

**BUILDING CONSULTATION FROM THE BOTTOM UP:
A CASE STUDY OF THE NORTH YUKON**

By

Robin Urquhart

B.A.H., Queen's University, 2005

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF ARTS
IN
NATURAL RESOURCES AND ENVIRONMENTAL STUDIES

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
August 2009

© Robin Urquhart, 2010



Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*
ISBN: 978-0-494-60851-7
Our file *Notre référence*
ISBN: 978-0-494-60851-7

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

Supervisor: **Dr. Annie Booth**
Associate Professor, Ecosystem Science and Management (ESM) Program,
University of Northern British Columbia

Committee Member: **Cindy Dickson**
Executive Director, Arctic Athabaskan Council, Whitehorse, YT

Committee Member: **Dr. Greg Halseth**
Professor, Geography Program, University of Northern British Columbia

Committee Member: **Dr. Michael Murphy**
Associate Professor, Department of Political Science,
University of Northern British Columbia

Abstract

The Canadian north is a land of sparse human population and a wealth of natural resources - both renewable and non-renewable. Global demands for such resources create a dynamic where exploitation in its many forms brings powerful forces to bear on small northern communities and indigenous governance bodies. Consultation, in a general sense, is the means for bringing divergent interests together to resolve resource management issues and ensure that development is conducted with the community's best interest in mind. In a legal sense, consultation protects First Nations from potential aboriginal or treaty right infringement. Consultation as defined in legislation is too broad to direct a meaningful and adequate process. It is necessary for First Nations to define consultation in their own terms. This thesis outlines and discusses the principles and procedures for guiding consultation in Old Crow, YT.

TABLE OF CONTENTS

Acknowledgement	7
1 Introduction	8
1.1 Research Topic	8
1.2 Research Question.....	10
1.3 Rationale	11
1.3.1 Lack of Definition.....	11
1.3.2 Context.....	12
1.3.3 Rationale Summation	18
1.4 Site Selection	18
2 Literature review	19
2.1 Introduction.....	19
2.1.1 Public Participation v. Consultation	20
2.2 Legal Precedents for Consultation	22
2.3 Deliberative Democracy	30
2.4 Public Participation	35
2.4 Principles of Public Participation in Environmental/Resource Management...	42
2.5 Consultation Procedure in Environmental Assessments and Resource Management	48
2.5.1 Example of community specific guideline.....	51
2.6 Processes related to approval, monitoring and review of research and resource extraction in the Yukon	52
2.6.1 The Umbrella Final Agreement (UFA).....	54
2.6.2 Conducting Research in the Yukon.....	55
2.6.3 Oil and Gas Rights Disposition Process.....	58
2.6.4 Yukon Environmental and Socio-Economic Assessment Act (YESAA) ...	62
2.7 Theoretical considerations.....	68
3 Methods.....	70

3.1 Old Crow and Vuntut Gwitchin First Nation	70
3.1.1 Consultation activities in Old Crow	73
3.2 Case Study Method and Rationale	82
3.3 Data Collection Methods and Management:	83
3.3.1 Scoping	83
3.3.2 Focus Groups	84
3.3.3 Semi-Structured Interviews	87
3.4 Insider/Outsider Status	88
3.5 Participant Selection	90
3.6 Data Analysis	93
4 Results	95
4.1 Vuntut Gwitchin First Nation Resource Application Referral Processes	95
4.1.1 Natural Resources/Lands	96
4.1.2 Heritage	97
4.1.3 Summation of Current VGFN Processes	99
4.2 Principles of Consultation	100
4.2.1 Information	100
4.2.2 Trust and Respect	108
4.2.3 Representation	114
4.2.4 Openness and Timing	117
4.2.5 Capacity	121
4.3 Conclusion	126
5 Discussion	128
5.1 General Principles and Procedure	130
5.2 Current processes for resource management consultation in Old Crow	131
5.3 Implications for project development of consultation principles	133
5.3.1 Implications of timing:	133
5.3.2 Implications of openness – deliberative mechanisms:	135

5.3.3 Implications of information:.....	137
5.3.4 Implications of representation	138
5.3.5 Implications of capacity	139
5.3.6 Implications of trust and respect.....	141
5.4 Legislated Definition	145
5.5 Consultation within a community	148
5.6 Conclusion.....	150
5.7 Future Research.....	153
6 Works Cited	155
List of Appendices	162
Appendix A: Mitchell and Parkins' comparison of deliberative mechanisms.....	162
Appendix B: Old Crow Community Layers	163
Appendix C: Chief and Council Resolution.....	164
Appendix D: Information letter to Participants – Focus Groups	165
Appendix E: Information Letter to Participants – Semi-structured Interviews	169
Appendix F: Semi-structured interview and focus group questions	173

Acknowledgement

I would first like to acknowledge the Vuntut Gwitchin First Nation and community of Old Crow, where I conducted the research for this thesis. It is at times a difficult topic given the past examples of consultation; however, community members and VGFN employees were open and willing to discuss it and help wherever they could. I especially thank all the research participants who shared their knowledge and insights. Thank you to Dr. Annie Booth my supervisor whose calm and level-headed advice and insights kept me on track. I thank my committee members – Dr. Halseth, Dr. Murphy and Cindy Dickson – for their time and effort in providing direction, painstaking edits and sharing their expertise in this field. A special thank you must go to Cindy Dickson and the Arctic Athabaskan Council without whom this thesis would not have been possible. The Arctic Athabaskan Council (AAC) helped fund this project and provided logistical and expert support. I humbly recognize the contribution the AAC has made throughout Northern Canada in its representation of Athabaskan peoples and also to the development and completion of my thesis. Thanks to my father, Doug, for his wealth of knowledge and expert advice and editing and to my mother, Judy, for her support, editing and positive attitude.

1 Introduction

1.1 Research Topic

The Canadian north is a land of sparse human population and a wealth of natural resources - both renewable and non-renewable. Global demands for such resources create a dynamic where exploitation in its many forms brings powerful forces to bear on small northern communities and indigenous governance bodies. In the Yukon, the land claims settlement has created a patchwork of semi-autonomous First Nation governments which, together with the communities (native and non-native) in their traditional territories, bear the brunt of resource exploitation proposals. The demands on the communities and First Nations of ensuring their involvement in resource development activities are often overwhelming yet the environmental, cultural and economic stakes are of such a high degree that they cannot afford to abstain from assessment processes.

In the midst of such considerations, consultation, however defined, is the vehicle for bringing diverse interests together to reach mutual agreements on how to proceed with respect to resource development. It is the crux of resource management and yet, paradoxically, consultation methods directed at communities are wholly inappropriate in many cases. Instead of an agreement being reached, the consultation process is often mismanaged so badly that an impasse develops.

Failure to reach an agreement, in the absence of fundamental, irreconcilable differences, is usually seen as a failure of the consultation process. If such a failure results in canceling a project the consequences are felt most by the proponents as

the following passage from the Canadian Association Petroleum Producers (2003) “Guide for Effective Public Involvement” indicates:

No one debates the value of good relations between the petroleum industry and its stakeholders. Misunderstandings, disagreements or opposing views can affect business, resulting in cost increases, project delays, and regulatory censures... (p. 2)

Conversely, the only recourse for a community or First Nation to an approved project, predicated on poor consultation, is a court challenge. This becomes a serious financial burden for all involved (especially at the community level), engendering a lasting animosity with an industry that might have returned far greater benefits had an amicable agreement been reached. Improving the consultation process may improve relations between community, government and industry and consequently produce a more cooperative stewardship of the land.

The purpose of this thesis is to examine consultation within the microcosm of a small, Yukon community with a strong, First Nations component. I will examine the current processes for administering resource development in the Yukon, the special connection First Nations have with their environment, the role industry plays in Yukon’s economy and the affect of land claims and self-government agreements. A preliminary concept of consultation (principles and procedure) will be developed from extant literature as a foundation upon which to build a community definition of consultation. The community definition will be arrived at through a combination of semi-structured interviews and focus groups. Themes will be highlighted from the

data that affect the concept of consultation. These themes will then be discussed in-depth to ascertain their function and implications for the consultation process in Old Crow, YT.

1.2 Research Question

The thesis will develop a community oriented definition/concept of natural resource consultation using the community of Old Crow as a case study to help create the definition¹. The prime objective of this research is to produce an operational overview that can be used by Vuntut Gwitchin First Nation to assess their current resource management consultation processes, and where appropriate, improve the consultation process.

Specific research questions are:

- What are general principles and procedures for consultation?
- What are the current resource management application and consultation processes for Old Crow?
- What principles and procedures for consultation are important to Old Crow?
- What are the implications of these principles and procedure for developing a consultation process?

¹ For examples of case studies see Van Velsen 1967; Rosenblatt 1981

1.3 Rationale

1.3.1 Lack of Definition

Definitions of consultation, as will be discussed below, embrace a large variety of situations, each with a different arrangement of principles and processes. There is no one definition for consultation and, as a result consultation lacks a prescriptive set of criteria by which to be guided (Sharvit, Robinson and Ross 1999, Marsden 2005). The courts in Canada argue that consultation is fit-for-purpose; each situation is unique, with different stakeholders and interest groups, specific legislation and political relationships, all requiring hand tailored processes and regulations (Taku River Tlingit First Nation v. British Columbia 2004; Mikisew Cree First Nation v. Canada 2005). The courts have thus opted to evaluate the adequacy of consultation on a case-by-case basis. Recognizing this, any legislation that employs the term 'consultation' is crafted with an intentionally vague definition to cover all possible situations on one hand, while not prescribing actions that could prove detrimental on the other. While the logic of not setting limits on consultation can be appreciated, the lack of definition can work to the detriment of all parties involved.

Due to the vagueness of the definition, project proponents legitimately seeking direction are the recipients of unclear instructions. An example is the Yukon's Umbrella Final Agreement's direction to "consult with First Nations" (UFA 1995, section 5). Several questions immediately arise after reading the UFA's definition of consultation contained in the agreement: does this mean a meeting with

Chief and Council? Does it mean special meetings with all the citizens of the First Nation? Are not all these people also Yukon residents and, therefore, why does a public meeting not suffice? Must there be house to house consultation for First Nation citizens but not for other residents in the region?

The lack of a clear definition of consultation severely handicaps proponents by leaving them in a dubious position on how to proceed. If the courts are unwilling to prescribe a definition, and definitions in current resource management processes are overly vague so as not to provide clear direction, it falls to the First Nation and/or community to define consultation on their own terms. This thesis is a first step in that direction for the Vuntut Gwitchin First Nation and the community of Old Crow.

1.3.2 Context

Specific circumstances serve to contextualize the issue of consultation in the Yukon, which in coming to terms with the general picture of consultation deserve further examination. They are:

1. Yukon First Nations and their traditional lifestyles,
2. the mining industry's role in the Yukon economy, and,
3. land claims settlement status in the Yukon.

1.3.2.1 Yukon First Nations and the need for culturally appropriate consultation

In 2006, First Nations people, as recognized by the federal government, comprised almost 25 percent of the Yukon population. This number is especially

significant compared to Canada's national average of approximately four percent (Statistics Canada 2006). Both the medium and high population projections by the Yukon Bureau of Statistics (2008) show that the First Nation population will continue to grow in size and as an overall percentage of the Yukon population.

Consultation by proponents, which are generally based in southern Canada, is designed for southern demographics. There is little or no awareness or inducement for proponents to embrace Yukon First Nations' particular world views and cultures (Sharvit, Robinson and Ross 1999). The emotional, spiritual and, to some extent, the practical daily lives of many First Nations people are closely bound to the land - a fact that is often overlooked in resources related consultation (McKillop 2002). First Nations are ensnared by management regimes that "overlook traditional approaches and undermine local stewardship and harvesting interests" (Sherry 2002 p.37). McKillop (2002) further notes that "current consultation approaches are inappropriate for the way Aboriginal people perceive and categorize cultural resources, do not give equal weight to traditional ecological knowledge and western scientific methods, and do not reflect or acknowledge the special suite of rights that Aboriginal people possess" (p. 2). She adds that recognition of First Nations' special connection to the environment should appear throughout the consultation process.

A prime example of First Nations' continued connection to their land base is their use of traditional foods. Wein and Freeman (1995) compared the frequency of traditional food use between four communities in the Yukon: Whitehorse, Teslin,

Haines Junction and Old Crow. They looked at two factors: 1) estimated annual frequency of traditional food use per household; and 2) frequency of traditional foods in daily diet as recalled by participants. Results showed Yukon First Nation households used traditional foods over 400 times per year on average, with Old Crow ranking highest. The study concluded that traditional foods – especially moose, caribou and salmon – remain extremely important in the contemporary diets of Yukon First Nation people.

The daily consumption of traditional foods and associated activities such as hunting, fishing, gathering, meat and preserve preparation, feasting and planning, binds Vuntut Gwitchin people to the land and reinforces their culture (Sherry & VGFN 1999). The extent and nature of Vuntut Gwitchin First Nation's inherent cultural connection to the surrounding environment, and how that connection affects consultation processes, remains to be determined. There is a significant knowledge gap in ascertaining the consultation needs and desires of citizens of Old Crow without taking this connection into consideration. It is therefore necessary to receive information first-hand from persons who feel this connection and to determine what principles and procedure are important for them in the consultation process.

1.3.2.2 Industry's role in Yukon economy

The history of economic development in the Yukon portrays a roller coaster economy driven almost exclusively by discoveries and closures of mines (Coates and Morrison 1988). Resource extraction continues to play a major role in the

Yukon economy, accounting for the highest percentage of the Yukon's GDP outside of government services (Department of Economic Development 2008).

According to the Government of Yukon's economic report for 2008, mining will continue to provide economic growth for the Territory in the longer term, including benefits for First Nations' economies (Department of Economic Development 2008). The Arctic Climate Impact Assessment (2004, p. 7) suggests that a warming climate and technological advances will lower the high costs of resource extraction in the Yukon. This will make resource developments more economically feasible. Such factors will ensure continued and likely increasing interest in petroleum and mineral resources in Canada's North (North Yukon Planning Commission 2007). Given the likelihood of accelerated economic growth in the Yukon, it is vital that consultation becomes better attuned to Yukon society in general and First Nations in particular.

1.3.2.3 Land Claim Agreements in Yukon

The Umbrella Final Agreement (UFA) (1993) sets out land claims for eleven of the fourteen First Nations in the Yukon. The First Nations who signed the UFA gave up their constitutionally entrenched aboriginal rights and title in favour of those provided in the UFA. The UFA provides a suite of rights and benefits, including land, cash compensation, harvesting rights, resource rights and co-management opportunities and protection for traditional lifestyles and heritage. It sets out a framework for individual First Nations in the Yukon to create specifically tailored Final Agreements that prescribe the rights and benefits mentioned above. In tandem with the land claims agreements came self-government agreements. Yukon is one

of the few places in Canada where First Nations are self-governing. Self-government under the Yukon First Nations Self-Government Act gives Yukon First Nations law-making authority over internal management, land use and wildlife harvesting, business licensing and taxation of First Nations citizens. The First Nation governments can enact laws concerning language, culture, health care, education and social welfare (Werret 1999).

Each First Nation that signs a Final Agreement is granted land and certain rights to that land. There are two main types of settlement land classification that have an impact on resource development: Category A and Category B lands. First Nations have surface and sub-surface rights over Category A lands, while only maintaining surface rights for Category B lands. Land that is considered part of a First Nation's traditional territory, but not part of the settlement land, is administered by the Yukon Government as Crown Land. Under the strictest interpretation of the agreement, the Yukon Government is not obligated to consult with First Nations on the disposition of Crown Land unless it can be shown that there is the possibility of treaty right infringement from the proposed development (Little Salmon/ Carmacks First Nation v. Yukon Government 2008). Rights associated with the two major categories of settlement land, over which consultation is likely to occur, are as stated in the UFA (section 5.4, p. 45):

5.4.1 *A Yukon First Nation shall have by virtue of this chapter:*

5.4.1.1 *for Category A Settlement Land,*

- a) the rights, obligations and liabilities equivalent to fee simple excepting the Mines and Minerals and Right to Work the Mines and Minerals, and*
- b) fee simple title in the Mines and Minerals, and the Right to Work the Mines and Minerals;*

5.4.1.2 *for Category B Settlement Land,*

the rights, obligations and liabilities equivalent to fee simple reserving there from the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right.

The implications for consultation are significant. A First Nation government has sole discretion over developments on Category A lands. The Yukon Government reserves the right to administer Mines and Minerals and the Right to Work the Mines and Minerals for Category B and Fee Simple Settlement Lands (which, for the intents and purposes of this thesis, are the same). This means that on Category B lands the responsibility to ensure meaningful consultation rests with the territorial government, since they ultimately decide whether or not a project can go ahead, and on Category A lands the responsibility lies with the First Nation. In either scenario, the First Nation government is responsible for consulting with its constituents. The difference is that on Category A lands they are held directly accountable by their constituents, whereas on Category B lands they are one step removed from the responsibility as the territorial government makes the final decisions.

1.3.3 Rationale Summation

The above factors provide the background and framework for consultation in the Yukon. A thorough understanding of this environment is requisite to crafting an effective consultation process that serves the interests of all the relevant parties.

To date the existing methods of consulting with Yukon First Nations on resource development matters has not been comprehensively studied. This thesis is an effort to partially fill that gap by highlighting problems and successes in the system in relation to the attendant processes and regulations in administering resource activities on Yukon lands. Lessons learned through this research may be instructive to other First Nations finalizing land claim settlements and developing self-governing agreements.

1.4 Site Selection

Old Crow, YT, was selected as the study site based on several conditions and contributing factors. The conditions for the study site were necessary in order to receive information appropriate to the topic area and research questions. Old Crow was selected as the study site based on several factors; Yukon community, land claim settlement, isolated community, and experience with consultation. Old Crow is a self-governing First Nation that has signed a comprehensive land claim agreement as per the Umbrella Final Agreement and thus fulfilled the second criterion of site selection. It was determined that a remote community would be most representative since the majority of communities in the Yukon are isolated. "Isolated" is by its nature a relative term. For the purposes of this research, isolation in community

terms is defined as a small community (<800 citizens) at least 150 kilometres from a large community (>800 citizens). Although the community of Old Crow is isolated, Old Crow has extensive experience with consultation due to the sheer volume and diversity of projects that have started in the within the community and traditional territory over the last few years (for more information see Section 3.1.1). I was able to witness this experience firsthand through my involvement with the Arctic Athabaskan Council led 'Climate Change Risk Assessment and Final Agreement Analysis – North Yukon.' It was through this project that we noted the deficiency in directions for how to consult with the community. Several community members communicated to us that they were discontented with the current standard of consultation.

After the site had been selected it was imperative for the success of the project that the community be willing to participate in the study. It was necessary to receive permission and support from the First Nation government and community prior to the conduct of the thesis research. The research was approved and encouraged through two resolutions: the first from chief and council and the second from the Old Crow General Assembly.

2 Literature review

2.1 Introduction

There is a dearth of literature concerning consultation theory. Many academics/researchers investigating the issue of meaningful and adequate

consultation must appeal to other forms of association or bodies of theory. Theorists borrow from the field of public participation (Giesbrecht 2003; Mitchell and Parkins 2005; Marsden 2005; Lee 1999; Lackey 1998; Smith et al. 1999) and the literature on deliberative democracy (Mitchell and Parkins 2005) to close the ideological gaps identified in the term 'meaningful consultation.' Such gaps include the overall goal of consultation, various levels of public involvement, the principles and procedure of public engagement, the deliberative mechanisms available, and the link between knowledge and participation.

The term 'consultation' is widely applied to resource management processes. Its application often refers to deliberative mechanisms usually associated with high levels of public participation, such as community panels and oversight committees. Consultation can also apply to the use of surveys, questionnaires, focus group meetings, public meetings and house visits. In light of this fact it is necessary to make a careful distinction between public participation and consultation. For the purposes of this paper, public participation refers to the spectrum of activities for involving the public in decision making processes from low levels (informing, questionnaires) to high levels (citizen juries, community panels). The definition of consultation remains much more nebulous.

2.1.1 Public Participation v. Consultation

The distinction between public participation and consultation is understandably confusing. Both are types of public involvement, but represent different degrees of involvement. Most public participation spectra include consultation as one level in

the spectrum, one with moderate involvement and expectations. The distinction between the two terms, as noted by Roberts (1995), relates to the ability of those in the process to share in and control the decision making process. Consultation is associated with informing and, sometimes, negotiating, whereas public participation brings the public directly into decision making processes (Arnstein 1969). Roberts' distinction is overly simplistic and does not take into account the common usage of the term consultation, which can refer to a variety of public involvement processes and deliberative mechanisms.

In Canadian courts the duty to consult arises when there is a possibility of aboriginal or treaty right infringement (*R. v. Sparrow* 1990). As the courts will not provide a detailed definition of consultation (*Taku River Tlingit First Nation v. British Columbia* 2004; Parker 1996; Booth and Halseth 1999), other pieces of legislation are forced to define the term, such as the Umbrella Final Agreement, the Oil and Gas Act and the Yukon Environmental and Socio-Economic Assessment Act.

Consultation is also invoked when describing any sort of communication between project proponents and/or government and community that provides information regarding a project with the aim of soliciting feedback. Consultation does not occur if the sole purpose of the communication is information dissemination with no recourse to accepting feedback on the information.

The term consultation takes on many meanings depending on the context. The courts have ensured this fuzziness so the processes would remain flexible to individual circumstances. It is thus important, and the *raison d'être* of this thesis, to define consultation from the bottom up.

2.2 Legal Precedents for Consultation

Section 35(1) of the Constitution Act, 1982, states: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” This article ensures that aboriginal peoples’ rights must be taken into consideration in any developments that may have an impact on them. Through a line of legal precedents stemming from *R. v. Sparrow*, the courts have placed a fiduciary obligation on government to consult with First Nations in the event of possible aboriginal or treaty right infringement (*R. v. Sparrow* 1990; *Delgamuukw v. British Columbia* 1991; *R. v. Jones* 1993; *R. v. Sampson* 1995; *R. v. Jack* 1995; *R. v. Little* 1995; *Klahoose First Nation v. British Columbia (Minister of Forests)* 1995, *Haida Nation v. British Columbia* 2004, *Taku River Tlingit First Nation v. British Columbia* 2004, *Mikisew Cree First Nation v. Canada* 2005). Failure to abide by the requirements of the constitution could render any tenure, permit or license, to the extent that the legislation is inconsistent with the constitution, “of no force or effect” (Section 52(1) Canadian Constitution Act 1982; Sharvit, Robinson, Ross 1999, p. 1).

The courts find it “impossible...to provide a prospective checklist of the level of consultation required instead preferring to decide on a “case by case” basis (*Taku River Tlingit First Nation v. BC* 2004, p. 1). The reasoning behind this is obvious: each situation is different and to define consultation could impose unnecessary and debilitating requirements on industry, government and First Nations.

As stated by the presiding justice in *R v. Sampson* (1995):

The word 'consultation' is one that is in general use and that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place.....If a complaint is made of failure to consult, it will be for the court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultation may often be a somewhat continuous process and the happenings at one meeting may form the background of a later one.

The definition of consultation remains unclear. However, both *Haida* and *Taku* were influential in developing a better idea of what comprises adequate consultation (Marsden 2005). *Haida* emphasized the fiduciary obligation of the Crown to consult First Nations prior to proving their title and rights (*Haida Nation v. British Columbia* 2004). *Taku* went further by outlining a process that could satisfy the legal duty to consult for at least that specific situation (Marsden 2005). However, this process is situation and region specific and it should be noted that, although the Taku River Tlingit First Nation was successful in getting the Courts to acknowledge the fiduciary obligation of Government to consult with First Nations, they eventually lost their case.

The Mikisew Cree case extended the duty to consult to treaty areas, whereas previous precedents had been set only in non-treaty areas. The Mikisew Cree case centred on the construction of a 118-kilometre winter road that would cross

traditional hunting and trapping areas of the Mikisew Cree. The Mikisew, who fall under Treaty 8 (1899), argued that they were not consulted prior to the approval of the winter road and consequently took the the government of Canada to court over the issue (*Mikisew Cree v. Canada* 2005).

A recent court case manages to bridge the divide between the specific legal circumstances of the Yukon Territory and the legal circumstances in the rest of Canada with regards to the 'duty to consult' (*Little Salmon/Carmacks First Nation v. Yukon Government* 2008). It is worth discussing this case and its aftermath in detail as it has far reaching implications for the duty to consult in the Yukon. It has also never been cited in consultation literature to this point.

Eleven of fourteen First Nations signed on to the Umbrella Final Agreement, which provides a framework for resolving land claims in Yukon. By signing on to the Final Agreement, the First Nations extinguished their aboriginal title pursuant to Section 35(1) of the constitution in exchange for the rights incorporated into the Final Agreement (UFA 1993). As such, meaningful consultation must be decided based on the rights provided in the Umbrella Final Agreement. As with the Mikisew Cree case, this assertion had never been tested. The case of *Little Salmon/Carmacks First Nation v. The Government of Yukon* (2008) created a bridge between precedents set in treaty and non-treaty areas outside of the specific legal circumstances in Yukon.

The issue centred on an agricultural land grant application for 65 hectares of Crown Land. The application was also in the area of Johnny Sam's trapline. Mr.

Sam's trapline comprising of 21 435 hectares had been recently damaged by forest fires and other natural disturbances. Mr. Sam holds a commercial trapping concession as per the *Wildlife Act* (2002, c. 229), that allows him to exclusively trap in the area. The Little Salmon/Carmacks First Nation (LSCFN), on Johnny Sam's behalf, complained that they were not notified of the land grant application and review process and consequently were unable to provide input. LSCFN submitted that the proposed agricultural and timber harvesting would be to the detriment of Johnny Sam and other trappers in the area and their ability to pursue traditional activities enshrined in the Final Agreement. The Yukon Government issued a letter to the effect that, under the LSCFN Final Agreement, there was no duty to consult in the disposition of Crown land. While this is true, it ignores the rights in the Final Agreement guaranteeing the sustainability of harvesting and other traditional activities (UFA Section 2.2.4 1995). It also ignores aboriginal rights to traditional areas for harvesting as enshrined in the Constitution. The chambers judge, Veale, decided in favour of LSCFN, thereby revoking the issuance of the land grant, on the basis that the duty to consult applied to the situation and was not met by the Yukon Government.

In the application of the duty to consult, the chambers judge invoked Supreme Court of Canada decisions and applied them to the Yukon case. In paragraph 66 he states,

I conclude that the duty to consult and accommodate arises from the concept of honour of the Crown and is an implied term of every treaty.

The court clearly states that “the honour of the Crown also infuses every treaty and the performance of every treaty obligation. It is a corollary of section 35 of the Constitution Act, 1982. It is also significant that the duty arises in the Mikisew Cree case even where the Crown had the right “to take up” land because consultation is required in advance of interference of existing treaty rights.

Judge Veale follows the reference to the Mikisew Cree case in paragraph 80,

It may be that the parties to the Final Agreement did not contemplate the common law duty as it is expressed in the Mikisew Cree case. However, in section 2.2.4, the parties did contemplate and expressly permit the First Nation “to exercise, or benefit from, any existing or future constitutional rights for aboriginal people that may be applicable to them.

In the final decision the chambers judge rejected the Yukon Government’s submission that the duty to consult does not apply in the disposition of Crown Lands. He argued that the Final Agreement does not provide a process for Crown Land disposition and where the Agreement is silent, the common-law duty to consult must be invoked, as it was in the Mikisew Cree case. The duty was not met and the chambers judge then revoked the agriculture land grant.

The Yukon Government immediately appealed the decision and the year after it was made, the decision was overturned. The appeal focused on two issues:

1. That the duty to consult does not apply to the Final Agreement where the agreement does not explicitly state that the Yukon Government must consult; that it is not, in effect, an *implied term*, and,
2. That if there is a duty to consult it is not owed to an individual, in this case Johnny Sam, and that the consultation, considering the degree of right infringement, would be at a low level.

Addressing the first issue, the appeals judge states in paragraph 90,

*However, as I have noted, the honour of the Crown and the correlative duty to consult are constitutional duties for the reasons expressed in Haida Nation, Taku River Tlingit, and Mikisew. They exist outside and infuse the treaty and govern Yukon's dealings with Yukon First Nations. In my opinion, the duty to consult **does apply** to the interpretation and implementation of the Final Agreement and is not precluded from application by the terms of the treaty. In my view, such a finding does not render the Final Agreement uncertain or open to unending renegotiation. It simply means that Yukon must be cognizant of potential adverse impacts on First Nations' treaty rights when Yukon proposes to dispose of Crown lands, and, when treaty rights may be affected, **Yukon must seek consultation with First Nations.** The*

degree of consultation will be a function of potential impact. (emphasis added)

The appeals judge states that the duty to consult is not a constitutional right, thus article 2.2.4 of the Final Agreement (see Veale paragraph 80) does not apply to the situation. However, the appeals judge recognizes that the duty to consult, as per *Haida, Taku* and *Mikisew*, does represent a constitutional duty based on the honour of the Crown. In so doing, the appeals judge creates a link between rights enshrined in the constitution and treaty rights set forth in Yukon First Nations' Final Agreements. As the appeals judge states (paragraph 95); "Yukon must be cognizant of potential adverse impacts on First Nations' treaty rights...and...must seek consultation with First Nations."

The appeals judge decided in this case that the consultative requirement, though invoked, was low and sufficiently met through the various processes initiated by the Yukon Government. Thus, the appeal was sustained and the original judgment overturned; however, the duty to consult was upheld. This decision raises other, consultation specific issues. For example, what is the appropriate method of consultation? What constitutes low-level consultation as opposed to high-level consultation? And what is the degree of impact required to prompt each level?

It is important to reiterate that, while the original ruling was overturned, legal precedents throughout Canada with regards to the duty to consult now apply within the Yukon and First Nation Final Agreements. This means that there is a fiduciary obligation on Yukon government to consult with First Nations in the event of any

possible treaty right infringement, regardless of the specific wording within the Final Agreement.

Treaties define rights and often extinguish aboriginal rights in favour of the rights incorporated in the treaty. Prior to the *Mikisew Cree* case it was unclear whether aboriginal rights, as enshrined in the constitution, would still apply to treaties. The decision of the presiding justice Binnie was to the effect that the honour of the Crown and the duty to consult and accommodate in the case of possible aboriginal right infringement exists independent of treaties and also applies in the interpretation of treaties (*Little Salmon/Carmacks First Nation v. Yukon Government* 2008). This has important implications for Yukon First Nations who have signed treaties.

While it is understandable that the courts will not prescribe a checklist of criteria for consultation (*Taku River Tlingit First Nation (TRTFN) v. BC* 2004) this unfortunately places both resource companies and First Nations in an awkward position. It is common practice for government (federal or provincial/territorial), while unable to divest itself of its fiduciary obligation to consult, to delegate its consultation responsibilities to the resource companies (Sharvit, Robinson, Ross 1999; Marsden 2005; *TRTFN v. BC* 2004). However, most resource companies do not have the capacity, either financially or professionally, to consult with small communities often resulting in poor consultation (Sharvit, Robinson, Ross 1999). The First Nation, the recipient of poor consultation, often has no choice but to pursue a legal injunction to stop the industry's project, citing a lack of meaningful consultation (Sharvit,

Robinson, Ross 1999; Marsden 2005). A better conception of consultation must be developed as a step towards resolving these disputes. Unless land use conflicts are mitigated or resolved through a consultative process that is focused on equality and effectiveness, litigation will continue and may even escalate (Natcher 2001).

2.3 Deliberative Democracy

Mitchell and Parkins (2005) state that participatory practices are informed by deliberative democracy. An examination of deliberative democracy helps one to better understand the goals behind public participation (in the form of consultation) in resource management. With these goals in mind it will be easier to determine the principles and procedures for adequate resource management consultation.

The term 'deliberative democracy' is too large to have a definitive set of statements to describe it. It is much like 'liberalism' in that its proponents do not entirely agree on the required form of the democratic association (Macedo 1999). This section will outline some of the core values of this theory as stated by its major proponents and how it can inform the consultation process.

The word deliberative is formed from the latin 'librare' – to balance or weigh, and the prefix 'de' – meaning 'entirely'. Democracy is a conglomerate of the Greek words 'demos' – 'people' - and 'kratos' – 'rule.' The term deliberative democracy etymologically means rule by the people in a way that gives due consideration to all points of view.

Deliberative democracy is rooted in the ideal of democratic association. Cohen (1999) outlines five principle parts of that association: (1) that the association

is ongoing and independent; (2) that it provides the framework for the results of the deliberation; (3) that there is a clear link between deliberation and outcome; (4) that it is pluralistic; and (5) that members recognize one another as having the ability to participate effectively (Cohen 1999, p. 72/73).

Gutmann and Thompson (1996) take a slightly different view from Cohen in their work, *Democracy and Disagreement*. Here they outline four basic principles of a deliberative democratic system: reciprocity, publicity, accountability and utility. 'Reciprocity' is the idea of mutual acceptance and the desire to justify a particular preference to others (p. 53). 'Publicity' grounds the process in accountability, practicality and, above all, mutual gain (p. 97). Accountability is the idea that each participant is accountable to every other participant for the decisions arrived at in a deliberative process (p. 112). Utility states that in considering everyone's viewpoint and in arriving at mutually beneficial decisions, the greatest good will be provided to the greatest number (pp. 165-166).

Gutmann and Thompson's principles mirror Cohen's core values, although there are some distinct differences. Cohen proposes as a core principle that the participants' "terms of association provide the framework for the results of their deliberation" (Cohen 1999 p. 72). Terms of association can differ and must be set before the deliberative process begins. Cohen's principle goes well beyond Gutmann and Thompson's 'scope of accountability', by providing a formal system to ensure that results are linked to deliberations. A formal system ensures that all parties recognize the purpose of deliberation and commit to the results derived

through the process. This is further corroborated by Urquhart and Alfred (2002), who recommend developing terms of agreement prior to any deliberations. Cohen (1999, p. 73) also stresses that all participants should have equal deliberative capacity. Gutmann and Thompson do go beyond Cohen in their 'promise of utilitarianism.' In this principle, Gutmann and Thompson provide a context and rationale for participants' open discussion of reasons behind their preferences (Gutmann and Thompson 1996).

Cunningham (2002), agrees with Gutmann and Thompson's and Cohen's assertion that deliberative processes require a commitment to providing rationales in order to be effective. In his view, "reasons must be publicly given and exchanged in forums suitable for this purpose and participants must be able freely and equally to arrive at informed preferences and to acquire and exercise the abilities required for *effective participation in the forums*" (p. 37). Cunningham also argues that a deliberative democracy only works when parties enter into it with the willingness to modify their viewpoints, preferences and goals and expect the same of the other parties. It is not enough simply to give reasons for one's preferences; one must consider changing his or her own reasons as well. If one is unwilling to budge on his or her position no compromises can be reached and the success of the deliberative activity will be severely hampered.

The issue of 'rationale' anticipates the most serious criticism leveled at the deliberative process viz., that it has difficulty managing irreconcilable differences (Cunningham 2002). Gutmann and Thompson (1996) call this problem 'persistent

difference' and devote an entire chapter to it in their work. In the ideal situation all parties would recognize the need to come to a consensual decision and would make concessions to achieve this goal. However, participants may have views that cannot be compromised, which means that other measures may be required in order to move forward the deliberation. In such a case a vote may be necessary, which should not be considered a failure of the deliberative process, but only a reflection of the fact that the parties may have contradictory and non-negotiable terms that cannot be resolved through discussion (Sharvit, Robinson, Ross 1999).

Bohman (1996), a deliberative democrat, outlines other considerations for deliberative democracy which, if left unaddressed, will hamper its functioning. There is a large degree of cultural pluralism in modern society, which can produce deep and persistent moral conflicts. Social inequality is also prevalent and only getting worse, which hampers the ability to participate on equal terms in the democratic process.

These are serious criticisms that the deliberative democratic process cannot seem to fully resolve. However, Mitchell and Parkins (2005) contend that, by placing deliberative democracy within the context of resource management consultation, one can avoid some of the short-comings found in larger institutions by providing a small and artificial environment where it can work effectively. Moreover, social inequality can be mitigated through the provision of adequate financial and other resources to ensure that participants have equal ability to participate in the process.

Cultural pluralism, however, will not disappear in the consultation process and will have to be recognized and considered. Monique Deveaux (2000) argues that moral and ethical convictions are a key part of the deliberative process and a part of politics (p. 175). She states further in her approach, 'reasoning and deliberation are conceived in terms of the actual communication of agents' positions and beliefs, thus shifting the attention to actual processes of moral argumentation (p. 177). Contrary to Bohman's criticism that pluralism will hinder the process of deliberative democracy, Deveaux shows that it is a necessary part of the democratic process and that deliberative democracy is the most suitable means of incorporating pluralism into decision making.

The above theorists – Sharvit, Robinson and Ross, Guttman and Thompson, Cohen, Bohman, Deveaux and Cunningham – are useful in developing principles to guide public participation in resource management. The ultimate goal of any deliberation is to discuss and resolve specific issues and then identify a way forward. There must be a clear link, as Cohen (1999, p. 72) explicitly states, between the deliberative process and outcomes. Borrowing from Gutmann and Thompson (1996, p.112), participants must be accountable to one another. The only way for this to work is for the results of deliberation to be clearly linked to the process. The issue of rationales, specifically the need for participants to provide reasons for their preferences, was mentioned most directly by Gutmann and Thompson (1996, p. 53) and Cunningham (2002, p.37). This is a very important component of deliberative democracy, since understanding another's position will allow participants to work through issues and come up with compromises. In the event of irreconcilable

differences, a vote may be necessary (Sharvit, Robinson and Ross 1999). I think that a vote, if clearly explained at the outset of the deliberative process, can be a means of moving forward while maintaining Guttman and Thompsons' call for utility.

2.4 Public Participation

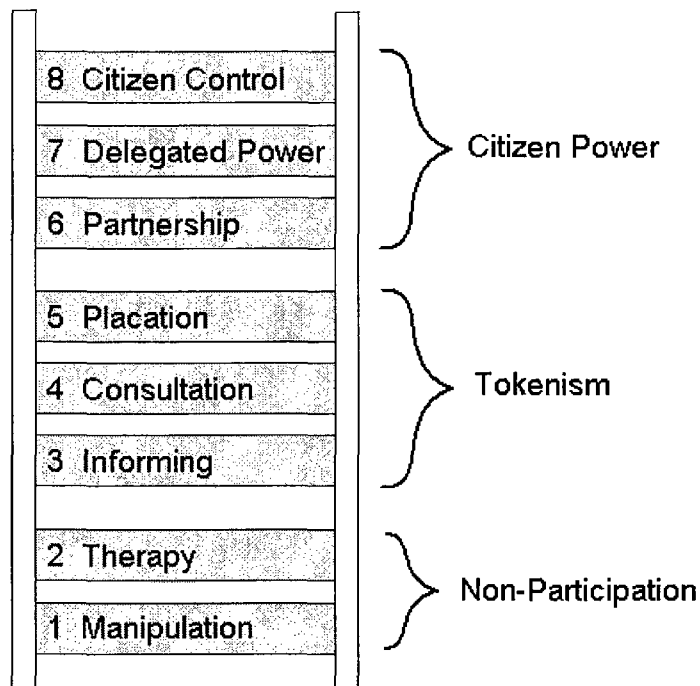
Throughout the literature, resource management theorists focus on the role of public participation in the success of a project or plan. Lee (1999) calls public participation the keystone of any management system or project development, without which the whole structure will collapse. Morghan et al. (2006) argue that management plans will have limited success without adequate public involvement due to pressure on government or the administrative authority in charge of implementing the plan from stakeholders that were not effectively included in the planning process.

Smith, McDonough and Mang (1999), in a study of the public participation component of the Northern Lower Michigan Ecosystem Management Project, recognized that broad public involvement was the most effective way to foster cooperation and highlight public needs and desires. The results of his study showed that the public wanted to be listened to, and to have an impact on decisions, but was dissatisfied and distrustful of the current participation system. There was a high level of agreement between natural resource professionals and public participants that more and better public participation was needed for the success of resource management.

Public participation theory informs much of consultation theory. Many public participation theorists list 'consultation' as a category in the public participation spectrum (Arnstein 1969; Commission on Resources and Environment 1995; Vanderwal 1995; International Association for Public Participation 2006). However, consultation, in the context of the courts, is not necessarily the same consultation listed in public participation theories. Most public participation theory builds a ladder or spectrum of participation ranging from the least onerous type (public information sessions, posters, etc.) to full citizen participation (joint decision boards, oversight committees, etc.). Consultation is often placed in the low to middle areas of the public participation spectrum (Arnstein 1969; Commission on Resources and Environment 1995; International Association for Public Participation 2006). However, the consultation discussed in this paper, and as observed by the courts, is undefined and may contain many of the features only seen in higher levels of the public participation spectrum.

Arnstein, in her seminal 1969 thesis, outlines a ladder of citizen participation. This deserves an in-depth explanation as it informs much of the public participation theory that came after it (Marsden 2005).

Figure 2.1) Arnstein's Ladder of Citizen Participation (Arnstein 1969)



Arnstein (1969) calls 'citizen participation' or 'public participation' a categorical term for citizen power. Her concern is predominantly the citizenry's role in government. Arnstein argues that the highest level of citizen participation in government "is the means by which they can induce significant social reform which enables them to share in the benefits of the affluent society" (p. 216). With regards to resource management, adequate consultation is the means by which the community affected is enabled to share the benefits of development while minimizing adverse impacts.

The top category, grouped under the heading 'citizen power,' encompasses three parts. The first rung is partnership. Partnership occurs through negotiated agreements to form joint policy boards, planning committees, oversight committees, etc. Arnstein makes the point that partnership works best when properly resourced and held accountable to the community. Delegated power is next up the ladder and is evidenced by citizens forming groups and associations that hold considerable control and have responsibility for a program or project. An example of this, though not common in resource management, would be a contract or sub-contract granted to a group to design and deliver a program or project (Marsden 2005). The top rung of the ladder is citizen control, which still relies on government funding but is not required to spend the funding in any specific way. In a resource management context, citizen control could take the form of a community incorporating itself to extract or participate in the extraction of a certain resource such as coal-bed methane gas or timber (Marsden 2005).

Consultation has often been associated with tokenistic measures aimed at placating communities while offering them no guarantee that their input will be taken into account (Arnstein 1969). This form of consultation often takes the form of public hearings, questionnaires and focus groups (Marsden 2005, 17). Arnstein (1969, p. 218) argues that partnerships are most meaningful when leaders are accountable to constituents, and when financial and technical resources are available. Arnstein's perspective on public participation is very hierarchical. From her choice of terminology (placation, tokenism, manipulation) it is obvious that Arnstein feels that the only way the public can have an effect on policy or decision making is to be

involved in the highest echelon of her ladder. Her argument is largely unsubstantiated and she shows no evidence of why focus groups or public meetings cannot be a guaranteed means of citizen power.

The International Association for Public Participation (IAP2) (2006) outlines a similar Participation Spectrum (Table 2.1). IAP2's table provides more information than Arnstein's ladder. Included in IAP2's spectrum are the goals, responsibilities and mechanisms associated with each level of participation. The major difference between IAP2 and Arnstein is that IAP2 does not place a value judgment on the various levels of participation. Whereas Arnstein argues that for public participation to be meaningful it must reside in the top three rungs of the ladder, IAP2 recognizes that all levels of participation are useful if placed within the appropriate context. By providing the goals and responsibilities associated with each level, IAP2 explains when each level is a useful component of public participation. For example, the category 'consult' is characterized by low public impact and the promise of the consulting body to acknowledge concerns and show how these concerns affect public policy. Often this is the form that consultation will take in communities and with First Nations, since the ultimate decision making power rests with the territorial, provincial or federal government. However, in treaty areas the decision making power often rests with the First Nation and the term consultation can connote a wide range of mechanisms from the public participation spectrum.

Table 2.1) IAP2 Public Participation Spectrum (IAP2 2006):

INCREASING LEVEL OF PUBLIC IMPACT

→

INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:	Public Participation Goal:
To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities, and or solutions	To obtain public feedback on analysis alternatives and/or decisions	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making authority in the hands of the public
Promise to public:	Promise to public:	Promise to public:	Promise to public:	Promise to public:
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations in to the decisions to the maximum extent possible.	We will implement what you decide.
Example techniques to consider:	Example techniques to consider:	Example techniques to consider:	Example techniques to consider:	Example techniques to consider:
<ul style="list-style-type: none"> • Fact sheets • Web sites • Open houses 	<ul style="list-style-type: none"> • Public comment • Focus groups • Surveys • Public meetings 	<ul style="list-style-type: none"> • Workshops • Deliberate polling 	<ul style="list-style-type: none"> • Citizen advisory committees • Consensus building • Participatory decision-making 	<ul style="list-style-type: none"> • Citizen juries • Ballots • Delegated decisions

The Commission on Resources and Environment (CORE) produced a similar, though not as detailed, document in 1995, describing the various levels of consultation and the deliberative mechanisms incorporated at each level. It highlights the link between expectations and commitment with the various mechanisms of consultation (CORE 1995). The higher you are on the spectrum, the more expectations and commitments there are between the consulting body and the consulted. The CORE document harmonizes with IAP2 in recognizing that each level of participation is positive in the appropriate context.

Yukon, due to its complicated legal landscape, must remain open to a variety of forms of public participation. In a legal sense the duty to consult requires low public involvement, public impact on policy and expectations and commitment (Arnstein 1969, Commission on Resources and Environment 1995, International Association for Public Participation 2005). Consultation will often take this form in the Yukon, as in cases where the territorial or federal government is the ultimate decision making authority. However, in the case of land claims settlement areas, where the First Nation maintains control over surface and subsurface rights to that land, consultation may take on a very different form. In these cases, consultation is undertaken in partnership with the affected community and reflects higher levels of public involvement, expectations and commitment. The precise form of this type of consultation is unclear. It often involves the project proponent and the First Nation office (chief and council) both consulting community members and land claims beneficiaries to understand their views on the matter.

It is the aim of this thesis to describe principles of consultation that are important for both scenarios, whether the territorial government is the decision making authority or the First Nation retains that power. The rationale is to develop an idea of consultation from the bottom up that ensures the consultation is appropriate for the community members of Old Crow. Designers of consultation process may choose from a variety of mechanisms with which to consult (questionnaires, surveys, public meetings, focus groups, oversight committees, citizen panels, etc.) keeping in mind how these mechanisms can be made appropriate to the community. Before gathering data on the principles and procedure for consultation from research participants it is important to develop a general understanding of principles that guide public participation.

2.4 Principles of Public Participation in Environmental/Resource Management

The purpose of this section is to describe general principles of consultation as derived from the literature on public participation in environmental and resource management. I will develop a complete a list of principles as evidenced in relevant literature highlighting commonalities and differences between the various theorists. It is not the aim of this section to critique the principles provided by the authors. This section is simply a description of general principles for consultation with the aim of informing a more complete definition provided by the community of Old Crow.

Vanderwal (1995) outlines eight important principles of consultation.

Table 2.2) Criteria for Public Participation: Participation and Knowledge (Vanderwall 1995)

Participation		Knowledge
Clear reason to participate.	Clarity of purpose	Clear research objectives.
Form of public involvement seen as appropriate.	Appropriateness of methods	Objectives and methods accepted in the scientific and lay communities.
Inclusiveness, equal opportunity to participate and process self-design.	Openness	Clear communication of information, openness to other kinds of knowledge.
Credibility of “third party”.	Institutional credibility	Credibility of technical institutions.
Accountability of participants to process, constituencies.	Accountability	Accountability of technical studies to process.
Process timeline takes information collection into account.	Time limits	Research timeline takes public participation into account.
Agreement on policy.	Consensus decision making	Agreement on research results.
Commitment to implementation.	Implementation	Effective ongoing learning and monitoring.

Marsden (2005) also outlines what she determines to be the ‘principles of meaningful consultation’ (see below). Marsden derived her principles of consultation by examining the principles of public participation in extant theory. Her principles are derived from consultation as defined by the province of British Columbia, legal

principles as established by the Supreme Court of Canada, and the perspective of First Nations on past consultation. Each group has a specific rationale and understanding for each principle, according to Marsden (Table 2.3). In my research I found Marsden's table to be the most complete account of the principles guiding consultation in Canada.

Though listed differently in Marsden's account, many of her principles coincide with those highlighted by Vanderwal. Her specific additions to Vanderwal's principles are: pro-action, respecting the right of non-participation and the provision of financial resources. Pro-action suggests that Government should initiate the consultation process before going very far along the development stage. Respecting the right of non-participation takes into account groups that might be affected by the development, but have not partaken of the consultation process for reasons that may include, but are not limited to; distrust, lack of time, lack of capacity and inability to understand the information. The provision of financial resources suggests that government has a responsibility to ensure all parties have appropriate financial capacity to engage in the consultation process (Marsden 2005).

Table 2.3) Principles of Meaningful Consultation (Marsden 2005 pp. 35/36)

- Relationship-building
- Pro-active, not Re-Active
- Representation
- Continuous cycle of consultation
- Ability to modify decision
- Respecting the right of non-participation
- Financial resources
- No unilateral changes
- Two-way process
- Equal value of inputs
- Balance of substantive and process-based approaches
- Sound research
- Legitimate decision making

Sharvit, Robinson and Ross (1999), in *Resource Developments on Traditional Lands: The Duty to Consult*, outline what they see the information requirements to be for consultation. Sharvit, Robinson and Ross focus on rights infringement and what rights are at stake in resource development. An important point omitted in both Vanderwal's and Marsden's theses is the duty for government to inform itself of what aboriginal rights might possibly be infringed upon. Another requirement is the principle of 'reasonableness' – that the party being consulted must only make reasonable demands for information as accepted by the scientific, academic or professional communities. Sharvit et al. also stress the issue of timing, specifically the provision of appropriate timelines for First Nations or other communities to

respond. Vanderwal (1995) also discusses timing with a focus on the consultation process designing timelines appropriate for both research and public participation.

Table 2.4) Information Requirements (Sharvit, Robinson and Ross 1999 pp. 12-14)

Timing	Both government and aboriginal peoples should be provided with enough information to ensure that unjustifiable infringement of rights is avoided.
Rights	Government must inform aboriginal peoples on what rights will be affected and why.
Duty to become informed	The government has a legal duty to inform itself of what possible Aboriginal or treaty rights might be infringed by the proposed development.
Funding/resources	Although not a fiduciary duty, government should assess the funding and resources required for the community to participate in the consultation process and provide assistance where appropriate.
Reasonableness	The community cannot make demands for information that are unreasonable. There is always the possibility of conducting another study or collecting more information. Where these demands surpass accepted scientific, academic or professional practices they may be deemed unreasonable.

Mitchell and Parkins (2005), in *A Practitioner's Guide to Public Deliberation in Natural Resource Management*, outline three major considerations for the consultation process. The first corroborates previous calls for openness, while the other two are important additions to the principles discussed above. Mitchell and Parkins (2005) argue that consultation should be responsive to different social settings and modes of communication and that the methods must be straightforward

and repeatable to be adopted for future use without requiring the presence of social scientists or communication experts.

The discussion of methods brings up the issue of deliberative or consultative mechanisms. Mitchell and Parkins (2005, p. 3) state that “no perfect protocol exists for public deliberation.” Following this idea, Mitchell and Parkins systematically detail the most common deliberative mechanisms used in public participation. Besides being a very practical guide on how to set up community dinners, discussion panels and advisory committees, one of the most important results of their work is a table which compares various deliberative mechanisms (Appendix A). This table is important because it does not seek to provide a definite course of action but admits that different mechanisms will be appropriate at different times and under different circumstances.

I have created a table outlining the various principles of consultation and public participation examined in the literature. Beside the explanation of each principle I have bracketed the work from which the principle is derived.

Table 2.5) General Principles of Consultation

<i>Open</i>	To participants from all sectors of a selected community or region (Vanderwal 1995; Mitchell and Parkins 2005)
<i>Responsive</i>	To differing needs for outputs and inputs, ie. storytelling, plays, science, etc. (Mitchell and Parkins 2005; Marsden 2005))
<i>Equal</i>	All participants should have equal input (Cohen 1999; Marsden 2005; Mitchell and Parkins 2005)
<i>Representative and</i>	Representatives should be accountable to those they

<i>Accountable</i>	represent, and all groups should be represented. (Cohen 1999; Gutmann and Thompson 1996; Marsden 2005)
<i>Pro-active</i>	Government/Industry should engage in consultation before proceeding too far into the development stage (Marsden 2005).
<i>Continuous</i>	A constant cycle of consultation that should not cease entirely as soon as the project begins (Marsden 2005).
<i>Multi-lateral</i>	No party can unilaterally change the agreement (Vanderwal 1995; Marsden 2005)
<i>Funding</i>	All parties should be cognizant of funding and resource capacities and effort should be made to ensure all participants can participate fully and effectively (Sharvit, Robinson and Ross 1995;
<i>Timely</i>	Deadlines and timelines should reflect the administrative capacities of the parties involved (Vanderwal 1995;
<i>Co-development</i>	All parties should be included at the earliest possible stage, before the project has been fully designed (Marsden 2005).
<i>Rights</i>	All parties should be aware of the rights at stake in the potential development. This includes government becoming informed and informing others (Sharvit, Robinson and Ross 1999).
<i>Implementation</i>	Clear commitment and plan to implement the results of the deliberation (Cohen 1999; Gutmann and Thompson 1996; Vanderwal 2005)

2.5 Consultation Procedure in Environmental Assessments and Resource Management

It is important to identify a general procedure for consultation process. As consultation needs guiding principles, so it needs guiding procedures to ensure it

meets the requirements of all involved. Procedural elements have been derived from extant literature on environmental assessment, environmental management and resource management. The aim of this procedural account is descriptive not analytical. It is simply to supply a general understanding of how consultation should proceed according to major authors in this field. It is noted that the process is linear whereas in many human interactions, consultation not excluded, the process is often recursive containing adaptive and evaluative components. It is recognized that the linear process may be subject to change and recursion as the consultation process unfolds.

Richard Roberts (1995, pp. 32-35) divides the consultation process into five stages: early consultation, initial planning, and development of a public involvement action plan, implementation and follow-up. In the first stage participants and issues are identified, information gathered and communications networks established. Planning determines the consultation process itself, and as well as strategies to inform and explain the process to the public. It is clear that when Roberts refers to the consultation process, he refers to a specific process beyond the five stages he outlines in general. After the consultation process is developed the methods of participation are chosen for the public involvement action plan and resources are allocated where appropriate. The plan is then implemented and afterwards followed up.

Roberts' depiction of the consultation process is top-down. It is interesting to note that the public, or the consulted body, is not involved in developing the process.

Instead they are informed of what the process is to be. Roberts also does not give any explanation as to what he means exactly by determining the 'consultation process.' Arguably that is what the five stages are about, yet he sets the process aside as something different.

Lamont (2006), based on two case studies and extant literature, outlines eight steps for public participation in resource management. His steps are similar to Roberts, but with important differences. Lamont takes an admittedly 'top-down' approach, delineating the physical, constitutional and legalistic boundaries within which stake holders make decisions. One important difference is Lamont's (2006, p. 8) invitation of stakeholders prior to the development of a terms of reference. It is assumed that stakeholders are a part of the development of the terms of reference that will guide deliberation. A terms of reference (unmentioned in Roberts) is similar to the deliberative democratic precept called, by Cohen (1999) the 'terms of association'. In this regard, I think the development of terms of reference is an important addition to Roberts' stages.

Consistent with Roberts (1995) and Lamont (2006), Mitchell and Parkins (2005, pp. 17-19) outline specific stages in the consultation process. They divide the consultation process into three main categories; pre-deliberative, deliberative, and post deliberative. Marsden (2005) identifies similar stages of consultation: pre-consultative scoping, joint development of the consultation process, consultation, and post-decision follow-up. Again with Mitchell and Parkins, a top-down approach is taken where participants are identified by the consulting body and informed of the

selected deliberative (consultation) process. Of special note in Mitchell and Parkins consultation process is the attention to building trust and good relationships and ensuring that participants are cared for and fed. Mitchell and Parkins introduce a human element that in my opinion is missing from the previous authors. Following in this vein, Mitchell and Parkins recommend encouraging shared learning and understanding and assessing information requirements, noting that information may have to be presented differently to different participants.

The procedural outlines provided by Roberts, Lamont, Marsden, and Mitchell and Parkins are important in developing a holistic perspective on the consultation process. The above information is provided as background for the analysis of adequate and meaningful consultation. The principles and procedures derived above will be used in coding the information received from research participants. The authors all have points of agreement, but also important differences. By including both the commonalities and the differences it is possible to develop a general consultation procedure from which specifically tailored processes can be crafted. An example of such crafting is the document entitled *How to Consult in Selkirk Traditional Territory* (Alfred and Urquhart 2002).

2.5.1 Example of community specific guideline

How to Consult begins to bridge the gap between esoteric theory and on-the-ground application. In this document there are thirteen specific recommendations. These recommendations are addressed specifically to the Selkirk First Nation and are based on information gathered from Selkirk community members. Many of the

recommendations reflect principles discussed in other public participation works. This is an important document for resource management consultation in the Yukon as it anticipates and vindicates the need for the development of similar documents by all fourteen First Nations groups. The document's major additions to the literature already examined are of a practical nature. It suggests the creation of a steering committee to develop the consultation process, the use of Northern Tutchone wherever appropriate and the use of a variety of deliberative mechanisms, including house visits, to ensure broad participation.

It is important as demonstrated by this guide to keep in mind that communities are all different from one another and that the consultation process should be designed to reflect and accommodate these differences. It follows that if the courts are to decide consultation disputes on a case-by-case basis due to the specific nature of each situation, individual communities should be defining their own consultation protocols specific to their region and cultural values.

2.6 Processes related to approval, monitoring and review of research and resource extraction in the Yukon

Approval, monitoring and review of research and resource extraction in the Yukon can be very complicated. It is important for one to familiarize oneself with common terminology in order to better understand the various restrictions and regulations incumbent on research and development in the Yukon. I have provided a list of terms below to aid the reader in comprehending the discussion of these processes.

Table 2.6) Glossary of terms

<i>Deliberative Event</i>	Any organized event designed to inform the community or receive feedback or both (questionnaires, focus groups, public meeting, etc.)
<i>Proponents</i>	The proponent(s) of any project (oil and gas, mineral, research)
<i>First Nation</i>	In general, refers to any one of the First Nations in the Yukon.
<i>VGFN</i>	Refers specifically to the Vuntut Gwitchin First Nation government
<i>VGFN territory</i>	Encompasses all categories of land as set out by the VGFN Final Agreement as well as VGFN Traditional Territory. In a simplified sense, it is any land in which VGFN has a vested interest.
<i>Consult; Consultation</i>	Consult(ation) with a capital 'C' refers to the legal duty to consult. The Consultation is determined by the definition in the specific legislation. The term 'consult(ation)' with a lower case 'c' denotes informal communication with the design of providing information and receiving feedback. The process is undefined.

The Yukon is a rich and diverse environment where resource management and related research are concerned. With four orders of government potentially involved in any undertaking, legislated processes and related policies abound to monitor and enforce resource developments such as oil and gas exploration and extraction, agriculture and mineral extraction. Similarly, research initiated from beyond Yukon borders is also vetted through processes designed to ensure relevance, political and cultural awareness and environmental protection. In all of the above, consultation, either mandated or implied, is vital to ensure positive outcomes. To discover where opportunities for effective consultation lie, it is necessary to understand how the major extant processes work and what they are intended to achieve.

The processes detailed here do not represent all current regulative processes with respect to resource management in the Yukon. The Umbrella Final Agreement,

the Oil and Gas Act, the Scientists and Explorers Act, and the Yukon Environmental and Socio-Economic Assessment Act were chosen for examination in this research as they are the major regulative processes that affect VGFN and Old Crow. Other regulative processes will be mentioned in the text where appropriate.

While this thesis is concerned primarily with consultation in regards to resource activities, the processes for outside research will also be explained. The link between research and resource development is that, on the ground level, the mechanisms employed by each for informing and receiving feedback from the community are very similar, if not, in many cases, identical. The past examples of research consultation conducted in Old Crow serve to further contextualize and provide a base for the community's principles and procedures for adequate consultation.

2.6.1 The Umbrella Final Agreement (UFA)

The Umbrella Final Agreement (UFA) is the framework for land claims settlement in the Yukon. From this document, each First Nation (signatory) constructs a Final Agreement specific to its individual requirements. To date 11 of the 14 Yukon First Nations have become parties to the UFA. In so doing they extinguished their previous aboriginal rights in favour of those set forth in the UFA and their respective Final Agreements (Umbrella Final Agreement 1993, section 2.2.3).

Over the past several years debate within the Yukon has been mounting over the 'duty to consult' with respect to the Final Agreements. Key to this controversy is

the following UFA definition for consultation which set the stage in the Yukon for all subsequent interpretations and practical applications:

'Consult' or 'Consultation' means to provide:

- a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;*
- b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and*
- c) full and fair consideration by the party obliged to consult of any views presented. (UFA 1993 Definitions p. 2)*

The Umbrella Final Agreement proactively attempts to establish a mode for consultation with First Nations in the Yukon. The lack of a more prescriptive definition has led some to argue in favour of each community defining consultation in their own terms (Dawson District Renewable Resources Council 2003; Alfred and Urquhart 1999).

2.6.2 Conducting Research in the Yukon

Anyone entering the Yukon to undertake scientific research must have a permit pursuant to the *Yukon Scientists and Explorers Act* (2002), with the exception of archaeological research which is permitted through a different body of legislation (*Guidebook on Scientific Research in the Yukon* 2008). Beyond the Scientists and

Explorers Permit, various permitting processes might come into effect. Examples of lands that require specific permits are conservation areas, territorial parks, national parks and special management or habitat protection areas. Research involving the harvesting or capture of wildlife requires another permit pursuant to the *Wildlife Act* (*Guidebook on Scientific Research in the Yukon* 2008). The Heritage Resources Unit of the Yukon Government forwards all *Scientists and Explorers Act* applications to the appropriate department of the affected First Nation government. Research originating in the Yukon does not need a Scientists and Explorers Permit (*Guidebook on Scientific Research in the Yukon* 2008).

The Yukon Government is required to consult with a First Nation before issuing a permit at an historic site as per the *Yukon Historic Resources Act* (*Best Management Practices for Historic Resources* 2006). the Yukon Government is not obliged to consult with the First Nation in whose territory the research is to take place if the research does not take place at an historic site.² This puts the onus on the researcher to contact the First Nation and receive feedback. As an unregulated and unlegislated process there is no legal definition to guide the required consultation.

The *Guidebook on Scientific Research in the Yukon* (2008) “provides updated information for scientists and researchers planning to conduct studies in the Yukon. Furthermore, it outlines the permits and licenses or consent that must be obtained from Canada, Yukon and First Nation governments in order to carry out such work”

² Research that does not affect physical land does not have to go through the Yukon Environmental and Socio-Economic Assessment process. This process will be described in-depth in a subsequent section, but is important to note here to avoid confusion.

(1). The Guidebook is not an exhaustive account of how to conduct research in the Yukon. The introduction states that while researchers are encouraged to consult communities prior to making an application, “the formal requirements for community consultation will depend on the nature and location of the project” (2).

The Yukon Government requires that any research project occurring on Yukon First Nation settlement land must obtain permission from the appropriate First Nation before the application will be reviewed (Scientists and Explorers Act). To be included with the application are details of any community consultation, scoping, protocols or terms of agreement signed with the First Nation. Furthermore, any research involving information from Yukon residents must have written confirmation that the community, the First Nation, special interest groups and residents have been informed of, and had input into, the research project. The source and authenticity of such confirmation is not specified and from personal experience it is enough simply to specify that the First Nation and community have been contacted and have agreed to participate in the research.

The Guidebook is deficient in its discussion of consultation between researchers and communities/First Nations. The Yukon Government does not set out any comprehensive framework, principles or procedures to guide the consultation process, stating only that it will depend on the location and nature of the project. Principles and procedures for consultation are only mentioned in reference to timing and language. The considerations highlighted in the Guidebook are: 1) to give adequate time for discussion and meetings, and 2) to be aware that certain

times of the year may be better than others, and 3) to use simple, non-technical language (*Guidebook on Scientific Research in the Yukon* 2008, 2). It also mentions that the elected council should be notified as a courtesy in the event of major potential community impact (5).

The fact that the Yukon Government places the consultative responsibility on the researcher has two important implications. First, the researcher must be proactive in procuring information about the affected community and about how best to consult with it. The onus is solely on the researcher to contact the community. Second, the First Nation can be subjected to inappropriate forms of consultation in lieu of a set of criteria either specified by itself or the Yukon Government. It does, on the other hand, make sense that the responsibility for consulting the community is placed on the researcher rather than the territorial government. If the territorial government were to be involved in the initial stages of every project the system would become unstable. A proponent would take an idea to the government and then could divest itself of the responsibility of contacting the First Nation and community. The real problem lies in not providing the proponents with adequate guidance on how to carry out their duty to consult.

2.6.3 Oil and Gas Rights Disposition Process

2.6.3.1 Rights Disposition

Oil and gas exploration and development are carefully managed by the Yukon Government according to the *Oil and Gas Act* and the *Oil and Gas Disposition Regulations*. Disposition rights for oil and gas are granted by the Minister of Energy,

Mines and Resources (Yukon Government) through a competitive two-step process (*Oil and Gas Act* 1996; Oil and Gas Disposition Regulations 1998).

The first step of the process is a 'Request for Postings' (RFP) (*Yukon Oil and Gas Licensing Process* 2001). In response to this, companies submit Locations³ of interest for oil and gas exploration. At the termination of the RFP a 60-day review process of the requested Locations is initiated. This allows time for First Nations, Yukon Government agencies and departments, and members of the public to submit statements regarding of environmental, socio-economic and surface access concerns. Notices are published in local newspapers inviting Yukon Government departments, agencies and the public to comment. Postings are also referred directly to each First Nation on whose traditional territory the proposal is located (First Nation Settlement Lands are excluded from the process). It is up to the First Nation government to consult with its citizens and relay any concerns to the Department of Energy, Mines and Resources. Based on responses received from the Review Process, the head of the Oil and Gas Division (Energy Mines and Resources) reports to the Minister with recommendations regarding the inclusion of proposed Locations in the 'Call for Bids' (CFB) which is the second step of the process.

Companies interested in a Location must submit a bid during the CFB and the highest bidder is awarded the exploration rights to that area. Prior to publishing the CFB, the Minister of EMR, according to the *Oil and Gas Act* (Section 14:1), must

³ Location/s is capitalized to reflect its status as a legal term. Where location/s is not capitalized it defers to its general definition as unspecified geographic area.

also confidentially consult⁴ with the affected First Nation if any part of the project occurs within its traditional territory. A further provision states that the Minister must consult only if the First Nation has a reciprocal law obligating it to consult with the Minister before publishing a CFB with regards to Settlement Land. If no such law exists, the Minister waves the obligation to consult with the First Nation until it enacts the required legislation.

Beyond the single provision in the Oil and Gas Act there is no other reference to consultation with First Nations regarding oil and gas exploration and development in the Yukon. Moreover, since the definition of consultation mirrors the one in the UFA, it is subject to the same deficiencies with no further clarity provided. This form is maintained throughout subsequent stages of permitting for oil and gas development and production.

2.6.3.2 Oil and Gas Operations and Activities

The oil and gas disposition process grants rights to specific Locations within the Yukon for exploration and related operations. However, prior to any activity on the site, additional authorizations and other processes come into effect. All winning bidders must obtain a permit or lease under the *Oil and Gas Act*. Most permits trigger further assessment through the Yukon Environmental and Socio-Economic Assessment Board which, in turn, requires further Consultation with the affected First Nations.

⁴ The Oil and Gas Act employs the same definition of consultation as does the UFA

A document entitled *Oil and Gas Best Management Practices* (OGBMP) (2006) is provided by the Yukon Government to guide appropriate courses of action for exploration and development. In addition to providing logistical information for applications and permits, the OGBMP focuses largely on physical impacts and managing archaeological and heritage resources. Conspicuously, there is no mention of consultation with First Nations in the OGBMP.

EMR has developed several initiatives to improve consultation between resource companies and communities/First Nations. The department (according to their website) is working on assembling information from other regions regarding First Nation engagement - specifically British Columbia, with the aim of including a webpage on Community/First Nation Engagement for the Yukon (www.emr.gov.yk.ca). A recently produced webpage under EMR, entitled "First Nation Land Claims," contains a section on "Key Considerations for Consulting with First Nations." The 'key considerations' are not a prescriptive set of steps for consulting First Nations, but rather six points to be aware of when engaging a First Nation; the last of which states,

"Initiate meetings to exchange information between the company president and the chief, director of lands and resources or other senior official(s) (First Nations Land Claims 2008)."

The above directive, the only one that seems to move beyond common sense, does not move the project developer any closer to providing a consultation process tailored to the individual First Nation or community to be consulted. Rather, it

places that burden on the First Nation, which must determine what constitutes 'adequate consultation' according to its own principles and standards, or in lieu of such a determination, suffer the consequences of uninformed and often inadequate arrangements.

Consultation between the developer and the First Nation/community occurs at many stages before oil and gas activities can actually take place. As noted above, the Yukon Government manages the process pursuant to various acts of legislation. However, since the legislation is largely silent on consultation, the onus for ensuring its adequacy devolves to the First Nation. During the RFP Review, all RFPs are referred to the appropriate First Nation and it is the responsibility of the First Nation to consult its constituents with regards to the suitability of these lands for exploration and development (*Yukon's Oil and Gas Rights Disposition Process* 2008). Where the Yukon Government is required to consult with the First Nation, the *Oil and Gas Act* employs the Umbrella Final Agreement's definition of consultation, which in VGFN's case is insufficient so far as intergovernmental consultation is concerned. It should be noted that apart from responding to a notification via the government website there is no provision for 'consultation' between the Government of Yukon and the public or interest groups in the RFP review. For Old Crow this is accomplished through VGFN's own consultation process.

2.6.4 Yukon Environmental and Socio-Economic Assessment Act (YESAA)

The Yukon Environmental Socio-Economic Assessment Act (YESAA) came into effect on May 13, 2003. It provides a clear, regulated system for assessing

projects and development within the Yukon Territory. YESAA is designed to integrate resource management through a forum where economic, environmental and societal concerns can be registered and, hopefully, harmonized. In looking closely at the inter-relationship(s) among these three factors, the assessment process seeks input from various government agencies, First Nations and the general public. However, the assessment process falls short in its delineation of the consultation process required. The reasons for this shortfall are examined below by providing the process which applications must undertake.

Any party undertaking a project or development that will affect land, water or other natural resources in the Yukon will require (as noted in “Oil and Gas Rights Disposition” section) a government permit or license and, usually, an assessment of the socio-economic and environmental impacts of the project. The Yukon Socio-Economic Assessment Board established under the Act operates at arm’s-length from the Yukon Government to conduct these assessments.

The assessment is initiated by an application for assessment from the proponent. The assessor, either one of YESAB’s six designated offices, the executive committee or the board panel, reviews the project, with input from government agencies, First Nations and the public (Energy Mines and Resources Assessment Guide 2008). The assessor then provides a report to the ‘Decision Body’ which is the federal, Yukon or First Nation government depending on the location of the project. The report recommends whether a project should proceed or

not. In the former case, conditions are usually attached. The Decision Body then accepts or rejects the recommendation (EMR Guide 3).

Beyond the purposes of ensuring an efficient, standardized system, YESAA strives to include First Nations' and the public's experience and values in conducting the assessment. It clearly states in section 5 that the purposes of YESAA are:

(g) to guarantee opportunities for the participation of Yukon Indian persons—and to make use of their knowledge and experience—in the assessment process;

(h) to provide opportunities for public participation in the assessment process;

(i) to ensure that the assessment process is conducted in a timely, efficient and effective manner that avoids duplication; and

(j) to provide certainty to the extent practicable with respect to assessment procedures, including information requirements, time limits and costs to participants.

YESAA employs a four-part definition of consultation, essentially the same as in the Umbrella Final Agreement. Thus, wherever references to consultation occur in YESAA, the exercise of that function is accomplished:

(a) by providing, to the party to be consulted,

(i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,

- (ii) a reasonable period for the party to prepare its views, and*
- (iii) an opportunity to present its views to the party having the duty to consult; and*

(b) by considering, fully and fairly, any views so presented.

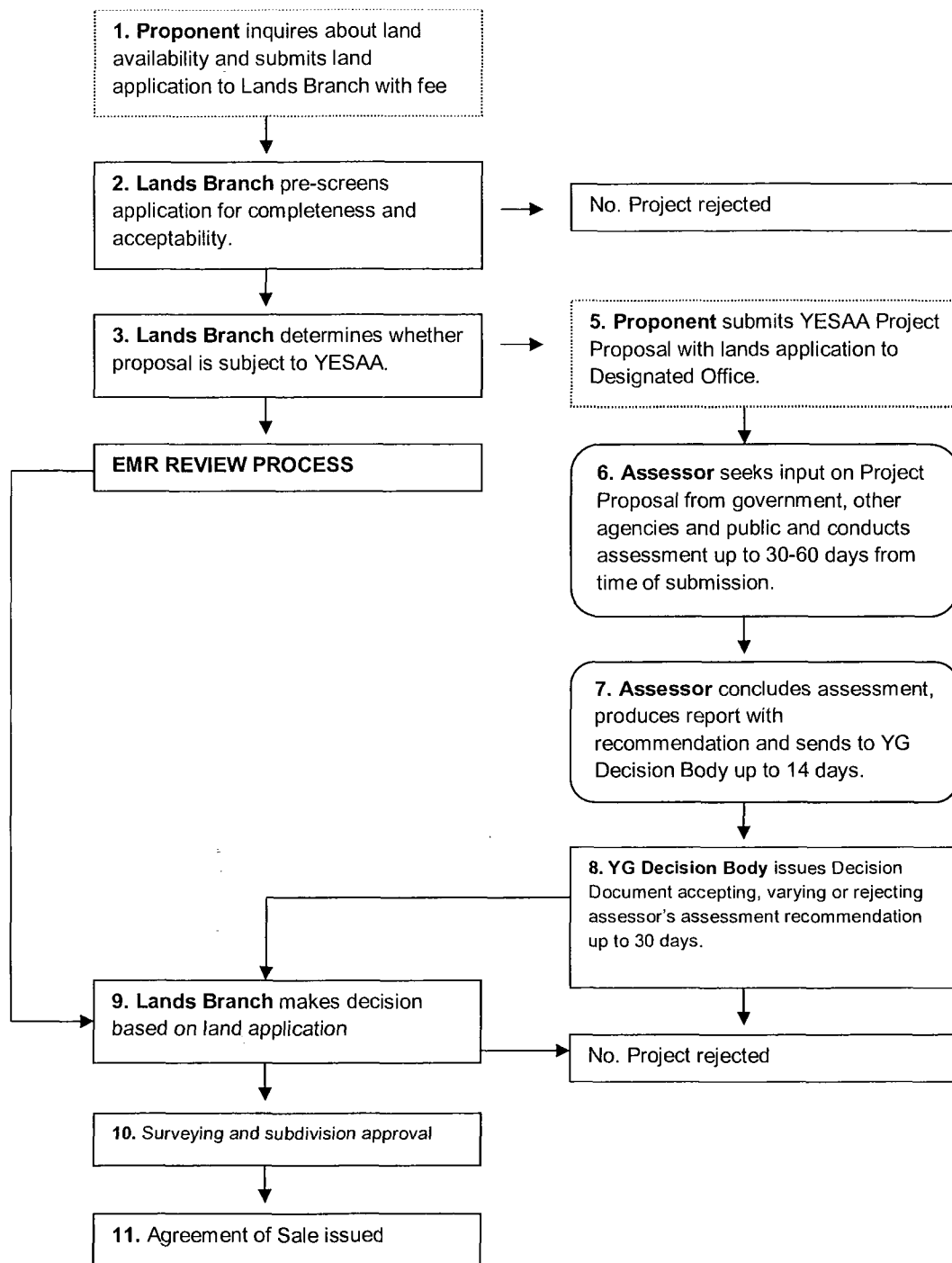
Since YESAA was negotiated as a follow-up from chapter 12 of the UFA, it is not surprising that it conforms to the same definition of Consultation. The result, however, is that a more definitive procedure for conducting adequate consultation is not provided. A document entitled, "Public Participation in Assessments" (2005) published by YESAB reaffirms YESAA's commitment to public participation in the assessment process. The document states (p. 1),

Opportunities for public participation will vary significantly depending on the type of assessment under our Act. For instance the opportunities for public participation will be significantly greater for an Executive Committee screening than for a Designated Office evaluation. Opportunities for public participation will also vary from project to project based on the scale of the project, the environmental sensitivity to the type of development and the concerns raised by the public. Timelines for public comment may be extended at the discretion of the assessor within the time periods prescribed by YESAB's Rules of Practice and Procedure.

Public meetings may be held to provide further opportunities for participation.

While YESAA makes provisions guaranteeing First Nation input and opportunities for public participation, nowhere in the Act or in “Public Participation in Assessments” does it state in what form this inclusion will take place. The YESAA assessor simply needs to contact the affected First Nation government according to the criteria for consultation listed above. How this contact is translated into meaningful consultation with the citizens of the First Nation becomes the responsibility of the First Nation government. Throughout the YESAA assessment process, concerned Yukon citizens, government agencies and First Nations must be proactive in informing themselves and providing their respective viewpoints on a given project under assessment.

Figure 2.2: Land Rights Disposition Process – Non-settlement land (Public Participation in Assessments 2005)



The lack of a prescribed consultation procedure for the above processes places a First Nation in a double-bind: it must adequately consult its constituents,

but it can only do so if it is adequately consulted itself. The Heritage Department of Vuntut Gwitchin First Nation has a research application similar to the Scientists and Explorers Permit application, but slightly more-tailored to VGFN's specific situation. However, no guidelines or protocols are available from VGFN to assist the project developer in the consultation process. Consequently, as this paper demonstrates, the various mechanisms employed to regulate research and resource projects within VGFN territory are inefficient and unreliable as a guide to consultation.

In order to examine how the community wants consultation to proceed, and by what principles consultation is to be guided, it is important to understand the current consultation processes in Old Crow. The second section of the results chapter will elaborate the current communication lines, procedures and obstacles in Old Crow.

2.7 Theoretical considerations

The literature review has shown that the term 'consultation' can take on many meanings. The courts have mandated it as a term to be used whenever there is the chance of aboriginal or treaty right infringement. This makes the term 'consultation' of supreme importance in guaranteeing aboriginal or treaty rights in Canada.

Conversely, public participation literature has relegated 'consultation' to a low place on the participation spectrum, one that focuses on simply providing information and receiving feedback with no commitments to using that feedback or guaranteeing a relationship between the consulting and consulted parties beyond this exchange.

Given the above two understandings of consultation, one that makes it an all important word for guaranteeing the preservation of aboriginal or treaty rights and

one that ranks it as 'tokenistic,' users are in a tenuous situation. If we maintain the traditional public participation definition of consultation we are invoking a grossly inadequate means of protecting aboriginal peoples' rights in Canada.

There can be little argument that this is not what the courts had in mind when they made 'consultation' a fiduciary obligation for the federal and provincial/territorial governments, nor is at all what the courts mean when they specify the duty to uphold the honour of the Crown. It is thus important to push out the theoretical considerations of the term 'consultation' from its meager position in the public participation literature. It is imperative that a more comprehensive understanding emerges that takes consultation's current legal use into account. Adequate and appropriate consultation methods can never be successful if operating under the antiquated understanding manifest in public participation literature.

Consultation is the means by which communities, government and industry come to decisions on how to manage resources. Each region or community has unique circumstances that must be taken into account when designing the consultation process. The community must define for itself the level of consultation and the principles and procedure that such consultation must follow (McKillop 2002, Marsden 2005).

It is in the attempt to broaden the understanding of consultation, to make it more responsive, open and appropriate to the situations in which it will be used and the parties who will be subject to its implementation, that the research for this thesis was undertaken. The first step in understanding the wider meaning of consultation is

to understand the parties who are going to be consulted; how do they view consultation, what principles or procedural elements are important to them? By exposing the perspective held by the community of Old Crow, consultation theory will move towards a more complete understanding of the topic. It can be hoped that this effort may spur on other First Nations to also examine the issue of consultation in their communities.

3 Methods

3.1 Old Crow and Vuntut Gwitchin First Nation

Old Crow is a geographic area encompassing approximately 300 inhabitants in the North Yukon (Longitude = 139° 49.8' West, Latitude = 67° 39' North) (Old Crow Official Website). It is situated in Vuntut Gwitchin Traditional Territory at the confluence of the Crow and Porcupine Rivers. VGFN Traditional Territory is bio-zoned as interior sub-Arctic (Christian and Gardener 1977). The summers are short and hot while the winters tend to be long and cold. The tree vegetation is predominantly spruce, dwarf birch and alder, birch and willow.

Many Vuntut Gwitchin beneficiaries (those listed as VGFN citizens under the VGFN Final Agreement) live outside Old Crow. For the purpose of this essay and the purposes of adequate consultation, these beneficiaries are considered part of the community of Old Crow. As will be seen below, they are defined as non-local interest-based community members.

The Gwitchin rely on the Porcupine Caribou Herd, which traverses the area on its way to calving grounds on the North Slope (Alaska), for a great part of their food and subsistence. People have maintained a seasonal round of activities that tied them economically, spiritually, socially and politically to each other and to the land (Sherry 2002).

In 1993 the Vuntut Gwitchin signed the VGFN Final Agreement with the Government of Yukon and Canada (Vuntut Gwitchin Final Agreement). In the agreement is stipulated the dimensions of their territory as well as their rights to directly manage that land. The settlement includes a land base of approximately 7,744 square kilometers and monetary compensation of \$19, 161, 859 CAD (VGFN Final Agreement).

Individuals in Old Crow signed on to the Vuntut Gwitchin First Nation Final Agreement and became beneficiaries of this agreement. While the vast majority of people residents of Old Crow can be categorized as Vuntut Gwitchin, this term can be misleading. The Vuntut Gwitchin First Nation is the government that was established by the Vuntut Gwitchin First Nation Final Agreement. Beneficiaries are recipients of the benefits incurred from this land claim and are also responsible for electing local government and providing leadership directives and often simply identify as Vuntut Gwitchin. However, Vuntut Gwitchin beneficiaries also identify with other groups such as the Dagoo and Tetlit.

Old Crow has only existed as a permanent centre since the early 1900s, before that time First Nations were settled all over what is now Vuntut Gwitchin

Traditional Territory. For example the Dagoo people, according to Alfred Charlie, an Elder in the community, were spread out from Crow Flats all the way to Eagle Plains. In the summertime they would travel as far south as Dawson to trade and fish before returning in the fall for the hunting season (Charlie N.D.). Similarly, other groups or even families strongly identify with particular regions. This has important implications for the consultation process.

The fact that community members identify with certain groups and certain regions means they will have different preferences or feel differently than other community members about activity in the traditional territory. It is important to note that the homogeneity implied by the term Vuntut Gwitchin is in fact much more diverse. It is all the more important for consulting parties to consult with a broad section of the community of Old Crow in order to touch on these various sub-groups within the Vuntut Gwitchin appellation. I found very little mention of the Dagoo, Tetlit or Vuntut peoples in the extant literature on this region. It is enough for consultation to note the diversity of peoples in Old Crow and act accordingly; however, this is an area that may provide fruit for anyone wishing to study it.

All beneficiaries can take part in the annual General Assembly, where policy directives are provided to the elected leadership. At the General Assembly the Vuntut Gwitchin First Nation government reports on finances, activities and issues over the previous year. The community also often receives presentations from other groups associated with Old Crow, such as the International Polar Year or the Arctic Athabaskan Council. The beneficiaries make resolutions in the last day of the

General Assembly to direct the government's actions for the next year. This is an important event for consultation as it is an excellent means of getting community input and direction on specific projects or issues. While there have been complaints of late that too many non-beneficiaries are speaking at the General Assembly, there is an opportunity for consulting parties to have their issue raised through other avenues. For example this project received a resolution from the General Assembly encouraging it to be developed.

3.1.1 Consultation activities in Old Crow

The community of Old Crow has extensive experience with consultation, both in its legal form and its more nebulous information sharing and communication role. In 2008, over 30 research projects were active in Old Crow and Vuntut Gwitchin Traditional Territory (VGFN Project Registry 2009). As will be examined later in this thesis, all research projects must pass through a rigorous screening process both with the territorial government, in the form of a Scientists and Explorers Permit, and Vuntut Gwitchin First Nation government. VGFN vets incoming projects for cultural and environmental appropriateness and sensitivity, relevance and methodology. Particularly sensitive projects are further screened by the heritage review committee, which is an advisory body made up of community members. Once through the screening a project must sign an agreement with VGFN that delineates the requirements for reporting, timelines and procedure. The agreement does not specify how or in what form consultation should take place with community members. Its only stipulations are on when and how interim reports should be submitted (VGFN Template Research Agreement 2008).

The research projects currently listed in the VGFN project registry range from a project studying the hydrology and limnology of Old Crow flats, to a master's thesis examining the role of traditional Gwitchin hymns in Anglican services. Other projects of note include a "Heritage Resources Impact Assessment" conducted on behalf of Northern Cross limited, an oil and natural gas exploration and development company, and a project entitled "Experiential Learning in an Indigenous context: Praxis of place, experience and criticality" (VGFN Project Registry 2009). The foci of projects in Old Crow and the surrounding territory determines how much interaction researchers will have with community members and how much consultation may be required. While there are no specific criteria to guide consultation of this nature, it is obvious from the number of projects listed in the VGFN registry and from the nature of many of these projects that significant interaction between researchers and community members is taking place.

From my own experience in working with a climate change risk assessment project (led by the Arctic Athabaskan Council) in Old Crow, I understand the need for appropriate consultation with community members to ensure project success and cultural appropriateness. I detail below an example of community consultation that occurred as a result of the project activities in Old Crow. The aim of this account is not to make value judgments on what worked well and what did not, but simply to describe the process in the attempt to give readers of this thesis better contextual information on the community of Old Crow's familiarity with research projects in their area and their interaction with researchers. The project began in August 2006 and was completed in the spring of 2008.

The first stage in the consultation process was a thorough scoping of the community's interests in the topic area and preliminary input on how the community would like to see the project progress. The project was first pitched to Chief Linklater and other Council members to ascertain the degree of support from local government. Upon affirmation of the project's significance from Chief Linklater, the project was proposed to the Old Crow General Assembly. A resolution encouraging the development of the project was granted by the General Assembly. Throughout this first visit to Old Crow, the project team members were querying members of the community on their ideas for the project's development. Communication lines were kept up in the coming month and a focus group meeting to further define the project framework was organized.

The second stage involved project development. A one day focus group meeting was held with selected members of the community to define project steps, instruments, goals and timeline. The project has been fundamentally developed by the community with assistance and support from the project team members. During this focus group meeting a research plan was devised, a timeline established and the instrument for data collection defined. Follow-up from the focus group involved sending the research plan and all of its parts back to the focus group members for comment and approval. After approval from the focus group the research plan then began its implementation phase.

The third stage was project implementation. A questionnaire (and list of indicators), defined by the focus group, was filled out by 25 community members.

The information was then compiled by the project team and analyzed (coded) for common themes. A public meeting was held to present back to the community the information that had been collected and to solicit comment/feed-back on the data. The project team employed a community member to facilitate the meeting. Participants at the meeting also gave feedback and further insight into the research plan and consequent steps of the project.

It was the aim of this project to ensure meaningful participation through co-development with the community of Old Crow. All facets of the project were developed from community input. After each stage was developed it was taken back to the community for approval and further comment. Every effort was made to involve as broad a range of community participants as possible.

In the period April 2006 to August 2009, 24 projects in Vuntut Gwitchin First Nation territory have initiated processes mandated by the Yukon Environmental and Socio-Economic Assessment Act (Yesab Online Registry 2009). The projects range from water license amendments to summer oil drilling programs. In every case the community must be informed of proposed activities and given opportunity to submit concerns or feedback. The consultation process is not clearly delineated, but proof must be shown by the project proponent that the community has been contacted, informed and given adequate time to respond to the proposed activity.

I detail below an account that focuses on Northern Cross Incorporated's consultation with the community regarding its oil exploration in Eagle Plains. Northern Cross is an oil and natural gas company that has been operating in the

north Yukon for almost twenty years. Eagle Plains is approximately 800 kilometers east of Old Crow and within VGFN Traditional Territory. The right for disposing of this land lies with the Yukon Government; however, many community members, especially those identifying as Dagoo and Tetlit, have a strong connection to the land in and around Eagle Plains. The aim of this account is not to make a value judgment on Northern Cross's consultation process, but simply to explain the process initiated by the company in order to contextualize the community of Old Crow's familiarity with large scale project operations and consultation processes.

A phone interview with Northern Cross Vice President of operations, Gregory Charlie, elicited information regarding public outreach and consultation processes initiated by the company. Mr. Charlie is a long-time resident of Old Crow and also a member of Vuntut Gwitchin First Nation. His roles and responsibilities include managing the processes mandated by the Yukon Environmental and Socio-Economic Assessment Act, negotiating a benefit agreement with Vuntut Gwitchin First Nation, under the Oil and Gas Act and making interim reports to Vuntut Gwitchin First Nation government, including Chief and Council and the Natural Resources department. I have corroborated information provided by Mr. Charlie with Shel Graupe, the director of Natural Resources for Vuntut Gwitchin First Nation.

The first step in the consultation process was for the Board of Directors of Northern Cross to work with the community to develop a program of consultation and activity. This was achieved through multiple meetings with the director of the Natural Resources Department and a public meeting with the community. The role of the

public meeting was to provide the community with opportunity for public comment and discussion of the strategic plan.

The next step was to discuss economic opportunities for the community of Old Crow with the Vuntut Gwitchin Development Corporation. The VGFN Development Corporation stands at arm's length from the government and oversees development programmes in Old Crow and the traditional territory. The Corporation has come under scrutiny of late for containing a high proportion of government officials in its board of directors, thereby calling into question its arm's length status. As a result of discussion with the Development Corporation a benefit agreement was signed between VGFN government and Northern Cross.

Northern Cross keeps in regular contact with Vuntut Gwitchin First Nation government and is always open to public inquiries. While, the Natural Resources department maintains an open door policy, they defer questions about Northern Cross operations and management to Mr. Charlie. To date there have been 13 public meetings to discuss development at Eagle Plains. The public meetings are usually well attended, according to community members queried on the subject, and provide dinner and door prizes to all meeting participants as is standard practice in Old Crow. At the terminus of every meeting there is a question and answer period with the community members, VGFN government and community members.

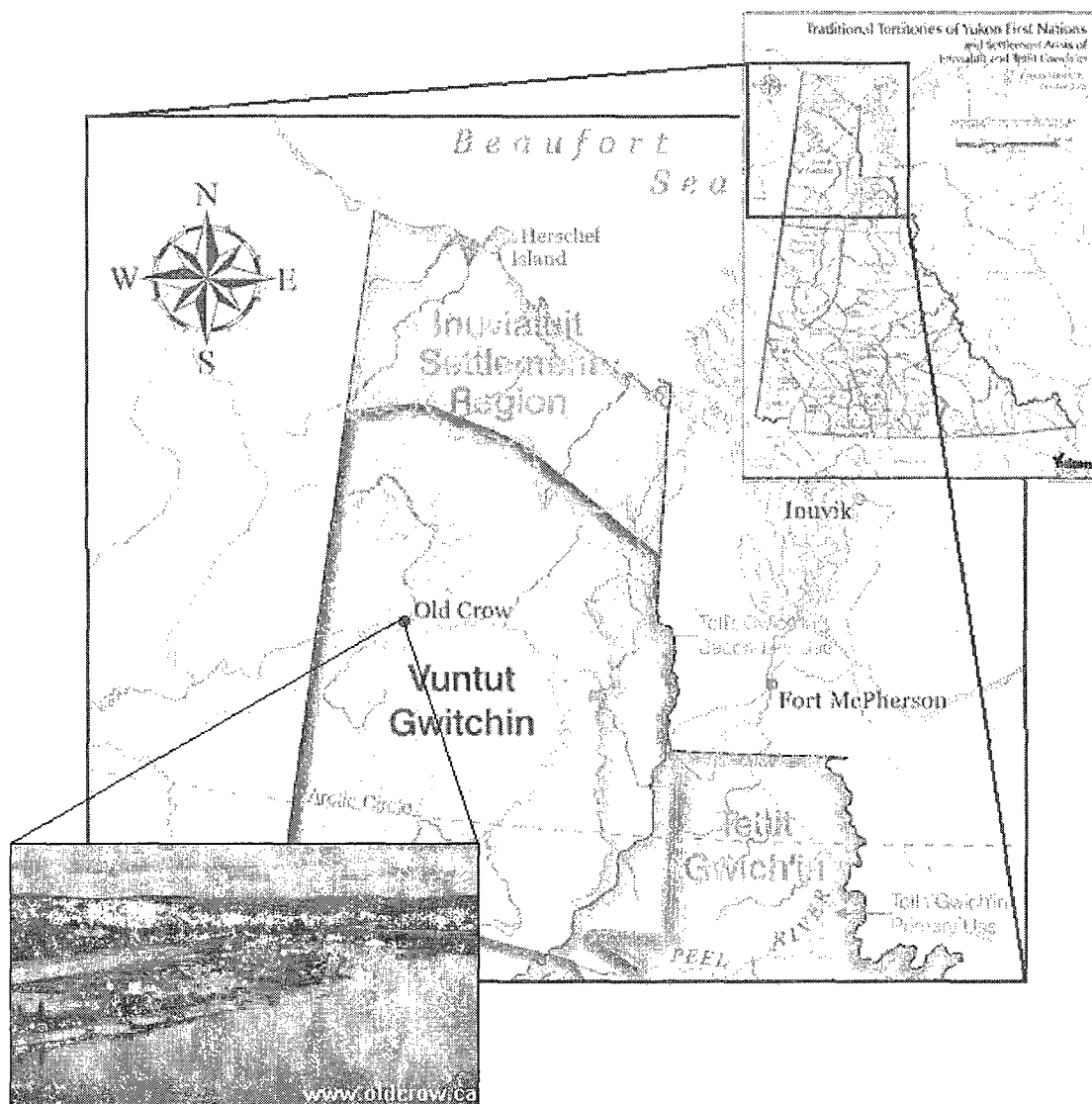
Community members admitted very little knowledge of current Northern Cross operations in Eagle Plains, when queried in focus groups and semi-structured interviews. Despite Northern Cross's consultation efforts, the majority of participants

who spoke on the matter showed significant distrust for the company and their work. One participant voiced the concern that Northern Cross was not forthcoming with information about their operations and that even if something went wrong he did not feel that Northern Cross would inform the community [FG 5]. Many participants wished to have more information from Northern Cross and felt it was up to VGFN government to ensure the community was kept up to date on any developments. The issue was raised in the 2009 General Assembly meeting. Mr. Charlie, VP of operations for Northern Cross, admitted that more work will have to be undertaken to ensure adequate consultation with the community.

It is apparent from the above accounts that the community of Old Crow has substantial experience with consultation processes in their many forms. The fact that in the last three years over 54 projects were active in Old Crow and VGFN traditional territory suggests that the community is well versed in consultation processes or the lack thereof. It is a fair conclusion to state the community of Old Crow stands in an officious position from which to speak on the theory of consultation and how it would like consultation to proceed in the future. The essence of communication with community members, through public meetings, focus groups, interviews, questionnaires or other means are common to all consultation processes. It is the aim of this thesis to elucidate the community's perspective on consultation, a perspective that is grounded in extensive experience with previous and current processes.

While there is a strong case for Old Crow's experience with consultation and outside project activities, there has not been a lot of large-scale resource development in Old Crow or within VGFN Traditional Territory, with the exception of Northern Cross Incorporated's activities. Advancing technology, global climate change, and world demand for resources will likely change this scenario (Hassol 2004, p. 8). It is thus important for the community of Old Crow to formulate a definition or criteria for consultation on their own terms. The manifest distrust for oil companies is predicated in part by a history of poor consultation. It is important to overcome hurdles such as these in order that history does not repeat itself.

Figure 3.1) Traditional Territories of Yukon First Nations and Settlement Areas of Inuvialuit and Tetlit (Yukon Government 2008; Old Crow official website 2007)



3.2 Case Study Method and Rationale

The case study, in its most basic form, is “an examination of a specific phenomenon such as a program, an event, a person, a process, an institution, or a social group” (Merriam 1998, p.9). Creswell (1994) defines a case study as an attempt to understand a single phenomenon or entity, temporally, spatially and procedurally bound, in which the researcher collects detailed information through various data collection procedures, over a sustained period of time. DeMarrais and Lapan (2004, p. 218) state that case studies “seek to answer focused questions by producing in-depth descriptions and interpretations over a relatively short period of time, perhaps a few weeks to a year.” Case studies should be selected based on a balance between maximizing time and resources and what can be learned in the period of time available (Tellis 1997). Multiple case studies do not necessarily ensure better or more applicable results (Yin 1984, Feagin et al. 1991, Flyvbjerg 2006).

Yin (2003) argues that the size of the sample (whether two, ten, or 100 cases) does not always lead to a better understanding of a particular situation; rather, the number of cases selected should be guided by the goal of the study. The goal of the current research is to improve the understanding of what consultation principles and procedures are important to the community of Old Crow and how they can be implemented in a meaningful way. The inherent differences among communities, manifested in individual land claims settlements and self-governments, suggest that results obtained from other communities may not apply to the Old Crow situation. While a comparative analysis would be interesting between communities in the

Yukon, no such studies exist and it is beyond the scope or goal of this research to conduct multiple studies.

3.3 Data Collection Methods and Management:

Data collection was divided into three distinct stages: scoping, focus group interviews and semi-structured interviews. Two methods were used, namely: focus groups and semi-structured interviews. The use of multiple methods assures a deeper understanding of the topic or subject (Frankfort-Nachmias and Nachmias 2000; Denzin and Lincoln 2005). The strengths of each method are utilized to ascertain information and collect data, thereby improving the quality of research and information collected (Babbie 1987). The process was iterative, in that it involved returning to the community for verification and validation after every stage.

Ethics approval was obtained for 2006-7 and 2007-8 from the University of Northern British Columbia and Vuntut Gwitchin First Nation. A Scientists and Explorers permit was issued by Yukon Government for both years.

3.3.1 Scoping

Scoping was undertaken prior to data collection. I met with community members and Elders in Old Crow, consultation experts with experience in Old Crow, and the Vuntut Gwitchin First Nation Chief and Council. I made a presentation to the community on the projected work and received a resolution from the General Assembly encouraging the research to go ahead. A similar resolution was obtained from Chief and Council to the same effect (Appendix C). Two weeks, spread over two discrete visits, were spent in the community of Old Crow prior to data collection.

3.3.2 Focus Groups

3.3.2.1 Overview

Focus groups ranged in size from 4-9 persons. Meetings lasted approximately one hour for each group. All meetings were audio recorded, and an official note-taker was arranged. Participation in the focus group was voluntary, and confidentiality outside the group was guaranteed. Participants were advised that they could withdraw from the group at any time, and, wherever possible, their information would be stricken from the record. All participants read, or were read an information sheet, and signed the attached focus group consent form (Appendix D). A translator (Lorraine Peter) was present to address any confusion. The focus group was conducted entirely in English. All focus group participants were paid honoraria of \$150 CAD.

Participants were given, at the beginning of the focus group session, the general list of consultation principles derived from the literature to introduce the topic and to help guide discussion. A set of questions and prompts was used to guide discussion. No participants withdrew from the focus groups. All audio tapes will be destroyed at the termination of this project to ensure anonymity.

3.3.2.2 Focus Group Adaptations

It was necessary to adapt the focus group interviews to changing circumstances. The first attempt at focus group interviews was postponed due to a death in the community. It was necessary, in reorganizing, to take two additional factors into consideration: concurrent projects and maximization of resources. The

community of Old Crow has undergone and continues to undergo much study. With this in mind, three projects combined resources in order to share resources and provide a more efficient means of sharing information. These projects were: the Arctic Athabaskan Council led 'Climate change risk assessment' (mentioned above), a joint VGFN, Council of Yukon First Nations and University of Northern British Columbia 'Food security' project (as yet untitled), and the research for this thesis.

Focus group meetings were set at 3.5 hours. Each project was guaranteed one hour of discussion time per focus group. The Climate Change Risk Assessment took the first hour, 'Building Consultation' the second, and Food Security was discussed in the third hour of the focus group. Clear lines of demarcation were drawn between each project, including a reiteration of the purpose of the project about to be discussed to ensure differentiation. The preliminary results for 'Building Consultation,' showed no crossover in topic areas. Participants were able to make a clear distinction among projects and limited themselves to the topic area under discussion. It was determined that data integrity was maintained and no special qualifications were made.

The presence of Lorraine Peter throughout all focus group meetings did not seem to affect data. I believe that her presence lent credibility to this research and also helped to instill trust in the process. Mrs. Peter is a well-respected community member and has served as the Member of the Legislated Assembly for Old Crow. Her services as translator were not utilized; however, she opened all focus group meetings, provided distinctions between the three projects being discussed and

closed the meetings. From this experience it seems very important to have a person from the community coordinate and administer focus group and public meetings.

3.3.2.3 Focus Group Feedback Mechanisms

Feedback was provided to the participants of each focus group in the form of a detailed summary report. A summary report was chosen to maintain anonymity. Several focus group members, after the focus group meeting, expressed concerns over information sensitivity and a full transcript was deemed high risk. Relevant quotations were included in the summary report; however, no direct attributions were made. The summary report is consistent with the literature in that themes were derived from the original transcript and detailed in the report. Participants were then able to comment on the themes and attendant quotations. As information was not used from the focus groups outside of the summary reports, I believe information integrity was maintained. Summary reports were mailed to focus group participants with a pre-paid, self-addressed envelope included for feedback responses, phone number and email address. A deadline of 1.5 months was set for response past the mail-out date. In addition, I made personal visits to collect feedback from participants. This feedback was included in the data analysis phase. Audio files were not shared with focus group members. The summary report was the primary document for data analysis.

3.3.3 Semi-Structured Interviews

3.3.3.1 Overview

Semi-structured interviews were chosen as the primary interview technique. This allowed for a high degree of freedom in the interview and avoided stimulus/response modeling recognized in survey techniques (Neumann 2004). Specific questions initiated discussion (Bryman and Teevan 2005); however, the interviews took on a depth interviewing approach (Hakim 1987). As described by Hakim, this form of interview is

“of variable length...and may be extended into repeat interviews at later dates. Although the interviewer guides the discussion enough to focus on the topic of interest, the depth interview provides enough freedom for respondents also to steer the conversation, for example to bring in all sorts of tangential matters which, for them, have a bearing on the main subject” (Hakim 1987, p. 26-27).

Fifteen semi-structured interviews were conducted over a span of two weeks. Interview times ranged from 25 minutes to an hour (average time approximated 43 minutes). Interviews took place in person, usually at the interviewee's place of residence, or in some cases that of the researcher. All interviews were audio recorded and notes were made of important points deserving of further discussion in the interview. A series of 14 questions were asked of each interviewee; following the interviewee response, various prompts were used to elicit further discussion and information. All interviewees read or were read an information sheet explaining the

project and advising the participant that all information would remain confidential and anonymous and that participation was voluntary and the participant could withdraw at any time (Appendix E). All participants signed the attached consent form. Notes were taken by the researcher post-interview to further contextualize comments.

3.3.3.2 Interview Feedback Mechanisms

Feedback was provided to interview participants in the form of an interview transcript. Participants could also obtain a digital audio file of the interview upon request. The transcripts were mailed out to all participants with a prepaid, self-addressed envelope included for feedback purposes. Participants could also provide feedback via email or telephone. A deadline of 1.5 months was set past the mail-out date for feedback. Feedback was included in the data analysis phase. Interview transcripts were the primary document for data analysis. I transcribed all interviews.

3.4 Insider/Outsider Status

The position of the researcher within this project merits discussion of insider versus outsider status. The insider/outside distinction is an oversimplification in most instances (Page 1999; Eppley 2006). Miles and Crush (1993) argue that the interviewee/interviewer dynamic is not reducible to an insider/outside definition. The insider/outside relationship is better viewed as existing over a continuum rather than as a binary (Griffith 1972). The researcher's position exists somewhere within

this continuum. Positionality will affect relationships, data gathering and the expression of research data (Griffith 1972).

Positivistic thinkers have tried to minimize positionality by reducing the interaction between the researcher and those being researched (Maxwell 1996). Post-positivistic methodologies, in contrast, argue that all knowledge is socially constructed (Di Leonardo 1991). Di Leonardo argues that positivistic methodology's effort to 'minimize' bias ignores the true positionality of the researcher, thereby compromising information integrity. Instead, recognizing one's positionality is the key to good research methodology, data gathering and analysis (Alcoff 1994).

Identities and attendant power relations are defined and transformed in dynamic and interactive ways (Griffith 1972). Mullings (1999, p. 341) argues that uncertainty will always be present in the evaluation and analysis of research data and that naming these uncertainties is "an important step towards not only establishing rigor in the research process, but also to displacing the indomitable authority of the author."

I continually reflected on my positionality along the continuum between insider and outsider in order to assess how it would affect the data (Merton 1972). Positionality fluctuated throughout the project due to circumstances, timing and the project's various stages. There was a great fluidity throughout the process. My position could even fluctuate within interviews depending on the content of the conversation. At some points I was a Northerner, just like they were, and at other times I was a Southern academic. The elements and issues with respect to

positionality are infinite, though it may prove helpful to list some of the more common ones. Contributing factors to the insider pole were mutual interests, common experience (hunting, trapping, wildlife, etc.), place of residence and family affiliation. Contributing factors to the outsider pole were difference in vocabulary and diction, skin colour, education, divergent interests and differing experience.

3.5 Participant Selection

Interest groups were defined by Cindy Dickson (Executive direction (Canada) of the Arctic Athabaskan Council Chair, and citizen of Vuntut Gwitchin First Nation), Darcie Matthiessen (former Director of the Old Crow Renewable Resource Council), Lorraine Peter (former MLA for Old Crow and owner of Destiny Consulting – Old Crow and citizen of Vuntut Gwitchin First Nation) and me. It was important to include Ms. Peter and Ms. Dickson, both who grew up in Old Crow and who are intimately familiar with it, and Ms. Matthiessen who, while being familiar with the community, only spent two years living there. I felt that by getting the insider and outsider input we would be able to better characterize the community and its interest groups. Interest groups were categorized by gender, family affiliation, special-interest, age and experience (Appendix B). Community members often belonged to more than one interest group. Names of community members were listed under each group as appropriate. Interest groups were then analyzed according to number, respective ages, and relative proportions of men and women. Criteria for selecting members from each group to participate in focus groups and semi-structured interviews were based on representativeness of the larger group (drawing from a variety of ages and maintaining relative proportions of men and women),

representativeness of all groups (ensuring that at least one member from all categories participated), and willingness to participate. If a selectee declined participation, the next most suitable candidate was selected based on the above criteria. Every effort was made to ensure that selectees only participated in one form of data collection (focus group or semi-structure interview) and were not selected for more than one instance of either method.

In total, 29 community members were contacted regarding the study and 26 agreed to participate. Two individuals declined to participate in the study. Reasons were not cited at the time for their refusal to participate. Participants ranged in age from 19 to 75, with the highest concentration of participants in the 30-50 year old age bracket. Twelve women and fourteen men participated in the study.

Focus group size and number were first determined by the needs of the study. Four factors contributed to size determination: the number of questions, the required time for each question, the format of the focus group session and the duration of the session (Tang and Davis 1995, p. 474). The ideal focus group number was set at 6-12 members (Lindlof 1995; Brown 1999), however; it was determined that focus group numbers could drop as low as 4 members without compromising data integrity, due to the homogeneity of the groups (Brown 1999). The number of focus groups was set at three due to time and financial constraints; however, had each focus group presented new themes, it would have been necessary to use more focus groups. The repetition of themes within the focus

groups suggested that three groups was an appropriate number (Glaser & Strauss 1967, Strauss & Corbin 1998).

Focus groups were set up with the three numerically largest interest groups in Old Crow: men, women and youth. The community of Old Crow is numerically small, so the rationale behind using the three largest numerical groups was to ensure appropriate focus group size (between 4-12 persons). An effort was made to reduce intra-group clumping – the phenomenon of smaller interest groups being included in a larger group. To this end, participants were selected so as to ensure that a wide-range of other groups were included, such as different families, occupations, etc. The backgrounds of individual participants in the focus groups was acquired and noted to better contextualize comments. VGFN employees (Chief and Council and department heads) were not involved in the focus groups to avoid any conflict of interest in the discussion forum. VGFN employees' data was gathered through semi-structured interviews.

Semi-structured interview participants were selected from the above 'interest group' criteria in an effort to include groups that were not part of the three focus groups. Fifteen interviews were conducted. Two individuals declined participation and the next most suitable candidate in both cases was contacted and agreed to participate. In three other cases, the selected individual was not present in Old Crow. Given the time-frame and logistical situation, the next most suitable individual was selected and agreed to participate in all three cases.

Overall, 26 community members participated in the project. The population of Old Crow is 256 people (Yukon Bureau of Statistics 2007). Approximately 11 percent of the population participated directly in the project. All interviewees were paid honoraria of \$50 CAD per interview, as recommended by the VGFN researcher agreement.

3.6 Data Analysis

The method for analyzing the focus group information was modeled on Fereday and Muir-Cochrane's discussion of a hybrid approach to coding (Fereday and Muir-Cochrane 2006). Fereday and Muir-Cochrane describe a methodological approach that integrates data-driven codes with theory-driven ones. A hybrid approach was used to ensure a complete coding of the data and also to differentiate between new information generated by the focus group and themes stemming from the principles of consultation provided for the meeting.

The data went through three rounds of analysis. In the first round, a codebook was used. Due to the reliance on deliberative democratic theory and public participation theory to inform discussion, it follows that use of an a priori, theory-driven template would elicit information directly pertaining to extant theory (Crabtree and Miller 1999). Fereday and Muir-Cochrane (2006) describe how when using a template, a researcher defines the template (or codebook) before commencing an in-depth analysis of the data. The codebook is sometimes based on a preliminary scanning of the text, but for this study, the template was developed a priori, based on the research question and the theoretical framework. The template used for the

data analysis in this thesis replicated the ‘Principles for consultation’ derived from the extant literature.

In the second round of analysis, themes were identified (coded) that captured the qualitative richness of the discussion prior to an interpretation of the data (Babbie 1987). The themes from both rounds of analysis were combined. Often the same data was grouped under multiple themes. In total, there were twenty-two themes identified. In the third round of analysis the relationships between patterns were identified (Bryman & Burgess 1994; Humerman & Miles 1994; Powell and Renner 2003; Neuman 2004) and grouped into five meta-themes. The data was then recoded according to these five themes. Original coding was also maintained. An example of what the data looked like after the three rounds is included below. Code A refers to themes arising from the code-book, code B refers to themes arising without the code-book and code C refers to the meta-theme.

“The Chief and those big guys up there. They are the ones that let them come in here. They are the ones that look after us.” [A3 – representative and accountable] [B6 – consultation responsibility] [B8 – community representatives] [B9 – trust] [C2 – trust and respect] [C3 – representation]

4 Results

The following sections, 4.3 and 4.4, are results of on-site research. Quotes have been employed to maintain the qualitative richness of the data. Section 4.3 details VGFN's resource application referral process. All data in section 4.3 was collected through semi-structured interviews with VGFN employees. Section 4.4 details principles or themes of consultation as identified by research participants in both semi-structured interviews and focus groups.

4.1 Vuntut Gwitchin First Nation Resource Application Referral Processes

The Natural Resources Department (NRD) of VGFN is responsible for land management as per the Vuntut Gwitchin Final Agreement. The NRD is divided into two sections; Natural Resources/Lands, and Heritage. Land based activities are administrated by the NRD Director and the Land Manager. Outside projects not directly impacting the land are assigned to the Heritage Manager who reports directly to the NRD Director. For example, this thesis, although it concerns natural resource management, was coordinated through the Heritage section because it does not directly affect the land.

The two sections have similar but distinct project review processes. Often, due to issues of capacity, one will assist the other by coordinating meetings or arranging other logistics. The processes for reviewing lands applications by each section are presented below based on interviews with VGFN employees. It should be noted that the terms 'Natural Resources' and 'Lands' are used interchangeably in the text and by interview and focus group participants quoted in the following sections.

4.1.1 Natural Resources/Lands

The bulk of information regarding applications for land exploration or development is received by VGFN through the YESAA process, which posts all project applications on a public access registry. Emails notify VGFN employees when a project is proposed that may affect the community or VGFN lands. A project proponents' first point of contact is chief and council. Chief and council vet all lands and resources applications. If appropriate, chief and council contact the Natural Resources Department (NRD) to arrange a public meeting.

"There is no standard protocol to follow. It is all about building relationships and the first step is getting in touch with Chief and Council and getting the email addresses of the people they should be in contact with and the ball starts rolling from there." [S3]

"I don't know why it [Lands] doesn't have a concrete process for them [projects] and it would make sense to develop one." [S1]

Public meetings are the primary deliberative mechanism employed by VGFN. Employees generally recognized that participation has depended on the project under discussion. Any meeting to do with oil and gas had good attendance; however, employees noted that other project meetings were not as well attended. It is the lack of attendance that has prompted discussions on how to improve communication between VGFN and the community.

"We have had some conversations internally in our department about what other options are available to get feedback; to have more involvement, higher

involvement, to put mechanisms in place to make the community feel comfortable and able to provide their feedback.” [S2]

A meeting will usually decide whether a project will go ahead and in what form. Projects are expected to report back on their progress at appropriate times, though no regulative mechanisms (such as ensuring reports are made, site inspections, environmental monitoring, etc.) is in place to monitor current projects.

4.1.2 Heritage

The primary information source for the Heritage Department differs from that of Lands, though there may be overlap in the event that an exploration or other lands project will have implications for VGFN heritage. There is no formal process in place for contacting the Heritage section so the means of initial contact vary.

“It [Heritage] has a Vuntut Gwitchin researcher application so they [project proponents] often contact the department first. There is a contact point on the website that is for researchers and media or they call [Heritage] or [Heritage] will get an application through the Scientists and Explorers Act process and [Heritage] then asks the researcher to put in a Vuntut Gwitchin application.” [S1]⁵

There is no information provided to researchers on how to appropriately consult with the community, either through the Scientists and Explorers Act or the VGFN Research Agreement. It was noted by two VGFN employees that it would be

⁵ Codes are assigned to participants to maintain anonymity. The numbers were assigned to individual participants randomly. The S and F substitute 'semi-structured interview participant' and 'focus group participant' respectively.

beneficial to make an information package available to researchers about how best to carry out research in Old Crow [S4, S10].

Once contact has been made, the project is reviewed internally for community sensitivity and may go through another review process by the Heritage Review Committee. If the application is approved, Heritage completes a research agreement with the researcher based on a template adjusted to each project. The template covers reporting requirements and other basic information sharing provisions. There is also a provision that the researcher must consult with either Heritage or the NRD Director or the Lands Manager if appropriate; however, the form of consultation is not specified [S4].

If a community member is interested in acquiring more information on current projects in Old Crow there are few options at their disposal. A VGFN employee stated that the principal means is directly from the researcher.

“Often the researcher is required to come to the community to do a presentation rather than relying on their interim reports, so that is the primary means [of gathering information on projects].” [S3]

VGFN maintains a central registry of all past and current projects in Old Crow. The registry is only accessible by the employees of the NRD.

“[Heritage] will often do a printout of all the researchers that can be expected in the year so the people can know who is coming.” [S1]

The printout was not mentioned by any other interviewee as a means of acquiring information on current projects in Old Crow, suggesting that it has minimal communication impact. One employee observed that it would be beneficial if the central registry could be made more accessible to the community.

Both the Natural Resources/Lands and the Heritage sections agreed that consultation works best when the project is not already completely defined. One employee stated,

“Good consultation is when you haven’t already set up the project or the act [territorial legislation] and there is genuine input.” [S2]

4.1.3 Summation of Current VGFN Processes

VGFN employees were knowledgeable about current Yukon Territorial project assessment processes. Employees were able to accurately outline the path a project must follow in order to be granted permission to conduct exploration, development or research. However, though employees were proficient in their responsibilities, specific problems with VGFN’s current resource management processes hinder adequate consultation.

Heritage has a template agreement that it provides to project developers conducting research on VGFN lands. However, the template agreement does not specify how, or in what form, the project developer should inform and receive feedback from the community. Lands does not have a template or protocol to instruct project developers on how to consult with the community. The result of both scenarios is that the project developer may not have adequate resources (financial

and/or personnel) or adequate knowledge to consult effectively with the community of Old Crow. The community may, as a result, be subjected to inadequate consultation. As will be noted further in this chapter, participants place responsibility on VGFN to ensure project developers have the requisite information and capacity to provide adequate consultation.

Another problem is that it is very difficult for community members to obtain information on past or current projects in VGFN lands. The central registry is not open to the public. No participant mentioned the registry printouts of incoming projects, which suggests that it has no communicative value to the community. It was noted by employees that the primary means of obtaining information is from the researcher, often at a public meeting. However, the fact that community members are expected to make a decision on a project in the same meeting as they are presented with information about the project is problematic. Community members do not have time to discuss the project and prepare their views. This situation will be discussed later in this chapter, but is worth mentioning here as it directly pertains to VGFN's current processes. The NRD employees' are always willing to receive feedback at any time from the community and have instituted an "open door" policy. It can be argued that this is not the most efficient means of disseminating information, though laudable in its manifest concern for the community.

4.2 Principles of Consultation

4.2.1 Information

Results from the focus groups and semi-structured interviews showed that quality of information is a crucial factor in the consultation process. Participants

raised three issues with respect to information: quantity, presentation and community comprehension. These three factors are interrelated. For example, the quantity of information must be coupled with appropriate presentation otherwise it will not be understood by most of the community. However, the presentation can be good and the community may understand the information presented, but the quantity is insufficient to inform decisions. While it is recognized that quantity, presentation and comprehension are inter-related, the results will be presented separately for each factor and linkages to the other two factors will be discussed where appropriate.

4.2.1.1 Information quantity

The majority of participants stated they were not receiving adequate amounts of information regarding new and current projects in VGFN territory. Responsibility in this situation was placed on VGFN for not providing enough information on current projects and activities. Responsibility was also placed on project proponents to provide interim updates to VGFN and the community on their activities. Participants suggested a number of improvements in communication lines to ensure that appropriate amounts of information were being provided by both VGFN and proponents to the community.

Eighty-five percent of participants felt they were not receiving sufficient information on current or proposed projects in Old Crow. Ninety-one percent of those who raised the issue of insufficient information quantity placed the responsibility on VGFN. The general feeling from participants who spoke on the matter was that VGFN could be doing more to inform the community on current and upcoming projects. Focus group participants (FG participants) were more outspoken

regarding VGFN's communication with the community than semi-structured interview (SSI) participants. FG participants generally agreed that VGFN was not doing enough in this regard and expressed significant frustration with the current situation.

“There should be more information provided from our government to our people about what is really happening instead of just getting a few words with blanks here and there. I think those blanks need to be filled in.” [S8]

Participants did not blame VGFN exclusively for a lack of information and recognized the need for proponents to provide interim updates on their projects and for VGFN to subsequently make them public. Seventy-eight percent of participants also placed the responsibility for information on project proponents. FG participants generally agreed that a meeting at the beginning and the end of a project is insufficient.

“The project manager from that project should keep in touch with a manager here and they should keep the community informed through meetings like as it progresses through the internet—keeping in touch.” [S5]

Participants suggested a variety of means to improve communication between VGFN and the community. I have tabulated the suggestions below (Table 4.1); the bracketed numbers reflect the number of participants who made the specific suggestion. Some participants suggested more than one improvement.

Table 4.1) Focus group suggestions for the improvement of communications between VGFN

Suggestion	#	Sample comment
Newsletter	(10):	<i>"There should be a newsletter in this community where people can know what is going on all around town what's happening what meetings when, what the meetings are about."</i> [S9]
Reports	(5):	<i>"[VGFN] could produce reports"</i> [S7]
Meetings	(4)	<i>"I think there should be more meetings, like once a month updates with Chief and Council, or maybe every two months. To keep people updated on what's going on."</i> [S9]
Radio	(3)	<i>"The radio. A lot of people listen to CHON [FM] around here."</i> [S11]
Information book	(3)	<i>"Yeah there needs to be a book somewhere listing all the researchers, IPY and whatever other research that is happening here in Old Crow"</i> [S4]
Website	(3)	<i>"Have an updates section on the website"</i> [S5]
Video	(1)	<i>"There should be a video on what's out there already, what wells are already out there."</i> [F1]
Messenger	(1)	<i>"Get somebody to go through town and let the older people know...because half the time I don't know what is going on in town. That's the way long ago you know send a messenger around, a guy running around camp, and they are going to have meeting and that and they all come together."</i> [S6]
Toll free number	(1):	<i>"It would be nice to have a toll free number to call."</i> [S5]

A minority of participants (3/26) expressed the opinion that the community was receiving adequate information from VGFN regarding projects in Old Crow. The number of women doubled the number of men in this regard. This, in my opinion, reflects their connection to activities in VGFN. All three participants, though not full-time employees of VGFN, were employed at some point. Their perception of information flow is influenced by better access (direct and indirect) to information at VGFN through working on projects and being employed by the VGFN. Another explanation may be that they did not want to speak poorly of their employer, though I have no evidence to back up this assertion.

Two participants stated that the problem also lies with the community and that community members are not actively seeking out information or attending all information sessions. While there are a number of factors associated with lack of participation, it is important to note in this section as it will certainly hinder any quantitative improvements VGFN or proponents may make if community members are not interested in taking in the information.

“Old Crow is just so...everybody just down they don’t care no more it just seem like, they just go home alone. The thing is that the general assembly, remember when the old lady passed away and [the General Assembly] started already so they had just had one day. Later on they had two days and nobody showed up. So that is part of it.” [F1]

4.2.1.2 Information presentation

Sixty-two percent of the research participants stressed the necessity of presenting information in a way that was appropriate to the community. The criticism

of inappropriate information presentation was leveled at project developers. There was no mention of VGFN presenting information in a less than satisfactory way. Participants recognized that the results of poor information presentation were frustration and absenteeism from deliberative processes, to the detriment of the community.

“Half the time I don’t understand them what the heck. Half the time I make out, eh. Depends on how they talk.” [S6]

“A lot of that jargon...is chaos and it is lost here. People get frustrated and stay away. And at the end of the day it is [the community members] who are being affected.” [S9]

All research participants who spoke on the issue agreed on the solution – simplify. Men were slightly more prominent than women (sixty-seven to fifty-four percent) in their call for simpler presentations. Participants argued that project developers must make an effort to present information in a simplified way, using simple words and breaking complex ideas down into ones that can be more easily digested by the community. Another solution mentioned by participants was the creation of a coordinator position to assist in information presentation and logistical arrangements.

“A lot of people really don’t understand. Like if you sat down with -----, and you explain it in the simplest form and try to get them to understand what you are doing, why, and take the time to explain to them, then they’ll understand it.” [S9]

"I think it would be very challenging for an outsider who hasn't spent very much time in Old Crow to try and come up here and arrange a meeting on their own, because so many things happen just by knowing the right person..." [S4]

While participants unanimously directed their suggestion for simpler presentations to project proponents there are also examples of good presentation techniques. For example, the various International Polar Year (IPY) projects conducting research in Old Crow have coordinated their presentation efforts and have shown some understanding of how to communicate with the community. In addition to all IPY projects presenting on the same day, their presentations include updates on work being conducted, preliminary results and a focus on how the community may be affected. From my experience of the presentations they were simple and contained excellent imagery. These projects serve as a good example of how to present to the community, and are recognized as such by many community members [S4, S12, S14, F2].

4.2.1.3 Community comprehension

The effectiveness of community comprehension is closely bound to the issue of information presentation, but this alone is not sufficient. When asked what some of the major obstacles to consultation are in Old Crow, almost thirty percent of the SSI participants responded 'lack of education.' They felt that information could only be simplified to a certain point beyond which the integrity of the idea becomes lost. To facilitate comprehension, a degree of instruction is required and this should be

delivered by proponents, researchers and VGFN in concert with the simplified presentations.

“The problem is to get people more educated. If they were more educated on what’s happening in meetings, to ask the right questions. Because they usually don’t understand and then they don’t know the right kind of questions to ask.” [S11]

The importance of providing rationales for why participants hold certain opinions was recognized by three participants [S11, F3, F6]. They believed community members should have the ability to say why they do not support a proposed development. This coincides with the insights of Cohen (1999), and Guttman and Thompson (1996) who stress the necessity of providing rationales behind given preferences in the success of the deliberative process. To this end, participants suggested an education component of the consultation process to improve the capacity of community members to provide reasons for their support or lack thereof for a given project. Women were slightly more prominent than men (forty-five to thirty-three percent) in their call for an education component.

“They have to be educated first so they can say why they don’t want it to come through.” [S6]

It is an interesting reversal when considering that the men were more prominent in their desire for simple presentations. The youth did not speak at all of an education component, which I believe reflects the higher levels of education among young people in Old Crow.

4.2.2 Trust and Respect

The words trust and respect came up repeatedly when discussing issues surrounding consultation. Another phrase often attached to these two words was "relationship building". According to the participants in this study, the levels of trust and respect are roughly proportional to the amount of time and effort put into building a relationship with the community. The prevailing sentiment regarding new projects was one of distrust. The distrust is explained most adequately by three factors: a history of disrespect, a lack of information flow and no recognition of community concerns. In addition there was a general distrust of the consultation process in general. Consultation was viewed as an extension of powerful forces outside of Old Crow that could manipulate them to suit their own interests. However, participants recognized that it is possible for a project to build a strong relationship with the community and thereby create mutual trust and respect.

Study participants were on the whole distrustful of oil companies. Men were much more vociferous on this issue than women. Only one woman mentioned oil companies whereas nine men commented strongly on them. Another interesting breakdown is that all participants who self-identified as people who spend a lot of time on the land were distrustful of oil companies. Participants cited a history of poor consultation and poor environmental ethics as the primary causes for this antipathy. Participants' concerns were concentrated on the protection of natural resources - especially protection of the fragile ecosystem which the community relies upon for its traditional way of life. Participants were adamant that oil companies were not taking their ecological concerns into consideration. The community and oil companies are

coming at the issue of development from drastically different perspectives: one focused on environmental protection, the other focused on environmental extraction.

"If oil companies are saying "none of the waste is going into the rivers," can I seriously believe that? No, I can't." [S7]

"An [oil] well could be leaking up there right now; they're not going to tell us."

"On one hand we are defending the land and the water; the environment. And on the other hand there are these people that want to take, take, take. So there has to be a compromise and build a good working relationship. And I think consultation is something that really needs to be defined clearly too; what is consultation and who do you consult?" [F3]

Past examples served as the basis for the general mistrust. One participant in the men's focus group was an environmental monitor for an oil exploration project and reported birds dying from eating poisoned soil which they had ingested to replenish their gizzards [F3]. According to him, the company suppressed his report and he never heard anything back about the issue. Whether the claims he makes are true or not, I have no way of independently confirming, nor do I have any reason to disbelieve them. The implications for the consultation process are the same whether it is true or not, because the implications are based on community perception. There is a distrust of oil development due to the perception of wrong doing in the past. This is a problem that cannot be easily remedied.

“You have to understand it is going to take a long time for the communities to understand and be trusting of the oil companies because of all the trauma and disrespect they did to their people twenty years ago.” [S7]

While it was recognized that the consultation process should be a significant factor in resource management decisions, there were distinct misgivings regarding whether the process was effectively serving community interests and concerns. Consequently, all participants who mentioned ‘oil companies’ believed them to be untrustworthy when it came to negotiating and implementing best practices for adequate resource protection. One participant voiced the general feeling.

“If we let them drill here, we’re finished. They don’t care what they do. If you make a meeting, it won’t stop them.” [F4]

The same distrust and antipathy were mentioned regarding outside projects in general. Another story was recounted to illustrate the lack of respect for the community’s opinion. The story had been mentioned to me before the focus group interview from which I obtained the following version. People use it as a tag for poor community involvement in projects, referring to it as ‘like them moose collars.’ While I do not have the proponent’s perspective on the story and cannot comment on the veracity of the elements described, it serves two purposes; to illustrate participants’ general distrust for the consultation process and also as a good hypothetical example of how not to go about consulting with the community.

“Spring there is some biologists, they want to go into Crow Flats and tag and collar some moose and they have a meeting during the day and everybody is

off working. [Community member name] was there [community member name], and they could barely hear what was going on. Five/six people sitting there. Why they have that meeting was to ask the public what they think about doing that. And the elders in here, just a few, said “no, we don’t want you to do that.” They have a big collar on the table and a good sized collar you know for moose and a lady said, “you’re not going to put that collar on a moose, you’ve done that on the caribou for years and now you going to start doing that to moose.” I thought, why? I ask, “why are you having this meeting?” Because they want to know if it is okay to do it. And think, with that few people they still went ahead and do it anyway, because it was the day before they were going. You have to have the company ...need ... one or two people there it’s not enough ...so they went and done it anyways. That’s not fair to me. Our leaders were supposed to be there.” [F3]

There was a strong link between a lack of trust and poor implementation. The feeling among many participants was that their involvement and input has not been reflected in project development, resource management decisions or the implementation of conservation measures. Convinced that their voices have little or no influence, the participants had become at best apathetic and at worst hostile. The solution suggested by participants who spoke on the issue is simple: make a clear implementation plan, and show where information is coming from and how it will be used in the future. The plan should also include regular community updates to ensure the community can track how its input is incorporated into development.

“The people just don’t want to ...they don’t think anything is being done. Climate change, oil and gas, caribou; they hear about these over and over. People get tired and they walk out. We can’t just talk about it at every [Gwitchin] Gathering, every General Assembly. That is not going to work. What I’m hearing is why should I go to meetings, we just talk about the same thing over and over. As soon as we talk about climate change or caribou they just walk out.” [S12]

While there was significant distrust of outside projects and the consultation process in general, not everyone held such a negative view. Many participants, especially women, spoke of the link between trust and respect in terms of the need for outside interests to build a solid relationship with the community. Respect is a highly ingrained social value in Vuntut Gwitchin culture. A story from the women’s focus group illustrates the place of trust in Gwitchin culture. It also touches on the idea of implicit trust in the sharing of knowledge. Information sharing is done in the expectation that such knowledge will not be misused. The give and take of trust and respect on both sides is the essence of building strong and lasting relationships in the community.

“You know, way back, in what we believed in, when non-First Nations first came into our country you know our people always showed them great respect. You know, we talked about this not too long ago. Where somebody mentioned you know when they came into our own home you know we were sitting at the table we would put them at the table and we would sit on the

floor. And that's how much respect that our people showed to people who live in our community and we still kind of practice that and that's something that is still ingrained in us, and especially the elders. And we had to work like hell to get the information that we need to learn for ourselves... it is important to share that information, because they're not really thinking about themselves now, just they're thinking about generations ahead. And they always trust that you're going to take that information and share it in a good way, and that doesn't always happen. And so there is a lot of fine lines and there is a lot of sensitivity that goes along with it and you and other people who gather information from our people, you know there is a lot of trust put in you and other people that come into our community.” [F8]

More than thirty percent of participants expressed the belief that a trustful relationship could be built between outside interests and the community. Women outnumbered men seven to three in their belief that trustful relationships could be created. The youth also manifested a belief that relationships could be built. Activities such as visiting homes, boarding with community members, taking part in traditional activities, eating traditional foods and spending appreciable amounts of time in the community were highlighted as means to building good relationships. Participants referenced the need to understand a more holistic view of the community when trying to understand even a part of it.

“You have to have a genuine connection to the community. You have to understand where the community is coming from. You just can't come in and

say, 'oh we're going to meet and we're going to have steaks and potatoes and a real good dessert and then we are going to share with you what we proposed to do.'" [S15]

4.2.3 Representation

4.2.3.1 Decision making representatives - Community

Issues of representation were raised frequently throughout the research.

Participants highlighted two major issues: community representation and proponent representation. Participants were somewhat divided on the question of who, if anybody, should represent the community of Old Crow in the consultation process. A minority of participants expressed the view that Chief and Council should represent the community in resource decisions. The traditional role of a chief in Vuntut Gwitchin culture may help explain participants' reticence at bestowing decision making power on chief and council. With regards to representatives from the proponent, participants were homogenous in their response.

The role of a chief in Vuntut Gwitchin, as described by one participant, was very different prior to the inception of western style democratic institutions. The chief was a provider and a leader, but did not make decisions for the whole community. He was often the best hunter and would share food with others, making sure everyone had equal amounts. He would also lead hunting activities, traditional games and other cultural celebrations. An elected chief and council that makes decisions on behalf of the community were instituted for the administrative convenience of the Federal Department of Indian Affairs. This arrangement is inconsistent with Vuntut Gwitchin tradition.

Forty-six percent of research participants felt that chief and council should not be solely responsible for making decisions on behalf of the community in relation to resource management. Participants were more confident in limiting chief and council's role than in supplying suggestions for how the community could take part in the consultation. The women's focus group suggested that representatives from the community should be elected to oversee project development. In this suggestion, responsibility and accountability for the project were major considerations. However, there was no clear consensus among participants as to what form representation should take, or what exactly consulting the entire community would look like.

"Chief and council they are just the leaders, they are not Old Crow. Old Crow is the whole community. You got to meet with the whole town." [S6]

"I think that there should be that [election of oversight committee] process and to monitor that [the project] is going according to what the agreement was."

[F7]

Contrary to the majority of participants who spoke on the issue, a minority of participants (two women, one man) felt that chief and council should be authorized to make decisions on behalf of the community because that was what they were elected to do. In considering the option of consulting the entire community in resource management decisions, a couple of participants noted the confusion that this would create in practical application. It was suggested by three participants that Vuntut Gwitchin First Nation should be the primary contact for consultation and then it would be VGFN's responsibility to inform and receive input from the community.

“Who are the people that you go to that you can truly say we consulted with the community. Because with communities do you consult with the First Nation [government], do you consult with the Elders, do you consult with the community members, do you consult with the renewable resource councils...?” [S7]

“Chief and Council because they are supposed to be our leaders and they are supposed to be working for us, the community. And if you are not in contact with your community how do you know what their needs are or what they want or what is happening in the community” [S6]

“Leadership needs to take responsibility, needs to take more responsibility and make sure these people know exactly what is going on. They’re our leaders and it is their responsibility...” [F3]

Another suggestion came from two VGFN employees who participated in the research. They suggested that a Natural Resources Review Committee be established similar to the Heritage Review Committee. The benefit of such committees is that, being at arm’s length from the government, they would have a more direct connection to the community. The Renewable Resources Committee, which is not a VGFN organization, takes on this role in part, and as per the UFA, is empowered to make recommendations to all governments (federal, territorial, First Nation) on issues related to fish and wildlife management. The suggestion of a review committee is, in a sense, a compromise between those who feel the

community should have the final say and those who feel that chief and council (and VGFN) should make the decision.

4.2.3.2 Representatives - Proponent

Fifty percent of total research participants and all participants who spoke on the issue agreed that proponents should be present at some stage in the deliberative events. The women's focus group argued that representatives for the proponents should be the decision makers for their project. This would ensure that an agreed upon course of action would not be countermanded later by a higher authority. The group also felt that if the proponent's representative was the ultimate decision maker this person would be more conscientious about providing accurate information because they would be directly accountable.

"I think the representatives from the projects should be there too in case VGFN can't answer the questions. The person that is running the project [should be there] because there could be a lack of communication if you send the wrong person [and] they might give the wrong information." [F5]

4.2.4 Openness and Timing

4.2.4.1 Openness

Openness describes the ability of community members to participate comfortably in the consultation process, for example; a process that does not take into account hunting and trapping schedules or day-care schedules is less open than one that does incorporate these elements and acts accordingly. Another integral factor in determining the openness of a consultation process is the use and quality of deliberative mechanisms (meetings, focus groups, questionnaires, etc.). Public

meetings were frequently referred to by participants as an example of what needs to be considered when designing an open consultation process.

On the other hand, forty-two percent of research participants argued that meetings were not an adequate forum for many community members to receive information and express their ideas. Many of these participants expressed an unwillingness to voice their concerns in a public meeting setting. Even participants who self-identified as vocal members of the community recognized the reticence of other community members to voice their concerns. The information presented at meetings is sometimes overwhelming and incomprehensible to many community members. There is also the added pressure of appearing uneducated or ignorant by saying the wrong thing. Offending fellow community members is another factor to be considered when voicing an opinion. In a small community, participants at a meeting are not only stakeholders, but are also each other's family and friends.

"You know before the meeting sometimes people are afraid to talk. You know, who wants to talk in a meeting? I mean it is overwhelming and then people are scared and they don't really know what to say and they get up, and then there's five boys around you and you don't want to be stepping on those toes." [S7]

"I don't think I have asked a question in public because I always think is that an appropriate question to ask? Is that a good question? So I always second guess myself." [S4]

Participants recognized that those individuals who might not attend, let alone speak, at meetings had as much right to input as any other community member. One participant stated that an effort was required from the consulting body to include these people. Other participants suggested the inclusion of a comment box where meeting participants could ask questions anonymously. An idea outside of the comment box came from the youth focus group that suggested having meetings in more traditional settings. The youth argued that formal western-style meetings are foreign to Vuntut Gwitchin and community members might feel more comfortable in smaller groups around a fire, or out on the land [F6, F11, F13].

“If you have a big gathering and big meeting like that then there is a less of a chance that a lot of these people will attend. Like a lot of the older people don’t go there. For one a lot of them have problems seeing, hearing and the language is just like not their language so right away they are lost and they get frustrated and go home and stay home.” [S9]

In spite of the problems associated with public meetings, such as attendance, comfort and comprehension, VGFN uses meetings as their primary means of informing the community and receiving feedback. The public meeting does have certain benefits associated with it such as the fact that it is a large, cost and time effective forum for information dissemination and discussion. Also it brings the community together as a whole on issues that may be of concern rather than splitting the community up into various focus groups or individual interviews. It is

unclear why another deliberative mechanism, such as house visits, is not used in tandem with public meetings.

“There are so many more other people, the quieter ones like [community member name]. You know some of the quieter people...go visit them, go ask them questions.” [S9]

4.2.4.2 Timing

The issue of timing came up frequently as a sub-theme of openness.

Deliberative events must be at times that are convenient for community members to participate and the overall consultation process must be done on a timeline that does not overly strain VGFN and community capacity. Participants expressed the need to develop community-friendly timelines. Community members need time to receive and digest information, as well as to formulate opinions and questions in order to make informed decisions. Translators also need adequate time to ensure they can understand and translate the issues being presented. Traditional activities should also be taken into account. Participants said the worst time to have a meeting was in August and September as that is when people are hunting caribou and fishing. October was deemed a good time for a meeting as freeze-up prohibits much activity on the river or traveling.

I learned from my own experience that untoward events, such as funerals or deaths in the community, can seriously affect project timelines. It is Vuntut Gwitchin tradition to cease work in order to honour the deceased. This extends to VGFN as well: all work is delayed, including all deliberative events or other consultation processes for up to one week after the death. In these cases there is little one can

do to prepare. There is no simple solution to this problem, but it might be considered by project designers and resources set aside in case of such an event.

4.2.5 Capacity

Capacity in the context of this research is described as the ability to effectively manage the responsibilities and duties associated with one's role in the consultation process. Participants described capacity in terms of human and financial resources. I have further divided the theme of capacity into two subthemes: VGFN capacity and community capacity. Capacity should be taken into account when designing any consultation process as the lack thereof can be severely detrimental to all involved.

4.2.5.1 VGFN Capacity

There was much discussion about VGFN's ability to appropriately manage their responsibility to the community. Thirty five percent of participants stated that VGFN did not have adequate capacity to meet its responsibilities, including consultation. Three of the five VGFN employees interviewed also pointed to a lack of capacity, primarily a lack of personnel. Many employees must handle a variety of tasks. Signs of wear are evident, both in terms of employee morale and other things such as delayed project deadlines and products.

"Lately I don't keep track of anything. It is just too much. There is so much, we go through so much...I don't know I can't remember. I am burning out."

[S4]

“Sometimes the deadlines are a bit short, but that is due to capacity in the office. We need more help there is no questions and it is getting good help that is the problem.” [S2]

“The newsletter is not going forth anymore, lack of capacity.” [S7]

From my own experience I can attest to the incredible strain put on certain employees, especially to those in the Natural Resource Department. In one case, I contacted an employee one month prior to a data gathering trip with the idea of arranging a semi-structured interview. I again contacted the employee upon arriving in Old Crow; however the employee was unable to guarantee a free time within the next two weeks. A tentative time was set for the next week. Upon arriving at the specified time and location, the employee informed me that we would have to reschedule due to last minute circumstances. A time was set for the next day, which again was deferred until later that day. In the end the interview was unfortunately cut short due to time restrictions. The creation of a position to coordinate the various projects in VGFN traditional territory may relieve some of the strain.

“It makes sense to have someone who is helping to coordinate all the documentation and meetings and presentations, making sure researchers get their reports in and applications and agreements done. Because once we get to the point where we give them an agreement and ask them to sign it we’re full into the summer and we often don’t have time to chase down whether they’ve done it or not until the research is already over.” [S1]

4.2.5.2 *Community capacity*

In addition to VGFN capacity, participants recognized a lack of capacity in the community to adequately participate in the consultation process. Attendance at public meetings, with the exception of oil and gas projects, is poor. There are many reasons to explain the poor attendance at meetings, including a lack of information, a lack of trust, and a lack of an appropriate forum. Another explanation indirectly referred to by participants was a lack of community capacity to deal with the deliberative mechanisms involved in consultation (e.g., questionnaires, meetings, focus groups). Many community members either do not have the time (in one case due to the lack of day care services) or the inclination to participate in much of the consultation currently being undertaken in Old Crow. One participant suggested that there is a serious risk of burning the public out with deliberative events.

“You know what I hear is historically people used to get dressed up to come to the meetings, but now that has evolved to the necessity of serving food to actually get them to come.” [S3]

“If I have to do one more questionnaire, I am going to be sick.” [S15]

“I think another thing with public consultation too, and this is one of [the] big issues, is trying not to burn the public out. We don’t want to have meetings that aren’t necessarily important so we try to walk that line as well. If you have too many then people are going to stop coming.” [S10]

The community’s lack of capacity to effectively participate in the various deliberative mechanisms associated with public consultation has far-reaching

implications. While it is true that Old Crow has been heavily studied in the past, there is no sign that the number of projects in VGFN Traditional Territory will decrease in the coming years. In fact, there are several prognostications that they will increase in the Arctic generally, bringing the necessity for more consultation (ACIA 2005, NYPC 2006).

4.2.5.3 Compensation

The subject of compensation comes up often when discussing capacity. There are two basic sides to the issue of compensation. On one side are those who believe that at least some, if not all, community members should be financially compensated for their time spent in deliberative mechanisms. On the other side are those who believe that no community members, unless it is their job to be there, should get paid for their time in deliberative mechanisms. Participants were split on the issue, though the majority of participants recognized the danger of setting precedents in the community by providing compensation.

Thirty-three percent argued for compensation. There was general agreement among these participants that it was necessary to compensate community members who live a subsistence lifestyle and who do not receive income from other sources. The youth were, with the exception of one, in favour of compensating community members. One argument stated that VGFN employees, researchers and proponent representatives all get paid for their time at the meeting so why should not community members [S9]. One participant recognized that there can be many

meetings in a year and this represents a significant amount of time for community members, valuable time that could be spent doing other necessary activities [S11].

Fifty-seven percent argued against providing compensation. Semi-structured interview participants unanimously derided the idea of compensation. On no other issue was there such a distinction between the information gathered in the focus group and the information derived from one-on-one interviews. SSI participants widely agreed that community members should not be monetarily compensated for their time at deliberative mechanisms. Instead these participants argued that meals and door prizes were sufficient compensation for community members' time.

"I don't like that idea. I think people should come into meetings if they care about what is happening to their land. Money should not be an issue; as long as you give them a meal and door prize that should be enough." [F4]

Almost thirty percent of participants and a high proportion of women (forty-five percent) feared that projects led by the community (with lower budgets) might not be able to compensate community members and thereby would suffer because the larger, outside projects have set a precedent of paying people for their time.

"...I don't think they should get paid, that is going too far; because they are going to get used to it, because if I wanted you to interview me today I get you to pay me 200 bucks. You have to be careful because you could set a precedent." [S9]

It is interesting to note that VGFN recommends outside projects provide an honorarium to focus group and interview participants. Participants in this study were all financially compensated for their time, and it was obvious that potential participants showed greater interest in the work after hearing that there would be financial compensation for their time.

4.3 Conclusion

The Yukon has many regulative processes to ensure that resource development and outside research are conducted in an efficient and appropriate way. The Umbrella Final Agreement is foremost in setting out how project proponents are to conduct consultation with communities and First Nations. The definition of consultation employed in the UFA is semantically replicated in subsequent legislation, including, YESAA and the Oil and Gas Act. Other legislation that does not replicate the definition simply defers to the original UFA three-part definition of consultation. The UFA definition does not prescribe a criteria by which consultation is to be undertaken. It does not provide a proponent with an understanding of how to consult communities or First Nations in the Yukon. As recognized above, this places both proponents and the affected First Nations and communities in an awkward position.

It is evident from the results of this study that there are many opportunities for community consultation throughout the regulative processes in the Yukon, both territorial and VGFN. The lack of an operational concept for consultation both in the legislation, guidebooks and best management practices places the burden to ensure

adequate consultation on the affected First Nation. VGFN suffers not only from being on the receiving end of poor consultation, but also from the capacity strain of dealing with each project on a case-by-case basis.

The community of Old Crow notes specific problems with the current consultation processes. The data gathered from the community is broken down into five themes: information, trust and respect, representation, openness and timing, and capacity. The theme delineation was my choice and I realize that another researcher may have made different groupings. Nonetheless, the themes and problems presented above give an accurate account of how consultation is conducted in Old Crow and how the community is impacted by it.

Table 4.2: Numerical breakdown of participants by semantic statement affirmation				
Theme	Semantic statement:	Participant breakdown		
		# Women	# Men	# Total
Information	Not Receiving adequate information regarding projects in VGFN territory	9	14	23
	- VGFN responsibility	9	12	21
	- Project developer responsibility	8	10	18
	Receiving adequate information regarding projects in VGFN territory	2	1	3
	Need for Simple presentations	6	10	16
	Need for Education component	5	5	10
Trust and Respect	Trust and respect used in tandem			
	Distrust oil companies	1	9	10
	Distrust other projects	0	7	7
	Building relationships	7	3	10
	Need for implementation	3	6	9
Representation	Chief and Council/VGFN should make resource decisions on behalf of the community	2	1	3
	Community should make resource decisions as a whole	6	6	12

	Communication between RRC and VGFN has been poor in past	0	2	2
	Proponents should be present at deliberative events	6	7	13
	Proponents meeting with the community should be decision makers	6	7	13
Openness/ Timing	Unwilling to voice concern in public meetings	7	4	11
	Do not speak public for fear of looking ignorant	2	0	2
	Inclusion of a comment box	2	3	5
	Meetings are not appropriate for Elders	7	6	13
	Need to give community enough time to understand and prepare views	5	8	13
	Deliberative events must be at appropriate times of year	11	15	26
Capacity	Lack of VGFN Capacity	4	5	9
	Lack of community capacity to participate in all deliberative events	8	8	16
	Non-VGFN employees should be compensated for their time at deliberative events	6	3	9
	Non-VGFN employees should not be compensated for their time at deliberative events	6	9	15
	Compensation will set a dangerous precedent	6	2	8

5 Discussion

The results of this research describe a small First Nation community in the Yukon with both a land claim and a self-government agreement. By virtue of the

agreements the citizens of this isolated region and, by extension, their government, possess considerable management authority over a patchwork of settlement lands within their traditional territory. Through their semi-subsistence culture the community retains close ties to the land and a strong sense of stewardship towards it. Thus, resource development interests directed towards these lands are a constant source of concern to them. Such interests are manifested as project proposals which are presented to the community of Old Crow and the Vuntut Gwitchin First Nation. Legislation developed in pursuance of the *VGFN Final Agreement*, specifically the *Yukon Environmental and Socio-Economic Act*, calls for consultation on such proposals; however, the exercise of this function is confounded by the lack of guidance in the legislation.

The following discussion revisits the questions presented at the outset of this research. The questions raised at the outset of this study had two: 1) to highlight the consultation status quo in Old Crow, and 2) examine the community's perspective on the current processes; obstacles and solutions.

The specific research questions are:

- What are general principles and procedures for consultation?
- What are the current resource management application and consultation processes for Old Crow?
- What principles and procedure for consultation are important to Old Crow?
- What are the implications of these principles and procedure for developing a consultation process?

This 'discussion' chapter will directly address how the results of this study pertain to the above-listed questions. The first two questions were addressed originally in the literature review. The role of the 'discussion' with regards to these questions then is to examine the implications of the answers and provide possible suggestions for how to resolve perceived problems. I will recount the principles and procedure for consultation derived from extant literature as they will be instrumental in identifying gaps in data collected from research participants with regards to consultation principles as well as presenting solutions to ameliorate these gaps.

The last two questions will be confronted directly in this discussion chapter. I will discuss the implications of the principles for consultation derived from participants and, on the basis of these principles, construct more complete consultation guidelines that may help to direct future resource management consultation in Old Crow.

5.1 General Principles and Procedure

In the literature review section of this paper, I examined the ideas of various authors and theorists with the aim of developing a general framework of principles and procedure to guide the consultation process. The literature did not provide, in my opinion, a list of principles that adequately covers the consultation needs of Old Crow. Many principles identified by research participants fell well outside the bounds of the general principles derived from the literature. However, in some cases, principles that are important to the consultation process were not mentioned

by research participants, but were mentioned in the literature. I am speaking specifically about the principles of funding and rights. Funding came up indirectly in discussions of capacity, but it was from the literature that the attention to funding was most explicit. Rights were not mentioned by research participants, yet as has been noted in literature review, the legal concept of the 'duty to consult' is itself based on aboriginal and treaty rights. Consultation in a sense is all about addressing possible rights infringement, something the literature makes very clear.

The principles of funding and rights are important additions to the principles identified by community members. It is also important to note that all of the other principles derived from the literature (see Table 2.5) for a complete list) were corroborated by research participants.

5.2 Current processes for resource management consultation in Old Crow

In the literature review (section 2.6), I detailed examples of various processes that regulate land use, land disposition and research activities in the Yukon and Old Crow. There is often a requirement to consult the affected community or First Nation in the regulatory processes. The problem does not lie in the lack of opportunity to consult, but in the lack of direction those consultations should take. Current resource project assessment processes do not provide an adequately operational concept to guide proponents through the consultation process. This situation affects all First Nation signatories to the UFA and [all?] communities in the Yukon, prompting some to argue for the development of individualized consultation

protocols or guidelines tailored to the needs of all of the relevant parties (Sharvit, Robinson and Ross, 1999; Alfred and Urquhart 2002).

The creation of specific protocols or guidelines has the benefit of providing a more fit-to-purpose definition of consultation. Each First Nation or community would develop a guideline and provide it to any outside proponent wishing to do work in its area. As an unlegislated definition of consultation, the drawback is that it may not be adhered to by the consulting body. It would fall into the category of 'best-practices' and have no legal force to back it up. One way to circumvent this problem is to modify guidelines so that they take the form of a 'terms of agreement,' where each party signs the document with the understanding that the document will perforce direct the consultation process.

There are two major implications of such an agreement. First, the signing of a 'terms of agreement' would help reconcile the problem of an unlegislated definition of consultation. By signing the agreement, the proponent would be committing itself to following the consultation criteria devised in the agreement. Second, the proponent may have input into the terms of agreement, thereby improving the fit-to-purpose aspect for the proponent as well as the First Nation. The terms of agreement should not be viewed as an imposition on the proponent, but rather as a mutual understanding of how consultation will be undertaken.

5.3 Implications for project development of consultation principles

5.3.1 Implications of timing:

Research participants raised two issues with respect to timing: consultation timelines and the specific timing of deliberative events. Their attention to timing as an issue in the consultation process coincides with the observations of several authors examined in the literature review (Vanderwal 1995; Sharvit, Robinson and Ross 1999; Alfred and Urquhart 2002). Vanderwal, who borrows his framework from the Commission on Resources and the Environment in which timing is mentioned, stresses the need to develop appropriate timelines both in terms of information collection and public participation. Alfred and Urquhart (2002, p. 10) suggested that a steering committee elected from the community be responsible for developing the consultation timeframe to ensure that it will adhere to community exigencies.

One area of significance focuses on the timing of deliberative events. Participants stressed that meetings or other events should be organized at times that are appropriate for the community. Many activities revolve around procuring traditional foods. It is therefore inappropriate to arrange events during hunting or trapping seasons, for example; participants mentioned that late-July to October as the worst time to organize a meeting. The exception to this rule is VGFN's annual General Assembly, which is held in August or September. The importance of this meeting may override community members' interest in being on the land. However, from my own observations, the General Assembly does not have high attendance.

This is no doubt due to other factors in addition to timing, but timing may play a role in audience participation.

Another significant issue raised by participants is the amount of time needed to understand information and provide feedback. The major complaint was that often the proponents of outside projects provide information during a meeting in which they also want a decision or significant input on the information presented. This does not leave enough time for the participants to feel comfortable in providing well-developed feedback (see section 4.2.4.1 for more information). While in other settings the method of presenting information in a meeting and immediately receiving feedback may be acceptable, due to cultural differences and language barriers, the consultation process may have to plan for a longer time frame in this regard.

It would make sense, given that timing is a major factor in involving the community in resource management decisions, that a body, representative of the community, take on the responsibility of developing the consultation process timeframe and timing for deliberative events as Alfred and Urquhart (2002) suggest. Only community members will be able to determine how long the process will need to take and when the best times to arrange deliberative events are. There are other factors that I have noticed from my own experience that an outside proponent would find very difficult to take into account when constructing a timeline. Such factors are other large meetings outside Old Crow, sickness or death in the community, and other concurrent projects placing additional strain on community capacity.

5.3.2 Implications of openness – deliberative mechanisms:

The issue of deliberative mechanisms came up frequently both in the literature review and among research participants. Arnstein (1969) details the deliberative mechanisms associated with different levels of public participation. She places meetings and questionnaires in the least participatory category of her analysis. Contrary to Arnstein, Mitchell and Parkins (2005) highlight the benefits and drawbacks of the most common deliberative mechanisms used in consultation. Their argument follows the Commission on Resources and Environment's (1995) idea that different mechanisms serve different purposes and that the process of consultation should be designed to maximize the effectiveness of each mechanism. I agree with the notion that different situations will require different deliberative mechanisms. It is important for project proponents to understand the benefits and drawbacks of all mechanisms for each community.

Research participants argued that the public meeting format is not the most suitable mechanism for the community. However, according to Mitchell and Parkins (2005, p. 11) and this is a view with which I agree: public meetings do have significant advantages over other forms of deliberation, which include audience size, cost effectiveness and time efficiency. It would therefore be a mistake to drop public meetings as a deliberative event. Rather, the point to be made is that public meetings should not be the only form of deliberation. Public meetings could be augmented to improve their deliberative integrity (see section 4.2.4.1).

Research participants argued that other mechanisms should be used in conjunction with public meetings to ensure a broad array of participation. Elders respond well to having information presented in a less formal setting. The consultation process might consider conducting house visits with elders to explain information and solicit feedback. In addition, feedback may come in a variety of forms, from written statements to discussion to allegorical stories. The consulting body should be open to accepting feedback, and providing opportunity for feedback, in a variety of forms. Feedback will be improved if the consulting body organizes other events such as focus groups, house visits, or questionnaires. Some community members feel more comfortable in less formal settings than public meetings and will be more open to accepting and providing information.

One mechanism that is never mentioned in the literature, but was suggested by research participants, is to organize trips out on the land. VGFN has done this in the past with seemingly successful results. There are three major benefits. First, it provides an informal setting conducive to two-way information flow. Second, it allows the proponent to understand the values and perspectives of the community in a more tactile way. Third, it builds relationships: highlighting the importance of partaking in community events and community life in order to build mutual trust and respect with the community. I think this would be a very fruitful avenue should any consulting bodies wish to pursue it.

5.3.3 Implications of information:

Sherry (2002) highlighted the role of communication in resource management decision making in Old Crow. Her study found that “[shared resource management (SRM)] members must be dedicated to communication that generates a continuous flow of information...” which will in turn “raise awareness and solicit feedback on the performance, results and impacts of SRM” (p. 306). Little mention was made of appropriate information forms in the examined literature on public participation and deliberative democracy, although it can be considered an implied term in many instances. For example, Cohen’s (1999) principle of equality can only be realized if all sides have access and capacity to understand all the pertinent information to make decisions.

Research participants stressed that information should be presented, as with all deliberative events, in a manner that is easily understood by community members. Towards this end, the consulting body may want to consider keeping language non-technical and at a level that is comprehensible to all community members, include a translator, relate ideas to things the community already has experience with and make use of multimedia throughout their presentations if appropriate. In addition, supplementary information that can be left with community members is also beneficial.

However, and it might in part explain the literature’s ignorance of this issue, appropriate forms of information and presentation will depend upon the audience and the community. What may be appropriate for Old Crow may not be appropriate

for another community in the Yukon. It is important to have a good understanding of the level of education regarding the issue to be discussed prior to embarking on a deliberative event. Determining appropriate information and presentation will require connection with the community before organizing deliberative events.

5.3.4 Implications of representation

Research participants argued that in order to maintain information integrity and accountability it would be preferable to have representatives from the project proponents who were in a decision making capacity (see section 4.2.3.2 for more information). This point is also raised in Cohen's (1999, p. 73) work on deliberative democracy in which he states that participants should have equal deliberative capacity. Guttman and Thompson (1996, p. 112) also state that each participant in the process should be accountable to every other participant. One way to ensure this equality and accountability is for all participants in the consultation process to have decision making capacity.

The question of who represents the community is very complex and cannot be resolved definitively here. The chief and council are elected in a western-style fashion and with the ostensible understanding that they are authorized to make decisions on behalf of the community. A significant portion of research participants argued that chief and council could not speak on behalf of the community regarding resource management or land development projects. Community members, suggested other associations may be suitable for overseeing project development, such as community elected committees or even the entire community. It may be a

lack of communication that explains the disconnect between the roles of chief and council and the perceptions of community members, or there may be a wish for more direct involvement in decision making. I believe this is an issue that deserves more scrutiny and more research.

5.3.5 Implications of capacity

Data collected from research participants suggested dividing the issue of capacity into three sub-issues: VGFN capacity, community capacity and compensation. Capacity also arises in the literature surrounding consultation and public participation. Marsden (2005) recommends that proponents plan to contribute finances or other resources to the First Nation being consulted if necessary. Sharvit, Robinson and Ross (1999) do not make recommendations but stress that failure to consider capacity constraints could halt the consultation process altogether.

VGFN showed signs of capacity strain. The multitude of projects being conducted in their jurisdiction and the lack of personnel available to coordinate VGFN's participation in these projects presents a significant hindrance to the consultation process. Several suggestions were made to relieve the burden on VGFN employees, including the creation of a project coordinator position, the creation of a lands review committee and making the land application process more efficient. I believe all suggestions have merit, but require significant organization and resources. It may be that capacity will have to be developed over the long term and with financial or personnel support from projects with which VGFN is involved.

The research data suggests a strong link between VGFN capacity and community capacity. Many community members are disheartened by the lack of information flow from VGFN and the lack of visible implementation of community concerns, resulting in a lack of trust that VGFN is operating in the community's best interest. A partial solution to increasing community capacity may be increasing VGFN's project management effectiveness and communication efficiency. The more community members know about projects and the more they trust their involvement will be meaningful the more they may be interested in participating.

The issue of burning the community out with deliberative events has profound implications for developing consultation processes. The population of Old Crow is small. As such, many of the same community members are involved in most of the projects that come through. Additionally, these community members are involved with various boards and the functioning of VGFN. The solution to community burnout is not to create more incentives for community members to participate. Rather the best solution is to limit or integrate deliberative events. In the two most recent cases where it has been tried, the results have been successful. The projects associated with the International Polar Year arrange their presentations and community feedback sessions on the same day. The turnout has been good both the years that it has been conducted. Another example is the research for this thesis. The focus groups used in this research were also used for two other projects, the Arctic Athabaskan Council led Climate Change Risk Assessment and the University of Northern British Columbia led Food Security study. In this case the projects were of widely different natures. Community members responded well and

were able to differentiate and provide information to each project. The success of these two examples could inform the organization of deliberative events that conglomerate different projects.

Compensation was an issue that frequently came up in the research data. There was no clear consensus among research participants as to whether or not participants in deliberative events, such as public meetings, should be financially compensated for their time. VGFN recommends that projects compensate community members for deliberative events that require fewer people than meetings and higher levels of expected participation, such as focus groups or questionnaires. While I think there is a real threat of setting a precedent to the detriment of community led projects with low budgets, there is a good argument for reimbursing people for time that they could be spending on other things. In a subsistence economy, cutting and drying meat is like working for pay, though people who do so for their own consumption do not get paid. Western society often overlooks this fact. It may be too onerous to insist on compensation for large meetings, but it seems reasonable that for smaller deliberative events with a high level of interaction, participants be paid for their time.

5.3.6 Implications of trust and respect

A theme that crosscuts all principles outlined by participants is that of trust and respect. Principles will be discussed through the lens of this pervasive theme and how it can affect the consultation process. Many obstacles in the consultation process can be removed by focusing attention on trust and respect and, specifically,

on building relationships. Trust and respect can be viewed as an umbrella under which all the other principles of consultation reside. I will provide clear examples of how encouraging the development of trust and respect can ameliorate many of the other issues raised in the research and how in turn finding solutions to some obstacles will increase trust and respect.

Participants recommended spending an appreciable amount of time in the community. The point was so well encapsulated in the following statement that I have chosen to replicate it from the Results chapter;

"I think one of the ways to build trust is just visiting around with people having tea eating their food not acting like you are better than them. Just visit. So many people love visiting. They'll tell you stories, they'll tell you pretty soon how they would like to see things. Pretty soon they are involved in not only this part of your work, but they are involved in building a relationship. Pretty soon it is building a rapport and helping you to do this [research] as well."

In essence, spending time with people, eating their food, being in their space and listening to their stories is an effective way to begin building a relationship with the community. The youth focus group also mentioned visiting people in a place where they are comfortable. The idea of a large, indoor meeting with formal attired outsiders at the front of the room is so alien to the everyday life of most community members that it is no wonder they are intimidated and think, deliberate and speak out. Community members want to share their culture and their ideas, but they want to impart these things to somebody they know will understand them. Simply by

sitting and listening to them in their own homes, experiencing their daily lives, one can derive a great deal of information.

The first benefit, from a consultation perspective, in building relationships is that it will significantly enhance the amount and quality of feedback, and include participation from a broader array of society than simply a public meeting. Another benefit is that it will make the communication of information much easier. Visiting with community members prior to large public meetings will improve the communication of information at the meetings themselves. The proponent will have a better understanding of what the community as a whole knows what they do not know. The proponent will know how to talk to the community and in turn the community will know how to communicate with the proponent. The easiest way to find a cultural middle-ground is through dialogue – getting to know one another.

One of the major problems with the consultation process is that community members do not trust the players. A major reason is poor project management in the past. Two examples were referenced in the Results chapter; moose-collaring and dying birds. In the first example, the project's consultation amounted to nothing more than an information session. In the second example, information was deliberately suppressed regarding the environmental disturbance created by the project. These examples and many others have left a poor, and ultimately undeserving, image of outside projects in the minds of community members. Time and ethically sound project practices will no doubt assuage the feelings of wrong-

doing, but a more expedient means to rectify the situation is to build personal relationships.

Other issues, such as information sharing and accountability are closely related to trust and respect. Participants in the study did not feel like they were receiving adequate amounts of information from VGFN on decisions being made on the community's behalf. By sharing more information, and in a variety of media, VGFN will do much to restore trust lost through opaque reporting processes. Regular reports, meetings and newsletter will make VGFN more accountable to its constituency. The increased levels of trust and respect, as a result of better communication practices, will allow for a smoother functioning of the consultation process. Open, transparent processes, especially manifested through information sharing, will involve the whole community. The question will not be, 'What group does one consult with?' because all groups will be informed about the proposed project and will have input into any decision, through other complementary mechanisms. It will help answer the question put forth by one participant,

"Who are the people that you go to that you can truly say we consulted with the community. Because with communities do you consult with the First Nation [government], do you consult with the Elders, do you consult with the community members..." [S7]

An interesting feature of the results was how gender was reflected in participants' responses to the theme of trust and respect. In no other theme was there such disparity between the responses of women and men. The men were far

more distrustful of the consultation process, including the parties within it, whereas the women were far more accommodating and focused on relationship building. Men recognized the problem and the women recognized the solution. It is safe to suggest that the polarity of this issue should be reflected in all VGFN consultation processes through equal representation of men and women.

5.4 Legislated Definition

The above discussion has focused solely on the context and situation of Old Crow. I feel it is important to step beyond the Old Crow example and recommend changes to the consultation standard in the Yukon that might see benefits for other First Nations under its jurisdiction. The justification for this extrapolation is based on my experience, the general principles noted at the conclusion of the literature review, the principles raised by the community of Old Crow and through discussions with other facilitators in the Yukon. The most obvious starting point is the nebulous definition of consultation contained in the Umbrella Final Agreement. There are two reasons for the definition's lack of coherence. First, consultation had to be included in the UFA to ensure that First Nation participation would be included in legislative and resource management decisions. Second, the definition had to remain flexible to different communities and situations. It is much the same rationale as that employed by the courts in their decision not to prescribe definitive consultation criteria.

However, in my opinion a more detailed definition of consultation is possible without creating a situation that would hamper the consultation process. Of the

major themes discussed in this research, the UFA definition only takes into account three of them – information, timing and implementation – and even then it is a very general treatment. It would not hurt the UFA definition to include many of the other factors in the same general way that it treats the above three. To recap, the UFA states;

‘Consult’ or ‘Consultation’ means to provide:

- a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;*
- b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and*
- c) full and fair consideration by the party obliged to consult of any views presented. (UFA 1993 Definitions p. 2)*

There is no mention in the UFA of appropriate representatives, deliberative mechanisms or events, audience, extant consultation guidelines provided by the First Nation, or issues to do with capacity; all of which are key issues raised by research participants and in the literature. Consultation has evolved considerably since the early 1990s, aided by legal precedents, increased attention from academics and other theorists and First Nations’ larger role in land use and

stewardship. It is necessary to update the UFA's definition to manifest the current perception of what makes for adequate consultation.

It is not unreasonable to suggest that the definition of consultation provided in the UFA should be revisited and updated. Definitions of consultation based on the definition contained in the UFA, such as those contained in the Yukon Environmental and Socio-Economic Assessment Act and the Yukon Oil and Gas Act, would also need to be updated to reflect the new UFA definition. In an aim to show where theory can inform practice, I have provided an example of a more complete definition of consultation, based on research participant information and principles derived from extant literature on public participation. Below each tenet, I provide a brief rationale to explain the tenet's placement in the definition.

A more appropriate definition, taking a more holistic view of consultation, is:

'Consult' or 'Consultation' means to provide:

- a) to the party to be consulted, notice of a matter in sufficient form and detail to allow that party to prepare its views on the matter;*

Rationale: As participants observed, any communication must be in a 'form' comprehensible to the community. Providing notice before a deliberative event will allow the community time to discuss and prepare initial views.

- b) representatives from the consulting party whom are in a decision making capacity;*

Rationale: As suggest by participants, this principle would increase equality and accountability in the process.

- c) a variety of deliberative mechanisms to ensure a broad range of participation;*

Rationale: As participants observed, public meetings are not a suitable forum for many community members. A variety of deliberative mechanisms will improve the quality and quantity of participation.

- d) *if available, full and fair attention to extant 'consultation guidelines' produced by the consulted party;*

Rationale: Sharvit, Robinson and Ross (1999, p. 7) stress that consultation criteria will not be widely adhered to unless the courts make it legally binding. The definition in the UFA, by referencing locally produced guidelines, will make the guidelines a necessary part of the consultation process.

- e) *recognition of the consulted party's capacity constraints, and willingness to assist where possible;*

Rationale: Research participants highlighted issues of capacity both in VGFN and the community. A lack of capacity can hinder and possibly even fatally undermine the consultation process. It is in the best interest of the proponent to provide assistance where required to facilitate the process.

- f) *full and fair consideration by the party obliged to consult of any views presented;*

Rationale: The wording for this tenet is taken directly from that already contained in the UFA. Research participants consistently articulated the feeling that they were not being listened to. Cohen (1999) argues that a fundamental tenet of the deliberative process is equality. Marsden (2005, p.36) goes further and states that the consultation process should be a two-way flow of information and employ equal value of inputs.

g evidence of incorporation or expulsion of presented views in any further decisions

Rationale: Research participants frequently raised the issue that their input seemed to have no effect on project development. This sentiment was used to explain, in part, poor participation in meetings and a lack of trust in the consultation process. In order to increase participation and trust it seems reasonable that clear implementation of community concerns and input be shown or provision of a good reason(s) why their input was not heeded.

5.5 Consultation within a community

Consultation may take many forms within a community and any community/First Nation produced guidelines will need to take this fact into account.

On VGFN Settlement Land community consultation is really community project assessment. The community decides whether the project that affects their lands can continue and, if so, under what conditions. YESAA must also have its say in any land development, but ultimately the future of the project is up to the community. On Traditional Territory land, the community does not have the same veto power. Similarly, the community cannot restrict access to researchers who have obtained a Scientists and Explorers Permit.

The community must define consultation in relation to what it wants out of the process. Specifics to consider when defining the process are the degree of impact on the community of a proposed project, the amount of information required to make informed decisions and the amount of involvement necessary from the community level to ensure the project is carried out in an appropriate and sensitive manner. A lesson may be taken from YESAA, which provides three tiers of assessment. Each tier has specific consultation requirements. Communities could implement something similar to differentiate the consultation requirements among different projects. One can easily see that a non-invasive research project, such as studying traditional Vuntut Gwitchin hymns, has much less consultative responsibility than a large-scale, land-altering project such as oil and gas exploration. It would be inappropriate to assign both proponents equal consultation responsibilities. Responsible personnel would be assigned the task of deciding where each project fits in the consultation tier system, and consequently what information should be provided to the proponent explaining how the community expects consultation to be executed.

The creation of a NRD Review Committee, as suggested by some research participants, would reduce the strain on VGFN personnel to conduct the prescreening of project applications and assign them to the appropriate tier. The NRD Review Committee, as the executive committee is in YESAA, would be responsible for administering and ensuring adequate consultation in high-tier projects.

5.6 Conclusion

The above discussion attempts to answer the questions put forth at the outset of this research. The research is a necessary addition to consultation theory and public participation literature in a number of ways. As noted in the introductory chapter, the special connection First Nations have to their surrounding natural environment has important implications for consultation and, with the exception of McKillop (2002) and Sherry (1999, 2002) has received little attention in this light. Further, the important role of the resource extraction industry in the economy of the Yukon ensures that development will continue and may even grow in the future. First Nations who have signed land claims and have special jurisdiction over land in the Yukon will face pressure from the resource industry in the form of applications for exploration and development. It is important in this regard to conduct research and better understand the issue of consultation.

Overarching legislation will not prescribe a definition for consultation. The reason is that the definitions must be applicable on a broad level. They must be flexible enough to deal with a variety of situations and circumstances and still remain

valid and relevant. This is not a criticism of 'consultation' on the broad scale, but rather a recognition of its place and its limitations. In being so general, big 'C' consultation as it has been termed (legally defined consultation) is insufficient in guiding adequate and meaningful processes for First Nations in the Yukon.

This would not be a problem of course, if the courts had not placed a fiduciary obligation on the government to consult with First Nations. Precedents beginning in the early 1990s have produced an obligation for government (Federal, provincial and territorial) to consult with First Nations in the event of possible aboriginal right or treaty infringement. Recently, a bridge has been created between legal precedents set outside of the Yukon to the specific circumstances surrounding the terms of the Umbrella Final Agreement. The Government of Yukon has been given a directive by the Territorial Supreme Court that it must consult with First Nation signatories in the event of possible treaty right infringement. As noted above, consulting parties have little direction on how to adequately engage First Nations and communities in the Yukon.

Project proponents have the same difficulty as the governments in coming to terms with adequate consultation. As noted, it is in the best interest of a resource company to meaningfully engage with and maintain good relations with First Nations and communities. While coming from different perspectives, there is no reason that all parties cannot build trust and respect for one another and mutually benefit from the arrangement. Consultation is the means by which these relationships and projects are developed. It is thus very important for proponents to have a good

understanding of how to consult with First Nations and communities on their own terms.

There is a substantial need to develop consultation on a more specific scale, a smaller scale, but also to push out the theoretical underpinnings of consultation. It is imperative to develop a broader understanding of consultation, one that is more appropriate to consultation in its legal context of ensuring appropriate and adequate representation of consulted parties. The research presented in this thesis argues that there are principles and procedures at the community level that are sufficient in guiding an adequate and meaningful process. Added to the principles provided in the literature are the themes derived from the research data: information, trust and respect, representation, openness and timing, and capacity. Especially important are the implications associated with those themes. It is these principles and themes that are at the heart of what consultation efforts should focus on in Old Crow.

This research is the first step in beginning the process of better understanding consultation on a more comprehensive scale. Consultation can no longer be considered in its restrictive definition contained in the public participation literature, which views it as tokenistic information sharing. This thesis has helped to expand the theory of consultation by showing that the definition of consultation must take into account principles such as trust, respect, adequate and appropriate timelines, capacity, representation and openness.

The Vuntut Gwitchin First Nation and community of Old Crow will be able to use the information provided here to potentially develop comprehensive consultation

guidelines to direct further projects (both resource and research based). In lieu of prescriptive legislated definitions for consultation, it falls to individual First Nations and communities to develop their own guidelines. It can be hoped that adherence to individualized guidelines will be reflected in future legislation.

5.7 Future Research

Following from this research it seems that more can be done in developing and testing a comprehensive consultation guideline for Old Crow. Researchers and/or administrators could use the findings presented in this thesis to begin the construction of a comprehensive guideline. The guideline would then be taken through a consultative process to receive feedback from community members. After community ratification, it might be used for all future incoming projects.

Similar guidelines could be created for all eleven signatories of the UFA. Case-studies could be conducted on what the First Nation and community want out of consultation in their area. Guidelines could then be crafted based on the case study research.

It would be interesting to do a comparison of similar case studies in the Yukon once they are completed to discover if there is much overlap between First Nations and communities when it comes to consultation. There are many implications for significant overlap, not the least of which is incorporation into legislated definitions of consultation. The similarities between case studies could also work towards streamlining the process of developing consultation guidelines for the remaining First

Nations and communities. They could use the overlap and differences as a base on which to develop their own guidelines.

There are many possibilities for future research in resource management consultation in the Yukon and the suggestions listed above are only a few of them. As discovered through this thesis, research is simply not enough; there must also be a clear plan for implementation.

6 Works Cited

- Alcott, L. (1994). Cultural feminism versus post-structuralism: The identity crisis in feminist theory. In Culture/power/history: A reader in contemporary social theory. Dirks, Eley, and Ortner (Eds.). Princeton: Princeton University Press.
- Alfred, R. and Urquhart, D. (2002). How to consult in Selkirk Traditional Territory; A model based on the 'Dooli'/Traditional law process [Final Draft]. Pelly, YT: Selkirk First Nation. Available at Selkirk First Nation Office
- Arnstein, S. R. (1969). "A ladder of citizen participation," JAIP. 35(4): 216-224.
- Babbie, E. (1987). The practice of social research, (5th ed). Belmont, CA: Wadsworth.
- Bohman, J. (1996). Public deliberation: pluralism, complexity, and democracy. Cambridge: MIT Press.
- Booth, A. and , G. (1997). Discussion paper on concepts: Community. Prince George, B.C: University of Northern British Columbia
- Booth, A. and Halseth, G. (1999). Public participation and the new forest economy: Discussion paper on concepts: Citizen participation in resource management. Prince George: University of Northern British Columbia.
- Brown, J. B. (1999). The use of focus groups in clinical research. Crabtree & Miller (Eds.), Doing qualitative research (2nd ed.). Thousand Oaks: Sage. 109-124
- Bryman, A. and Burgess, R. (Eds.) (1994). Analysing qualitative data. London: Routledge.
- Bryman, A. and Teevan, J. (2005). Social research methods: Canadian edition. Oxford: Oxford University Press.
- Bureau of Statistics, Government of Yukon (2008). Population 2007. Whitehorse, YT: Government of Yukon.
- Canadian Association of Petroleum Producers (2003). Guide for effective public involvement. Calgary, AB: CAPP
- Coates, K. S. and Morrison, W. R. (1988). Land of the midnight sun: A history of the Yukon. Edmonton, AB: Hurtig.

- Cohen, J. (1999). Deliberation and democratic legitimacy,. Deliberative democracy: Essays on reason and politics. Bohman and Rehg (Eds.). Cambridge, MA: MIT Press.
- Commission on Resources and Environment (CORE) (1995). Public participation: Rights and responsibilities, community resource boards. The provincial land use strategy. Victoria, BC: Government of British Columbia.
- Corell, R. W. and Cleveland, C. J. (2004). Arctic climate impact assessment (ACIA). Cambridge, UK: Cambridge University Press.
- Crabtree, B., and Miller, W. (1999). A template approach to text analysis: Developing and using codebooks. In B. Crabtree & W. Miller (Eds.), Doing qualitative research (pp. 163-177). Newbury Park, CA: Sage.
- Charlie, Alfred (N.D.). Alfred Charlie describes Dagoo like at Kaachik. Date accessed: October 2009.
<http://plunge.vgfn.org/places/kaachik/stories/alfred_charlie_describes_dagoo_life_at_kaachik/>
- Creswell, J. W. (1994). Research design: Qualitative and quantitative approaches. Thousand Oaks, CA: SAGE Publications Inc.
- Cultural Services Branch, Department of Tourism and Culture, Government of Yukon (April 2008). Guidebook on scientific research in the Yukon. Accessed November 2008.
<http://www.tc.gov.yk.ca/pdf/science_research_guidelines.pdf>
- Cunningham, F. (2002). Theories of democracy: A critical introduction. New York: Routledge.
- Daniels, S. and Walker, G. (1996). Collaborative Learning: Improving Public Deliberation in Ecosystem-based Management. Environmental Impact Assessment Review. 16: 71-102
- Dawson District Renewable Resources Council (2003). Renewable Resources Council Training Handbook. (Illus.) Urquhart, D. *Available from Dawson District RRC*.
- Denzin, N. K., Lincoln, Y. S. (Eds.) (2005). Handbook of qualitative research (3rd ed.). Newbury Park, CA: SAGE Publications, Inc.
- Department of Economic Development, Government of Yukon. Yukon economy in 2008. Whitehorse, YT: Government of Yukon. Accessed March 2008. <<http://economics.gov.yk.ca/economy08/>>.
- Department of Energy, Mines and Resources, Government of Yukon (2006). Energy, mines and resources (emr) assessment – Regulatory guide: A guide

to explain how EMR's regulatory regime works with the assessment process under the Yukon Environmental and Socio-economic Assessment Act (YESAA). Whitehorse, YT: Government of Yukon. Accessed November 2008. <http://www.emr.gov.yk.ca/pdf/yesaa_guide_final_web.pdf>

- Department of Energy, Mines and Resources, Government of Yukon (2001). Yukon oil and gas licensing process. Whitehorse, YT: Government of Yukon. Accessed November 2008. <<http://www.emr.gov.yk.ca/oilandgas/pdf/licensingprocess.pdf>>
- Department of Energy, Mines and Resources, Government of Yukon (2006). Oil and gas best management practices for historic resources. Whitehorse, YT: Government of Yukon.
- Deveaux, M. (2000). Cultural pluralism and dilemmas of justice. Ithaca, NY: Cornell University Press.
- Di Leonardo, M. (1991). Gender at the crossroads of knowledge: Feminist anthropology in the postmodern era. Berkeley, CA: University of California.
- Eppley, K. (2006). Defying insider-outsider categorization: One researcher's fluid and complicated positioning on the insider-outsider continuum. Forum: Qualitative social research, 7(3): 5-21 Accessed February 2007. <<http://www.qualitative-research.net/fqs-texte/3-06/06-3-16-e.htm>>.
- Feagin, J. and Orum, A., and Sjoberg, G. (Eds.) (1991). A case for case study. Chapel Hill, NC: University of North Carolina Press.
- Fereday, J. and Muir-Cochrane, E. (2006). Demonstrating rigor using thematic analysis; A hybrid approach of inductive and deductive coding and theme development. International Journal of Qualitative Methods, 5(1): 1-11.
- Flyvbjerg, B. (2006). Five misunderstandings about case-study. Research qualitative inquiry, 12 (2): 219-245.
- Frankfort-Nachmias, Chava and Nachmias, D. (2000). Research methods in the social sciences. New York: Worth.
- Glaser, B. G., & Strauss, A. L. (1967). The discovery of grounded theory: Strategies for qualitative research. Chicago, IL: Aldine Publishing Company.
- Griffith, A. (1998). Insider/outsider: Epistemological privilege and mothering work. Human studies. Rotterdam. NE: Springer Netherlands.
- Gutmann, A. and Thompson, D. (1996). Democracy and disagreement. Cambridge, MA: Belknap Press of Harvard University Press.

- Hakim, C. (1987). Research design: Strategies and choices in the design of social research. London: Allen and Unwin.
- Hassol, S. J. (2004). ACIA Impacts of a warming climate: Arctic climate impact assessment executive summary. Cambridge, UK: Cambridge University Press.
- Huberman, A.M., and Miles, M.B. (1994). Data management and analysis methods.' In N.K. Denzin and Y.S. Lincoln (Eds.). Handbook of qualitative research. Thousand Oaks, CA: Sage, 209-219.
- International Association for Public Participation (IAP2) (2006). Public participation spectrum. Accessed June 2008.
<<http://www.iap2.org/displaycommon.cfm?an=5>>
- Kuper, A. and Kuper, J. (1985). The Social science encyclopedia. Boston, MA: Routledge & Kegan Paul.
- Lackey, R.(1998). Seven pillars of ecosystem management. Landscape and urban planning. 40(1-3): 21-30.
- Lamont, A. (2006). Policy characterization of ecosystem management. Environmental monitoring and assessment. 113: 5-18.
- Lee, K. (1999). Appraising adaptive management. Ecology and society. 3(2): Article 3.
- Lindlof, T. R. (1995). Qualitative communication research methods. Thousand Oaks, CA: Sage.
- Macedo, SS (1999). Deliberative politics: Essays on democracy and disagreement. New York, NY: Oxford University Press.
- Marsden, T. (2005). From the land to the supreme court, and back again: Defining meaningful consultation with first nations in northern British Columbia. MA Thesis. Prince George: University of Northern British Columbia.
- Maxwell, J. A. (1996). Qualitative research design: An interactive approach. Thousand Oaks, CA: Sage Publications Inc.
- McKillop, J. (2002). Toward culturally appropriate consultation: An approach for Fort Mckay First Nation. Calgary, AB: University of Calgary.
- Meriam, S. B. (1998). Qualitative research and case study applications in education. San Francisco, CA: Jossey-Bass Publishers.

- Merton, R. K. (1972). Insiders and outsiders: A chapter in the sociology of knowledge. American journal of sociology, 78: 9-47
- Miles, M. and Crush, J. (1993). Personal narratives as interactive texts. Professional geographer. 45(1).
- Mitchell, R.E. and Parkins, J.R. (2005). Practitioner's guide to public deliberation in natural resource management. Edmonton, AB: Northern Forestry Centre.
- Morghan, K. and Sheley R. and Svejcar, T. (2006). Successful adaptive management – The intergration of research and management. Rangeland ecology management. 59: 216-219.
- Mullings B., (1999). Insider or outsider, both or neither: Some dilemmas of interviewing in a cross-cultural setting. Geoforum. 30(4).
- Natcher, D. C. (2001). Land use research and the duty to consult: A misrepresentation of the aboriginal landscape. Land use policy. Vol. 18, No. 218(2): 113-122.
- Neuman, W. L. (2004). Basics of social research: Qualitative and quantitative approaches. Boston, MA: Pearson Education Inc.
- North Yukon Planning Commission (2008). Recommended North Yukon land use plan: Nichih Gwanal'in, looking forward. Whitehorse, YT: North Yukon Planning Commission.
- Oil and Gas Act; Oil and Gas Disposition Regulations, Y.O.I.C 1999. Accessed March 2008.
<http://www.emr.gov.yk.ca/oilandgas/pdf/reg_disposition.pdf>
- Page, E. C. (1999). The insider/outsider distinction: An empirical investigation. The British journal of politics and international relations. 1(2).
- Parker, Z. (1996). Public advisory bodies in land use planning: A synthesis of ministry of forests staff experience. Victoria, BC: Ministry of Forests.
- Powell E. and Renner, M. (2003). Analyzing qualitative research. Madison, WI: University of Wisconsin.
- Roberts, R. (1995). Public involvement: From consultation to participation. Environmental and social impact assessment. Vanclay, F. and Bronstein, D.A. (Eds.). New York, NY: John Wiley & Sons.
- Rosenblatt, P. (1981), Ethnographic case studies. Scientific enquiry and the social sciences. Brewer, M. and Collins, B. (Eds.). London, UK: Routledge

- Sharvit, C. and Robinson, M. and Ross, M. (1999). Resource developments on traditional lands: The duty to consult. Calgary, AB: Canadian Institute of Resources Law.
- Sherry, E. E., and Vuntut Gwitchin First Nation (1999). The land still speaks: Gwitchin words about life in Dempster Country. Whitehorse, YT: Vuntut Gwitchin First Nation.
- Sherry, E. E. (2002). Constructing partnership: a Delphi study of shared resource management in the north Yukon. PhD. Dissertation. Prince George, BC: University of Northern British Columbia.
- Smith, P. and McDonough, M. and Mang, M. (1999). Ecosystem management and public participation; Lessons from the field. Journal of Forestry. 97(10): 32-38.
- Statistics Canada (2006). Profile of Aboriginal Peoples for Canada, provinces, territories, census divisions and census subdivisions, 2006 census. Government of Canada. Released 15/01/2008. Cat. # 94-578-X2006001.
- Strauss, A., and Corbin, J. (1998). Basics of qualitative research: Techniques and procedures for developing grounded theory (2nd Ed.). Thousand Oaks: Sage.
- Tang, K. and Davis, A. (1995). Critical factors in the determination of focus groups. Family Practice. Oxford, UK: Oxford University Press. 12(4): 474-475.
- Tellis, W. (1997). Application of a case study methodology. The qualitative report. 3(3). Accessed February 2007. <<http://www.nova.edu/ssss/QR/QR3-3/tellis2.html>>
- Umbrella Final Agreement between The Government Of Canada, The Council For Yukon Indians And The Government Of The Yukon (1995).
- Van Velsen, J. (1967). The extended-case method and situational analysis. The Craft of Social Anthropology. A.L. Epstein (Ed.). London, UK: Werver.
- Vanderwal, J. (1995). Public Participation in Environmental Management. Accessed November 2007. <<http://www.interchange.ubc.ca/plan/thesis/vanderwal/chap3.htm#s36>>
- Vuntut Gwitchin Final Agreement (1996). Accessed March 2008. <<http://www.vgfn.ca/vgfnfa/>>
- Wein, E.E., and Freeman, M.M.R. (1995). Frequency of traditional food use by three Yukon First Nations living in four communities. Arctic 48:161–171.

- Werret, J. (1999). Aboriginal self government. Library of parliament: Parliamentary research and information service. Accessed February 2009. <http://www.parl.gc.ca/information/library/PRBpubs/962-e.htm#3>. Yukon-t
- Yin, R.K. (1984). Case study research: Design and methods. London, UK: Sage Press.
- Yukon Government (2008). First Nations Land Claims. Department of Energy, Mines and Resources.
<http://www.emr.gov.yk.ca/mining/yukon_first_nations_land_claims.html>
- Yukon Government (2008). Yukon's Oil and Gas Rights Disposition Process. Department of Energy, Mines and Resources.
<http://www.emr.gov.yk.ca/oilandgas/rights.html#Yukons_Oil_and_Gas_Rights_Disposition_Process>
- *Yukon Scientists and Explorers Act* (2002)

Cases cited:

- Fletcher v. Minister of Town and Country Planning, [1947] 2 E.R. 496
- Haida Nation v. British Columbia (2004) BCSC 374
- Klahoose First Nation v. British Columbia (Minister of Forests) (1995) 13 B.C.L.R. 59
- Little Salmon/Carmacks First Nation v. The Government of Yukon (Ministry of Energy, Mines and Resources) (2007), YKSC 28.
- Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage, [2005] 3 S.C.R. 388, 2005 SCC 69
- R. v. Jack, [1994] 2 S.C.R. 310
- R. v. Jones, [1993] 1 S.C.R. 460
- R. v. Sampson (1995) 16 B.C.L.R. 267
- R. v. Sparrow, [1990] 1 S.C.R. 1075
- Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74

List of Appendices

Appendix A: Mitchell and Parkins' comparison of deliberative mechanisms

Appendix B: Old Crow Community_Layers

Appendix C: Chief_and Council Resolution

Appendix D - Information letter to Participants_– Focus Groups

Appendix E: Information Letter to Participants – Semi-structured Interviews

Appendix A: Mitchell and Parkins' comparison of deliberative mechanisms

Key feature	Deliberative Mechanism							
	Community Dinners	Town hall meetings	Focus groups	Advisory committees	Citizen panels	Negotiated rule making	Deliberative polling	Electronic group discussions
# People	<100	Several dozen or more	6-12	10-20	10-20	Several dozen	Several hundred	Up to 20
Degree of Complexity	Low	Low	Moderate	Moderate	High	High	High	Moderate
Representativeness	Low to Moderate	Potentially high	Low to Moderate	Low to Moderate	Potential high	Potentially high	High	Low to Moderate
Deliberation quality	Low to Moderate	Low to Moderate	High	High	High	Moderate	High	High
Cost	Low	Low to Moderate	Moderate	Moderate	High	High	High	Low

Appendix B: Old Crow Community Layers

Vuntut Gwitchin First Nation Citizens

Non-First Nations

Other First Nation Citizens

VGFN beneficiaries living outside Old Crow

Hunters/Trappers/Gatherers

Gwitchin Speakers

Elders/Spiritual leaders

Youth

Women

Familial Groups:

Charlie, Kyikavichik (Kaye), Moses, Frost, Tetlich, Vitrikwa, Bruce, Netro,
Tizya, Njootli, Kassi, Nukon (Shaeffer), Lord, Able, Linklater, Blake, Peter,
Rispin, Josie, Thomas, Kendi, Benjamin

VGFN government

Chief and Council

Former government members

Former Chief and Council members

VGFN citizens who grew up outside Old Crow

VGFN citizens who grew up in Old Crow

YTG government employees

Boaters

House builders

Dog mushers

Conservatives

Liberals

NDPers

Appendix C: Chief and Council Resolution

Chief and Council Resolution:

We agree to the following provisions;

The understanding that research conducted will be used in a Master's thesis document to be completed by Robin Urquhart and UNBC,

That the abovementioned thesis is by law a public document and will be made available to the public as required,

The understanding that research will be conducted with persons of the Old Crow community and that this participation is voluntary up to the conclusion of the interview,

That the section of this thesis, dependant on information from the community of Old Crow, will be submitted to Vuntut Gwitchin First Nation for feedback and check for accuracy,

The understanding that if anonymity is granted to those persons requesting it, and that research deemed harmful to the community will not be reflected in the thesis,

The understanding that full recognition and intellectual property rights will be granted to VGFN and participants for the research conducted

The understanding that authorship recognition will be granted to VGFN if so desired,

And the understanding that a copy of the thesis document in full will be provided to VGFN upon publication.

Originally Signed By:

Chief Joe Linklater

Councilors:

Kathy Nukon

Roger Kyikavichik

Esau Schaeffer

Appendix D: Information letter to Participants – Focus Groups

Operationalizing Consultation – The Community Perspective

Information letter to Participants – Focus Groups

The goal of this research is to provide more information on resource management consultation by looking through the perspective of Old Crow. A sub-goal is to provide the community of Old Crow with a functional definition of consultation that can be used in further resource management deliberations. This may be used as a model by other Yukon communities to similarly produce consultation protocols tailored to their individual situations.

You were chosen to participate in this research as a community member of Old Crow. Your unique experience and position in Old Crow will help to build the overall community perspective on resource management consultation. You will be asked to provide thoughtful insight into the topic of resource management consultation through focus group discussions. Specific questions will range around what are the ideal principles and procedure for consultation in Old Crow? Your personal opinion is all that is required as participation in this project.

The community of Old Crow can potentially benefit from this study. It will be provided with a better understanding of what the community desires in terms of consultation principles and procedure. This will give the community more direct access to resource management deliberations and potentially increase the benefit received by the community in projects being conducted within VGFN territory. There are no foreseeable risk in participating in this research.

Responses and information you provide are completely confidential and anonymous. A report from the focus group meeting will be written and available through the community steward/RRC Office for review, feedback and verification. Unmarked prepaid envelopes are provided and addressed to Robin Urquhart. If you have specific feedback or comments on the report coming from the focus group please include them and your name in the envelope and drop it in the mail box. Otherwise you may call Robin Urquhart directly; contact information is listed below.

The focus group meeting will be audio-recorded for note taking purposes only. Robin Urquhart will retain sole possession of this recording and it will remain in his safe possession in Whitehorse until project completion, whereupon it will be destroyed (December 2008).

The information will be used in a Master's Thesis and a report to the community of Old Crow. The Master's thesis is by law a public document open to anyone interested. The report to the community of Old Crow will be available through the First Nation office. With VGFN approval, this document may be sent out to other Yukon communities to act as a model for developing similar consultation protocols.

Your participation in this research will be completely anonymous and your name will not appear on any public document associated with this research unless you state otherwise. If you would like your name to appear on the final report and Master's Thesis please check the appropriate box on the consent form. No information will be specifically attributed to you, and you will be recognized as an invaluable participant of this research and that your information has been used, in part, to develop the community definition of consultation.

Participation in this research is completely voluntary and you may withdraw at any time up to the publication of the report or thesis defense (December 2008). If you withdraw, your information will be stricken from the record and immediately destroyed. Your participation is for the benefit of the community of Old Crow and I cannot offer remuneration for your work. You will be provided with a free copy the report to the community of Old Crow.

To receive copies of research results please contact VGFN Government Office. A copy of the thesis will be housed in the First Nation Office in addition to more copies of the Report to the community of Old Crow.

For more information or if you have any questions please contact:

Robin Urquhart
61-13th Ave.
Whitehorse, YT
Y1A 4K6
(867) 633 2493

Any complaints about the research project should be directed to:

Office of Research
University of Northern British Columbia
3333 University Way
Prince George, BC
V2N 4Z9
reb@unbc.ca
250 960-5650

Macee Cho,

Robin Urquhart

Resource Management Consultation –
Towards Developing an Operational Concept
Please check appropriate box
CONSENT FORM

Do you understand that you have been asked to be in a research study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you read or been read the attached information sheet?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand that the research meetings will be recorded?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand the benefits and risks involved in participating in this study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you had an opportunity to ask questions and discuss this study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand that you are free to refuse to participate or to withdraw from the study at any time? <i>You do not have to give a reason</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand all information is confidential and anonymous unless you state otherwise?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand your information will be used in public documents; including a Master's Thesis and Report to the community of Old Crow?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Do you wish to have your name listed as a participant of this research in public documents	<input type="checkbox"/> Yes	<input type="checkbox"/> No
--	------------------------------	-----------------------------

This study was explained to me by: _____

Print Name

I agree to take part in this study:

Date: _____

Signature of Research Participant

Printed Name of Research Participant

Date: _____

Signature of Witness

Printed Name of Witness

I believe that the person signing this form understands what is involved in the study and voluntarily agrees to participate.

Date: _____

Signature of Investigator

Appendix E: Information Letter to Participants – Semi-structured Interviews

Operationalizing Consultation – The Community Perspective

Information letter to Participants - Semi-structured Interviews

The goal of this research is to provide more information on resource management consultation by looking through the perspective of Old Crow. A sub-goal is to provide the community of Old Crow with a functional definition of consultation that can be used in further resource management deliberations. This may be used as a model by other Yukon communities to similarly produce consultation protocols tailored to their individual situations.

You were chosen to participate in this research as a community member of Old Crow. Your unique experience with consultation will help to build the overall community perspective on resource management consultation. You will be asked to provide thoughtful insight into the topic of resource management consultation through interviews. Specific questions will range around what are the ideal principles and procedure for consultation in Old Crow? Your personal opinion is all that is required as participation in this project.

The community of Old Crow can potentially benefit from this study. It will be provided with a better understanding of what the community desires in terms of consultation principles and procedure. This will give the community more direct access to resource management deliberations and potentially increase the benefit received by the community in projects being conducted within VGFN territory. There are no foreseeable risks in participating in this research.

Responses and information you provide are completely confidential and anonymous. A transcript of the interview will be provided only to you for your review, feedback and verification before information is used in any document. If you cannot read the transcript, Robin Urquhart or another person who has signed a confidentiality agreement, will read it to you. You may also obtain an audio-recording of the interview upon request.

The information will be used in a Master's Thesis and a report to the community of Old Crow. The Master's thesis is by law a public document open to anyone interested. The report to the community of Old Crow will be available through the First Nation office. With VGFN approval, this document may be sent out to other Yukon communities to act as a model for developing similar consultation protocols.

Your participation in this research will be completely anonymous unless you state otherwise. If you would like your name to appear on the final report and Master's Thesis please check the appropriate box on the consent form. No information will be specifically attributed to you, and you will be recognized as an

invaluable participant of this research and that your information has been used, in part, to develop the community definition of consultation. If you do not state otherwise, your name will not appear in any public document associated with this research.

Participation in this research is completely voluntary and you may withdraw at any time up to the publication of the report or thesis defense (December 2008). If you withdraw, your information will be stricken from the record and immediately destroyed. Your participation is for the benefit of the community of Old Crow and I cannot offer remuneration for your work. You will be provided with a free copy of your interview transcript, the report to the community of Old Crow and an audio-recording of your interview, should you request it. The transcript and audio-recording are your information. You may do as you see fit with them. Again, participation is voluntary; you may withdraw at any time up to project completion.

All recordings, interview notes and transcripts, will be securely stored with Robin Urquhart in Whitehorse. They will be destroyed at the thesis termination (December 2008).

To receive copies of research results please contact VGFN Government Office. A copy of the thesis will be housed in the First Nation Office in addition to more copies of the Report to the community of Old Crow.

For more information or if you have any questions please contact:

Robin Urquhart
61-13th Ave.
Whitehorse, YT
Y1A 4K6
(867) 633 2493

Any complaints about the research project should be directed to:

Office of Research
University of Northern British Columbia
3333 University Way
Prince George, BC
V2N 4Z9
reb@unbc.ca
250 960-5650

Macee Cho,
Robin Urquhart

Resource Management Consultation –
Towards Developing an Operational Concept
Please check appropriate box

Do you understand that you have been asked to be in a research study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you read or been read the attached information sheet?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand that the research meetings will be recorded?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand the benefits and risks involved in participating in this study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you had an opportunity to ask questions and discuss this study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand that you are free to refuse to participate or to withdraw from the study at any time? <i>You do not have to give a reason</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand all information is confidential and anonymous unless you state otherwise?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you understand your information will be used in public documents; including a Master's Thesis and Report to the community of Old Crow?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Do you wish to have your name listed as a participant of this research in public documents	<input type="checkbox"/> Yes	<input type="checkbox"/> No
--	------------------------------	-----------------------------

This study was explained to me by: _____

Print Name

I agree to take part in this study:

Date: _____

Signature of Research Participant

Printed Name of Research Participant

Date: _____

Signature of Witness

Printed Name of Witness

I believe that the person signing this form understands what is involved in the study and voluntarily agrees to participate.

Date: _____

Signature of Investigator

Appendix F: Semi-structured interview and focus group questions

*In some cases not all questions were asked. This was especially true if I felt the interview had already covered the topic of a subsequent question. Various prompts were also asked depending on the answer to the following questions to elucidate more information.

1. Where is the first place you hear about new projects coming into Old Crow?
2. Is this or are these good methods of learning about projects?
3. How much do you feel you know about projects that are currently being undertaken in Old Crow or in VGFN TT? Why, why not?
4. If you wanted to know more about a current or incoming project where could you go to find more information?
5. Whose responsibility do you think it is to consult the community?
6. Do you feel like consultation has been adequate in the past? Why, why not?
7. What are the major obstacles (if any) to consultation in Old Crow?
8. What, in your opinion is the most important characteristic, or principle, for successful consultation?
9. What are other characteristics, or principles, that are necessary for successful consultation?
10. When is a good time to hold consultation events (meetings, door to door visits, etc.)?
11. What is the first thing an incoming project (be it researcher or exploration company or anybody in between) should do in the community?
12. What other steps should an incoming project take?
13. How comfortable do you feel participating in consultation events? Why, why not?
14. Do you feel community members should be compensated for their time in consultation events? Why, Why not?