositions about difficulties in the consultation process, suppositions claimed to rest on solid evidence, objective information, and rational analysis (Boyd & Lorefice, 2018, p. 575). As discussed, more and better information does not drive those with different frames closer together, as groups and individuals sort the information provided to support their perspectives of reality (Goffman, 1974; Schön & Rein, 1994).

Boyd and Lorefice (2018) examined 75 documents and websites published by Indigenous groups, governments, and industry: 30 from Indigenous groups covering the geography of

Canada, inclusive of Métis, Inuit, and First Nations, involving multiple Treaty relationships (Peace and Friendship, numbered and modern) as well as non-treaty groups; 24 from various governments, spanning the federal government as well as every province and territory; and 21 from industry groups and companies involved in resource development (Boyd & Lorefice, 2018). The study offers an opportunity to juxtapose its findings with the subject of this thesis, the Cascade project. It also provides a model for the parties' frames in Supreme Court of Canada decisions.

While the authors wisely caution against overgeneralization, the representative frames are as follows. The policy documents of Indigenous groups connect consultation to the context and historical relationships among Aboriginal peoples, the Canadian state, and non-state actors; the term chosen to describe this frame is *political*. Government policy documents view consultation as a legal requirement concerned with managing and adhering to existing processes; this frame is termed *legal*. Meanwhile, the studied documents and websites show that industry associates consultation with risk-mitigation activities that lower uncertainty and foster economic development; this frame is termed *economic* (Boyd & Lorefice, 2018).

Table 2*Policy Frames Used by Indigenous Groups, Government and Industry*

	Sense-making	Selecting	Storytelling	Frame
Indigenous Groups	Connection to broader political context and historical relationships	Consent as consensus Early engagement for increased involvement in decision-making	Empowerment and autonomy	Political
Government	Managing existing processes	Consent as veto Early engagement for meeting timelines	Adhering to court/legal requirements	Legal
Industry	Managing existing relationships	Consent as veto Early engagement for cost-effectiveness	Creating economic benefits and reducing uncertainty for business	Economic

Note. From “Understanding consultation and engagement of Indigenous Peoples in resource development: A policy framing approach,” by B. Boyd and S. Lorefice, 2018, Canadian Public Administration, 61(4), p. 580. Copyright 2018 by The Institute of Public Administration of Canada.

From this perspective, the general dissatisfaction observed among all parties could stem from their frames not being genuinely acknowledged in a process focused on communication and from inconsistent achievement of their objectives.

Taken together, these distinctions suggest that dissatisfaction may persist even where consultation is procedurally complete, because participation in a shared process does not ensure that the distinct goals associated with each frame are acknowledged or achieved. The representative frames, therefore, establish the interpretive distinctions carried through the remainder of this thesis, but they do not explain how consultation came to be organized around these expectations. Chapter 3 turns from the conceptual vocabulary of frames and framing to the historical and jurisprudential development of consultation, tracing the decisions that

progressively altered what Aboriginal groups, governments, and industry could expect, contest, and accomplish through the process.

3 Historical and Legal Context: The Making of the Duty to Consult

Having identified the Political, Legal, and Economic frames, this chapter traces how consultation became the institutional setting in which those frames intersect. Because the language surrounding consultation is historically layered and interpreted in multiple ways, the chapter begins by clarifying the key terms used in this thesis. It places those terms in context, summarizes the developments that predate the modern era, and concludes by examining court rulings through which consultation practice took its contemporary form.

3.1 Terminology and Its History

People organized into Nations existed in what is now Canada before the British monarch George III asserted sovereignty. Before this contact, these people would have self-identified as Nations based on culture, language, history, and territory (McIntyre, 2022). While the precise number of distinct groups existing before contact is likely lost to history, a 2020 report to Parliament indicated that more than 50 Nations and languages existed prior to contact⁵ (Indigenous Services Canada & Crown-Indigenous Relations and Northern Affairs Canada, 2020). The most appropriate way to refer to a particular group is therefore the name that group uses for itself. However, with 630 *First Nations* communities, 51 *Inuit* communities, and dozens of *Métis* communities spread across four regions, the task is monumental. Regrettably, the vocabulary that developed focused on collective terms rather than specific ones due to reasons as varied as Canada's colonial history and ethnocentric bias.

A collective term for pre-contact people(s) is *Indigenous* (McIntyre, 2022). The use of the word *Indigenous* has increased significantly in Canada, starting in 2007 with the creation of the

⁵ Depending on how a nation is defined, this figure ranges from more than 50 to 120 (McIntyre, 2022).

United Nations Declaration on the Rights of *Indigenous* Peoples (United Nations General Assembly, 2007) and continuing with the passage of the United Nations Declaration on the Rights of *Indigenous* Peoples Act, which received royal assent on June 21, 2021 (McIntyre, 2022). However, it is often used without this specific definition in mind.

Aboriginal gained currency in the 1980s and 1990s; it holds legal standing through its use in Canada's Constitution and Charter of Rights and Freedoms, and is seen in the language used in legal decisions and documents (Younging, 2018, p. 62). The combination of *Indigenous* and *Aboriginal* seems sufficient for today's use as a collective term for the peoples who lived in what is now called Canada and their descendants. However, several other terms appear in legislation, court rulings, academic papers, and associated documents. Provided with this legitimacy, they deserve to be addressed here.

The original collective term was *Indian*. Perhaps apocryphally linked to Christopher Columbus's belief that he had discovered India when arriving in North America, it was nevertheless the word imposed imperially to describe pre-contact people in legislation, the Indian Act (1876), and Treaties, dating from the pre-Confederation period to the 20th century (Government of Canada, n.d.). Because it is associated with enfranchisement policy or is a misnomer, this word carries a derogatory connotation. Presently, it is generally used in a historical context; however, it remains in legislation and is used by Elders whose experience predates the adoption of other terms.

The term *First Nation* was coined by several groups in the 1970s as an alternative to previous terms such as *Indian*. This uniquely Canadian term gained political support in the 1980s. The Assembly of First Nations, formerly the National Indian Brotherhood, adopted its use, and several reserves or groups within larger nations use it to distinguish themselves

(Younging, 2018). This term has been characterized as elitist by critics and appears to be declining in favour of *Indigenous*; however, with its adoption by communities and organizations, it remains in common use (Younging, 2018).

Indigenous is the latest of this long line of collective terms used in this way. McIntyre (2022) distinguishes *Indigenous* (pre-contact peoples) from *Aboriginal* (post-contact peoples). This thesis follows the usage set out in A Note on Positionality, using *Aboriginal* where the analysis engages the legal and constitutional register and *Indigenous* elsewhere; the temporal sense is used only in the historical discussion below.

3.2 Consultation, Negotiation, and Agreement

In Aboriginal consultation, the term “consultation” differs from other words, such as negotiation and agreement, which are frequently employed in individual efforts to quickly make sense of this multifaceted concept. Indeed, this is a reasonable starting point, as the words share several connotations, including association with communication and the involvement of two or more parties. Beyond that, an *agreement* involves an endpoint resulting from a shared understanding of the outcome, and *negotiation* denotes the process of reaching an agreement. Both also suggest a specific, delineated event or transaction. While the results may impact future behaviour, they are not continuous.

Consultation, conversely, is broader in scope. This view aligns with Dr. Leroy Little Bear’s statement that consultation is ongoing (L. Little Bear, personal communication, December 15, 2020). While negotiations and agreements can occur during a consultation, their mere existence does not guarantee that a consultation has occurred. When used in Aboriginal consultation, it also has an essential distinction from its use in other contexts; the word focuses less on hierarchy. The SCC has advised that Aboriginal consultation is more than a courtesy of

those in authority to subordinates, while balking at the idea that Aboriginal communities must agree with the results (*Haida Nation v. British Columbia (Minister of Forests)*, 2004, para. 48). These nuances separate consultation from negotiation and agreement enough that they should be at the forefront of people’s minds when considering information surrounding this subject.

3.3 From Treaties to Section 35(1)

The prevalence of negotiation and agreement as shortcuts to understanding Aboriginal consultation is even more reasonable when one considers the historical basis of what can now be called the modern era of Aboriginal consultation. From the mid-1700s to 1975, nearly 500 Treaties, Surrenders, Agreements, and Adhesions were signed between those asserting sovereignty over what is now called Canada and Indigenous and Aboriginal communities (Library and Archives Canada, 2023). The earliest agreements were concluded with Indigenous Nations, and the later ones with Aboriginal communities, as that term came to be understood. These documents, classified as agreements and likely resulting from negotiations, are foundational to the knowledge of scholars and served as the basis for section 35(1) of the Constitution Act, 1982 (Constitution Act, 1982). Steeped in this history, it is little wonder that the concept of *consultation* has struggled to emerge from the shadow of *negotiation* and *agreement*.

Section 35(1) consists of a single line:

“The existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed” (Constitution Act, 1982, p. 63).

Using this phrasing, the Constitution Act is placed as the culmination of prior activities, allowing it to serve as the starting point of the modern age of Aboriginal consultation. It also marks the beginning of the analysis of the evolution of the consultation practice. Although established through the Constitution, the determination of its practical aspects has rested with

Canada's judicial system. The SCC began interpreting section 35(1) shortly after repatriation. Using a series of landmark rulings as signposts (Morellato, 2008; Newman, 2014), one can map the shift from an agreement-and-negotiation standpoint to one centred on consultation, known as the "duty to consult" doctrine. From there, the theoretical framework will illustrate an evolution in Aboriginal consultation that has bearing in the Cascade Power case.

3.4 The Court's Interpretation of Section 35(1)

With its 1984⁶ ruling in *Guerin v. The Queen*, the Supreme Court of Canada recontextualized the Aboriginal and treaty rights recognized in section 35(1). The Court stipulated that, in addition to treaties, historical records and, notably, the oral history of Aboriginal peoples should be considered in matters involving Aboriginal rights (*Guerin v. The Queen*, 1984). The Court found that the Crown had not acted in the best interests of the Musqueam Band when negotiating the lease of reserve land (*Guerin v. The Queen*, 1984). The ruling introduced fiduciary duty and *sui generis* into the interpretation of section 35(1) (Morellato, 2008). Fiduciary duty legally binds the fiduciary, in this context, the Crown, to act in the best interest of the beneficiary (Aboriginal communities or rights holders). *Sui generis*, a Latin phrase translated to "of its own kind," draws attention to the unique nature of the relationship between the Crown and Aboriginal peoples in Canada and foreshadows that reasoning used in other areas of legal scholarship cannot necessarily be carried over to matters covered under section 35(1). *Sui generis* will be used by the Court to justify creating a separate doctrine to address future cases, leading to a reappraisal of fiduciary duty.

⁶ The facts of *Guerin* predate the passage of the Constitution Act, 1982. It can be argued that the SCC was not interpreting section 35(1) in this decision. That objection is technically correct; *Guerin* is included here because the elements it introduced play a pivotal role in the cases that inform the interpretation of section 35(1).

The Supreme Court further developed its interpretation of *Guerin* in its 1990 decision in *R. v. Sparrow*⁷. The ruling defined “existing” from the act, i.e., *the existing aboriginal and treaty rights*, in finding that Sparrow, a Musqueam band member, had the right to fish because that right existed before the enactment of the Constitution (Hellinga, 2020; *R. v. Sparrow*, 1990). It also applied *sui generis* to establish that government responsibility is separate and broader in scope than the legal obligation of fiduciary duty. The Court used the principle “*honour of the Crown*” from the Royal Proclamation of 1763 (Slattery, 2014) as the basis for the expanded obligations of the government. The ruling limits governments’ legislative power: legislation intended to avoid the Crown’s obligations would be unlawful (*R. v. Sparrow*, 1990). Finally, the Court also ruled on the conditions under which the rights of Aboriginal peoples could be infringed upon (Morellato, 2008).

The ruling speaks to the fine line related to the hierarchy mentioned earlier. In its Sparrow ruling, the Court encouraged consultation in other disputes. It accomplishes this by defining its liminal spaces and by forestalling legislative efforts to avoid the obligation while also ruling out a veto for Aboriginal communities, making it more than a mere courtesy provided by those in power.

As noted above, the restriction on government power is encapsulated in the honour of the Crown, and the Court balanced this against the limitations placed on rights protected under section 35(1). Aboriginal rights were limited with the caveat that infringement would be lawful if the government had justified its actions. The ruling defined infringement and set out criteria for

⁷ In Canadian case names, “R.” refers to the Crown: Rex (“King”) when the reigning monarch is male and Regina (“Queen”) when the reigning monarch is female. R. v. [Name] denotes a prosecution brought by the Crown against the named party.

determining the validity of justifications the government might have. The requirements, known as the “Sparrow test,” set the stage for the entry of consultation into interactions by including consultation in mitigation for infringement of Aboriginal rights (Morellato, 2008).

Infringement occurs when it is unreasonable, imposes an undue hardship, or prevents right-holders from exercising their rights (R. v. Sparrow, 1990). Infringement is justified, the Court reasoned, based on whether the government could demonstrate a “valid legislative objective,” for example, the conservation of natural resources. Further, in assessing justification, the Court asked whether “there has been as little infringement as possible,” whether “fair compensation is available,” and “whether the aboriginal group in question has been consulted with respect to the actions taken” (R. v. Sparrow, 1990). Sparrow impacted governments and Aboriginal groups thereafter by balancing the conditional nature of the rights in question with the inclusion of honour of the Crown to interpret government actions (Morellato, 2008).

The SCC expanded on concepts introduced in Sparrow in a series of decisions leading up to establishing the duty to consult doctrine⁸. In *R. v. Van der Peet*, the Court clarified that the honour of the Crown applies equally to scenarios outside of fiduciary duty (i.e., *where treaty rights have yet to be proven*) and that doubt about the presence of a right should be resolved in favour of Aboriginal peoples. In *Delgamuukw v. British Columbia* and, subsequently, in *R. v. Marshall*, the Court ruled that evidence beyond treaty documents must be considered when assessing Aboriginal rights; this includes extrinsic evidence such as oral history and other contemporaneous documentation (*Delgamuukw v. British Columbia*, 1997; *R. v. Marshall*,

⁸ The doctrine, a foundational principle in Canadian law, emerged following landmark SCC cases in 2004 and 2005. It imposes an obligation on the government to engage in meaningful consultations with Aboriginal communities before undertaking projects or making decisions that could potentially impact their rights, lands, or resources.

1999). These findings changed the landscape of interactions between Aboriginal communities and other parties, namely all the levels of government and industry organizations. The broadened interpretation played a pivotal role in the Court's analysis of compensation and, subsequently, consultation.

The Court had not defined compensation in *Sparrow* (*R. v. Sparrow*, 1990); it explained its view more closely over several rulings to influence and direct the consultation process. In *R. v. Gladstone* (1996), the Court extended the compensation timeframe from an implied post-infringement activity to actions the government should have taken to accommodate Aboriginal rights. As in *Sparrow* (1990), the Court balanced this obligation by explicitly stating that “priority” was not exclusive use of a resource in regulatory and legislative regimes (Morellato, 2008). In *R. v. Adams* (1996), the Court restricted governmental discretion as a substitute for accommodation. Discretion is wording in legislation or regulations that delegates a decision to an official. Such systems must outline specific criteria for granting and withholding discretion; further, enabling legislation or regulations concerning natural resources must include provisions that address and permit the accommodation of infringed treaty rights (Morellato, 2008; *R. v. Adams*, 1996). Importantly, any consultation or accommodation decision not made under sufficient enabling legislation would be vulnerable to judicial review (Morellato, 2008).

In the *Delgamuukw v. British Columbia* (1997) decision, the Court also expanded the concept of Aboriginal title beyond mere use and occupation of land in relation to compensation. It recognized that Aboriginal communities have the right to choose how their land will be utilized, including the economic implications that result (*Delgamuukw v. British Columbia*, 1997). The right to select land uses creates avenues other than compensation and accommodation for satisfying the Crown's duties, namely the involvement of Aboriginal peoples in decision-

making; this opens the door to participation in the development of resources within their traditional lands (Morellato, 2008).

Finally, in *Halfway River First Nation v. British Columbia*, the British Columbia Court of Appeal imposed a positive duty on the Crown. A positive duty requires governments to actively consult and inform Aboriginal peoples of actions intended for their traditional territory and to inform themselves about the nature of Aboriginal or treaty rights (*Halfway River First Nation v. British Columbia* (Ministry of Forests), 1999; Morellato, 2008).

This traces the evolution from the legal basis of fiduciary responsibility in *Guerin* and *Sparrow* toward a constitutional, proactive, and protective duty (Newman, 2014). The constitutional framework balances the government's power by limiting its legislative authority while precluding a veto by Aboriginal peoples. It outlines what constitutes the infringement of Aboriginal rights, both treaty and non-treaty, while offering accommodation and consultation as avenues for mitigation and compensation.

3.5 The Duty to Consult, 2004–2005

Three Supreme Court of Canada decisions, delivered in 2004 and 2005, established what is referred to as the duty to consult doctrine (Newman, 2014). The rulings built on earlier cases and coalesced the reasoning used in several of them into a single precedent.

In *Haida Nation v. British Columbia*, the Court extended the notion of Aboriginal title, mentioned earlier in *Delgamuukw*, to circumstances where claims have yet to be proven (*Haida Nation v. British Columbia* (Minister of Forests), 2004), asserting that the sort of consultation and accommodation envisaged in *Sparrow* and *Gladstone* are available to all Aboriginal peoples regardless of the state of their claims process (Morellato, 2008). The Court reasoned that if, as stated in *Van der Peet*, the primary objective of section 35(1) is the reconciliation of the pre-

existence of Aboriginal societies with the sovereignty of the Crown, then the honour of the Crown would not be satisfied by unilateral action taken in pre-proof scenarios (*Haida Nation v. British Columbia (Minister of Forests)*, 2004). As in previous decisions, the Court encouraged consultation by balancing it with a veto-precluding requirement for Aboriginal groups. Further, consultation, as a positive duty, must occur before the decision to act at the strategic level rather than after the decision (*Haida Nation v. British Columbia (Minister of Forests)*, 2004). The ruling also states that the duty to consult rests solely with the Crown, which may delegate its administration but not the responsibility (Morellato, 2008).

The *Mikisew Cree v. Canada* decision, which followed in 2005, was the first instance in which the Court applied the reasoning in *Haida*, in this case to treaty rights (*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005). The case involved a challenge to the construction of a winter road that would border the Mikisew reserve and, if constructed, would interfere with hunting and trapping rights. The issue was that the lands were within the land covered under Treaty 8. A clause in the treaty allowed for lands to be “taken up [...] from time to time” for settlement purposes (*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005, para. 59). The Court ruled that the order to construct the road was invalid due to the lack of consultation, extending the duty to consult doctrine to treaty rights and reasoning that fiduciary duty need not be invoked to engage the duty to consult and accommodate (Morellato, 2008; Newman, 2014).

The third ruling, a companion case to *Haida*, is presented out of chronological order because of its impact on the evolution of Aboriginal consultation. Whereas the decisions in *Haida* and *Mikisew* broadened and expanded the scope and reach of the duty to consult, the decision in *Taku River Tlingit v. British Columbia* somewhat restricted it. The Court set boundaries on the

duty to consult in determining that the First Nation had been consulted and accommodated through the environmental assessment process (Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004). Thus, the decision established that governments must consult but need not reach agreement, specifying that failure to do so does not breach their good-faith obligations.

While Supreme Court decisions are not crafted to express anyone's worldview or agenda, they do operate as authoritative, external forces that reshape the interpretive environment in which the parties operate. From a framing perspective, they introduce externally imposed reinterpretations that modify the assumptions, responsibilities, and expectations across the groups involved in Aboriginal consultation. The next section explores this interaction.

3.6 Jurisprudence as External Reframing

The court decisions discussed above are evidence of inter-organizational controversies that the Supreme Court has commented on. From a frames-and-framing perspective, these decisions do not constitute the frame reflection as Schön and Rein describe it, because the reinterpretation is imposed rather than developed among the practitioners themselves. However, by clarifying and explaining the application of Canadian law, the decisions substantially impact how each organization practices Aboriginal consultation. They reshape the responsibilities, opportunities, and constraints that inform how future consultation issues are framed without requiring the parties to adopt a common frame. This alters factors related to framing issues in future consultations, resulting in a dynamic Aboriginal consultation practice.

With the representative frames established in Chapter 2 in mind, the actions of the groups following the Taku River Tlingit decision suggest a significant shift in Aboriginal groups' approach to consultation.

Even though the ruling was not in their favour, Aboriginal groups saw participation in government environmental assessment processes as a means of increasing their role in decision-making (Boyd & Lorefice, 2018). Due to increased participation, assessments became more extensive and complicated. The disruption to what had become the regular flow of environmental assessments conflicted with the goals of industry groups.

Lengthy environmental assessments add risk and uncertainty to projects and operate outside the established processes, sacrificing efficiency for inclusiveness; in that respect, they run counter to the Economic frame. In response to these concerns, the federal government restricted the processes in 2012 with the Canadian Environmental Assessment Act, 2012 (Gibson, 2012). The legislation passed in July 2012 rewrote the patchwork of pre-existing laws, severely limiting the ability of environmental assessments to impact decision-making while reducing their scope (Gibson, 2012). The Court continued to address whether regulatory processes discharge the duty to consult during this period (*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017). The Impact Assessment Act (IAA), which replaced the Canadian Environmental Assessment Act, 2012 (CEAA 2012), was itself later the subject of *Reference re Impact Assessment Act* (*Reference re Impact Assessment Act*, 2023). Whatever the outcome of that reference, environmental assessment processes no longer appear to offer Aboriginal groups the same avenue to pursue their consultation objectives.

To put it briefly, the post-Taku developments suggest that jurisprudence did more than define the Crown's obligations. It altered the institutional setting in which Aboriginal groups pursued political recognition, governments sought legally defensible processes, and industry sought predictable project development. These effects did not reconcile or merge the Political,

Legal, and Economic frames; they changed the opportunities and constraints through which each group could pursue its goals.

This chapter has established that trajectory but has not yet interpreted its full significance. Chapters 4 and 5 establish the hermeneutic method and introduce the empirical encounter with Cascade. Chapter 6 then returns to the jurisprudence from that changed understanding, examining the relationship between the Political and Legal frames and between the Economic and Legal frames before considering whether the Cascade equity agreement created an outside-the-system route toward concurrent pursuit of institutionally articulated goals.

4 Methodology: Interpretation, Complexity, and the Hermeneutic Circle

4.1 Philosophical/Epistemological Underpinning

With the theoretical foundation laid, the methodology now shifts toward aligning method with meaning. This section does not present tools for data collection and analysis, which would be reductive; instead, it situates the study within the philosophical alternatives set out in the research onion (Figure 1), reflecting a commitment to coherence between epistemology and practice. As Crotty (1998) argues in *The Foundations of Social Research*, omitting that work does readers a disservice, depriving them of the justification—or even the explanation—for the choice of methodologies and methods. Interpretivism frames this thesis.

Positivism, the topmost philosophy of the outer ring, is arguably the earliest branch of research philosophy, emerging during the Scientific Revolution in the seventeenth century, sustained in the work of Auguste Comte and the Vienna Circle, and continuing with as many as 12 separate varieties (Crotty, 1998, p. 20); the other philosophies emerge in response to its criticisms. The belief that reality is objective and atomistic underlies positivism. Objective in that what is real (truth, facts) exists separately from the researcher, and knowledge about reality is gained purely from what can be observed and measured (Saunders et al., 2023). Atomistic, in that positivists can also see reality as the “sum of its parts,” allowing complex systems to be broken down into smaller, measurable, and abstract components. This belief in the nature of reality (ontology) and the acquisition of knowledge (epistemology) guides positivist research toward quantitative methods and the collection of quantifiable data.

Positivism’s strength lies in its appeal to rationality, which holds, in this context, that knowledge is gained and tested above all by reason and deductive logic. Rationalism begins with certainty, “if this is true,” and then, through reasoning, reaches logically undeniable conclusions,

“then this must also be true.” These truths, so proven, form the initial certainty of the subsequent argument, and so on. These tenets are evident in quantitative methods’ claim of being value-free and generalizable, in which techniques and measures are shared across academic disciplines and subsequently analyzed mathematically. However, the perfectly rational conclusions reached via positivist research do not always agree with empirical observations, leading to criticisms and alternative philosophical perspectives outlined below.

Empiricism does not refute the role of rationality in acquiring knowledge but challenges the initial certainty on which rationalism is based. It contends that logical reasoning based on asserted certainty is not logically sound. The first rational assertion, “if this is true,” cannot be proven but is instead based on perception and experience. Thus, empirical evidence (sensory observation, experience, experimentation) is the primary source of knowledge from which logically coherent theories are derived.

If one accepts *a priori* that the goals of science are *description*, *prediction* (following description), and *explanation* (following prediction) (Jhangiani et al., 2019), then positivism struggles with the last two, especially when social phenomena are involved. Bruschi (2017) notes that the situation differs from that of natural sciences, where procedures focus on manipulating *objects*, whereas, for the most part, properties in social sciences are “operationalized by prevalently *linguistic*, not *material* indicators, as those of the physical sciences, with serious consequences on the ‘objectivity’” (p. 2225; emphasis in original).

Critical realism offers a significant alternative to positivism while retaining the proposition that a reality exists independently of the researcher’s knowledge of it. It rejects the assumption that reality is exhausted by what can be directly observed. Instead, critical realists distinguish observed experiences and events from the structures, relations, and generative

mechanisms capable of producing them. This distinction is particularly important in social research because social phenomena are concept-dependent and therefore require interpretation, even though they are not regarded as existing only through the researcher's interpretation (Easton, 2010; Fleetwood, 2005). Critical realism thus combines a realist ontology with an acknowledgement that knowledge of social reality is partial, situated, and interpretively mediated. In management research, it has consequently been used to support qualitative case studies seeking to explain how underlying structures and mechanisms generate observed organizational events (Easton, 2010).

Critical realism is, therefore, a plausible alternative for the present study. Its recognition that social phenomena require interpretation and its refusal to collapse the object into the researcher's account have affinities with aspects of the hermeneutic position developed later in this chapter. The distinction lies principally in what the inquiry asks interpretation to accomplish. A critical realist case study would typically move from observed events toward an account of the underlying entities, structures, and causal mechanisms capable of producing them (Easton, 2010). This thesis does not attempt to establish the mechanisms that led to the Cascade agreement or to dissatisfaction with consultation. Instead, it asks how consultation has been understood and framed by historically situated actors, institutions, jurisprudence, and participants, and how those understandings change through their interaction with one another. Its principal object is, therefore, meaning rather than a causal mechanism. For that reason, critical realism provides an informative neighbouring position but not the philosophical foundation adopted here.

Pragmatism offers another credible alternative, particularly within applied management research. Rather than beginning from a fixed position in disputes concerning objectivity and

subjectivity, pragmatist inquiry places greater emphasis on problematic situations, experience, action, and the consequences of knowledge. Contemporary applications of pragmatism emphasize actionable knowledge, the interconnectedness of experience, knowing, and acting, and the selection of research approaches based on their usefulness for the inquiry being undertaken (Kelly & Cordeiro, 2020; Morgan, 2014). Pragmatism is therefore not synonymous with mixed methods, nor is it simply a licence to employ whatever technique is convenient. It constitutes a philosophical orientation in which the meaning and warrants of knowledge are closely connected to what follows from it in experience and practice.

Pragmatism is attractive for a study that began with dissatisfaction in an established process and that ultimately considers whether alternative arrangements may better serve the parties involved. However, practical effectiveness is not the primary criterion by which understanding is established in this thesis. The inquiry first seeks to understand how consultation is constituted and experienced through historically situated meanings, frames, jurisprudence, and participant accounts. Practical implications emerge from that interpretation rather than providing the initial standard by which competing interpretations are selected. Pragmatism, therefore, shares this study's concern with experience, context, and practical consequences, but interpretivism more accurately describes the epistemological commitment guiding the inquiry.

A further alternative is postmodernism. While postmodernism builds on interpretive lines of thinking, it emphasizes language's function and the role of power dynamics in understanding reality (Saunders et al., 2023). Positivism and interpretivism disagree on ontological and epistemological grounds, but share a regulatory perspective. This perspective requires cohesion in research guided by it, namely, that its findings on organizational phenomena can be integrated with current realities. Postmodernism, in contrast, guides researchers to question the role of

power relations in sustaining dominant “realities” or points of view from their perspective. The goal is to emphasize what has been left out or marginalized by deconstructing the ideologies and power relations used to support them. Put another way, instead of researching “Management,” postmodernists focus on the ongoing processes of “Managing” (Burrell & Morgan, 1979).

Regarding the research gap, given that the existing literature leans toward positivism, an alternative philosophy could offer a fresh perspective and a deeper understanding. However, a position such as postmodernism, which challenges the legitimacy of present practices, would face a more difficult path to having its recommendations taken seriously by those informed by the existing literature and engaged in the current processes.

Interpretivism offers a different philosophical response. Where critical realism ultimately seeks explanations in the structures and mechanisms underlying observed events, and pragmatism emphasizes inquiry through experience and practical consequences, interpretivism places the meanings through which people understand and constitute social reality at the centre of inquiry. Social phenomena are therefore approached as historically and culturally situated rather than as objects whose meaning can be abstracted from context (Crotty, 1998; Saunders et al., 2023). This is the philosophical position adopted in the present study.

Formed in response to criticisms of positivism’s effort to develop a natural science of the social (Crotty, 1998, p. 67), interpretivism posits that social reality is subjective and holistic, rather than being objective and abstractable. Subjective in that the truth about the objects of social science research is in the meaning placed on them by their human creators. Holistic in that the meanings are historically and culturally situated (Crotty, 1998). In other words, they are inextricably linked to context. These beliefs lead researchers to gather rich, typically qualitative, empirical evidence. To maintain logical coherence, a researcher may collect data (the description

phase) and then develop a theory (prediction and explanation phases), as in grounded theory. Alternatively, as was done in this research, they may determine an appropriate theoretical framework before gathering data. Empirical rigour is established in this study through a framework-first design.

Interpretivism, however, is a philosophical branch rather than a single position, and the commitments that follow from it depend on where one lands on it. The strand taken up here runs through philosophical hermeneutics, where the interpreter's situatedness is treated not as contamination to be minimized but as the condition of understanding itself.

Hermeneutics (philosophy of interpretation) and phenomenology (philosophy of experience) jointly articulate this stance (George, 2021; Smith, 2018). They reorient research such as this away from the positivist search for detached regularities toward a dialogical relationship with phenomena: knowledge comes from allowing meanings to disclose themselves while scrutinizing how those meanings came to be.

Within this scope, the hermeneutic circle supplies the basic logic of inquiry: understanding moves recursively between the whole (e.g., findings from Boyd and Loreffice (2018)) and a part or specific example (Cascade project, interview narratives). Each pass through the circle sharpens the other pole and draws hidden assumptions to the surface, creating a self-adjusting pathway toward deeper understanding (Grondin, 2017). Far from being an "offshoot," the circle is the distinguishing element of hermeneutics itself; it underwrites every act of interpretation from antiquity to the present (Grondin, 2017).

Hermeneutics was originally used in biblical philology; Friedrich Schleiermacher (1768–1834) called for hermeneutics to be used as a "universal" art of interpretation, joining grammatical analysis with a re-creation of the author's individuality (Schleiermacher, 1998).

Wilhelm Dilthey (1833–1911) built upon this in his essay “The Rise of Hermeneutics,” recasting the art as the methodological core of the “human sciences” (Dilthey, 1976). Dilthey’s key contribution was to insist that understanding (*Verstehen*) provides access to lived experience. Systematic interpretation (*Auslegung*) is the method that makes such understanding possible, distinguishing the human sciences from the causal explanations sought in the natural sciences (Makkreel, 2021). By taking hermeneutics beyond textual interpretation to the understanding of lived experience, Schleiermacher and Dilthey established hermeneutics as foundational for the social sciences, directly informing the methodological choice for this study.

About a decade following Dilthey’s death in 1911, Martin Heidegger (1889–1976) radicalized hermeneutics. He treated it not as a scholarly method but as an ontological condition. He argued that interpretation and hence hermeneutics were the “fore-structure of understanding,” an essential characteristic of the human mode of existence (*Dasein*). For Heidegger, every act of understanding is already operating within this tacit fore-structure (Heidegger, 1927/2008). Hermeneutics is therefore unavoidable rather than an optional technique. His student, Hans-Georg Gadamer (1900–2002), rearticulated Heidegger’s thoughts in his book *Truth and Method*, published in 1960. He added the notion of “fusion of horizons,” whereby the interpreter’s horizon or perspective shaped by history meets the horizon embodied by the text. For Gadamer, understanding arises dialogically as these horizons fuse into a new shared horizon (Gadamer, 2004).

By Gadamer’s account, the interpreter projects the text’s historical horizon, which is not a personal invention but is anchored in the work’s own history and continues to challenge and refine every new reading; this projection, however, is only a phase of understanding and is taken up into a fusion with the interpreter’s own horizon. Together, Heidegger’s assertion that

interpretation was foundational to the human condition and Gadamer's fusion of horizons expanded hermeneutics beyond methodological practice into a philosophical framework crucial to identifying biases and facilitating authentic dialogue in research.

Gadamer's notion of a "fusion of horizons" enriched the dialogical aspect of interpretation. Nevertheless, criticism followed the publication of *Truth and Method* in 1960 and continued through the decades thereafter. In the late 1960s, German philosopher Jürgen Habermas (1929–2026) began formulating the most widely cited critique of the model, namely, that it had no normative or contestable criteria (Habermas, 1990, 1968/2015, 1967/2015). This made it vulnerable to accusations of relativism—that it would support both a carefully sourced historical study of a text and an expression of opinion (Habermas, 1990). Given this, he rejected the claims of "universality" made by Heidegger and Gadamer.

In the 1980s, Algerian-born French philosopher Jacques Derrida (1930–2004) fundamentally objected to the notion that philosophical hermeneutics offered any pathway to unbiased truth through the method envisioned by Gadamer (Derrida, 1989). From a philosophy of deconstruction point of view, he argued that Gadamer's assumption that both the horizon of the researcher and the horizon of the text can be grasped in their entirety **is an impossibility (Derrida, 1989)**. Deconstructionists hold that "construction" can never be completed or rendered stable, and that Gadamer's close reading exposes undecidable elements that lead to the discovery that the construction has dismantled itself (Derrida, 1991). In short, the circle cannot be completed. The critiques from Habermas and Derrida uncover important methodological warnings, namely, avoid relativism and acknowledge the impossibility of absolute interpretive completeness. They also created space for Figal's new-realist hermeneutics, which directly addresses these challenges.

A parallel response to these critiques had already taken shape within the qualitative-methods literature, which turned to Paul Ricoeur to recover an objective and contestable moment from inside the hermeneutic tradition itself. Russo (2021) values Ricoeur's contribution for bridging ontological and critical hermeneutics, an aspect Russo reads Gadamer as having left undeveloped. On this reading, where the fusion of horizons tends to dissolve the difference between interpreter and text, Ricoeur's account of *distanciation* restores it: when speech is transcribed, it becomes autonomous of the original speaker and situation, and this distance is what allows interpretation to acquire objective content and answer to features of the text that others can examine (Nigar, 2020; Russo, 2021). Russo develops this specifically for narrative interviews in nursing care, where transcribing a patient's spoken account is the very operation that generates its interpretive value; Nigar operationalizes the same lineage for narrative inquiry, noting that for Ricoeur, unlike Gadamer, a text's meaning is reached only by letting it pass through a standpoint lying outside the interpreter. This thesis extends the same distance-as-objectivity logic, grounding it in Figal's stronger ontological account of exteriority. One difference should be marked: Ricoeur's hermeneutic arc recovers distance methodologically yet closes in *appropriation*, the reader's assimilation of the world of the text, whereas Figal holds the object's remove open even within understanding (Figal, 2010, pp. 24, 138). It is this preserved exteriority that distinguishes the present approach and motivates the turn to Figal.

Recognizing the limitations raised by Habermas and Derrida, Figal deliberately preserves the interpretive power of hermeneutics while reintroducing an accessible and contestable form of objectivity to the method. This is particularly valuable in examining the complex, multi-stakeholder interactions inherent in Aboriginal consultation. Günter Figal (1949–2024) offered a new approach to hermeneutics that took it beyond Gadamer and Heidegger (George, 2009).

Figal's approach retains Gadamer's dialogical elements, but balances that with a nuanced definition of "objectivity" (*Gegenständlichkeit*). For Figal, objects retain their "exteriority," and hermeneutics is concerned with interpreting something outside oneself that stands over against (*entgegensteht*). Because of this, interpretations must answer to publicly shareable features of the object (Figal, 2010). In this way, the contestability that Habermas demands is satisfied without abandoning the hermeneutic circle. He also stipulates that interpretation is spatial, meaning that objects are at a distance from understanding, acknowledging Derrida's point of view while contending that this contestability allows dialogue to further understanding without claiming absolute presence (Figal, 2010).

Figal distinguishes his approach from classical hermeneutics (from Schleiermacher through to Gadamer), which treats whole-part recursiveness as an essentially subject-centred dialogue—namely, the interpreter navigates bias and prejudice, fuses horizons, and deepens self-understanding through the encounter with the object. Figal re-orientates the movement around the objective "exteriority" of what stands "over against" the interpreter. Because meanings must answer to what confronts them, each pass through the circle is publicly contestable: interpretations can be questioned, criticized, or revised by appealing to features of the object that anyone, in principle, could encounter (Figal, 2010; George, 2009). In short, Figal's new-realist hermeneutic circle, by maintaining distance and emphasizing spatial relatedness, aims for a common (intersubjective) rather than personal understanding. This thesis, therefore, adopts Figal's reorientation as a development of Gadamer's hermeneutics: where Gadamer is centrally concerned with the event of understanding, namely, what happens to the interpreter in coming to understand something that confronts them, Figal shifts the focus to the object of understanding, to what is being interpreted and how it can become intelligible through that interpretation.

Gadamer's insights are retained: understanding is dialogical, is historically situated, and always proceeds from the interpreter's own horizon. But where the fusion of horizons integrates the difference between interpreter and object into a shared horizon, and where Gadamer treats distance as productive and takes it up into that fusion, this study follows Figal in locating distance in the object itself and holding it open as exteriority, the condition under which interpretation remains contestable.

That preserved exteriority requires a design in which the object can resist the reading, which is what the hermeneutic case study provides, particularly for complex, contextually situated phenomena. In this model, understanding emerges not through the justified, yet reductive, extraction of facts based solely on previously justified beliefs, but through a back-and-forth movement between the parts and the whole. While hermeneutic case studies have been applied in several fields, including psychotherapy (Elliott, 2002), nursing and end-of-life care (Fleming et al., 2022), and psychobiography (Knight, 2019), this thesis appears to be the first to apply Figal's "new-realist hermeneutics" to Aboriginal consultation and resource development, a choice made because of Figal's emphasis on objectivity, spatiality, and contestability that directly addresses previous critiques and enables rigorous interpretation of complex phenomena. The following sections describe how the hermeneutic orientation shaped the ongoing inquiry and the case study design.

4.2 Researcher's Hermeneutic Spiral

The hermeneutic method has already been applied in this thesis, in what is described here as a hermeneutic spiral,⁹ as follows:

Loop 0: As noted in A Note on Positionality, my inquiry began in remote hearing rooms of the Alberta Energy Regulator. In the fall of 2015, I sat, first as an IT professional, then as an increasingly curious observer, through three hearings. I was struck by the uniform dissatisfaction shown by industry proponents, Indigenous and landowner representatives, government officials, and even the commissioners with a process ostensibly created to serve them. The “field” encounter formed my pre-understanding (*Vorverständnis*), a felt sense that the normative aims of consultation were misaligned with the lived experience of those in the hearings.

Loop 1: Seeking to make academic sense of what I had witnessed in the hearings, I began by exploring literature relevant to the practical problem I had observed: how parties brought into consultation might work more effectively together. At that stage, I did not yet understand this movement in explicitly hermeneutic terms. Looking back, however, it marked an early expansion outward from the immediate experience of the hearings toward broader conceptual resources that might explain them.

I first approached the issue from a team performance perspective and reviewed Suzanne T. Bell's work on group effectiveness and selection (Bell, 2004, 2007). From there, I turned to stakeholder engagement, prompted in part by Arnstein's “A Ladder of Citizen Participation” (Arnstein, 1969) and then to collaboration literature, including the work of Barbara Gray (Dewulf et al., 2009; Gray, 1989; Gray & Purdy, 2018; Gray et al., 2015; Wood & Gray, 1991).

⁹ The term spiral, rather than circle, reflects my adaptation of an image already used in the hermeneutic literature: the study's three research questions each involved an interpretive circle, and these informed one another across successive loops.

Although each of these literatures illuminated aspects of the hearings, none adequately explained the persistent dissatisfaction I had observed. A breakthrough came through the environmental conflict literature, particularly *Making Sense of Intractable Environmental Conflicts: Concepts and Cases* (Lewicki et al., 2003), where I encountered scholarship on frames and framing. That path eventually led me to Bateson (1955), Goffman (1974), Schön and Rein (1994), van Hulst and Yanow (2016), and finally Boyd and Lorefice (2018), whose work connected framing directly to Aboriginal consultation. In retrospect, these readings made the hearings newly legible: what had first appeared as a practical failure of process came to be understood as a clash of interpretive frames.

Loop 2: My first pass through the jurisprudence on section 35(1) preceded the theoretical framework. At that stage, my working understanding of the hearings was compositional (that consultation succeeded or failed according to whether the right people were in the room), and I read the decisions through that lens. Even so, Taku River Tlingit registered as different from Haida and Mikisew, though I could not yet say how; I noted the anomaly without comprehending it. In Figal's terms, the object had already announced its exteriority: it stood over against a reading that was not equipped to interpret it, and the resistance was recorded before any framework existed that could have produced it.

The second encounter came after Boyd and Lorefice (2018) supplied the representative frames. Re-read with the parties' goals overlaid, the jurisprudence disclosed itself as a sustained exercise in balance, each ruling anticipating competing questions in its wording: rights affirmed, yet infringement justifiable; consultation required, yet no veto. Taku would not fit that reading. Where the other decisions balanced, Taku answered. It addressed the question an Aboriginal group might put to the process (why is this development we oppose justified?) and its answer

was that the Nation had been consulted, the Court describing in detail how the environmental assessment had taken the concerns seriously and amended the activity to mitigate them. Nor was the friction confined to the text: read alongside the developments traced in Chapter 3: Aboriginal groups subsequently treating environmental assessment as a strategic venue, and the legislative correction of 2012. The object resisting my reading was a composite of the ruling and its aftermath. What that composite would not stop saying was that consultation goals had been pursued, and the duty discharged, through a venue adjacent to the formal consultation process. The revision of the whole followed: the dissatisfaction might not be inevitable, and the operative question became not whether the process could be perfected, but whether its goals could be met through other arrangements, the question the Cascade case would make empirically tractable.

Loop 3: The Cascade Power case provides an ideal empirical opportunity to examine the revised horizon. Through semi-structured interviews with the Nations' financial advisor, a senior official of the AIOC, and an executive of the proponent, the circle is reengaged, with the interviews treated as objects and Boyd and Lorefice's goals set as the horizon. The precise nature of this is discussed in Chapter 5.

Loop 4, the discussion chapter, synthesizes the empirical findings from Loop 3 and the theoretical elements of Loops 1 and 2.

4.3 Research Design

Having outlined the iterative hermeneutic circle, which began with the initial field encounter (Loop 0) and progressed through theory, jurisprudence, empirical engagement, and integration (Loops 1–4), I set out below the design through which the empirical case study and its interpretation were operationalized. A qualitative hermeneutic case study approach is appropriate because it facilitates focused attention on contextual nuances and the situated

meanings central to Aboriginal consultation processes. The case study boundary (Cascade Power Project, Alberta, 2018–2025) keeps the inquiry feasible for an MSc Management thesis while allowing this research to incorporate multiple data sources. Hence, information on the historical, cultural, and political dimensions, expressed through policy, legal decisions, and personal narratives, is presented in relation to the Cascade project. The hermeneutic aspect enables the analysis of complex interactions and the formulation of recommendations based on a deeper understanding.

This process is operationalized through five interpretive loops that structure the inquiry. Beginning with the firsthand observation (Loop 0), each subsequent loop iteratively refines understanding through theory (Loop 1), legal texts (Loop 2), empirical interviews (Loop 3), and integrative reflection (Loop 4). These loops illustrate the research process and align with the hermeneutic circle in practice.

Table 3*Researcher's Hermeneutic Spiral*

Spiral Loop	Empirical Encounter	Insight or Revision Gained	Practical Steps Taken
Loop 0 – Field Encounter	Observer Alberta Energy Regulator Hearings	Recognition of dissatisfaction	Problem statement formation
Loop 1 – Theory Search	Literature search	Identification of theoretical lens	Building theoretical framework
Loop 2 – Jurisprudence	SCC s. 35(1) decisions (Taku River Tlingit)	Rulings read as balancing the frames; Taku resists that reading	Document analysis of legal texts
Loop 3 – Empirical Case	Cascade Interviews and documents	Alignment, qualified by refusal-and-redesign and interframe tension	Qualitative interviews; descriptive coding and interpretive reading (interviews, texts)
Loop 4 – Revised Understanding	Cross-comparison of empirical and theoretical elements	Emergent Synthesis: co- creative rather than adversarial practice	Interpretation and final integration presented in findings and discussion

The selected case, the Cascade Power Project, shaped the direction of the research. Locating a demonstrably “successful” consultation in which participants might be more willing to discuss it proved challenging. An exhaustive search began; however, as noted earlier, consultation is ongoing, and successful consultations attract less attention. After canvassing friends, colleagues, industry contacts, and Indigenous relations professionals, I received a warm referral to the CEO of an Indigenous-owned corporation, which led to contact with the Cascade Power Project, the first transaction supported by an AIOC loan guarantee.

Because Cascade was the first AIOC transaction, the factors in this case informed the use of the theoretical framework to further understanding of Aboriginal consultation. As each instance of consultation is contextually situated, selecting Cascade positions it as a “part” whose interpretation will iteratively interact with my understanding of consultation as a whole; a different case would have traced a different hermeneutic arc. Because hermeneutics seeks contextually situated meaning, each new case would yield a more comprehensive,

complementary understanding of Aboriginal consultation. Framed in qualitative research design vocabulary, the Cascade case is best understood as an exploratory, illustrative case. It is not selected as a critical test of a proposition that, if falsified, would overturn the theoretical framework; nor is it offered as a representative sample from which statistical generalization is intended. Following Stake (2005), it is a bounded, contextually situated instance through which the theoretical framework can be interrogated and progressively refined. What this design permits is analytic generalization (the extension of theoretical propositions, rather than empirical findings, to other settings), not statistical generalization to a broader population of consultations (Yin, 2014). Barr (2004) notes that the strength of a case study lies in its ability to particularize, not generalize: to describe, contextualize and interpret complex social phenomena. The significance of the Cascade findings, therefore, lies in what they suggest about the conditions under which frame convergence may occur, not in their frequency across cases.

Prior to the interviews, approval was granted by the University of Lethbridge Human Subject Research Committee (Protocol #2021-027). The application included the general interview guide and the letter of informed consent. Consistent with the dialogical ethic of hermeneutics and the principle of mutual respect, participants were offered confidentiality, recognizing that knowledgeable insiders might otherwise identify one another.

4.4 Data Collection

Participants were purposively selected based on their direct involvement in the Cascade project (Gentles et al., 2015; Palinkas et al., 2015). Participants were recruited through warm referrals, starting with the First Nations financial advisor, then a senior official at the Alberta Indigenous Opportunities Corporation, and finally an executive at Kinetikor, the proponent company. Although participants' roles are publicly visible within the Cascade agreement, all

quotes have been anonymized using role-based pseudonyms unless explicit consent to attribution was granted. This approach balances ethical obligations with the interpretive clarity required for hermeneutic analysis.

Efforts were also made to recruit participants who could provide a perspective more closely grounded in the participating First Nations. Between March 2022 and July 2022, invitations were sent to Chiefs and Council via email and through mutual connections, requesting interviews and permission to contact members. Multiple follow-up attempts were made where appropriate. These efforts did not result in additional interviews.

The interview record itself documents these efforts and their standing among participants: the Proponent, unprompted, urged that the perspectives of the participating Nations' leadership "should be the most important piece for this research," and the Advisor undertook to facilitate an introduction to a senior figure in the Nations' agent firm (Proponent, interview, September 27, 2021; Advisor, interview, September 23, 2021). That the participants closest to the transaction directed the research toward community-level voices underscores both the seriousness of the recruitment effort and the significance of the gap that remains; the evidentiary boundary described in Section 4.8 is therefore drawn with, not against, the participants' own view of whose account matters most.

The resulting sample, therefore, includes individuals professionally involved in advising, financing, and developing the Cascade agreement, but does not include community members or representatives participating specifically in a community-level capacity.

Interviews for this research were semi-structured, meaning an interview guide was prepared beforehand to optimize the time available while maintaining a sense of the breadth and depth of possible questions. Semi-structured interviews are preferred when the goal is a better

understanding of the participant's unique perspective (Adeoye-Olatunde & Olenik, 2021). The general guide was amended for each interview, allowing customization for each participant while retaining an identical core set of questions. The interview guide was designed under an earlier formulation of the research questions, oriented to typologies of frames in conflict and negotiation research (Dewulf et al., 2009); its core questions about the process and about participants' own and others' objectives were retained as the study's focus shifted to the goal-based frames of Boyd and Lorefice (2018). The interviews were conducted via Zoom, consistent with pandemic-related travel limitations and participant preference, in August and September of 2021. The interviews lasted between 40 and 60 minutes, were recorded (audio and video), and were transcribed verbatim with participants' informed consent. These interviews formed the empirical objects examined in Loop 3 of the hermeneutic spiral and revisited in Loop 4 during interpretation.

Thus, a semi-structured interview design was used to allow participants to express their perspectives in depth while keeping them focused on the topic, aligning with the interpretive goals of the thesis.

The interview sample, therefore, supports analysis of how professionally situated participants understood the Cascade agreement and its relationship to the three frames. In relation to the Political frame, the empirical object is the participants' interpretation of the institutionally articulated goals identified by Boyd and Lorefice (2018), rather than community-level experience or consensus.

4.5 Data Analysis

Guided by the hermeneutic tradition, the analysis proceeds as a narrative-informed hermeneutic case study. Each participant interview was first approached as a self-contained narrative, allowing individual framings and experiential language to reveal themselves on their

own terms. These “first” readings were then re-read against the evolving “whole”: the theoretical frames developed by Boyd and Lorefice (2018), and the jurisprudential interpretation found in the SCC decisions, such as *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* (2004).

Analysis followed a recursive spiral: each pass brought the part into conversation with the whole, surfacing moments of alignment and contention. NVivo was used during the early stages of analysis to manage interview transcripts and supporting documents, apply initial codes, and organize coded excerpts. NVivo access ended before the analysis was fully completed. The later stages of comparison and synthesis were completed manually through iterative review of the transcripts, coded exports, and annotations. The analysis, therefore, did not rely on NVivo as an automated analytic tool but used it as part of a broader interpretive process to organize and revisit the data. This process emphasized analytic transparency and interpretive traceability rather than procedural replication.

The analysis proceeded in three stages. First, each transcript was read in full and annotated; the annotations record passages marked on first reading, questions raised, links to other interviews, and, on later readings, where an initial interpretation was revised. Second, transcripts were coded using descriptive codes that remained close to what participants discussed (Saldaña, 2021): the equity agreement; participants’ own roles and those of other parties; consultation and equity; dissatisfaction; and industry’s view of the project. Apart from two codes drawn from Boyd and Lorefice’s political and economic goals, the frames entered the analysis of the interviews at the interpretive stage rather than as its organizing coding scheme; legal matters were coded rarely, and most interview material bearing on the Legal frame was identified in later readings. The jurisprudence examined in Loop 2, by contrast, was coded directly against the

goals of government, Indigenous groups, and industry. Third, after NVivo access ended, interpretation was completed manually and the findings were organized around the three frames. The frames, therefore, entered the analysis of the interviews at the interpretive stage rather than as its coding scheme: participants' accounts were first coded in their own topical terms and then read against the frames. The interview guide did not introduce the three frames or their names; its core questions asked about the process, participants' own objectives, and their understanding of other parties' objectives. One question introduced the ESG characterization of the agreement from a published case study (von der Porten & Podlasly, 2021), and responses to it are read with that prompt in view.

In Figal's sense, each transcript was treated as an object, a source of exteriority that could challenge or confirm the whole rather than reinforcing prior assumptions. Transcription is itself part of this exteriority: fixing a participant's spoken account in a verbatim text distances it from the original interview situation, so that the account confronts the interpreter as something standing over against them, rather than as an extension of the exchange that produced it. This mirrors the Ricoeurian distancing discussed above and, in Figal's terms, the passage from positional speech to writing. Extending Figal's largely textual sense of exteriority to the researcher's social position relative to participants is an application this thesis makes rather than one Figal states directly; it is warranted here because the transcripts, like texts, are encountered as fixed objects that answer back to interpretation.

The findings chapter will explore how the narratives of each participant relate to and potentially extend the representative frames described by Boyd and Lorefice (2018). These comparisons identify points of alignment, tension, and extension across the three frames and

provide the basis for assessing whether framing alignment contributed to the convergence observed in the Cascade case.

4.5.1 Exteriority in Practice

The Taku reading described in Loop 2 was the first of three instances in which the object resisted an established interpretation. The interviews supplied a second instance of the object answering back. Cascade had been located because it succeeded, and I entered the interviews expecting a detailed account of a successful agreement, with the AIOC understood, roughly, as its enabler. The first interview seemed to bear this out: the AIOC official described the corporation's due diligence and the creative structuring worked out with the pension-fund investor, but said nothing of any refusal. It was the Advisor, in the second interview, who disclosed that the AIOC had "flat out said no" to the Nations' preferred direct-investment structure, an account that prompted follow-up questions the interview could not fully answer. My reading at the time, and on the first pass through the transcript, assimilated the refusal to what the framework would call storytelling: the Advisor emphasizing, for my benefit, the hard work and complexity behind the agreement.

Fixed in the transcript, the refusal would no longer remain rhetorical. Read against the AIOC official's own account, it explained what that account had left unmotivated: the "creative risk ... and return sharing" was not ingenuity in the abstract but the redesigned structure the refusal had forced, and the closed transaction (the pension-fund investor absorbing construction-phase risk) carried the refusal's trace in its architecture. The two accounts answered one another as publicly examinable features of the case: one part supplied the redesign without its cause, the other the cause without dwelling on its result. The interpretation this compelled was a double revision. The refusal was not colour but mechanism; the alignment observed at Cascade was

constructed through refusal and redesign rather than discovered as latent harmony. Furthermore, the AIOC could be read not as an enabler *simpliciter* but as a guarantor operating within its own frame, the province's risk directive standing within the equity arrangement, just as the duty to consult stood outside it.

A third instance arose where the data were least solicited. The interview guide was designed to let participants describe their own frames. By the later stages of the fieldwork, the accounts were converging with the Political frame's vocabulary: ownership as empowerment, generational wealth, and a seat at the table. The resistance came in answer to a closing question about lessons learned. The Advisor's response identified the transaction's chief unfulfilled possibility: "if we could have directly created more opportunity for Community owned businesses and procured out work kind of tied to the project ..., I think we would have done that," but only without what he called "cross threat" (that is, jeopardizing the agreement itself), "because whenever we went and presented to the communities ... [t]he question wasn't necessarily around what are, you know, what's the economic benefits of ownership of the plant. It was generally more around what employment opportunities, can we create for our people" (Advisor, interview, September 23, 2021).

Fixed in the transcript, the passage stood over against the reading the interviews had been building up to. The means of assimilating it lay in the same interview: the Advisor's distinction between assets, which build generational wealth, and income, which supports consumption, could have rendered the employment questions a communication gap awaiting financial education, leaving the empowerment reading intact. The transcript's own framing resisted that resolution. The Advisor presented the gap not as a misunderstanding to be corrected but as a regret under constraint: a provision the parties would have included had including it not

endangered the transaction. Read against the Proponent's account of the operating asset, 25 permanent staff and no long-term stream of ancillary contracting, the datum became structural rather than attitudinal: the asset class that makes equity dividends possible is the one that provides least of what communities first asked about, and the agreement's viability precluded adding it. The revision this compelled was to retain the tension as a finding. The empowerment reading survives, but is qualified from within: the Political frame at Cascade is not simply satisfied by ownership; it is internally strained between the participation achieved and the participation asked for.

4.6 Case Description

The Cascade power plant is a 900-MW combined-cycle natural gas facility located 12 km southwest of Edson, Alberta, and was conceived in 2018–2019 amid Alberta's legislated coal-to-gas transition. The project is designed to supply baseload electricity to Alberta's electric system while cutting per-megawatt emissions by approximately 50% compared to legacy coal (Stantec, 2019). Cascade Power GP Ltd. was created by Kinetikor Resource Corp. as a special-purpose vehicle for the project. Cascade filed its applications with Alberta Environment and Parks and the Alberta Utilities Commission in November 2018. Alberta Environment and Parks determined that a provincial environmental impact assessment was not required. Because the plant's 900 MW capacity exceeded the 200 MW threshold for fossil-fuel generating facilities in the Regulations Designating Physical Activities, the project was a designated project under the Canadian Environmental Assessment Act, 2012, and its project description was submitted to the Canadian Environmental Assessment Agency for screening (Stantec, 2019, pp. 1.5, 1.8, 2.2).

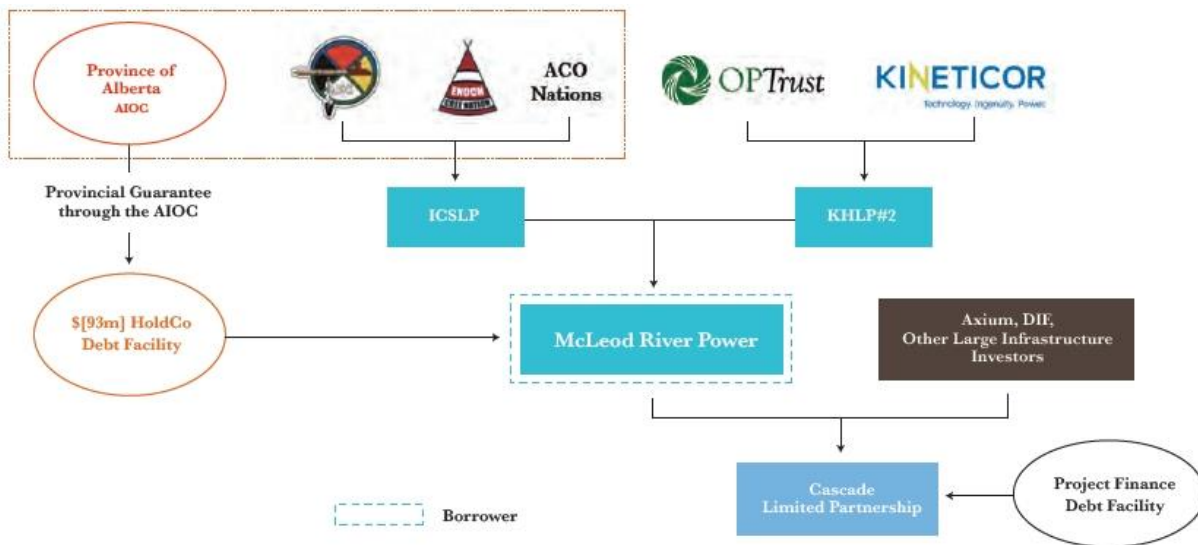
On March 28, 2019, the Agency determined that a federal environmental assessment was not required (Canadian Environmental Assessment Agency, 2019). The project description

details mitigation measures for air quality, noise, wetlands, and wildlife, and documents early outreach and consultation with four First Nations: Alexis Nakota Sioux Nation, Kehewin Cree Nation, O’Chiese First Nation, and Paul First Nation. As of January 2019, no objections had been received from these or the other Indigenous groups contacted (Stantec, 2019, p. 6.5).

The consultation stage itself was not frictionless. In August 2019, the proponent publicly attributed slower-than-anticipated approvals to concerns raised by First Nations and to the Alberta Utilities Commission process (Moore, 2019), with the Commission’s approval following in November 2019 (Government of Alberta, 2019). Read alongside the consultation record (Stantec, 2019), this indicates that the equity agreement emerged after and, in part, in the wake of a consultation process involving genuine contest rather than *pro forma* assent. Far from weakening the case’s analytical significance, this strengthens it: the partnership documented in this chapter was built by parties whose procedural relationship had included the ordinary frictions of the consultation system, which is precisely the condition under which an outside-the-system arrangement is informative.

After, and independently of, this approval, an equity agreement was reached between Kinetikor, several institutional investors, and six First Nations, who were backed by the AIOC (von der Porten & Podlasly, 2021).

**Figure 2:
Organizational Structure of the Cascade Power Project**



Note. Adapted from *ESG-Indigenous Case Study: Cascade Power Plant Project* (p. 10), by S. von der Porten and M. Podlasly, 2021, First Nations Major Projects Coalition.

https://fnmpc.ca/wp-content/uploads/FNMPC_ESG_Case.pdf. Copyright 2021 by the First Nations Major Projects Coalition.

A defining feature of the Cascade project is the precedent-setting equity structure for Aboriginal groups. Six Treaty 6 First Nations (Alexis Nakota, Enoch Cree, Kehewin Cree, O’Chiese, Paul, and Whitefish Lake) formed the Indigenous Communities Syndicate LP and, with loan guarantees from the AIOC, acquired a meaningful minority equity interest (von der Porten & Podlasly, 2021).

The primary data for this research comprises interviews with a senior executive of the proponent, the financial advisor to the participating Nations, and a senior official of the AIOC. Secondary data consists of publicly available documents, including regulatory filings from before and after the agreement and government reports on the Cascade projects.

4.7 Researcher Positionality

As noted in A Note on Positionality, I am a non-Indigenous, non-Aboriginal researcher. Repeating that here is not redundant; positionality is not simply a personal disclosure to be made once and set aside. It is a methodological condition that shapes how data is gathered, how it is interpreted, and what can legitimately be claimed from it. This section addresses those implications directly.

The interpretive orientation of this study did not begin in phenomenology. In the fall of 2017, I attended a presentation at the Alberta Energy Regulator introducing the concept of ethical space in connection with the work of Dr. Reg Crow Shoe. In time, that work led me to the Mi'kmaw principle of *Etuaptmumk*, or Two-Eyed Seeing, brought forward by Elder Albert Marshall in 2004 (Bartlett et al., 2012). At that point, I had a subject but no approach. Two-Eyed Seeing supplied one: the commitment to holding Indigenous and Western knowledge traditions distinct, seeing with the strengths of each rather than merging them into a single account. I encountered Figal considerably later. What his work provided was a philosophical account of why holding difference open is epistemically productive rather than a failure to synthesize, and a vocabulary—exteriority, contestability, distance—through which that commitment could be operationalized as a research method. The sequence matters: the ethical orientation preceded the philosophy that now articulates it.

In refining the epistemological positioning of this study, I draw on scholarship, including Battiste (2013) and Henderson (1996), that treats Indigenous knowledge systems and legal orders as coherent in their own right rather than as extensions of Crown institutions. That awareness matters here because the research examines consultation within Canadian constitutional and regulatory structures without assuming that those structures exhaust the meaning of Aboriginal political life or the sources of Indigenous authority. At the same time, this thesis does not attempt to reconstruct Indigenous law as a discrete legal order. Its purpose is more limited: to interpret how a Crown-generated institution, consultation, operates across Political, Legal, and Economic frames in practice. Two-Eyed Seeing functions in this study as an ethical-epistemological orientation of non-hierarchical co-presence. It requires that Indigenous and Western knowledge traditions remain distinct, that neither be treated as derivative of the other, and that understanding emerge through dialogue rather than subsumption.

My entry into the Cascade case came through a warm referral network built over several years of working adjacent to consultation processes, beginning at the Alberta Energy Regulator. That mode of entry was practical, but it also carried interpretive weight. Participants who agreed to speak with me knew, or could readily infer, that I was a non-Indigenous academic studying a process they had been directly involved in. I cannot know with certainty how that knowledge shaped what they chose to share, how they framed their accounts, or what they may have held back. What I can say is that the semi-structured interview design was chosen partly to address this: by preparing a core set of questions while leaving substantial room for participants to direct the conversation, the design was intended to let their framings lead rather than impose mine. Anonymization was offered to all participants for the same reason: to reduce the cost of candour.

The broader interpretive framework was also chosen with this position in mind. Figal's new-realist hermeneutics insists that the object of interpretation retains its exteriority; it stands over against the interpreter and cannot be fully absorbed into the researcher's horizon. That structural insistence on distance is, in this context, not merely philosophical. It functions as a methodological safeguard against a non-Indigenous researcher's interpretive framework collapsing into, or speaking over, the perspectives of Aboriginal participants and communities. The framework mitigates the asymmetry in my position but does not eliminate it; instead, it requires that asymmetry to be acknowledged openly rather than concealed under a claim of neutrality.

4.8 Implications of Non-Indigenous Authorship

The most significant limitation of this research, and the one that most requires reflection rather than mere acknowledgement, is the interpretive asymmetry introduced by my position as a non-Indigenous researcher writing on Aboriginal consultation. Positionality shapes what questions are asked, what counts as adequate evidence, and whose account of a phenomenon is treated as authoritative; the literature on Indigenous research methodologies is explicit on this point (Battiste, 2013; Wilson, 2008).

Several of those consequences warrant specific naming. First, although this thesis draws on the Political frame as articulated by Boyd and Lorefice (2018), that frame was itself derived from an analysis of organizational documents rather than from community members speaking in their own voice. My engagement with the Political frame is therefore doubly mediated: first through their document analysis, and then through my own interpretive horizon. The interview data gathered for this study bring participant voices closer to the centre, but those participants (an AIOC official, a proponent executive, and a First Nations financial advisor) were each engaged

in their professional capacity. Their accounts are valuable and are treated here as the primary empirical objects of the hermeneutic analysis; they are, however, not a substitute for community-level understanding of what a precedent-setting equity agreement means within the ongoing negotiation of Aboriginal rights and relationships to land.

Second, the Cascade case is, by any measure, a relatively successful one: it was located precisely because it resulted in agreement, and the participants who agreed to speak about it were those who had reason to view the outcome positively. This is a selection effect that a different researcher, one with established relationships inside the participating First Nations communities, or one who could claim membership in them, might have been better positioned to counteract. The accounts gathered here reflect the post-agreement perspectives of people in professional roles at a single point in time. They do not show how the equity arrangement is experienced in communities, whether it has also met criticism or ambivalence, or how its significance may change as the plant moves toward and through operation. Although efforts were made to recruit community-level participants, none took part, so their perspectives cannot be inferred from the professional accounts; this sets an evidentiary boundary for the Political-frame analysis.

Third, and most broadly, the “about” versus “from” distinction is not simply a limitation to be noted and moved past. It is an ongoing condition of research in this area, one that calls for something more than disclosure. The methodological choices described in the Researcher Positionality section above (the interpretive framework, the interview design, and the ethical orientation I adopted from Two-Eyed Seeing) are the substantive response to that condition within the scope of this thesis. Future research that builds on these findings would be strengthened by designs that involve Aboriginal community members not only as participants but as collaborators in framing the inquiry itself.

4.9 Other Limitations

As the researcher, my position was that of an interested but non-embedded observer. I was not part of any of the groups involved in Cascade, nor did I witness the process unfold in real time. This degree of remove had genuine costs: it limited the contextual granularity available to me, and an embedded or longitudinal vantage, engaging from the outset of consultation and through the equity agreement, would have yielded profoundly different data, possibly enabling a more finely grained analysis of how frames emerged and evolved for each party over time. Yet on the hermeneutic framework this thesis adopts, that distance is not purely a deficit. Following Figal, the exteriority of what is interpreted is a condition of understanding it rather than an obstacle to be overcome (Figal, 2010, p. 24): my interpretive distance from the events allowed the participants' accounts, once fixed in the transcript, to stand over against my prior expectations and to resist them, as the Taku River decision resisted my initial reading of the whole (Loop 2). Distance, in this sense, is part of what made the accounts interpretable as something other than a projection of my own framing.

The productivity of distance, however, should not be overextended. Preserved exteriority addresses a methodological worry (that closeness is a precondition for valid interpretation), but it does not resolve a distinct and weightier concern about whose perspective the account issues from.

The timing of data collection also shaped the scope of the analysis. Interviews were conducted in 2021, after the agreement but prior to commissioning. While this moment captured post-engagement reflection, it necessarily excluded perspectives that may emerge during operations or after the realization of equity-related outcomes.

Another important limitation is that this research is based on a single case. The limits that follow from this design choice deserve direct acknowledgement. Cascade is a single, successful case; the design could not incorporate any instance in which the dissatisfaction identified in the founding observation persisted or intensified. Whether the conditions identified here produce convergence more generally, or whether frame convergence is achievable outside of favourable conditions, remains untested by this design. Because Cascade was selected as an illustrative case rather than a representative one, the findings also cannot be extended to all Aboriginal consultations or all equity arrangements involving Indigenous communities. The three sets of preconditions identified for outside-the-system convergence (economic, legal, and political) are derived from a single case examined at a specific historical moment, within a specific provincial regulatory environment, and among a specific set of participants. Whether those preconditions reappear in other jurisdictions, under different doctrinal conditions, or among Aboriginal groups with different governance capacities is an open empirical question. The contribution is interpretive and theoretical rather than empirical: it clarifies what conditions appear to enable convergence in this instance, opening those conditions to comparative examination in future research.

Finally, the constraints of the COVID-19 pandemic meant that all interviews were conducted remotely. While participants were forthcoming, the absence of in-person interaction may have reduced opportunities to observe cues and dynamics that often enrich qualitative insight.

5 Findings

5.1 Introduction to the Empirical Case

This chapter marks the critical shift from theoretical/philosophical grounding and preliminary research to the situated experiences of those involved in the Cascade Power Project, corresponding to Loop 3 of the hermeneutic spiral discussed in the methodology chapter. Here, interview narratives are interpretive objects, positioned between the theoretical horizon developed in Loop 1 and the reframing of Supreme Court jurisprudence introduced in Loop 2. The analysis that follows reflects the themes and tensions interpreted during this empirical engagement.

The empirical case draws from semi-structured interviews and selected documents to explore how participants understood their roles, the nature of the engagement, and their goals. Through this, it becomes possible to assess whether a reframing of the criteria for mutually beneficial agreement occurred and, if so, whether it emerged as a result of the individuals involved or through structural innovation.

The participants interviewed for this study offer distinct representative perspectives within the structure of the Cascade agreement. Each held a role aligned with one of the three framing groups outlined by Boyd and Lorefice (2018): the **Proponent**, a senior executive at Kinetikor, represented the industry perspective; the **Advisor**, a consultant to the First Nations partners, including the Alexis Nakota Sioux Nation, spoke to the Political frame from that professional perspective; and the AIOC Official, a senior executive at the Alberta Indigenous Opportunities Corporation, spoke from the position of government-backed financing. To protect participant confidentiality, these role-based pseudonyms are used throughout. They preserve the

interpretive value of each account while ensuring that quotations remain traceable to distinct perspectives.

Throughout Chapters 5 and 6, three forms of evidentiary statement are distinguished. Participant accounts and documentary records provide situated source evidence: they establish what participants understood or reported and what public or organizational records document. Where multiple sources point in the same direction, they are treated as convergent indicators rather than conclusive proof of an outcome or its cause. Claims concerning frame alignment, institutional structure, or mutual goal fulfilment are hermeneutic interpretations developed by reading those sources in dialogue with the theoretical framework and jurisprudence. Neither participant accounts nor documentary indicators are treated as direct evidence of community-level experience, consensus, or long-term outcomes.

A further tier of evidence is introduced in this chapter: public institutional statements by the leadership of the participating Nations, made at the announcement of the agreement and in the years following. These statements occupy a position between the participant accounts and the documentary record. Unlike the interview participants, the speakers are the Nations' own elected leadership, addressing the agreement in their institutional voice; unlike the interviews, the statements were made for public audiences, frequently at events convened by government or industry, and must be read as considered public communication rather than reflective testimony. They are treated here as evidence of how the Nations' leadership chose to frame the agreement publicly, the same genre of evidence from which Boyd and Lorefice (2018) derived the Political frame, and not as evidence of community-level experience, which remains outside the boundary of this study.

The symmetry between this study's evidence and the framework it applies deserves to be stated affirmatively rather than left implicit in a limitation. Boyd and Lorefice (2018) constructed the Political frame from the organizational documents of Indigenous groups: institutional articulations of empowerment and autonomy, not community-level accounts. The present analysis, therefore, examines the Political frame at the same level of articulation at which the framework was constructed, and in the Cascade case, that level now includes the participating Nations' elected leadership and their Nation-owned agent speaking about the specific arrangement under study. Where the frame was derived from generalized organizational statements, it is here examined against institutional speech about a completed transaction. Community-level experience of the agreement is accordingly treated not as a missing component of the question asked here but as a distinct research question: the community-based inquiry that Boyd and Lorefice (2018) identify as the field's next step, and that the future-research agenda of this thesis assigns to designs in which community members participate as collaborators.

5.2 Overview of the Findings

The findings are organized by frame to reflect the distinct yet overlapping frames articulated by participants. Each section was developed by reading the coded and annotated transcripts and supporting documents against the three frames, interpreted in relation to the theoretical horizon developed in Loop 1 and the jurisprudential reframing of Loop 2. While these themes are presented discretely for clarity, they are deeply interwoven in practice. The section begins with participants' accounts of their roles and the nature of the engagement, followed by an examination of the goals they sought to achieve. The final theme explores whether the structure of the Cascade agreement contributed to a reframing of consultation practice, potentially allowing participants to meet their consultation goals outside the formal system.

5.3 Reconstructing the Agreement: A Process Account

Before examining the frames individually, it is useful to reconstruct how the agreement came into being. The account below is assembled from the three participant interviews, which corroborate one another on sequence and substance while emphasizing different aspects of the process. In hermeneutic terms, the reconstruction treats each account as a part read against the whole formed by the other two; where independently given accounts converge on the same events, that convergence is treated as an indicator of the process as participants understood it, not as proof of a single authoritative narrative.

The initiative did not originate with the Proponent or with government. According to the Advisor, when the Government of Alberta announced in late 2019 that it would create the AIOC and its associated fund, the Chiefs of two Treaty 6 Nations, who already had a strong working relationship, resolved to pursue a transaction together: “they got together ... and said listen, we’ve got this opportunity to try to pursue some transactions for the ... betterment of both communities” (Advisor, interview, September 23, 2021). The search for a transaction preceded the identification of its object: “Cascade just happened to be the deal ... that came out of that” (Advisor, interview, September 23, 2021). Initial outreach to Kinetikor occurred in January 2020, when the AIOC was not yet operationally constituted; substantive engagement with the AIOC began several months later, just as its board and executive were being established. The Proponent’s account is consistent: the interest in equity came from one of the Nations, and the AIOC “was pretty much in its infancy at that time” (Proponent, interview, September 27, 2021).

The Aboriginal-initiated character of the transaction is also a matter of public record. In explaining the corporation’s first approval, the AIOC’s then-chief executive, Alicia DuBois, stated publicly that the project met the corporation’s criteria on several grounds, among them that

it was a deal brought to the AIOC by the Enoch Cree Nation and the Alexis Nakota Sioux Nation, that both Nations wished to bring further Nations on board, and that it was commercially viable (Narine, 2021). Chief Tony Alexis's statement at the announcement likewise credited the structuring and negotiation of the transaction to his own Nation's firm, acting on behalf of the six communities (Alberta Indigenous Opportunities Corporation, 2020). The origin account given independently in interview is therefore corroborated by contemporaneous public sources on both points that matter most for this study: who initiated the transaction, and who carried it.

The financing structure that ultimately closed was not the structure first proposed. The Nations' initial preference was a direct equity investment by the six communities. The AIOC judged that structure too risky and, in the Advisor's words, "they flat out said no, the first time, so we had to get really creative" (Advisor, interview, September 23, 2021). The parties went back to the blackboard and, working with the pension-fund investor, designed a risk-sharing arrangement in which that investor absorbed a portion of the construction-phase risk "in exchange for some creative risk ... and return sharing" (AIOC, interview, August 4, 2021). The guarantee provided by the AIOC backstopped a loan of approximately \$93 million into the partnership, which was then structured into equity for the six Nations; the Advisor was explicit that this was not a dollar-for-dollar conversion. The proportional division of that equity among the six Nations was left to the Nations themselves to determine (AIOC, interview, August 4, 2021), and the specific figures were treated as commercially proprietary and were not disclosed to the researcher (Advisor, interview, September 23, 2021).

The scale, tempo, and complexity of the transaction are also relevant to interpretation. The AIOC official described a raise of approximately \$1.5 billion, roughly two-thirds debt and one-third equity, involving on the order of ten debt providers and three equity groups, and

characterized the AIOC's own assessment as "probably three months from start to finish. That's incredibly quick" (AIOC, interview, August 4, 2021). Coordination was correspondingly intense: "dozens if not ... 100 meetings," including near-daily contact between the AIOC and the Nations' advisor, conducted almost entirely by videoconference under pandemic conditions (AIOC, interview, August 4, 2021). The deadlines that produced this tempo were exogenous and commercial. Price-validity dates in the engineering, procurement, and construction contracts and in the gas-supply agreements established "outside dates" past which the project's commercial terms would reopen; as the Advisor put it, "the project is moving ahead with or without us" (Advisor, interview, September 23, 2021). The commercial clock of the Economic frame thereby transferred its urgency directly into the equity negotiation.

The composition of the syndicate emerged in two stages. The two initiating Nations carried the discussions; the remaining four were approached only once a concrete transaction existed. Participants described this sequencing as deliberate. A premature approach carried a distinctly political cost for the initiating leadership: "it looks bad on them as a Chief to say hey, I've got this opportunity ... oh yeah, by the way, no I don't" (Advisor, interview, September 23, 2021). It also carried a transactional cost: "we wouldn't have gotten a transaction done, because now you're introducing four different viewpoints on what the deal should look like" (Advisor, interview, September 23, 2021). Most significantly for this study, the criterion by which the four additional Nations were identified was the consultation record itself: "how those four nations were selected really pointed back to the original consultation process. To say, these are the four impacted communities" (Advisor, interview, September 23, 2021). At the same time, one of the initiating Nations had entered the transaction without having been part of the Cascade consultation, through the pre-existing relationship between the two Chiefs. The syndicate was

therefore neither identical to nor independent of the consultation-defined circle: formal consultation supplied a compositional reference for the equity arrangement even as the arrangement extended beyond it.

Within the syndicate, the AIOC official emphasized parity of terms across all six Nations, offering a description worth preserving in his own words: “we bake the pie ... with two of the nations helping us put the pie together, and then the six nations took the pie away and they cut it up how they want it and shared it amongst themselves, so they were all eating the same pie” (AIOC, interview, August 4, 2021). Allocation among the Nations was theirs to decide; the terms were common. On the government side, the transaction moved through the AIOC’s internal governance: management brought the deal to the investment committee “probably half a dozen times,” with the committee, constituted as a majority of the board, holding effective approval authority under the province’s risk directives (AIOC, interview, August 4, 2021).

Three features of this process account bear directly on the analysis that follows. First, the arrangement was Aboriginal-initiated: the impetus, the agent, and the syndicate-building all originated with the participating Nations rather than with the Proponent or the Crown. Second, the consultation process and the equity process, though deliberately kept separate in negotiation, were connected in composition, with the consultation record serving as the basis for identifying affected communities for the ownership opportunity. Third, the final structure was co-created iteratively, through refusal, redesign, and risk-sharing, rather than accepted or imposed. Each of these features is taken up within the frame analysis below, and the third anticipates the synthesis, developed in Loop 4, of consultation practice as potentially co-creative rather than adversarial.

5.4 Participant Frames in Practice

Read against Boyd and Lorefice’s (2018) typology, the interview data resolve into three distinct yet constantly overlapping perspectives on what Cascade was meant to achieve.

As discussed earlier, in Boyd and Lorefice’s (2018) document analysis, industry articulates an “economic” frame focused on project bankability and timeline discipline; the organizational documents of Indigenous groups foreground a “political” frame centred on autonomy, capacity building, and generational benefits; and governments adopt a “legal” frame that foregrounds procedural compliance and regulatory certainty. None of these frames can be collapsed into the others, yet all three are typically present in every consultation.

What follows is not a tidy three-column comparison but a “dialogue” among frames. Each subsection below foregrounds one frame while keeping the other two in view, making it possible to see how economic calculations, political aspirations, and legal assurances push against—and occasionally reinforce—one another. The block quotations anchor the discussion in the participants’ own words; analysis then shows how each frame both advances its own goal and reshapes what follows.

5.4.1 *Economic Frame (Industry Goal)*

While Boyd and Lorefice (2018) classify the Economic frame narrowly as “economic benefits and reducing uncertainty for business” (p. 580), the participants viewed it more broadly while also acknowledging the narrower definition. For the Proponent, the approach seemed first and foremost a de-risking exercise for their financier. Cost control, access to capital, and schedule loomed large in the interview; ESG concerns and social matters, insofar as they promote those variables, extended the economic benefits beyond the business. Comments such as “we were able to go fund our project and get the bank debt and ... then carved out a piece, for

the First Nations” (Proponent, interview, September 27, 2021) and “being our primary financier we thought it’d be very advantageous to bring in local First Nations” (Proponent, interview, September 27, 2021) support that view. Still, his perspective is more nuanced than that; he also stresses that “these six First Nations ... should be getting significant dividends every year for the next 35 years,” the upper end of the plant lifespan he had earlier put at “about 30, 35 years” (Proponent, interview, September 27, 2021). The Advisor balanced the long-term economic benefits with immediate profitability: “kudos to Kineticor and how they supplied, or how they structured their gas supply agreements, let’s make sure we’re always profitable” (Advisor, interview, September 23, 2021).

A second layer of risk management is shown in comments from the Advisor, who describes how, with continued transactions, government support “instead of being ... [a] 100% loan guarantee moves down to a 50% loan guarantee, and then 40, 30, 20, 10” as confidence builds in this process (Advisor, interview, September 23, 2021). This illustrates a hand-off from public balance sheets to private capital: government support is envisaged as temporary, to be replaced by commercial underwriting once Aboriginal participation is demonstrated to be financially dependable.

The Economic frame also imposed structural constraints on when equity participation could occur, constraints that operate independently of any party’s principles regarding consultation. The Proponent explained that the AIOC “invests in shovel-ready projects; they don’t invest like \$2 million to develop a project ... to get a project to where the AIOC will invest, you have to have done all that work and got all your commercial agreements, got all your permitting in place” (Proponent, interview, September 27, 2021). Because permitting and consultation are preconditions of the financing itself, the sequencing observed at Cascade

(consultation first, equity after) is not only a principled separation but a structural one embedded in the capital-access mechanism. Scale operated as a second constraint. In the Proponent's account, a properly executed investment requires "significant ... capital to pay for advisors, to pay for the diligence work to actually do it properly," so that "the closing costs and costs of doing the investment kind of make it uneconomic" below a substantial threshold (Proponent, interview, September 27, 2021). He was equally direct that the arrangement was not a concession: "we weren't necessarily interested in just giving away pieces of equity ... we wanted to have a deal that made sense for everybody" (Proponent, interview, September 27, 2021). Within the Economic frame, these statements position the equity stake as a commercial transaction that had to clear ordinary investment thresholds, which is precisely what participants understood to give it durability.

Later in the interview, the Advisor describes the conventional banking logic that would make the Cascade agreement impossible without government support, stating that commercial lenders are "never going to be comfortable" with absorbing construction-overrun risk when an equity agreement such as Cascade's remains novel (Advisor, interview, September 23, 2021). Together, the passages show an Economic frame centred on de-risking: equity diverts revenue to Nations, while guarantees and novel structures reallocate project risk onto the provincial guarantor and the pension-fund investor, and away from the Nations. Yet balance-sheet logic alone cannot explain participants' enthusiasm.

A final economic observation concerns the compatibility of investment horizons. The Advisor characterized the pension-fund investor as an unusually well-matched partner precisely because "the risk aversion is consistent between the pension fund and the First Nation communities ... nobody's looking for the hundred X big return" (Advisor, interview, September

23, 2021). The stake, in his description, “is meant to be a long-term sort of annuity for the communities” (Advisor, interview, September 23, 2021). This suggests that the convergence observed at Cascade was facilitated not merely by the availability of capital but by a coincidence of temporal orientation: a long-horizon, downside-protected investor profile that matched what participants understood the Nations to be seeking. Where a proponent’s or financier’s horizon is short or speculative, the same structure might align less readily. The next subsection shows how equity also answers a political aspiration.

5.4.2 *Political Frame (Institutionally Articulated Aboriginal Goals)*

Boyd and Lorefice (2018) articulate the Political frame through organizational documents that connect consultation to history, relationships, political recognition, influence, empowerment, and autonomy. In the Cascade case, this frame is examined through the accounts of professionally situated participants involved in designing, financing, or supporting the agreement. The findings below, therefore, concern perceived alignment between the agreement and these institutionally articulated Political-frame goals. Within that evidentiary boundary, participants described the agreement as supporting governance capacity, influence, and long-term participation.

The AIOC official articulated the shift: “I’m really happy to see where we’ve gone from just consultation ... equity investment is true partnership, a completely different relationship than consultation or impact benefit agreement” (AIOC, interview, August 4, 2021).

He further described the pension-fund investor’s position in the same terms: “it was very important to them to have ... [t]he six nations as partners on this investment ... alongside them [as] true partners rather than just ... consulted groups that are consulted then forgotten about” (AIOC, interview, August 4, 2021).

The Advisor built upon this, describing capacity-building: “We’re working with the [financier] and Kinetikor to fund directors’ education ... There are those opportunities. But, outside of the governance side of things, one of the key opportunity, key pieces is capacity within the communities for community owned businesses” (Advisor, interview, September 23, 2021). This suggests that the professionally situated participants understood equity participation as more than a legal or financial agreement. They interpreted it as a mechanism potentially consistent with institutionally articulated aspirations for self-determination, governance capacity, and long-term influence.

The process account presented earlier bears directly on this frame, because the goals of influence, empowerment, and autonomy identified by Boyd and Lorefice (2018) are expressed not only in what participants said about the agreement but in who initiated it. On the participants’ accounts, the sequence began with the leadership of two Nations resolving to pursue a transaction together upon the announcement of the AIOC, engaging their own Nation-owned firm as agent, leading the negotiation, and then extending the completed opportunity to the four communities identified through the consultation record. This is a record of institutionally exercised agency: the Nations appear in these accounts as the transaction’s authors rather than its beneficiaries.

The AIOC official articulated the aspiration this initiative points toward: that ownership becomes a standing option rather than an exceptional event. He hoped no major Alberta infrastructure project would proceed without Indigenous groups “at least having the opportunity to look at it and say not only were we consulted, but we were asked if we wanted to invest” (AIOC, interview, August 4, 2021). Notably, his formulation preserved refusal as a legitimate outcome: a Nation “maybe ... look[s] at it and say[s] you know what, we’re okay for the project

to go ahead, but we don't really want to invest, we don't think it's the best use of our dollars" (AIOC, interview, August 4, 2021). Framed this way, the political significance of equity lies in the existence of the choice, not in its exercise, an understanding consistent with the frame's emphasis on autonomy.

Participants also connected ownership to a distinctly generational conception of benefit. The Advisor drew the distinction explicitly: "assets build wealth for communities, assets build generational wealth, whereas income is about ... consumption and just supporting your day-to-day needs" (Advisor, interview, September 23, 2021). The AIOC official described the anticipated "echo effect" of stable distributions, dollars that "can then be taken and re-leveraged into other things and used for other purposes" within communities (AIOC, interview, August 4, 2021). Read against the Political frame, these accounts indicate that the participants understood the agreement's time horizon (30 to 35 years of ownership rather than a single procedural episode) as itself a political feature.

The public statements surrounding the agreement, read within the evidentiary tier established in Section 5.1, extend this analysis in the institutional voice of the Nations and their agent. At the announcement, Chief Tony Alexis of the Alexis Nakota Sioux Nation framed the transaction in explicitly precedent-setting terms, describing it as "transformational for the First Nations involved" and as creating "the national blueprint for Indigenous communities to acquire ownership in major energy and infrastructure projects" (Alberta Indigenous Opportunities Corporation, 2020). This is not the language of a single transaction; it is the Political frame's constitutive vocabulary (precedent, recognition, and long-term influence), deployed by a participating Nation's leadership to interpret an equity agreement. Where Boyd and Lorefice

(2018) derived that vocabulary from organizational documents, here it appears in leadership speech about the specific arrangement this study examines.

The Indigenous-owned firm that structured the deal framed it in the same register, and in its own institutional voice. In its announcement release, Backwoods Energy Services—owned by the Alexis Nakota Sioux Nation—described the transaction as one that would provide “hundreds of millions of dollars in cashflow for future generations” and as “an important step toward financial independence and self-reliance for First Nations in Alberta.” Its chief executive characterized the deal as “meaningful to so many for decades to come” and as a potential “national blueprint for how major energy and infrastructure projects can be successfully financed on commercial terms and built to include Indigenous peoples” (Backwoods Energy Services, 2020). Read against the Political frame, the significance is twofold: these statements name autonomy (“financial independence and self-reliance”) and a generational time-horizon (“for decades to come”) as the goods the arrangement is understood to secure; and, because they issue from a Nation-owned firm speaking for the syndicate, they are Political-frame evidence expressed by an Aboriginal institutional actor rather than paraphrased by an external observer.

The endorsement has also survived a change of elected leadership. In late 2023, Chief Cody Thomas, the successor to the Enoch leadership that had entered the agreement, publicly described projects like Cascade as ones that “empower Indigenous communities with newfound opportunities and financial versatility enabling us to reinvest in our communities,” and that “stimulate economic growth, foster job creation, nurture innovation, cultivate generational wealth” (Narine, 2023). Within the Political frame, endorsement across a leadership transition is evidence of a particular kind: it indicates that the Nations’ institutional attachment to the arrangement is not reducible to the individuals who negotiated it. Consistent with Section 5.1, all

of these statements are read as considered public framing, institutional communication issued largely through coordinated releases and announcements.

These accounts indicate that professionally situated participants associated equity ownership with influence, governance capacity, and continued participation. Taken together, they indicate a shared understanding of the agreement as extending beyond immediate financial return. Read against Boyd and Lorefice's (2018) Political frame, this convergence suggests that the agreement's structure was perceived as consistent with institutionally articulated goals of autonomy and empowerment.

5.4.3 Legal Frame (Government Goal)

Despite these innovative aspirations, formal consultation was still shaped by established legal frameworks, as Boyd and Lorefice's (2018) Legal frame would anticipate. The Proponent explains that "we went through the consultation process required under the various different permits in the province, we went to the CEAA ... [and] went through the consultation process as directed" (Proponent, interview, September 27, 2021). Here, consultation is a codified checkpoint on the path to a regulatory licence.

The AIOC official similarly described the corporation's risk assessments as guided by provincial governance structures. What emerges here is a procedural layer that both enables and constrains the deeper forms of partnership described in the previous section. Legal requirements appear to provide the floor, but not the ceiling, for engagement.

The Legal frame posited by Boyd and Lorefice (2018) for consultation remains relevant in the context of the Cascade agreement. The AIOC official was unequivocal that blending the two processes would have jeopardized the opportunity: "Consultation is one thing; it shouldn't be muddled with investment ... they're obviously very close and overlapping ... but I do think

the two should always be separate and distinct” (AIOC, interview, August 4, 2021). The Advisor applied the same logic to the Nations’ construction work on the project, insisting that “the equity processes is isolated. Because one could then cross threat the other” (Advisor, interview, September 23, 2021).

The Proponent corroborated the separation independently and in categorical terms: “at no point did we ever commit to doing equity investment in order to get ... the local nations to endorse [our] site ... We did the consultation separately and then we did the investment separately” (Proponent, interview, September 27, 2021). His rationale, offered when asked whether future agreements might merge the two processes, was framed in the language of integrity rather than compliance: “the integrity gets thrown out the window [if] you put them together ... maybe some projects can ... get pushed through on one side because of the other side” (Proponent, interview, September 27, 2021). He allowed that the separation may be project-contingent, speculating that a more impactful development, “a pipeline going through ... directly past ... various stakeholders,” “might require more guarantees up front” (Proponent, interview, September 27, 2021), a caveat that usefully bounds the finding: the firewall observed at Cascade may itself depend on the project’s impact profile.

The Legal frame also appears inside the equity arrangement, not merely alongside it. The AIOC’s enabling legislation restricts its guarantees to qualified Indigenous groups (Alberta Indigenous Opportunities Corporation Act, 2019), a constraint the official illustrated concretely: one of the Nations “can’t sell their interest to ... Bob down the street and still have our loan guarantee” (AIOC, interview, August 4, 2021). Exit, transfer, and dilution are governed by the legal agreements, which contemplate these events explicitly. The commercial structure, in other

words, carries its own legal architecture, one that binds the ownership benefit to the participating Nations.

Taken together, these statements, offered by all three participants and grounded in three different institutional logics (regulatory defensibility for the AIOC official, transactional integrity for the Proponent, and negotiating clarity for the Advisor), illustrate a shared legal sensibility and an intellectual firewall between the two processes—a mental boundary for participants that may provide space for reframing.

The guarantor's frame also appears to be institutional rather than personal. Three years after the interviews conducted for this study, and under different leadership, the AIOC's chief executive publicly described the corporation's discipline in nearly the same terms the AIOC participant used in 2021: responsibility for what had grown to \$3 billion of the province's balance sheet, credit structuring designed to protect the guarantee, and an explicit accounting of the fiscal trade-off with a called guarantee competing with roads, schools, and health care (RBC Climate Action Institute, 2024). The persistence of this framing across personnel change supports reading the due diligence and risk-directive orientation documented in this chapter as a property of the institution, not of the individuals interviewed.

5.5 Goal Convergence and Tensions

A central point of convergence across the three frames identified by Boyd and Lorefice (2018) is the shared perception that equity financing transformed “consultation” from a one-off procedural obligation into an ongoing partnership. As the AIOC official put it, equity offers more than revenue: “You know, it's not only economic, it's about having a seat at the table, it's about having a voice, and if you truly treat them like partners and they truly have a voice in a seat at the table” (AIOC, interview, August 4, 2021).

The political-economic alignment addresses the Aboriginal goal of empowerment through meaningful participation at an institutional level, meets ESG and risk-management goals for the Proponent, and suggests to the government that long-term stability may be achievable outside formal consultation processes, without violating current legislation.

As noted above, the Legal frame in equity financing was cognitively separated from the Legal frame in consultation, as described by Boyd and Lorefice (2018), even though responsibilities laid out for the government in the Supreme Court decisions would not be extinguished by equity agreements. A second convergence emerges between the economic and modified legal frames. As the AIOC official explains, the corporation, as a provincial guarantor, had to conduct rigorous “due diligence” to meet Treasury Board risk thresholds while still delivering returns to its First Nation partners. This coupling of finance norms and regulatory compliance suggests that equity-financed participation may satisfy the government’s legal concerns for procedural integrity and the Proponent’s need for bankable risk, without reverting to the consultation model. “... we had to do all the due diligence and ensure the risk was appropriate for the province of Alberta ...” (AIOC, interview, August 4, 2021).

The process account adds an important qualification to these convergences: they were constructed, not discovered. The alignment between the province’s risk directives and the Nations’ participation did not exist in the transaction as first proposed; the AIOC “flat out said no” to the initial direct-investment structure, and alignment was achieved only through redesign, with the pension-fund investor absorbing construction-phase risk in exchange for a negotiated share of return (Advisor, interview, September 23, 2021; AIOC, interview, August 4, 2021). The refusal, on this reading, was not a breakdown of the process but part of its mechanism. Even the prospect of failure was framed by the AIOC official as carrying value for the Political frame:

where a transaction cannot be supported, “part of maybe the silver lining ... is hopefully we can be open in our communications in a way that leads to capacity building” among the Nations that brought it forward (AIOC, interview, August 4, 2021). Convergence at Cascade, then, is better understood as the product of iterative structuring across frames, sustained by unusually dense communication, than as a latent harmony the agreement merely reveals.

5.5.1 *Intra-Goal Tensions*

Long-term dividends and capacity-building mechanisms are consistent with the Political frame’s emphasis on autonomy and institutional capacity. In his interview, the Advisor noted tension between the economic and political goals as they surfaced in presentations to the communities.

if we could have directly created more opportunity for Community owned businesses and procured out work kind of tied to the project. Somehow without, cross threat I think we would have done that, because whenever we went and presented to the communities ... [t]he question wasn’t necessarily around what are, you know, what’s the economic benefits of ownership of the plant. It was generally more around what employment opportunities, can we create for our people. (Advisor, interview, September 23, 2021)

The AIOC official saw the corporation’s fiduciary mandate begin with the province, exposing a three-way strain that cannot be resolved by any of the frames on their own:

[T]he government has given us a low risk tolerance, you know we we’ve been asked not to risk the taxpayers’ dollars unduly and not to lose dollars, but it also extends to the nations that we’re working with, because. It doesn’t do them any favours if we support them on a transaction that goes belly up in two years, right? ... They had a cash

flow stream that they were probably counting on to do things within their nation that they were counting on to, you know, for infrastructure or education or housing, whatever, then all of a sudden it's gone. (AIOC, interview, August 4, 2021)

Legal frame: The province's directive (the AIOC was "asked not to risk the taxpayers' dollars unduly") codifies a public-finance restraint; the AIOC must structure every loan guarantee to survive external audit and Alberta Treasury Board scrutiny.

Political frame: The warning that a failed project would remove cash-flow streams intended for infrastructure and housing reflects the AIOC official's understanding of the purposes and expectations associated with the Nations' participation.

Economic frame: The two-year horizon "belly up in two years" flags the schedule-risk calculus, which was effectively transferred from the Proponent to the financier through the terms of the agreement.

Three further tensions appear in the accounts. The first gives structural content to the employment question raised above. Construction of the plant is labour-intensive, but the operating facility is not: "once the facility's up and operating ... we'll have 25 full time staff on site," and unlike extraction businesses there is no long-term stream of ancillary contracting: "it's not like ... the oil business, where we'll be hauling oil [in] a truck ... for the next 20 years" (Proponent, interview, September 27, 2021). The equity model generates dividends precisely because the asset requires little ongoing labour; the benefit communities most immediately asked about, in the Advisor's account, is the one this asset class structurally provides least. The tension between the Political frame's employment aspirations and the Economic frame's asset logic is therefore not incidental to Cascade but characteristic of it.

The second tension lies within the Political frame itself, between the breadth and materiality of participation. Asked why the syndicate did not include every Nation in Alberta, the Advisor endorsed the aspiration while rejecting the arithmetic: “instead of having an opportunity to do ... material changes for the communities that are invested, you’re now kind of like, wow, we got \$5 instead of \$500” (Advisor, interview, September 23, 2021). Meaningful participation, on this account, required limiting it, a trade-off between the frame’s inclusive and transformative aspirations that any replication of the model will confront. The sequencing tension described in the process account, in which approaching communities too early risked the credibility of the initiating Chiefs while approaching them late curtailed their influence over the deal’s design, is a further expression of the same intra-frame strain.

Third, participants did not treat the participating communities as monolithic. The Advisor anticipated ordinary heterogeneity of opinion within Nations, including environmental objections to the asset itself: “there’s definitely still going to be communities or even individuals within those communities to say, well, hold on, this should be 100% renewable” (Advisor, interview, September 23, 2021). This observation cautions against reading the agreement’s completion as evidence of community consensus, a boundary consistent with the evidentiary limits set out in Section 5.1.

5.6 Early Signs of Impact

Public records establish that Cascade began operating in January 2024 and reached substantial completion in June 2024 (Alberta Electric System Operator, 2024; Alberta Utilities Commission, 2025). These developments provide an operational foundation for generating project revenues, but do not establish the amount, timing, or distribution of returns.

The April 2025 Alberta Utilities Commission (AUC) decision states that no stakeholder concerns were raised regarding the application before it, and a search conducted on September 22, 2026, located no legal or regulatory challenges to the project. These findings provide an early indicator of regulatory non-contestation, but do not establish that the equity agreement caused the absence of challenges or that future legal disputes will not arise.

The Alberta Indigenous Opportunities Corporation states that its loan-guarantee projects “provide real, immediate financial returns” and that revenues support community priorities “here and now, and for generations to come” (Alberta Indigenous Opportunities Corporation, 2025b). For Cascade specifically, the AIOC project brief projects “long-term, stable distributions ... forecasted to total hundreds of millions of dollars over the project’s 30-year life” (Alberta Indigenous Opportunities Corporation, 2025a). These statements document AIOC’s institutional assessment and projections; they do not independently confirm the distributions received.

The 2021 interviews also preserve participants’ forward-looking expectations at a point when none of the public-record developments above had yet occurred, and those expectations can now be read against what followed. The Proponent stated an intention to treat the structure as standing practice, “we would incorporate the AIOC structure into our thinking” on future projects, “because we think it’s good business,” and expressed the hope that “the federal government and other provinces can ... mimic it or work off that template,” describing the arrangement as one that “facilitates ... economic reconciliation” (Proponent, interview, September 27, 2021). The AIOC official reported “some incoming inquiries” from other jurisdictions and judged that “the model is a powerful one that will hopefully be replicated elsewhere in Canada” (AIOC, interview, August 4, 2021). The Advisor sketched a taper in which public guarantees recede as commercial confidence builds, and the AIOC official went further,

hoping for the corporation's own obsolescence: "it would be wonderful to be in a world where ... AIOC wasn't needed ... but realistically I'm not sure that happens anytime soon" (AIOC, interview, August 4, 2021). These statements are expectations, not outcomes, and are treated here only as evidence of how participants situated Cascade at the time: not as a completed transaction but as the first instance of a repeatable institutional form. Subsequent developments, including the AIOC's continued transaction activity and the federal loan-guarantee program, are set out below from the public record as partial corroboration of these contemporaneous readings.

The public record now permits several of the 2021 expectations to be checked. The transaction attracted external professional validation almost immediately: Project Finance International named Cascade its Canadian Power Deal of the Year for 2020, citing, among other factors, the innovation of its approach to Indigenous involvement (Narine, 2021). The plant completed construction and commenced commercial operations in 2024, and is now rated at 932 MW (Kineticor Resource Corp, n.d.). The capital-access mechanism scaled in the manner the Advisor's taper account anticipated, in direction if not in form: the AIOC's guarantee capacity was raised from its original \$1 billion to \$2 billion and then to \$3 billion for 2024–25, with the corporation reporting more than 100 proposals under review (Alberta Indigenous Opportunities Corporation, 2023; Narine, 2023). And the corporation's public projections (offered with its chief executive's own caveat that they are projections) anticipated that Cascade would begin generating revenue for the Nations in 2024, with AIOC-backed communities collectively forecast to receive more than \$25 million annually over 30 years (Narine, 2023).

At the federal level, the Proponent's hope that other governments would "mimic" the model has been partly realized: the Indigenous Loan Guarantee Program, announced in Budget 2024 and launched in December 2024, is managed by the Canada Indigenous Loan Guarantee

Corporation and provides guarantees of between \$20 million and \$1 billion, within a \$10 billion envelope, to support Indigenous equity ownership in major projects (Canada Indigenous Loan Guarantee Corporation, n.d.).

Two further public developments bear on the model's institutionalization. First, the intermediation capacity identified in this chapter as decisive has itself begun to institutionalize. After leaving elected office in 2022, the former Chief of Enoch Cree Nation joined Axxcelus Capital Advisory as managing director. Axxcelus is an independent merchant bank, formed in 2020, that Windspeaker reports helped to structure the Cascade transaction. He framed the move as advancing economic reconciliation (Narine, 2022). The arrangement is reproducing not only transactions but also organizations and careers. Second, the reframing this thesis identifies has been articulated as institutional self-understanding: the AIOC's chief executive publicly characterized the generational shift as one in which Indigenous communities moved from being seen as "obstacles to partners in a generation" (Canadian Energy Centre, 2024, an Alberta government-funded outlet), a formulation that compresses the movement from procedural consultation to co-ownership into a single institutional claim. Consistent with the evidentiary discipline of this section, all of the above are treated as public institutional records and projections; none is direct evidence of distributions received or of community-level effects, and the provenance of the government-funded outlets is noted where applicable.

Taken together, commissioning, regulatory non-contestation, and projected distributions provide early but uneven indicators of alignment across the three frames. Alignment with the Economic and Legal frames is supported by observable operational and regulatory developments. Alignment with the Political frame remains prospective and institutionally

mediated because community-level experiences and uses of the anticipated benefits were not directly examined.

5.7 Interpretive Synthesis: Toward Consultation Beyond the System

The interviews and early impact signals suggest that equity participation for Aboriginal groups may alter the meaning of consultation for the parties. Rather than functioning as a disdained procedural hurdle or a transactional licence to operate, the relationship surrounding the project extends beyond formal consultation into an ongoing partnership, governed in part by commercial and financial arrangements, while operating alongside the protections and obligations structured by section 35(1) jurisprudence. This shift challenges the assumption, embedded in both regulatory practice and much of the academic literature, that satisfaction of consultation goals requires formal Crown-directed processes.

The participants' own descriptions of the post-agreement relationship give this shift concrete institutional form. The Proponent's formulation is worth quoting for its contrast with the episodic character of procedural consultation: "now we're married as investors for the next 35 years" (Proponent, interview, September 27, 2021). The relationship is housed in corporate agreements that "outline the ... investment structure and who can do what and how board seats are appointed," a framework that will "manage this investment ... for all the various parties for the next 35 plus years" (Proponent, interview, September 27, 2021). Where formal consultation concludes at approval, the governance of co-ownership has no such time horizon; disagreement, should it arise, is channelled into board and partnership mechanisms rather than into the regulatory or judicial venues characteristic of the consultation system. This is the structural sense in which participants understood the relationship to extend beyond consultation.

From an economic perspective, Cascade reached commercial production within 40 months of financial close, secured an uncontested AUC decision, and began generating cash flow (Alberta Electric System Operator, 2024; Alberta Utilities Commission, 2025). These achievements provide early evidence consistent with the industry goal of economic benefit and reduced uncertainty, outcomes that procedural consultation, by itself, cannot guarantee.

For government, the project has so far exhibited regulatory stability and an absence of legal contestation. A search of CanLII, the Federal Court decisions database, and the Alberta Utilities Commission eFiling System for “Cascade Power” and “Kineticor,” conducted on September 22, 2026, identified no applications for judicial review, appeals, or review-and-variance proceedings concerning the project. Separately, the province’s low-risk directive was observed through the AIOC’s risk-management structure. Regulatory filings note “substantial completion” alongside the absence of stakeholder concerns, indicating that the equity arrangement coexisted with an apparently complete and uncontested regulatory process once formal consultation was resolved. The evidence, however, does not establish that the financial structure itself secured legal compliance.

Politically, for participating Nations, participants interpreted equity ownership as creating a longer-term channel for agency beyond one-off consultation activities and impact-benefit agreements. As the AIOC official emphasized, reliable revenue that would be counted on for infrastructure, education, or housing and a “seat at the table” were interpreted by participants as turning economic participation into long-term capacity for empowerment and autonomy (AIOC, interview, August 4, 2021). The Alberta Indigenous Opportunities Corporation similarly presents its projects as providing immediate returns and supporting long-term community priorities, stating that its projects provide “real, immediate financial returns” and forecast distributions in

the hundreds of millions over the life of the project (Alberta Indigenous Opportunities Corporation, 2025a, 2025b). Participants understood the long-term nature of the revenues as politically significant for the participating Nations.

Tensions remain. Community preferences for employment over dividends, provincial intolerance for financial risk, and industry's strict timelines could still collide with these benefits. These latent strains underscore that the equity agreement achieved for Cascade cannot be assumed as a universal remedy; it represents a possible equilibrium that will require ongoing adjustment as contextual factors such as market conditions, community priorities, and policy settings evolve.

Interpreting these findings completes Loop 3 of the hermeneutic spiral by reshaping the theoretical horizon established earlier in Loops 1 and 2. The revised horizon is that alternative processes may create conditions in which consultation-associated goals can be pursued concurrently without abandoning the protection of section 35(1). The analysis suggests that such arrangements may embed opportunities for economic return, support institutionally articulated political aspirations, and coexist with regulatory stability, while leaving formal consultation obligations intact. Loop 4, which will comprise the next chapter, revisits Supreme Court jurisprudence and the theoretical framework to consider whether these doctrines can accommodate, or might even encourage, such outside-the-system models. In this sense, Cascade functions less as an anomaly than as an illustrative institutional configuration that invites broader inquiry into Aboriginal consultation in Canada.

6 Discussion

6.1 Purpose and Roadmap

This chapter brings the empirical findings from the previous chapter (Loop 3) into dialogue with the theoretical frames (Loop 1) and the jurisprudential context (Loop 2), while remaining responsive to the initial observations (Loop 0). The aim is not to prove a hypothesis in a deductive sense, but to build a coherent and contestable interpretation of how equity participation may alter the meaning and practice of Aboriginal consultation. The findings are interpreted through the theoretical framework and the jurisprudence examined earlier in the thesis. The chapter begins by revisiting the research questions in light of the Supreme Court jurisprudence and the Cascade case analysis. The discussion then synthesizes these insights through the hermeneutic framework developed in Chapter 4. The chapter ends by outlining implications for theory, practice, method, and scholarship, and directions for future research.

Its claims regarding alignment, convergence, and institutional conditions are presented as theoretically grounded interpretations of the Cascade case rather than as independently verified outcomes or causal findings.

6.2 Revisiting the Research Questions

6.2.1 *RQ1 Evolution of Practice Across Frames*

The jurisprudence on section 35(1) of the Constitution Act (1982) does not micromanage outcomes; it shapes the meaning of consultation by imposing external standards on the parties. In this sense, the decisions speak directly to the Legal frame (Boyd & Lorefice, 2018). How these same rulings reorient expectations inside the Political and Economic frames is the point of this discussion.

I will proceed in two passes. First, a political reading shows how the Court's reasoning establishes the unique position of Aboriginal peoples, elevates recognition of rights, and obliges the Crown to act honourably and in their best interests. Second, an economic reading shows how the same jurisprudence has a nuanced impact on proposed development projects. This two-pass structure keeps the frames distinct while following a broadly chronological order. When the analysis reaches the 2004–2005 decisions that establish the duty to consult, I shift to discussing their collective impact through the Legal, Political, and Economic frames together.

In *Guerin v. The Queen*, the Court grounded the Crown's actions in a fiduciary relationship and employed the principle of *sui generis* to preserve the sanctity of the jurisprudence related to the section, a principle that confines the Crown's discretionary power to equitable actions.

Sparrow (1990) demonstrates the balanced judgement that continues to this day. On the one hand, the ruling expounded upon rights under section 35(1), while on the other it introduced a justification framework, the "Sparrow Test," for the infringement of those rights. Balancing that further, the Court built on *Guerin*'s fiduciary logic, stating that justifications must be consistent with the honour of the Crown. At the same time, the Court promoted what would become consultation rather than litigation between the parties. The Court expressly signalled engagement over litigation: "Section 35(1), ... provides a solid constitutional base upon which subsequent negotiation can take place" (*R. v. Sparrow*, 1990, p. 1105).

Following *Sparrow*, subsequent decisions refined the reasoning to balance it in practice. *R. v. Van der Peet* (1996) was one of them. In *Van der Peet*, the justices connected important

interpretive principles such as the fiduciary relationship and the honour of the Crown to the ultimate purpose of section 35(1), stating:

the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, ... this fact above all others, ... mandates their special legal and now constitutional status. (R. v. Van der Peet, 1996, para. 30)

The Court went on to explain:

what s. 35(1) does is provide the constitutional framework through which the fact that aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown. (R. v. Van der Peet, 1996, para. 31)

Immediately following Van der Peet, the decision in *Delgamuukw v. British Columbia* (1997) reaffirms the stance on reconciliation and connects it to consultation. “There is always a duty of consultation ... In most cases, it will be significantly deeper than mere consultation” (*Delgamuukw v. British Columbia*, 1997, para. 168).

Although a lower-court decision, *Halfway River First Nation v. British Columbia* (Ministry of Forests) (1999) plays a vital role in what is to come. In finding that infringement was not justified, the court imposed a positive duty on the Crown:

The Crown’s duty to consult imposes on it a positive obligation to reasonably ensure that aboriginal peoples are provided with all necessary information in a timely way ... to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action. (para. 160)

This is balanced by a reciprocal duty on Aboriginal peoples to consult in good faith and not to frustrate the consultation process through refusing to participate or imposing unreasonable conditions (*Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999).

Taken together, the jurisprudence quoted above links the political and legal frames. For the government, its actions are constrained, and duties and responsibilities are imposed upon it. These limitations are balanced by carefully refined guidelines for justifying infringement of otherwise protected rights. For Aboriginal peoples, their rights are recognized and affirmed; the Court has taken them seriously and admonished other parties to do the same; and it has broadened the evidence considered to include contemporaneous documents and oral histories alongside treaties. These are balanced by the same justification framework and by the exclusion of Aboriginal peoples' veto.

Whereas intra-frame tension was noted in the empirical case, inter-frame tension is evident in the jurisprudence. The connection between the political and legal frames has been shown, and what follows is the economic-legal connection.

A case in point is *R. v. Van der Peet*, which contains both the passages quoted earlier in support of the political-legal connection and the "Integral to a Distinctive Culture," or "Van der Peet," test. The test lays out 10 criteria for establishing constitutionally protected rights. Key among them is the requirement that the practice, custom, or tradition be of central significance to the Aboriginal society in question and that it be in continuity with the group prior to European contact.

In so doing, *Van der Peet* diverges from *Sparrow* by placing the evidentiary burden on Aboriginal claimants rather than the Crown (Tokawa, 2016). Economically, the integrality threshold restricts commercial claims because rights tied to commercial activity must trace back

to pre-contact behaviours. For industry proponents, the decision did not reduce uncertainty; the requirements served to promote legal actions, generating increased due diligence costs prior to filing an application, and embedding transaction friction into every project in contested territory. Thus, Van der Peet expanded political visibility while narrowing and complicating the path toward fulfilling the political and economic frames.

R. v. Gladstone (1996), a companion decision to Van der Peet, recognized that commercial enterprise could qualify as an Aboriginal right, yet, critically, it also broadened the scope of valid legislative objectives to include “compelling and substantial” objectives, that is, “objectives furthered by those limits [that] are of sufficient importance to the broader community as a whole.” Valid objectives include “objectives such as the pursuit of economic and regional fairness” and “[t]he historical reliance upon, and participation in the fishery by non-aboriginal groups” (R. v. Gladstone, 1996, para. 75).

The expanded objectives offer a clearer pathway past the Political frame while encouraging legal scrutiny rather than mutual agreement. Commercial rights may exist, but the Crown has a broader scope to justify infringements, allowing industry access. However, the Crown must now show that the objective served by an infringement is “compelling and substantial” and withstand consultation scrutiny (R. v. Gladstone, 1996, para. 73).

Taken together, Van der Peet and Gladstone clarified how section 35 protects discrete Aboriginal rights, whether subsistence, cultural, or commercial, but left unanswered questions about the land itself. *Delgamuukw v. British Columbia* (1997) offered the first comprehensive doctrine for Aboriginal title, providing reasoning for how title is proven, how it can be infringed, and how infringements invoke duties of consultation and compensation. The Court shifts from rights exercised on the land to a potentially exclusive interest in the land.

How title can be proven is laid out in a three-part test:

In order to make out a claim for aboriginal title, the aboriginal group asserting title must satisfy the following criteria: (i) the land must have been occupied prior to sovereignty; (ii) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation; and (iii) at sovereignty, that occupation must have been exclusive. (Delgamuukw v. British Columbia, 1997, para. 143)

Justification for infringement is similarly straightforward, building on Gladstone's "compelling and substantial" reasoning:

In my opinion, the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kinds of objectives that are consistent with this purpose and, in principle, can justify the infringement of aboriginal title. (Delgamuukw v. British Columbia, 1997, para. 165)

The Delgamuukw decision extended the invocation of duties of consultation and compensation beyond Aboriginal rights, as addressed in Sparrow, to Aboriginal title, where the implications for territorial jurisdiction and economic rent are the most profound. The Court highlighted three aspects of Aboriginal title in its reasoning.

First, aboriginal title encompasses the right to exclusive use and occupation of the lands; second, aboriginal title encompasses the right to choose what uses the land can be put; ... third, the lands held pursuant to aboriginal title have an inescapable economic component. (Delgamuukw v. British Columbia, 1997, para. 166)

The Court's stance on consultation was quoted above. In terms of compensation and accommodation, the Court linked them to the Crown's fiduciary duties requiring that Aboriginal title be given priority. Anticipating arrangements such as the Cascade agreement, "this might entail, for example, that governments accommodate the participation of aboriginal peoples in the development of resources" (Delgamuukw v. British Columbia, 1997, para. 167).

As with Van der Peet and Gladstone, Delgamuukw holds out the Political frame of Aboriginal groups as an ideal yet provides little legal certainty for achieving it. Within the Economic frame, because the duties invoked must be satisfied before approval, increased legal certainty is exchanged for timeline risk. Instead of promoting good-faith consultation, which the Court had indicated was the minimum acceptable standard, the decision places pressure on consultation activities to align with project timelines. The decision *R. v. Marshall* (1999) extended the pattern of setting standards and obligations, without providing guidelines for their implementation. The ruling recognized a treaty-based right to a moderate livelihood, while leaving its implementation to federal regulators. The facts of the case involved the fishery. Economically, the combination of rights recognition and the absence of an authoritative mechanism to implement it in practice signals uncertainty regarding quotas, licensing, and enforcement for industry. Politically, it elevates expectations for Aboriginal communities without a matching process design. The stage is set for the establishment of the duty to consult doctrine.

6.2.1.1 Duty to Consult

In 2004 and 2005, in a series of companion decisions, the Court developed and consolidated the principles and tests from prior jurisprudence into the duty to consult doctrine. Read together, *Haida Nation v. British Columbia (Minister of Forests)* (2004), *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* (2004), and *Mikisew Cree First*

Nation v. Canada (Minister of Canadian Heritage) (2005) represent a single consolidating moment in which the Court establishes consultation as a mandatory obligation responsive to uncertainty rather than proven rights. Collectively, the decisions relocate consultation from a remedial response to established infringement to a proactive obligation triggered at the point where the Crown contemplates action that may adversely affect asserted Aboriginal or treaty interests. The trilogy, therefore, functions less as a sequence of refinements than as a systemic reorientation of how consultation is to be practiced across political, legal, and economic contexts.

The Court illustrates how the duty can be discharged by deciding that the Taku River Tlingit were consulted during the environmental assessment for the project under dispute. While the Court's reasoning in *Taku River Tlingit* aligns with *Haida* and *Mikisew*, its practical application produced consequences that extend beyond what the Court explicitly addressed. By affirming that consultation obligations could be satisfied through participation in an environmental assessment process, the decision inadvertently clarified where meaningful influence might be exercised. In the years following *Taku*, Aboriginal groups increasingly treated environmental assessment processes not merely as procedural venues, but as strategic sites for advancing political recognition and participation.

A decade later, *Tsilhqot'in Nation v. British Columbia* (2014) completed the line of reasoning on title that Delgamuukw had opened, producing the first judicial declaration of Aboriginal title in Canada. The Court held that title confers the right to decide how the land will be used, to enjoy its economic benefits, and to use and manage it proactively, so that governments and others seeking to use title land must obtain the consent of the title holders or justify the incursion under section 35 (*Tsilhqot'in Nation v. British Columbia*, 2014, paras. 73, 76). The Court added that those proposing to use or exploit land, "whether before or after a

declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group” (para. 97). Read through the frames, the decision sharpens rather than resolves the tension traced above: it strengthens the Political frame’s claim to decision-making authority and to the economic value of the land, gives the Legal frame a consent-or-justify standard where title is established, and raises the cost of unresolved claims within the Economic frame. Cascade lies within Treaty 6 territory rather than on land subject to a title declaration, so the decision matters here for the direction it gives the jurisprudence, not its application to this project. It bears on arrangements, such as Cascade, that build Aboriginal participation into a project’s ownership rather than leaving it to consultation alone.

Although the duty to consult doctrine consolidated consultation as a proactive constitutional obligation, it did not reconcile the distinct objectives operating within the Political, Legal, and Economic frames. Aboriginal groups gained procedural leverage and recognition, governments secured a structured, defensible process, and industry faced expanded timelines and due diligence demands. The doctrine stabilized consultation as a legal requirement, yet it did not eliminate the inter-frame tensions that had become embedded within practice. Although consultation had become the shared institutional language of engagement, dissatisfaction persisted as the goals animating each frame remained only partially fulfilled. The question that follows is therefore not whether consultation exists as doctrine, but whether alternative institutional arrangements might allow those same goals to be realized without further intensifying procedural obligations. It is in this context that the Cascade equity agreement becomes analytically significant.

6.2.2 *RQ2 Alignment of Cascade with Consultation Goals Across Frames*

The Cascade equity agreement occurs within a landscape of stabilized doctrine and persistent cross-frame tension. It presents a case in which Aboriginal groups' participation in a major resource project involved an ownership position in the project. The Cascade equity agreement was secured outside the formal duty to consult process, yet participants and institutional sources understood it as aligning with, and in some respects exceeding, what formal consultation alone was understood to deliver against the goals articulated in the jurisprudence and policy literature. Rather than centring on procedural compliance or static pro forma accommodation, the arrangement, as described by participants, altered the formal positions and ongoing relationships. The findings from the Cascade case, therefore, invite a reassessment of how consultation goals are realized in practice, particularly when alternative institutional arrangements are available.

The Economic frame provides a direct point of entry into the Cascade case, as the agreement was structured first and foremost as an ownership and financing arrangement rather than as a procedural extension of consultation.

6.2.2.1 Economic Frame: Profitability, Capital Access, and Risk Allocation

The interview participants emphasized that the Proponent had structured contracts prior to the equity agreement, ensuring the project would generate income from day one. The equity position taken by the First Nations did not involve other forms of compensation or downstream benefits; rather, it was a commercially viable ownership stake.

The equity stake, provided by a loan guarantee of approximately \$93 million, is not typically available to Aboriginal groups based on commercial viability alone. Reserve and territorial lands cannot readily be leveraged as security in conventional lending markets (Indian

Act, 1985, s. 89). Without the AIOC's involvement to guarantee the loan, equity participation would have been structurally difficult. It is important to note that the guarantee did not alter consultation requirements; rather, it enabled entry into a financing structure that would otherwise have been inaccessible.

While participants did not disclose the guarantee's financial terms, its role in the agreement can be read as an enabling condition that operates independently of the consultation process. The AIOC conducted due diligence and assumed the risk-assessment function that conventional financiers would ordinarily perform. By guaranteeing the loan and capping the First Nations' exposure at \$93 million in a greenfield project environment where capital calls for cost overruns are common, the structure contained downside risk while preserving upside participation (von der Porten & Podlasly, 2021). The guarantee did not modify or discharge consultation obligations, which had already been completed through regulatory processes. Instead, it reconfigured the economic feasibility of ownership by institutionalizing risk in a manner acceptable to the province and bounded for the participating Nations. In this sense, the arrangement expanded the range of economically viable participation options without converting equity into a substitute for consultation. This distinction is critical: consultation determines procedural obligations, whereas capital access determines whether ownership participation is materially possible.

Within the Economic frame, this structure altered the distribution of risk and return rather than expanding procedural obligations. For industry proponents, equity participation aligned incentives and reshaped the project's long-term risk profile, particularly with respect to uncertainty arising from opposition or delay. For Aboriginal groups, ownership created a pathway to asset-based revenue generation independent of compensatory accommodation. In this

sense, the economic goals previously articulated within the consultation framework (certainty, project viability, and participation in anticipated project benefits) were realized through capital structuring rather than procedural intensification.

6.2.2.2 Legal Frame: Doctrinal Integrity and Strategic Alignment

While the Economic frame suggests how Cascade reconfigured capital participation, the Legal frame clarifies how that reconfiguration relates to the duty to consult doctrine. In *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council* (2010), the Court distinguished between the impacts of a project and higher-level strategic decisions capable of triggering consultation duties. The decision underscores that the duty attaches to Crown conduct that has the potential to adversely affect asserted rights, not to economic arrangements connected to a project. Cascade did not expand or displace the duty to consult. Instead, it operated at the level of capital architecture, altering ownership and financing without modifying the Crown's consultation obligations. The agreement, therefore, illustrates how strategic-stage alignment can occur alongside, rather than through, formal consultation processes.

The Cascade project proceeded through the formal consultation processes, consisting of regulatory and environmental assessments, prior to the equity agreement (Stantec, 2019). Participants emphasized that consultation obligations were fulfilled through existing permitting channels, and no evidence of procedural deficiency or subsequent litigation emerged in the interviews. The equity arrangement was negotiated separately and subsequent to the completion of consultation activities. As participants consistently noted, the agreement was not designed to replace consultation, but to exist independently of it.

Within the Legal frame, the central goal is not substantive agreement but procedural integrity and defensibility (Boyd & Lorefice, 2018). Cascade did not alter the duty to consult

structure; rather, it unfolded alongside a consultation process that participants regarded as complete. In this sense, the agreement did not resolve legal uncertainty through doctrinal expansion but operated in parallel to an already stabilized consultation pathway.

6.2.2.3 Political Frame: From Consultation to Participation

While the participants described the equity stake primarily in terms of partnership, capacity, and long-term benefit rather than those of rights or sovereignty, the shift from consultation to ownership carries political implications. The Cascade agreement did not deepen consultation; it reoriented participation. Rather than engaging primarily through procedural objection or representative advocacy, the equity structure positioned Aboriginal groups within the project as owners. This shift from consultation to participation can be read as altering the political character of involvement without expanding the formal doctrine of the duty to consult.

This shift, however, is contingent rather than universal. Equity participation requires access to capital, institutional capacity, and alignment with the industry proponent and the participating Aboriginal communities. Not all Aboriginal groups are situated to assume ownership stakes at this scale, nor does ownership eliminate all sources of political disengagement or asymmetry. The Cascade case, therefore, provides an illustrative configuration through which participation may be institutionally structured, but it does not displace consultation as a constitutionally founded process; nor does it guarantee that similar arrangements will be feasible in all contexts.

A serious body of scholarship would contest the conclusion toward which this section moves, and it deserves engagement rather than acknowledgement. Coulthard (2007, 2014) argues that state-conferred recognition, however material its benefits, tends to reproduce the colonial relationship it appears to transform, because the terms of recognition remain the settler state's to

define. Pasternak (2020) extends the argument to Indigenous economies, showing how settler colonialism and racial capitalism jointly produce the borders within which Indigenous economic activity is permitted; Preston (2013) locates the same logic in Alberta's energy sector specifically; and Taylor and Friedel (2011), in the closest empirical precedent to this case, document the troubling effects of public-private partnership arrangements for First Nation and Métis communities in the same province and sector. Applied to the arrangement examined here, the critique can be stated in this thesis's vocabulary: that the Political frame's goals cannot be realized within structures the Economic and Legal frames define, and that equity participation, far from an alternative to the politics of recognition, is its extension: induction into the market on terms set by provincial legislation, commercial underwriting, and the Crown's balance sheet. A contemporaneous political version of the same concern was voiced at the announcement itself, when the provincial opposition leader argued that only certain Nations can qualify for AIOC guarantees, that the scope of eligible development is too narrow, and that fuller economic reconciliation would require greater Indigenous self-determination over which projects are supported (Cryderman, 2020).

The Cascade evidence assembled in Chapter 5 answers parts of this critique, and the answers should be stated. The arrangement was not offered to the Nations; on the basis of convergent evidence from the interviews and the public record, it was initiated by two Nations, carried by a Nation-owned firm, and extended by the Nations to the communities identified through the consultation record. The right of refusal was preserved and publicly articulated as legitimate by the guarantor itself. And the Nations and their agent framed the investment not as induction into an alien economy but as a step toward "financial independence and self-reliance," in the words of the Nation-owned firm that structured it (Backwoods Energy Services, 2020).

These are not the markers of recognition passively received; they are markers of an arrangement authored, within real constraints, by its Aboriginal participants.

Other parts of the critique the evidence cannot answer, and in places it corroborates them. Eligibility for the guarantee is defined through the categories of the Indian Act and the AIOC's enabling statute, a structural fact documented by this study's own participant evidence within the transaction, and precisely the kind of state-defined boundary on Indigenous economic life that Pasternak (2020) describes. Ultimate authority over the corporation's risk appetite rests with the provincial Crown, as the governance-chain evidence in Chapter 5 shows. Participation is contingent on commercial viability, which means the mechanism is structurally unavailable for projects that communities might value but cannot clear underwriting. The materiality logic that participants themselves articulated limits how widely participation can be extended. And the asset, in this case, is fossil-fuel infrastructure, about which participants acknowledged heterogeneous views within communities. Most fundamentally, whether ownership is experienced as self-determination is a question of community-level political life, and it lies outside this study's evidentiary boundary by design.

The frames framework does not require resolving this debate, and this thesis does not claim to do so. The framework clarifies the level at which the RQ2 conclusion holds. The Cascade case supports an interpretation of convergence among institutionally articulated Political, Legal, and Economic goals; the recognition critique contests whether those institutional articulations adequately represent the political aspirations of the communities themselves. The conclusion is therefore provisional in a specific and stated way: the evidence indicates alignment at the institutional level, and whether it constitutes the fuller transformation the critical literature demands is an open question that only community-grounded research, of the kind identified in

the future-research agenda, could address. It is worth noting, finally, that the loan-guarantee model is now contested from the opposite direction as well, on fiscal and taxpayer-risk grounds (Flanagan, 2025). That equity participation draws sustained critique from both decolonial and fiscal-conservative positions is itself consistent with the argument of this thesis: the arrangement has become a live institutional site in which the three frames' unresolved tensions are newly (and more consequentially) engaged.

Taken together, the Economic, Legal, and Political frames suggest that the Cascade agreement displayed alignment with goals often pursued within consultation, without expanding the formal doctrine, and did so through institutional design external to consultation procedures. Capital structuring enabled asset participation: consultation obligations remained intact, and participants interpreted institutional inclusion, rather than intensified procedural engagement, as the source of political significance. The case, therefore, shifts the inquiry: under what case-derived conditions can such arrangements operate as outside-the-system mechanisms that reshape how consultation is practiced across frames?

6.2.3 RQ3 Conditions for Equity as an Outside-the-System Mechanism

The Cascade case does not suggest that equity participation will routinely or automatically reshape consultation practice. Its significance lies instead in the specific conditions associated with the alignment interpreted in this instance. The analysis, therefore, moves from description to structure: rather than asking whether equity participation can coexist with consultation, the focus turns to identifying the institutional, financial, and relational conditions under which it can function as an outside-the-system mechanism. RQ3 thus examines the enabling preconditions of convergence across the Economic, Legal, and Political frames. The conditions identified below are analytical propositions derived from a single case and from the

pattern of convergence interpreted in the Cascade case alongside the jurisprudential and theoretical analysis developed in RQ1 and RQ2; as such, they should not be understood as empirically tested, necessary, or sufficient conditions for successful equity participation.

6.2.3.1 Economic Preconditions

The Cascade case suggests four economic conditions that appear to have enabled equity participation to operate as an outside-the-system mechanism. First, the proponent was willing to restructure ownership and allocate a portion of project equity to Aboriginal partners. Equity participation presupposes openness to dilution and shared governance; absent such willingness, no financing structure can compensate. Second, the project demonstrated financial viability sufficient to withstand institutional due diligence. Anticipated revenue streams, contractual structures, and regulatory approvals supported third-party financial risk assessment. Third, the project's risk profile was acceptable to lenders and guarantors. Even where participation is desired by Aboriginal partners and proponents, financing will not proceed if exposure to delay, litigation, or market volatility exceeds thresholds. Finally, a capital-access mechanism existed to bridge structural collateral constraints that would otherwise prevent participation. In Cascade, the loan guarantee performed this enabling function. Where any of these conditions are absent, equity seems unlikely to operate as a structural alternative to intensified consultation.

The interviews give these conditions empirical anchors. The shovel-ready threshold of the capital-access mechanism made completed permitting and consultation prerequisites of financing, embedding the sequencing of the two processes in the structure of the mechanism itself; transaction costs set a floor on viable participation scale; and the Advisor's summary was categorical: "without the AIOC, without government support, the transaction we created doesn't happen" (Advisor, interview, September 23, 2021).

6.2.3.2 Legal Preconditions

Additionally, in Cascade, equity participation served as an outside-the-system mechanism where the legal environment permitted Aboriginal groups to engage simultaneously as constitutional rights-holders and autonomous economic actors. First, the duty to consult doctrine is sufficiently stable and bounded to ensure that the scope of Crown obligations is understood and not continuously renegotiated. Doctrinal clarity enables consultation to proceed as a constitutional process without absorbing adjacent economic arrangements. Second, formal consultation was capable of standing on its own procedural sufficiency. Equity cannot serve as a substitute for consultation without compromising both legal defensibility and Aboriginal autonomy. Third, a principled institutional distinction was maintained between constitutional obligation and commercial participation. The *sui generis* character of section 35(1) jurisprudence reinforces that Aboriginal rights occupy a distinct constitutional space; equity arrangements, by contrast, operate within conventional financing structures. Equity appears to reshape consultation practice where these regimes remain separate yet capable of coexistence.

6.2.3.3 Political Preconditions

The Political preconditions concern the capacity and relational conditions required for equity to function as meaningful participation rather than symbolic inclusion. First, participating Aboriginal groups must possess or develop sufficient governance and institutional capacity to engage as equity partners. Ownership at scale entails financial oversight, risk management, and long-term strategic decision-making. Without internal capacity, equity agreements risk becoming nominal rather than transformative.

Second, the Cascade accounts suggest that this capacity condition includes, specifically, a capacity for *intermediation*: an actor able to consolidate the participating Nations and translate

between them and their institutional counterparts. The Proponent judged this decisive, doubting that “bringing six First Nations on the same terms” could have been managed bilaterally (“I don’t think it would have been an agreement that we could have done”), and drew the corresponding lesson for future transactions: “have them consolidate and have ... one negotiator for all of them,” ideally through parties “not tied to developers” so that “things can be fair and trust can be there” (Proponent, interview, September 27, 2021). For Cascade, this function was performed by a firm owned by one of the initiating Nations, which meant the consolidating agent was itself an expression of Aboriginal institutional capacity rather than an external substitute for it. Pre-existing relational infrastructure between the two initiating Nations’ leaders and between the Nations’ agent and the institutional counterparties appears in the accounts as the medium through which trust formed quickly enough to meet the commercial deadlines. The public record suggests this intermediation capacity is itself institutionalizing beyond the single transaction: an advisory firm reported to have helped structure Cascade has since appointed a former Chief of one of the participating Nations as managing director (Narine, 2022), indicating that the precondition, once met, may become partly self-reproducing.

Third, relational trust must exist between proponents and Aboriginal partners at a level that permits shared ownership and reciprocal recognition. Equity participation presupposes that Aboriginal groups are treated not merely as consultees but as credible institutional actors. Where trust is absent, ownership arrangements are unlikely to emerge or may be structured defensively rather than collaboratively. Equity reshapes consultation practice only where internal capacity and external trust converge to sustain participation over time.

These conditions do not operate independently. A proponent’s willingness to allocate equity is more likely where economic feasibility, legal stability, and political capacity converge.

Where financial viability cannot withstand institutional due diligence, where consultation doctrine remains contested or unstable, or where relational trust and governance capacity are insufficient, equity participation is unlikely to emerge or to operate as a transformative mechanism. Cascade, therefore, illustrates not a universal model, but a convergence of conditions under which equity can function alongside consultation to reshape practice across frames.

These conditions were not apparent at the outset of this research but became visible only through the recursive movement between lived dissatisfaction, jurisprudential analysis, and empirical encounter that structured this thesis.

6.3 Synthesis of the Hermeneutic Loops

The inquiry began with an observation of dissatisfaction across all parties in a hearing process. Viewed through the theoretical framework, political, legal, and economic actors were operating within a shared consultation framework. Aboriginal groups sought recognition and meaningful participation; government actors prioritized procedural integrity and defensibility; industry proponents pursued certainty and project viability. Although the duty to consult doctrine provided a common institutional structure, it did not reconcile the distinct objectives animating the frames. The friction that prompted this research was therefore not simply a matter of procedural deficiency, but of co-present goals that remained only partially aligned within the formal consultation system.

The analysis of the jurisprudence from the theoretical framework's perspective illuminated how consultation practices have evolved. Early decisions articulated root principles and justification frameworks, while subsequent rulings refined thresholds and expanded the scope of protected interests. This culminated in a trilogy of Supreme Court of Canada decisions

that consolidated prior reasoning into the duty to consult doctrine and established consultation as a proactive constitutional obligation triggered by the potential for an adverse impact. Within that consolidation, the Taku River Tlingit decision proved especially significant in practice. In ruling that an environmental assessment process could discharge the duty, the Court clarified where consultation might be considered sufficient. In the years that followed, Aboriginal groups increasingly treated environmental assessment not merely as procedural compliance, but as a strategic site for advancing political recognition and influence. This strategy did not produce frame convergence; rather, it affected project timelines, altered industry risk calculations, and contributed to institutional recalibration of environmental assessment legislation. This reframes consultation, not as a pathway to frame alignment, but as a legally stabilized institutional site within which pre-existing frame tensions are structured and enacted.

Within this post-Taku landscape of stabilized but unresolved frame tension, the Cascade equity agreement becomes analytically significant. Unlike the jurisprudential evolution that reshaped consultation practice from within, Cascade does not deepen or reform consultation itself. The project passed through the regulatory and consultation stages, which participants regarded as complete. The equity agreement was negotiated separately and deliberately maintained as distinct from constitutional obligation. Yet, within this separation, a different form of alignment emerged. Participants and institutional sources associated ownership with goals of empowerment, autonomy, and political participation rather than procedural advocacy; economic goals of certainty and project viability were supported through shared risk and return; and legal defensibility remained intact because the duty to consult was neither displaced nor diluted. The case supports the interpretation that alignment arose not through the consultation procedure itself, but through the design of the ownership and financing arrangement. In this sense, Cascade

illustrates how frame convergence can arise alongside consultation without requiring doctrinal expansion. In contrast to the post-Taku engagement with environmental assessment, which primarily advanced objectives associated with the Political frame without advancing those of the other two, an imbalance that intensified interaction across them, Cascade developed as an arrangement facilitated by the structure of equity finance, in which political participation, economic benefits, and legal stability were considered together. The distinction is therefore structural: not whether activity occurred outside the formal consultation process, but whether extra-procedural developments reallocated leverage within a single frame or restructured incentives balanced across frames.

Recognizing this structural distinction required two related recursive examinations embedded within new-realist hermeneutics. The first began with my initial observations of dissatisfaction and moved on to locating the theoretical framework and examining the jurisprudence from that perspective. Viewing the Supreme Court decisions through the lens of frames and framing clarified that consultation stabilizes legal obligations while leaving frame-specific goals and the inherent tensions between them intact. Consultation is not deficient, but structurally bounded. The insight came from analyzing the response to the Taku River Tlingit decision. Frame analysis showed that pursuing only one set of consultation-associated objectives outside the formal process can intensify interaction across frames, leading to a corrective response rather than mutual benefit. The second arose from reading Cascade alongside the post-Taku developments, which suggests that extra-procedural arrangements may differ meaningfully in structure. When ownership and financing arrangements address political participation, economic benefit, and legal stability together, the interaction across frames may be recalibrated rather than intensified. The insight, therefore, is not that consultation is displaced, but that

convergence depends on how institutional structures mediate relationships among frames. The analysis consequently suggests that consultation functions as a constitutional baseline within which different institutional arrangements shape interactions among frames.

6.4 Implications

6.4.1 *Theoretical Implications for Consultation*

The analysis clarifies the structural role of consultation within the broader institutional landscape of resource development. Viewed through the theoretical framework of frames and framing, consultation stabilizes constitutional obligations and defines expectations across Political, Legal, and Economic frames. What it does not guarantee is convergence among the distinct goals animating those frames. Consultation operates as a constitutional baseline within which inter-frame tensions are structured and enacted.

The distinction developed in this chapter further suggests that extra-procedural developments are not uniform in structure. The post-Taku engagement with environmental assessment is interpreted here as indicating that pursuing objectives associated with one frame *outside of the formal consultation process* may intensify interaction across the others. Cascade, by contrast, suggests that when ownership and financing arrangements are structured to address political participation, economic benefit, and legal stability together, the interaction among frames may be recalibrated rather than intensified. The implication is not that consultation should be displaced, nor that equity participation is inherently convergent, but that convergence depends on how institutional structures mediate the relationship among frames.

6.4.2 *Implications for Practice*

The preceding section addresses what this study contributes to theory. Because the arrangement examined here is one that actors across three sectors are actively attempting to

reproduce, the analysis also carries implications for practice. These are offered as considerations derived from a single successful transaction rather than as a template. The conditions set out in Section 6.2.3 constrain them, and nothing in this study establishes that the arrangement caused the outcomes that followed it. Read within those limits, the accounts assembled in Chapter 5 yield guidance for each of the three groups whose frames organize this thesis.

For proponents, four features of the Cascade sequence bear on how equity participation might be approached. The first is timing. The capital-access mechanism invested only in shovel-ready projects: “to get a project to where the AIOC will invest, you have to have done all that work and got all your commercial agreements, got all your permitting in place” (Proponent, interview, September 27, 2021). Equity participation is therefore not an alternative to completing consultation but a possibility that opens once consultation and permitting are complete, and proponents contemplating it should plan for it as a post-permitting undertaking. The second is scale. Because a properly executed investment carries significant diligence and advisory costs, “the closing costs and costs of doing the investment kind of make it uneconomic” below a substantial threshold (Proponent, interview, September 27, 2021). Smaller levels of participation may be worth pursuing for other reasons, but they may not clear the economics that the Cascade participants understood to give this arrangement its durability. The third is the choice of financial partner. The compatibility observed at Cascade rested on a coincidence of temporal orientation, in which “the risk aversion is consistent between the pension fund and the First Nation communities” and “nobody’s looking for the hundred X big return” (Advisor, interview, September 23, 2021). A proponent whose financing depends on a shorter-horizon or more speculative investor should not assume that the same alignment is available. The fourth concerns process design. The Proponent and the AIOC official held that consultation and investment

negotiations should be kept apart, while the Advisor drew the same line between equity and contracting. The Proponent framed this in terms of integrity rather than compliance: “the integrity gets thrown out the window [if] you put them together” (Proponent, interview, September 27, 2021). He allowed, however, that the separation may be project-contingent, and that a development with a heavier impact profile “might require more guarantees up front” (Proponent, interview, September 27, 2021). The separation is therefore best treated as a default warranting deliberate reconsideration where a project’s circumstances differ materially from Cascade’s.

For Aboriginal groups and the advisors who act on their behalf, five considerations follow. First, the arrangement examined here was initiated, structured, and extended by the participating Nations rather than offered to them, and the pre-existing working relationship between the two initiating Chiefs was the condition that made that initiative possible. The practical implication is that relational infrastructure built before a transaction exists is not preliminary to the work but part of it. Second, consolidation matters. The Proponent judged a single consolidated counterparty decisive, recommending that future transactions “have them consolidate and have ... one negotiator for all of them,” ideally through parties “not tied to developers” so that “things can be fair and trust can be there” (Proponent, interview, September 27, 2021). At Cascade, that function was performed by a firm owned by one of the participating Nations, which meant consolidation did not require delegating authority outside Aboriginal institutions. Third, the internal architecture of the syndicate preserved autonomy where it mattered: terms were common across all six Nations while allocation among them remained theirs to determine, described by the AIOC official as an arrangement in which the Nations “took the pie away and they cut it up how they want it” (AIOC, interview, August 4, 2021). Fourth,

breadth and materiality trade against one another. Extending participation indefinitely would mean that “instead of having an opportunity to do ... material changes for the communities that are invested, you’re now kind of like, wow, we got \$5 instead of \$500” (Advisor, interview, September 23, 2021). Any replication of the model confronts this trade-off directly. Fifth, and most consequential for managing expectations within participating communities, equity ownership and employment generation are not substitutes for one another. The operating facility supports approximately 25 full-time positions, and the asset generates distributions precisely because it requires little ongoing labour, yet the benefit communities raised first in the Advisor’s account was employment. Groups contemplating equity participation should therefore treat procurement, training, and employment provisions as separate objects of negotiation rather than as benefits expected to follow from ownership. Governance capacity is a related requirement, and one that participants were already addressing through funded directors’ education, which the Advisor saw as the start of “a longer horizon on how do we start to build that capacity” within each community (Advisor, interview, September 23, 2021).

For governments and guarantors, the case suggests that the design of the capital-access mechanism, rather than its existence alone, determines what it makes possible. The Advisor’s assessment was categorical: “without the AIOC, without government support, the transaction we created doesn’t happen” (Advisor, interview, September 23, 2021). Three design features warrant attention. The guarantee bounded exposure while preserving participation in the upside, which is what allowed a greenfield project to be entered at all. Eligibility was constrained by the corporation’s enabling statute, so that an interest cannot be transferred outside qualifying groups without the guarantee falling away; this protects the benefit but also defines, in statutory terms, who may participate, with distributional consequences that policy design should confront

explicitly. And public support was understood by participants as temporary rather than permanent, tapering “instead of being ... [a] 100% loan guarantee moves down to a 50% loan guarantee, and then 40, 30, 20, 10” as commercial confidence accumulates (Advisor, interview, September 23, 2021). A further feature is worth preserving in any replication: the guarantor articulated refusal as a legitimate outcome, hoping that groups would be positioned to say “not only were we consulted, but we were asked if we wanted to invest” while remaining free to decline (AIOC, interview, August 4, 2021). On that understanding, the policy objective is the availability of the choice rather than its exercise.

A final consideration cuts across all three groups. The alignment observed at Cascade was constructed rather than discovered. The structure that closed was not the structure first proposed; the guarantor “flat out said no” to the Nations’ initial preference, and the arrangement that succeeded emerged only through redesign (Advisor, interview, September 23, 2021). Practitioners approaching similar transactions should expect refusal and restructuring to form part of the process rather than signal its failure. What this case offers practice is not a model to be copied but an account of the sequence, the conditions, and the iterative work through which one such arrangement was built.

6.4.3 Methodological Implications: What the Interpretive Apparatus Contributed

A reader may reasonably ask what the philosophical and theoretical scaffolding assembled in Chapters 2 and 4 contributed that a more traditional design would not. Three contributions can be identified specifically, and one limit should be conceded.

First, Schön and Rein’s rejection of the relativist trap is what makes this study’s central finding explicable rather than merely observed. If frames were sealed and incommensurable, an arrangement satisfying parties who did not converge on a shared frame would be an anomaly

without an account. The framework predicts that translation across frames is possible and that reframing occurs through situated practice; the Cascade case can be read as an instance of exactly that, arrived at through refusal and redesign rather than persuasion.

Second, the distinction between rhetorical and action frames, and the levels at which each operates, supplied the principled basis for the evidentiary tiering set out in Section 5.1. It is the reason participant accounts and public institutional statements are treated as different kinds of evidence rather than as more and less of the same evidence, and it is what allows the Political-frame analysis to state precisely what it can and cannot support.

Third, Figal's insistence on the exteriority of the interpreted object operated as a methodological discipline rather than a description. Its clearest effect is documented in Section 4.5.1: the employment-versus-dividends tension was retained as a finding rather than resolved into the surrounding account of empowerment, because the framework treats resistance from the material as informative rather than as noise to be smoothed.

Much of what this orientation produced could also have resulted from a careful descriptive analysis attentive to disconfirming cases. What the framework added was not a different result but an explicit account of why disconfirmation is epistemically productive, and a vocabulary in which the researcher's distance from the events could be examined rather than merely disclosed. For a study whose central limitation is the researcher's position relative to the phenomenon, such accounting is not incidental; it is a contribution to how the study can be assessed, not a claim that its findings were otherwise unreachable.

A study conducted in this orientation is obliged to state what its interpretations answer to, and that obligation leaves a particular kind of residue. The evidentiary tiers specify what each class of source was taken to support; the boundary drawn around community-level experience

states what the study does not evidence; the preconditions offered in Section 6.2.3 are propositions available for testing rather than findings; and Section 4.5.1 records three occasions on which the material overturned a reading already formed. Whether an account built this way proves more useful to subsequent research than an equally careful analysis conducted on other principles is not something a single study can establish, and no such claim is made here. What can be said is narrower and still worth stating: the interpretations offered in this thesis are positioned so that disagreement with them has somewhere to land, and the next study can be aimed at a specific claim rather than at the account as a whole.

6.4.4 Implications for Consultation Scholarship and Future Research

These findings invite a broader approach within consultation scholarship. Much of the existing literature is about consultation, evaluating it in terms of procedural adequacy, compliance, or normative sufficiency. This analysis, in contrast, suggests that doctrinal refinement alone cannot address the persistence of dissatisfaction across actors. Attention to institutional design, incentive structures, and ownership configurations may be equally important in understanding how consultation is experienced in practice.

The study also illustrates the value of participant-centred qualitative inquiry for making these structural dynamics visible under the interpretive frame adopted here. Beginning from lived dissatisfaction and moving recursively between theory, jurisprudence, and empirical findings made visible structural distinctions among extra-procedural developments that might otherwise appear similar. Comparative case research could further examine whether the structural features identified in Cascade recur in other contexts, and whether variations in institutional capacity, financial viability, legal stability, and relational trust produce different patterns of interaction across frames. Longitudinal research may also assess whether structural

recalibration endures over time or reverts to intensified tension under changing economic or political conditions.

These findings do not imply a singular model to be replicated. Rather, they suggest that consultation scholarship may benefit from closer attention to how structured arrangements mediate the interaction among Political, Legal, and Economic frames. Such inquiry would deepen understanding of consultation not as an isolated procedure but as one component within a broader, evolving institutional ecosystem. Seeing consultation this way may help explain why dissatisfaction persists even when procedural obligations are met.

7 Conclusion

This study began with an observation of dissatisfaction among actors participating in hearings arising within consultation processes surrounding resource development. Aboriginal groups, government decision-makers, and industry proponents were willingly and formally engaged within consultation procedures, yet the outcomes of those processes rarely appeared satisfactory to all involved. The consistency of this dissatisfaction raised a central question: if consultation is intended to reconcile competing interests, why does tension remain even when procedural obligations are fulfilled? By examining Supreme Court jurisprudence, participant experiences, and the Cascade case through the theoretical framework of frames and framing, this thesis has sought to clarify the structural conditions under which those tensions arise and the circumstances in which consultation goals may be pursued beyond the formal consultation process.

The analysis presented in this thesis suggests that consultation operates less as a mechanism for reconciling competing interests than as an institutional structure that stabilizes expectations among actors, each operating within distinct Political, Legal, and Economic frames. Within that structure, Aboriginal groups, as represented in policy documents and institutional statements, pursue recognition and meaningful participation, government actors seek procedural legitimacy and defensibility, and industry proponents prioritize certainty and project viability. Consultation, therefore, provides a shared forum for engagement, but it does not inherently align the goals animating these frames. The analysis suggests that those goals need not be pursued exclusively through the formal consultation process itself. Instead, they may emerge through arrangements that develop separately from, or beyond, that process. The Cascade equity agreement illustrates how such an arrangement can recalibrate relationships among the three

groups and create conditions in which their respective consultation goals may be pursued together.

These conclusions concern structural and participant-perceived alignment as interpreted through the interview accounts, jurisprudence, and the documentary record. The available data do not establish community-level approval or lived empowerment, independently verify the long-term distribution or effects of project revenues, or demonstrate that equity ownership caused the absence of legal or regulatory challenges. Nor are the conditions identified from Cascade presented as necessary or sufficient conditions for convergence. Rather, the case supports a theoretically grounded proposition that equity arrangements may create conditions in which institutionally articulated goals across the three frames can be pursued together.

The question posed by this thesis's title can now be answered in the terms set out in Chapter 1. With respect to goals, yes: the Cascade case supports the interpretation that goals associated with consultation were pursued, and to a degree institutionally aligned, through an ownership and financing arrangement situated outside the formal process. With respect to the obligation, no: the duty to consult was neither displaced nor diluted, and this thesis makes no claim that equity participation can discharge it. With respect to sequence, the answer carries a condition that limits its reach. At Cascade, equity became available only once consultation and permitting were complete, because the capital-access mechanism invested solely in shovel-ready projects; the arrangement examined here operated downstream of a consultation process that had already succeeded. On this evidence, equity participation is not an alternative route to consultation goals for parties whose consultation has failed, but a supplementary route available to those whose consultation has worked. That is a narrower finding than the title's question might invite, and it is the one the evidence supports.

The interpretive arc of this study was shaped by the way section 35(1) jurisprudence stabilized consultation as a constitutional structure without reconciling the distinct goals operating within the Political, Legal, and Economic frames. The significance of the Taku River Tlingit decision lies not only in its doctrinal reasoning but in its practical effects. By affirming that consultation obligations could be discharged through an environmental assessment, the Court clarified a path for Aboriginal groups to pursue political recognition and influence beyond the formal consultation process. Yet the post-Taku response also illustrated the limits of that development: advancing the objectives of one frame outside the formal process intensified tensions across the others rather than resolving them. The Cascade equity agreement emerged within this broader institutional landscape and illustrates a different possibility. Rather than transferring leverage to a single frame, it created conditions in which political participation, legal stability, and economic viability could be pursued together through an arrangement that developed alongside, rather than within, the formal consultation process.

Considered together, these findings carry several implications for how consultation is understood within the broader institutional landscape of resource development. Most importantly, they suggest that the goals associated with consultation are not confined to the formal consultation process. Consultation remains an important constitutional and institutional structure, but it should not be treated as the only avenue for pursuing political, legal, and economic goals. The significance of this study, therefore, lies in clarifying how dissatisfaction within formal consultation may persist not because the process has failed on its own terms, but because the distinct goals animating the Political, Legal, and Economic frames are not necessarily aligned within it. This shifts the analytical emphasis away from consultation as a self-

contained mechanism of reconciliation and toward consultation as one part of a broader institutional landscape in which distinct frames remain operative.

This reframing also carries implications for consultation scholarship. The Cascade equity agreement should not be understood as a simple model of convergence or as a formula for replication across projects. Its value is interpretive rather than universal. The case illustrates that outside-the-system institutional arrangements may create conditions in which actors' frame-specific goals can be pursued concurrently without being reduced to a single shared objective, and that institutionally articulated goals go beyond what formal consultation alone provides. At the same time, the particularity of such arrangements matters. Their significance lies not in offering a standardized alternative to consultation, but in suggesting that the concurrent pursuit of goals across all three frames may depend on context-specific structures that can engage the political, legal, and economic concerns of the actors involved. Read in this way, the Cascade case extends consultation scholarship by highlighting the conditions under which convergence may be pursued beyond the formal process, without reducing them to a single, replicable model.

The implications are not only substantive but methodological, as I discussed in Section 6.4.3. The study's findings were made possible through an interpretive approach that treated jurisprudence, participant accounts, and the Cascade case not as discrete sources of evidence to be aggregated, but as dialogical points of engagement through which understanding was progressively refined. The hermeneutic movement between lived observation, theoretical framing, jurisprudence, and empirical case material made it possible to trace how consultation functions across Political, Legal, and Economic frames without collapsing their distinct logics into a single explanatory model. In this respect, the study suggests that interpretive qualitative research is well-suited to examining consultation where the issue is not simply whether

procedures were followed, but how meaning, institutional structure, and frame-specific goals interact in practice. At the same time, these methodological strengths also define the study's boundaries and limitations.

Those boundaries are acknowledged. This thesis is interpretive and case-based, and its claims are therefore intended to enhance theoretical coherence rather than to establish broad generalizability. The findings are shaped by a specific jurisprudential trajectory, a particular set of participant perspectives, and a single empirical case examined as a dialogical object rather than as a representative sample. For that reason, the study does not claim that the Cascade equity agreement offers a universally applicable alternative to formal consultation, nor that similar arrangements would produce comparable outcomes across different political, legal, and economic contexts. Its contribution lies instead in clarifying conditions under which consultation goals may be pursued beyond the formal process; its value is therefore partly a matter of how productively it can be argued with.

The conclusions of this study also point toward several directions for future research. If consultation goals may, under certain conditions, be pursued beyond the formal consultation process, further work is needed to examine how such conditions emerge across different projects, jurisdictions, and institutional contexts. Comparative qualitative research could help clarify whether arrangements similar to Cascade create comparable opportunities for the concurrent pursuit of institutionally articulated goals, or whether their significance remains specific to particular political, legal, and economic circumstances. Additional research could also examine how Aboriginal groups, government actors, and industry proponents interpret such arrangements over time, especially where the pursuit of one frame's goals may affect the stability of the others. Work of this kind would extend understanding of consultation not as a fixed procedural system,

but as a broader field of relationships between frames in which the conditions for convergence remain contingent and context-specific.

This thesis began with an observation of dissatisfaction among actors formally engaged in consultation processes surrounding resource development. The analysis suggests that such dissatisfaction does not necessarily indicate procedural failure alone. Rather, it may reflect the enduring reality that Aboriginal groups, government decision-makers, and industry proponents approach consultation through distinct Political, Legal, and Economic frames whose goals are not inherently reconciled within the formal process. The significance of the Cascade case lies in showing that this tension need not foreclose the possibility of structural alignment that allows distinct frame-specific goals to be pursued concurrently. Under certain conditions, arrangements developing alongside formal consultation may create space for those goals to be pursued together without dissolving their differences. Read in this way, consultation is better understood not as a self-sufficient mechanism of reconciliation, but as part of a broader institutional landscape in which more constructive relationships may be formed.

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