
Jacobs, Beverley Kim

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By

Beverley Kim Jacobs

A THESIS SUBMITTED TO THE FACULTY OF GRADUATE STUDIES IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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ABSTRACT

This dissertation demonstrates how wholistic health of the Akwesasronon is directly connected to the *Ohén:ton Karihwatéhkwen* (Thanksgiving Address), which reflects the healthy relationships and connection between all living things including human beings and the natural world. Using a Haudenosaunee Research Methodology with Community Based Participatory Action Research methodologies, including Photovoice with Akwesasne community members and interviews with Knowledge Holders, I show how wholistic health includes healthy relationships and connections with self, family, community, Mother Earth, The Waters, The Fish Life, The Food Plants, The Medicine Herbs, The Animals, The Trees, and finally, the Four Winds, the Thunderers, the Sun and the Moon, the Stars and Our Teachers (all aspects acknowledged in *Ohén:ton Karihwatéhkwen*). I also argue that wholistic healthiness of Akwesasronon is protected through the practices of Haudenosaunee laws.

I present the impacts of industrial and resource development that have had detrimental effects upon the mind, body and spirit of Akwesasronon and on all aspects acknowledged in *Ohén:ton Karihwatéhkwen*. The impacts also included many losses of the emotional, spiritual, physical, mental well-being of Akwesasronon and the environmental well-being of the natural world. Despite the impacts, I acknowledge the resiliency and strength of Akwesasronon that shines through because they have been able to maintain the practices of Haudenosaunee laws that protect their wholistic health.

I explain and utilize *Kuswentah* theory to establish the different ways of thinking and analyzing between Haudenosaunee laws and Euro-Canadian laws. Haudenosaunee laws, represented in their canoe, focus on the roles and responsibilities of human beings within the bigger picture of the natural world and natural laws. Euro-Canadian laws, represented in their ship, focus on the rights of human beings, and – specific to this study – on how the rights of Aboriginal peoples in Canada are defined under section 35 of the *Constitution Act, 1982* of Canada. I argue that the right to self-determination based on the practice of Haudenosaunee laws that protect wholistic health of Akwesasronon is protected as a *Kuswentah* treaty right under section 35. Nevertheless, Akwesasronon Knowledge Holders shared their hesitancy in litigating their section 35 rights, leading to my discussion of reconciliation and decolonization of Euro-Canadian laws.
ACKNOWLEDGEMENTS

Wow! So much has happened since I began my PhD journey nine years ago. Through so many personal traumas, losses of life of close family, Longhouse family and friends, I persevered and worked hard at finishing this.

There are so many people that I need to acknowledge!

First, to my Dad, Kenneth Jacobs, who has taught me what being Haudenosaunee means and his unwavering unconditional love.

To my daughter, Ashley, and our grandchildren, Nicholas, Tessa, Bryson and Tessa – thank you for your patience with me as I took way too much time away from all of you to finish this.

To my Patty-yo – thank you for taking care of me and everything that surrounds me! You have been my rock! This is all your fault for moving and working in Calgary first!

To my siblings and nieces and nephews – thank you for your love and support in anything that I decide to do.

To my community at Six Nations of the Grand River – thank you as well for your support in anything that I do. Thank you to Six Nations Grand River Education Office for funding the first four years of my study.

To the Alberta Network Environments for Aboriginal Health Research for also funding the first two years of my study.

To the community of Akwesasne, the Mohawk Council of Akwesasne and the Tehotienawakon Environment Program for allowing me to partner with the community to complete my study.

To those from the community of Akwesasne who participated in this study, specifically Jim Ransom, Elizabeth Nanticoke, Katsi Cook, Richard Mitchell, Emmy Mitchell, Louise McDonald, Della Adams, Maxine Cole, Joyce King, Konwanahtotha Sargent, Cynthia Lazore, Charlotte King, Curtis Lazore, Waylon Cook, Waheson, Kevin King, Owen Mitchell, Katsiatso:ni and the two anonymous community members. Thank you for your strength, brilliance and knowledge.

To my Doctoral Committee Members:

To Dr. Henry Lickers for your support, your stern guidance in this work from your knowledge, and for the many years of work in the community of Akwesasne;

To Professor Jennifer Koshan for your mentorship and supervision of this work, for keeping me on track and for your unwavering emotional support throughout this process;

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And to Dr. Jacqueline Ottman for your mentorship and support.
To Professor Amar Bhatia who read an earlier draft of this dissertation and assisted with some minor editing throughout. Thanks Amar!

To my friend and colleague Mary Ebets who also read an earlier draft of this dissertation and brainstormed with me on some section 35 points. Thanks Mary!

To my many, many friends at home, in Akwesasne and across Turtle Island (and on Facebook 😊) who have supported me throughout these years. Some took me to ceremony, some let me stay at their homes, most fed me, some bought me coffee from my favourite spot, and most just sat with me and listened and provided that emotional support I needed. Thank you to all of you.

To my new academic home, the Faculty of Law, University of Windsor. Thank you to all of my colleagues who support me 110% and let me bunk at your homes for the first year while I focused on getting this PhD finished! And to my Research Assistants at Windsor Law, specifically, Kristen Jeavons and Irma Shaboian, who helped me with edits and footnotes!! I appreciate all of your help!

And to all Knowledge Holders and Spiritual Leaders who have taught me and supported me spiritually and who continue to maintain and teach their “ways of being.”

Kanaronkwa, nia:wen (With Love & Thank You)
DEDICATION

To my Mom, Helen Jacobs (1937-1989), in memory of her unconditional love and who continues to guide me in spirit;

To my Aunt Marion Carr (1928 – 2006), in memory of her unconditional love and who continues to guide me in spirit;

To Jacob A. “Tekaronhianeken” (1942 – 2010) Swamp, in memory of his leadership, wisdom, knowledge and teachings of the Haudenosaunee Peoples;

To Patricia Monture-Angus (1958-2010), in memory of her strength and resilience as a Mohawk sister who guided and mentored me in life and in academia and who continues to guide me in spirit;

To Dan Sandy (1930 – 2010), in memory of my father-in-law with his strong connection to our Haudenosaunee ways of being and his teachings and who continues to guide me in spirit;

To my Uncle Tony Garlow (1943-2011) and Aunt Linda Garlow (1947 – 2015), in memory of their unconditional love and taking care of my emotional, mental, physical well-being whenever I needed it, and especially when I was a teenager and who continue to guide me in spirit;

To Dennis Henhawk (1976 – 2014), in memory of my grandchildren’s father who loved his children very much;

To Kyle Sandy (1987 – 2014); in memory of our nephew who left this world too early;

To Onondaga Confederacy Chief Peter Sky (1932 – 2014); in memory of his leadership, knowledge and teachings and commitment to the Haudenosaunee Confederacy and Peoples;

To my Aunt Grace Lobzun (1938 – 2015), in memory of her unconditional love and who continues to guide me in spirit;

To Faithkeeper Hubert Skye (1929 – 2016); in memory of his devotion to teaching the Cayuga language, teachings of the Longhouse and commitment to the Haudenosaunee Confederacy and Peoples;

To Onondaga Clan Mother Jaynane Burning-Fields (1956 – 2017), in memory of her commitment to her responsibilities to the Haudenosaunee Confederacy and Peoples;

To my Aunt Loretta Nelson (1932 - 2018), in memory of her unconditional love and who continues to guide me in spirit;

To Faithkeeper Jim Styres (1930-2018) who passed on while I was on my journey to defending this dissertation and whom I acknowledged and thanked in my defense. Nia:wen for teaching me and so many others. I know you will continue to guide me in spirit;

To all ancestors who continue to guide me.
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Impacts of Industrial and Resource Development on the Wholistic Health of Akwesasronon:¹ A Human Responsibility/Rights Solution

CHAPTER ONE: OHÉN:TON KARIHWATÉHKWEN

GREETINGS and THANKS to each other as people
TO THE EARTH mother of all, greetings & thanks
To all the waters WATERFALLS & RAIN RIVERS & OCEANS, greetings & thanks
To all the FISH LIFE, greetings & thanks
The grains and greens BEANS & BERRIES as one we send thanks TO FOOD PLANTS
MEDICINE HERBS of the world and their keepers, greetings & thanks
TO ALL ANIMALS & their teachings, greetings & thanks
THE TREES for shelter & shade fruit & beauty, greetings & thanks
TO ALL BIRDS large and small joyful greetings & thanks
And from the four directions THE FOUR WINDS thank you for purifying the air we breathe and giving us strength GREETINGS
THE THUNDERERS our grandfathers in the sky
WE hear your voices GREETINGS & THANKS
And now THE SUN for the light of a new day and all the fires of life, GREETINGS & THANKS
To our oldest grandmother THE MOON leader of women all over the world
AND THE STARS for their mystery beauty & guidance GREETINGS & THANKS
TO OUR TEACHERS from all times reminding us how to live in harmony GREETINGS & THANKS
AND FOR ALL the gifts of creation FOR ALL THE LOVE around us GREETINGS & THANKS
And for that which is forgotten WE REMEMBER. WE END OUR WORDS
NOW OUR MINDS ARE ONE²

¹ “The Mohawks who live along the St. Lawrence River at a place called Akwesasne have used the territory since time immemorial. We refer to ourselves as Akwesasronon...the People of the Land where the Partridge Drum.” Salli Benedict, “For Our Mother Earth Iethi’nistenha Onhwenstia”, in Haudenosaunee Environmental Task Force, Words That Come Before All Else, Environmental Philosophies of the Haudenosaunee (North American Indian Travelling College, year of publication unknown) at 18 [Words That Come Before All Else].
² Onondaga Nation, Haudenosaunee, “Greetings and Thanks to the Natural World, A Daily Thanksgiving” pamphlet in author’s possession (Thanksgiving Address).
Prior to any official meeting, gathering and ceremony of the Haudenosaunee Peoples, the Ohén:ton Karihwatéhkwen (translated from the Mohawk language meaning Words that Come Before All Else or Thanksgiving Address) is recited. Darren Thomas described it as follows:

This is not a prayer but an acknowledgement of our relationships with creation. When someone recites the speech, it is a reminder to the people that hear the words, to be grateful for each day, by thinking about all of the gifts of creation. The words are symbolic as it brings our minds together as the Creator wished us to be, to coexist as humans and all of creation.3

The purpose in presenting the Thanksgiving Address as an introduction to this dissertation is to acknowledge and to respect the Haudenosaunee Peoples, specifically the Akwesasronon, who are partners in this study. This is a translated “short version.”

I. Setting the Stage

I am a citizen of the Mohawk Nation, Bear Clan of the Haudenosaunee Confederacy from the Six Nations Grand River Territory. I originate from a matrilineal society so my mother, my maternal grandmother, my maternal great-grandmother and so on were of the Mohawk Nation, Bear Clan. My father is of the Onondaga Nation, Turtle Clan and his lineage originated from his mother, his grandmother and so on. I grew up with my paternal family surrounding me at the Six Nations Grand River Territory and went to school in the community from Kindergarten to Grade 8 and then went to high school in the nearby rural community of Hagersville until Grade 11. I moved to Hamilton with my maternal uncle and his wife when I turned 16 and finished high school in Hamilton. My mother and her family were severely impacted as a result of the residential school system. My maternal grandmother and her siblings were forced to attend the “Mushhole”, the Mohawk Institute in Brantford, Ontario, which was one of the first residential

schools built in the 1830s. It was run by Anglican missionaries before the British government
contracted with them in 1850. My paternal family maintained a traditional way of life – they
were active members of the Haudenosaunee Confederacy (my paternal uncle is a Confederacy
Chief and his title was passed to him by his brother, my uncle; and my paternal aunt is a
Clanmother and her title was passed to her by her mother, my grandmother) and the Cayuga
Longhouse (my grandfather was a Faithkeeper before he passed away and my father and I are
current Faithkeepers in the longhouse). My paternal grandparents spoke the Cayuga language
fluently and my dad was a Cayuga language teacher until his retirement. I was raised with this
kind of lifestyle – attending longhouse ceremonies and listening to the language being spoken.
Despite “hearing” the language from my grandparents and my dad, sporadically, my parents did
don not speak the language in our home. As a result, I am not a fluent speaker but I understand a
little more than I can speak. I was a young mother at the age of 18 and was a single parent to my
only daughter. My daughter has now gifted me with four grandchildren. I am partner to a strong
Mohawk man who respects me.

I became more aware of what I was taught by my paternal family when I moved away
from my community and attended the Native Pre-Law Program at the University of
Saskatchewan in 1991. This was after my mother died in 1989 and after the 1990 standoff with
the Canadian Army at Kahnesatake (also known as the Oka Crisis) occurred. This was the
beginning of my understanding of how much I was taught about our cultural ways, about our
traditional ceremonies, about my own knowledge of our traditional teachings and how these were
passed down to me.

After completing my law degree and realizing how Eurocentric law was used as a tool of
oppression and assimilation, I decided to complete a Masters in Law degree. I used this time as
an opportunity to learn more and to write about our traditional laws, The Great Law of Peace and I was able to speak to Elders and Traditional Knowledge Holders whom I already had known and who helped me to understand the differences in the way of thinking, living and understanding of our way and the “white” way. They taught me the wholistic aspects of our way of being, which I utilize in my personal and my professional life today and which I refer to as Indigenous legal traditions in this PhD dissertation. My late uncle had told me before he passed on that I was home now to learn more about “our own laws.”

II. Thesis Objective

There is a global debate regarding the effects of industrial and resource development on human life and the natural environment. On one side of the debate are those who advocate for the preservation of the natural environment, which includes the essential needs of trees, water, air and food. On the other side are those who advocate for the advancement of a market-driven world economy through industrial development and the extraction of minerals and resources. In the midst of this debate, human lives are at stake and it is disproportionately the Indigenous

6 I spent a lot of time with my late Uncle before he passed on to the spirit world. I know his spirit and many of my ancestors guide this work.
7 Industrial development includes hydroelectric power, and of relevance to this dissertation, the St. Lawrence Seaway Development Project “that opened up the Great Lakes ecosystem to industrial development and international trade”. Katsi Cook, “Powerful Like a River: Reweaving the Web of Our Lives in Defence of Environmental and Reproductive Justice” [Cook] in Melissa K. Nelson, ed, Original Instructions: Indigenous Teachings for a Sustainable Future (Rochester, VT: Bear & Company, 2008) 154 at 155 [Nelson]. Katsi Cook is from the community of Akwesasne. She is a traditional midwife, mother, grandmother and an environmental health researcher.
peoples’ lives and the relationships to all of creation (including land and the environment) that are at issue. This study has two purposes: the first is to determine the impacts of industrial and resource development on the wholistic health (which includes mental, physical, emotional, spiritual and environmental well-being) of the Akwesasronon and the second is to examine a responsibility/rights-based approach to protect Akwesasronon wholistic health.

II.1. Phase One

The first phase of this study is empirical and involves a research partnership with the Mohawk Community of Akwesasne. The following are my research questions:

1) What does wholistic health mean for the Akwesasronon?
2) What are the industrial and resource developments impacting the Akwesasronon?
3) What are the effects of industrial and resource developments on:
   a. the physical health of the Akwesasronon?
   b. the emotional health of the Akwesasronon?
   c. the spiritual health of the Akwesasronon?
   d. the mental health of the Akwesasronon?
   e. the environmental health of the Akwesasronon?
4) Is there a connection between having healthy lands and waters and wholistic health? If so, what is that connection?

A Haudenosaunee Research Methodology (HRM) and a Community Based Participatory Action Research (CBPAR) methodology called Photovoice are described in Chapter 2 and the results and analysis of the first phase of this study are reflected in Chapter 4.

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II.2. Phase Two

The second phase of this dissertation examines a human responsibility and human rights solution(s) to protect Akwesasronon wholistic health through Haudenosaunee legal traditions and Eurocentric law. Focusing upon the protections inherent in Haudenosaunee legal traditions and in Canadian constitutional law as it applies to Aboriginal peoples, there are three questions that are answered in this second phase:

1) How can Indigenous legal traditions, specifically Haudenosaunee legal traditions be used to protect the wholistic health of the Akwesasronon?

2) How can Aboriginal and Treaty Rights law (i.e. Eurocentric law) be used to protect the wholistic health of the Akwesasronon?

3) What are the Knowledge Holders’ views about utilizing Eurocentric law to enforce their rights/interests?

The legal analysis and arguments, as well as the responses from the Knowledge Holders are reflected in Chapter 5.

III. Background

There are three main areas of focus in this dissertation: Indigenous wholistic health, Law (including Indigenous Legal Traditions and Aboriginal and Treaty Rights as defined and interpreted within Canadian Law, under section 35 of the Constitution Act, 1982), and Indigenous research methodologies. The backgrounds of each area are identified in the following sections and are further elaborated on in the literature review in Chapter 3.

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III.1. Indigenous Wholistic Health

Health has many definitions for the Akwesasronon, as noted by Mary Arquette et al:

Health is spiritual. Health is rooted in the heart of the culture. Health is based on peaceful, sustainable relationships with other peoples including family, community, Nation, the natural world, and spiritual beings. Health is supported by the solid foundation of a healthy natural world.\(^\text{11}\)

The wholistic health of Indigenous peoples has also been defined to include mental, physical, emotional, spiritual and environmental well-being.\(^\text{12}\) The relationship of Indigenous peoples to their lands and environment is a concept that is universally understood amongst Indigenous peoples around the world. It is a spiritual, emotional, mental and physical relationship among human beings and their surroundings. The spiritual connections to Our Mother the Earth are maintained through ceremonies and acknowledgements of thanksgiving. It is that spiritual connection that as human beings, we are no different than a tree, a plant, an animal or any other living spiritual being. There is a common interest in that “what happens to you and what happens to the earth happens to us as well\(^\text{13}\)…the first peace comes with your mother, Mother Earth.”\(^\text{14}\) The only difference between human beings and any other living spiritual being is that the Creator gave human beings a mind to think;\(^\text{15}\) a mind to make decisions for the betterment of future generations.

The Haudenosaunee worldview is that Onkweh:we (human beings) have responsibilities “to the natural world to promote the health and survival of the sacred web of life


\(^{13}\) Chief Oren Lyons, “Listening to Natural Law” in Nelson, supra note 7 at 22.

\(^{14}\) Ibid at 26.

for the next seven generations”\textsuperscript{16} and that decisions made today must consider those future
generations.\textsuperscript{17} Further, through the Haudenosaunee teachings of *Ohén:ton Karihwatéhkwen*, we
are instructed “to believe in the interrelatedness and interdependency of all parts of the natural
world.”\textsuperscript{18} This teaching:

places human beings firmly in an interdependent coequal relationship with what we know
as other ‘nations’ – these being the various elements of creation that others think of as
separate species, natural forces and phenomena. Importantly, it places a burden of
responsibility upon each nation to ensure the proper functioning of creation. The special
set of responsibilities it places on the shoulders of human beings and the lessons it
teaches about the fulfillment of our responsibility to the rest of creation make it a crucial
teaching in the struggle to understand environmental and social justice.\textsuperscript{19}

Lambert and Wenzel discuss connections between land and health for Indigenous peoples
more broadly. They state that “when Indigenous Peoples speak about restoring health, they talk
about restoring the land in the same breath. For Indigenous Peoples, health is linked to the
health of the land, health of the culture and spiritual health.”\textsuperscript{20} Haudenosaunee language
speakers noted that “we are part of everything that is beneath us, above us and around us. Our
past is our present, our present is our future and our future is seven generations past and
present.”\textsuperscript{21}

\textsuperscript{16} Akwesasne Task Force on the Environment Research Advisory Committee, *Protocol for
Review of Environmental and Scientific Research Proposals* (Akwesasne: Akwesasne Task
\textsuperscript{17} Laura Westra, *Environmental Justice and the Rights of Indigenous Peoples: International and
\textsuperscript{18} Mary Arquette, Maxine Cole & The Akwesasne Task Force on the Environment, “Restoring
Our Relationships for the Future” in Mario Blaser, Harvey A. Feit & Glenn McRae, eds, *In the
Way of Development: Indigenous Peoples, Life Projects and Globalization* (NY: St Martin’s
\textsuperscript{19} Ibid.
\textsuperscript{20} Lori Lambert and Eberhard Wenzel, “Medicine Keepers: Issues in Indigenous Health” in
York: Routledge, 2008) 180 at 180 [Lambert and Wenzel].
\textsuperscript{21} Ongwehonwe:ka:? Wholistic Way of Life. Ongwehonwe:ka:? Native Languages for
Communication. NYS Syllabus, NYS Education Department at x, xiii cited in The Akwesasne
Not only do Indigenous peoples continue to suffer disproportionate burdens of all types of preventable and non-preventable illnesses compared to other peoples living in Canada, but they are also affected by environmental degradation and pollution that directly impacts the well-being of Indigenous peoples. The Royal Commission on Aboriginal Peoples has also noted these connections:

Environmental degradation affects the health and well-being of Aboriginal people in three ways. First, pollutants and contaminants, especially those originating from industrial development, have negative consequences for human health. Second, industrial contamination and disruption of wildlife habitat combine to reduce the supply and purity of traditional foods and herbal medicines. Finally, erosion of ways of life dependent on the purity of the land, water, flora and fauna constitutes an assault on Aboriginal mental and physical health.

There is also a spiritual connection to lands and wholistic health through language. Indigenous peoples have a specific language that identifies who they are in connection and relationship with their lands and territories. With a focus on the Akwesasronon in this dissertation, the Mohawk Nation is part of The Haudenosaunee Confederacy, which is comprised of a total of six nations. Each nation has its own language:

Kaienkehaka (Mohawk) Nation, Hodenehiotga (Oneida) Nation, Onodahgeyga (Onondaga) Nation, Gayogwenga (Cayuga) Nation, Donahguh (Seneca) Nation and the Honhndaskaein (Tuscarora) Nation…Kaienkehaka means ‘People of the Flint’; Oneida refers to ‘People of the Standing Stone’; Onondagas refers to ‘People of the Hills’; the

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24 Ibid.
Cayugas means ‘People of the Swamp’; and the Senecas means ‘People of the Great Hills’.25

The translation of the language of each Nation reflects the connection of the people to their lands and territories.

There is also a gendered relationship to Our Mother the Earth through the language of Haudenosaunee Peoples, calling the earth “Our Mother.”26 Tom Porter notes:

The Creator made the earth. And when he made the earth, the Creator said that the earth is gonna be a woman. And not just any woman, she’s gonna be the mother of all women. Or all life forms. And she will have the power to give life to the trees and the birds, to the bears, to the deer, to the humans. That’s why she’s exceptional…she has never thrown us away, discarded us or abandoned us since the beginning of time.27

There is a direct connection between femininity and Our Mother the Earth. In their collective statement to the community, the Haudenosaunee Clanmothers at Six Nations Grand River Territory stated:

Continuance of life depends on sustenance and it is the duty of everyone to nurture and protect the land. As women we have a special relationship to [Our Mother the Earth] because we also give life and nourish children and the generations that come from us. We are responsible to teach and demonstrate that we are stewards of the natural world. The role must now encompass a much greater struggle that indigenous peoples all around the world are facing in light of the industrialization and destruction of [Our Mother the Earth].28

Thus, when discussing the concepts of land and environmental issues in relationship to Indigenous peoples, the two go hand in hand.

Indigenous peoples have had to adapt to a multitude of changes to their lands and their environments but they have remained resilient in their continued responsibilities to Our Mother

26 Tom Porter, And Grandma Said…Iroquois Teachings as passed down through oral tradition (NY: Xlibris Corporation, 2008) at 11 [And Grandma Said].
27 Ibid.
28 Haudenosaunee Clanmothers (at Six Nations Grand River Territory) Statement, 2007 in author’s possession.
the Earth. Linda Tuhiwai Smith, a leading theorist on decolonization of the Maori peoples in New Zealand, notes:

For the past 500 years the indigenous peoples’ project has had one major priority: survival. This has entailed survival from the effects of a sustained war with the colonizers, from the devastation of diseases, from the dislocation from lands and territories, from the oppressions of living under unjust regimes; survival at a sheer basic physical level and as peoples with our own distinctive languages and cultures.29 Not only have there been changes to their environment, but there have also been changes to the health and well-being of Indigenous peoples. Environmental experts in the Mohawk community of Akwesasne, like Knowledge Holder and environmental scientist, Henry Lickers, have been making these connections for a very long time.30 There is a connection between the healthiness of the land and environment and the healthiness of the people.31 As is noted in most environmental discussions with Indigenous peoples, we, as human beings, are in a state of crisis. Melissa K. Nelson edited a collection of Indigenous teachings of the environment and she notes:

Urgent messages are needed for urgent times. Humanity and life on this planet currently face an unprecedented ecological crisis. Climate change, biodiversity extinction, food and water scarcity, overpopulation, the threat of nuclear war, pollution, and toxicity…sadly, the list goes on and on. Additionally we face a greater social divide between the rich and the poor, with fewer people controlling more power and resources. We live in a world where a billion people are starving to death, and a billion people are obese.32

Akwesasne means “the land where the partridge drums.”\textsuperscript{33} The traditional homelands of the Mohawk people are along the St. Lawrence River Valley on the border between the United States and Canada. The St. Lawrence River is described as “our sacred Kaniatarawaneneh, the place where many waters converge.”\textsuperscript{34} The second largest federal industrial development in history was the St. Lawrence Seaway Development Project “that opened the Great Lakes ecosystem [in 1959] to industrial development and international trade…[and] changed the whole nature of our environment by making cheap, easily available hydroelectric power to corporations like General Motors, Aluminum Corporation of America (ALCOA), and Reynolds Metals.”\textsuperscript{35} All of these corporations are adjacent to or near the Mohawk community of Akwesasne. The following two maps demonstrate 1) where the Mohawk community of Akwesasne is situated and 2) where the industrial developments are located:

\textsuperscript{33} Cook, \textit{supra} note 7 at 155.
\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid.
Figure 1: Location of Mohawk Community of Akwesasne
Used with Permission, ©Map by Zoltan Grossman, grossmaz@evergreen.edu

Figure 2: Location of Resource Development upriver to Mohawk Community of Akwesasne
Used with Permission, ©Map by Zoltan Grossman, grossmaz@evergreen.edu
In 1976, the Mohawk Council of Akwesasne (MCA) established its Department of the Environment to address the problems stemming from industrial development. As noted by Tarbell and Arquette:

Toxic substances such as polychlorinated biphenyls (PCBs), dioxins, dibenzofurans, volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), fluorides, cyanide, aluminum, arsenic, chromium, copper, and styrene (to name just a few) have polluted area ecosystems, affecting both the natural world and the Mohawk people. 36

General Motors Corporation has a toxic waste site immediately adjacent to the community. Two PCB-filled open lagoons from the site have leaked into the St. Lawrence River, “the lifeblood” of the Akwesasne Mohawk community, and “contaminated the local food chain.” 37 In a scientific study, PCBs were found in tissues of fish caught in Wildlife Pathologist Ward Stone’s contaminated cove, adjacent to the General Motors landfill. Katsi Cook noted that mothers actively participated in this study and partnered with research scientists to confirm that these same contaminants were found in Mohawk mothers’ breast milk. She noted:

Our scientific partners at the University of Albany School of Public Health fingerprinted congeners, or specific molecular structures, of PCBs found in tissues…These same congeners or contaminants were also found in Mohawk mother’s milk; I was one of the actual study participants. Because our nursing infants are at the top of the food chain, they inherit a body burden of industrial contaminants from our blood by way of our milk; thus are we part of the landfill, colonized. 38

Cook acknowledged that the community continues “to weave our way out of this web of confusion that took five hundred years to envelop us.” 39 As noted, resource development has had

37 Cook, supra note 7 at 157.
38 Ibid.
39 Ibid at 159.
a very specific impact on the lives of mothers and children in the community of Akwesasne and further examples of impacts will be examined in the qualitative component of this dissertation in chapter 4.

Research has been ongoing in Akwesasne regarding the effects of industrial development on the “well-being of humans, land, plants, water, animals, fish and the skyworld.” This dissertation includes findings from these studies completed in Akwesasne regarding land, waters, environment and health of the Mohawk peoples of Akwesasne in chapter 6. It is well known that industrial development corporations have encroached upon the Mohawk lands of Akwesasne and are responsible for the health impacts suffered by the Mohawk people in Akwesasne. What is further examined in this dissertation is a specific community perspective about the impacts of industrial development on the wholistic health in chapter 4 of Akwesasronon and the solutions for responding to those impacts in chapters 5 and 6.

III.2. Indigenous Research Methodologies

Most Indigenous peoples feel that they have been “researched to death.” In the past, non-Indigenous researchers appeared in Indigenous communities, did their scientific research, and took ownership of the research without reporting findings back to the community. They took knowledge from the Indigenous peoples they were studying, reported it as their own, and published it as they pleased. Today, there are ethical guidelines within universities, funding

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40 Arquette, Cole & ATFE, supra note 18 at 336.
41 Tarbell and Arquette, supra note 36 at 97.
42 National Aboriginal Health Organization, Ownership, control, access and possession (OCAP) or self-determination applied to research: A critical analysis of contemporary First Nations research and some options for First Nations communities (Ottawa: First Nations Centre, 2005) at 3 [NAHO].
agencies, Indigenous organizations and within Indigenous communities themselves whereby researchers (both non-Indigenous and Indigenous) can no longer practice research in this way. For example, the community of Akwesasne also developed its own ethical guidelines for research “to protect the community of Akwesasne and its future generations.”

Today, there are more and more Indigenous researchers who not only understand these past practices, but who also must acknowledge their own epistemological understandings of being Indigenous in the academy and their research relationships with Indigenous communities. Many Indigenous scholars are now discussing the importance of Indigenous research paradigms and Indigenous methodologies. This area of study is new and quickly growing in academia and in Indigenous communities. Their works will be discussed in the literature review in Chapter 3.

There are many English words that have defined or categorized Indigenous peoples over time such as Indian, Native, First Nations, Aboriginal, Métis, Inuit. Many of these terms are defined in various legislative and constitutional documents in Canada (i.e. Indian Act; Constitution Act, 1982). Some of the terms (i.e. Aboriginal, First Nations) are used interchangeably when referencing Canadian law that applies to Indigenous peoples. As all of

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46 NAHO, supra note 42 at 12.
47 ATFE, supra note 16.
48 Margaret Kovach, Indigenous Methodologies: Characteristics, Conversations and Contexts (Toronto: University of Toronto Press Incorporated, 2009) at 143 [Kovach].
49 The Indian Act, SC 1876, c 18, s 2.
these terms are English words, they really do not properly identify any Indigenous peoples because Indigenous peoples identify themselves through their own languages. The general term that is used the majority of the time in this dissertation is “Indigenous” which is a common term utilized at the United Nations and in the international context more broadly, as well as Haudenosaunee when describing my own nation.

José R. Martinez Cobo, United Nations Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who wrote a study on treaties and Indigenous peoples, emphasizes four characteristics of Indigenous peoples:

the historical continuity of their societies on territories they have occupied and inhabited for generations; their distinctiveness from ‘mainstream’ or dominant societies; their current non-dominant status in relation to the larger society and their desire and willingness to defend, protect, advance and pass on their identities, languages, cultural and social traditions, conventions and philosophies.50

I would suggest that the characteristics that Martinez references are universal amongst Indigenous peoples. There are also similar values and beliefs when discussing Indigenous peoples’ spiritual relationships to the land and all of creation, self-determination and Indigenous laws. However, there is no universal Indigenous paradigm because there is so much diversity amongst Indigenous peoples. Indigenous peoples’ specific relationships to land, languages, creation stories and ceremonies are different. For example, I am from the Mohawk Nation of the Haudenosaunee Confederacy. My Indigenous paradigm is not the same as those found in the Cree Nation, the Dene Nation, the Piikani Nation or any other Indigenous nation different from

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my own. A further discussion about Indigenous research methodologies and paradigms appears in Chapter 2.

I began this chapter with an explanation of my Indigenous paradigm, who I am and how I position myself within this research. The Thanksgiving Address is a part of the introduction and is utilized throughout this dissertation; its implications for theory and methodology are included in Chapter 2. As a result of the respect that I have of my own Haudenosaunee culture, tradition and practices, I was able to gain trust quickly with the community of Akwesasne. I am appreciative of that trust that the community has given me to write this dissertation.

III.3. Indigenous Legal Traditions and Aboriginal and Treaty Rights Law

Two areas of law are analyzed in this dissertation: Indigenous legal traditions and Aboriginal and treaty rights law (i.e. Eurocentric law). The Indigenous legal traditions of the Haudenosaunee Peoples originate from oral history passed down from generation to generation and are wholistic in nature. They are the Creation Stories, mnemonic devices to remember oral history, various wampum belts (including the Two Row Wampum Treaty Belt and Akwesasne Wolf Belt), the teachings of the Great Law of Peace and the Ohén:ton Karihwatéhkwen maintained by the Haudenosaunee Peoples that set the groundwork for our

51 For example, The Condolence Cane is a mnemonic device, which “is any kind of visual or tactile aid to memory, often used in traditional oral cultures to help speakers make formal presentations. A mnemonic device depicts symbols that trigger reference to points of information. In a sense, letters and words, all language, including songs – are forms of mnemonic devices. Words and visual graphics are symbols that help recall information stored in the mind/brain.” Jose Barriero and Carol Cornelius, Knowledge of the Elders. The Iroquois Condolence Cane Tradition (Ithaca, NY: Cornell University, 1991) at 5-6.
53 An Alliance Belt/Peace Treaty between the Seven Nations (the Indigenous communities that lived along the St. Lawrence River: Akwesasne, Kahnewa:ke, Oswagatchie, Kahnesata:ke, the Hurons of Lorette, Wenta:ke, the Abenaki’s of Odenak) and King George of Great Britain. Interview with Darren Bonaparte (12 August 2014).
peoples’ way of life including all spiritual, legal, social, educational, political and relational aspects. In describing Haudenosaunee legal traditions, Cayuga Bear Clanmother Carol Jacobs stated in her address to the United Nations:

In making any law, our chiefs must always consider three things: the effect of their decision on peace; the effect on the natural world; and the effect on seven generations in the future. We believe that all lawmakers should be required to think this way, that all constitutions should contain these rules. 

As Jacobs clarifies, Haudenosaunee legal traditions are based on peaceful relations with all of creation, responsibilities to the natural world and to the next seven generations. Therefore, sources of Haudenosaunee law are based on the responsibilities to each other as human beings and to all spiritual living things, which inherently protect the wholistic health of the Akwesasronon.

With respect to Eurocentric law, including analyses of Aboriginal and treaty rights, the discussion takes a totally different approach. Eurocentric law is man-made, written and based on precedent and common law. All of these aspects differ from Haudenosaunee laws. The discussion in Chapter 5 of this dissertation analyzes how Eurocentric law applies to protect the wholistic health of Akwesasronon. Section 35 of the Constitution Act, 1982, which guarantees Aboriginal and treaty rights, was enacted in 1982 after major debates and negotiations across Canada. In continuing its arguments for sovereignty since colonization, the Haudenosaunee Confederacy refused outright to accept that these laws applied to them based on the fact that

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the original nation-to-nation relationship was already in existence in *Kuswentah*, the Two Row Wampum treaty. Patricia Monture-Angus stated:

In my mind the failure to secure Aboriginal consent to this constitutional provision is not fatal to the goal of establishing a renewed relationship. If all section 35(1) accomplishes is to recognize the independent relationship of Aboriginal rights to the Canadian governments, then logically no Aboriginal nation needs to consent. Consent only becomes a primary issue after the passing of section 35(1) because Canada first had to acknowledge the truth about its relationship with Aboriginal Peoples. Section 35(1) does not change, touch or interfere with in any way the Aboriginal view of the world, our values, beliefs, laws and systems of government…The entrenchment of section 35(1) creates the necessary pre-condition which now allows us to proceed to the more important question of how we will choose to relate to each other. In my view, section 35(1) is a mere invitation.

In following Patricia Monture-Angus’ analysis, I continue with this line of thinking by analyzing how section 35 may protect rights to Akwesasronon wholistic health. The research and analysis that has been undertaken regarding Haudenosaunee legal traditions and section 35 Aboriginal and treaty rights law is reflected in Chapter 5.

Chapter 6 will bring together the analysis of the literature review presented in Chapter 3, the CBPAR / Photovoice project analysis in Chapter 4 and the research and analysis of both Haudenosaunee legal traditions and Eurocentric Canadian law’s application to the protection of wholistic health found in Chapter 5.

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CHAPTER TWO: THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGIES

Figure 3: Kuswentah Wampum Belt (replica)  
Photo Credit: Patricia Sayer, used with permission

KUSWENTAH

There is a bed of white wampum which symbolizes the purity of this agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us shall try to steer the other’s vessel.58

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58 Excerpted from presentations to the Special Committee by the Haudenosaunee Confederacy, Canada, Self-Government, supra note 55.
Introduction

Throughout this dissertation, a Haudenosaunee theoretical framework, entitled *Kuswentah* Theory, is utilized to present a Haudenosaunee and a Eurocentric worldview. This framework presents both worldviews in a respectful way, which is the intent of the principles of *Kuswentah*, as introduced above.

The *Kuswentah* theoretical framework applies to the research methodologies that are utilized throughout the two phases of this dissertation. It is noted by Indigenous scholars that there are similarities of philosophical values and beliefs of Indigenous worldviews that are very distinct from a western worldview. Indigenous peoples have a unique way of thinking that involves all of creation and all of life. Western scientific, historic and legal knowledges are based on Eurocentric values and beliefs and are different than Indigenous scientific, historic and legal knowledges which are based on Indigenous values and beliefs. Both of these paradigms of thinking follow this *Kuswentah* theoretical framework and complement each other in this research study.

Western Eurocentric knowledges are diffused into all academic disciplines and dominant research paradigms in western academic institutions. Mi’kmaq scholar Dr. Marie Battiste and Chickasaw scholar James (Sakej) Youngblood Henderson state:

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60 James (Sakej) Youngblood Henderson, “Postcolonial Indigenous Legal Consciousness” (2002) 1 Indigenous LJ 1 at 45.


These academic disciplines have been drawn from a Eurocentric canon, an ultra theory that supports production-driven research while exploiting Indigenous peoples, their languages, and their heritage.\(^{63}\)

The discourse by many Indigenous scholars reveal consistent support of this ultra theory. Sami scholar Rauna Kuokkanen explains:

\[T\]he academy supports and reproduces certain systems of thought and knowledge and certain structures and conventions, that rarely reflect or represent indigenous worldviews...To a large extent, the academy remains founded on epistemological practices and traditions that are selective and exclusionary and that are reflective of and reinscribed by the Enlightenment, colonialism, modernity, and in particular, liberalism. These traditions, discourses and practices have very little awareness of other epistemologies and ontologies and offer them heavily restricted space at best.\(^{64}\)

Plains Cree and Saulteaux scholar Margaret Kovach acknowledges that there is a “fundamental epistemological difference between western and Indigenous thought, and this difference causes philosophical, ideological, and methodological conflicts for Indigenous researchers.”\(^{65}\) There is also consistent discourse by Indigenous scholars that western knowledge is not “fully challenged in the academy”.\(^{66}\) Kovach specifically states:

While critical theory and postmodern analysis have created space within western science for representation, voice, and a multiplicity of truths, the essentialism of western thought pervading research has not been fully challenged in the academy.\(^{67}\)

Kovach further notes that non-Indigenous scholars must “adjourn disbelief and, in the pause, consider alternative possibilities.”\(^{68}\)

\(^{63}\) *Ibid* at 133.

\(^{64}\) Kuokkanen, *supra* note 50 at 1.

\(^{65}\) Kovach, *supra* note 48 at 29.


\(^{67}\) Kovach, *supra* note 48 at 28.

\(^{68}\) *Ibid*. 
The essentialism of western thought that is engrained in academic institutions has had a specific impact on Indigenous students, researchers and scholars. There are now many Indigenous scholars within academic settings in various universities around the globe. It has taken time for Indigenous scholars’ voices to be included within the academy and, in many instances, Indigenous scholars are still silenced or being isolated.\(^69\) Maori scholar Linda Tuhiwai Smith states that one of the many challenges specific to Maori researchers is to make space for themselves in the research community. She recommends the following:

[F]irst, is to convince Maori people of the value of research for Maori; second, to convince the various fragmented but powerful research communities of the need for greater Maori involvement in research; and third, to develop approaches and ways of carrying out research which take into account, without being limited by, the legacies of previous research and the parameters of both previous and current approaches.\(^70\)

This dissertation reflects a Haudenosaunee voice and includes the powerful methodological approach of one of its Mohawk communities: Akwesasne. It includes the voices of the members of the community and is guided by the community. It is also guided by Haudenosaunee traditional knowledge and legal traditions which are carried within the “canoe” of the Haudenosaunee Peoples in *Kuswentah*. This theoretical framework will be discussed next, followed by a discussion of the research methods used in this dissertation.

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\(^70\) Smith, *supra* note 29 at 183.
I. Theoretical Framework

The Kuswentah theoretical framework utilizes guiding principles directly from Haudenosaunee traditional knowledge, which includes “respect, equity and empowerment.”\textsuperscript{71} The guiding principles of the Akwesasne Task Force on the Environment (ATFE) are utilized in this dissertation “to protect the community of Akwesasne and its future generations.”\textsuperscript{72}

Specifically, the guiding principles are skennen, kariwiio and kasastensera and are described as follows:

> Since the beginning of time, our Creator has told our people to strive for peace and as individuals, communities and Nations, we must constantly strive to talk, work, live and be at peace. Skennen (peace) is more than just the absence of conflict or war and is based on spiritual, social and political foundations…When we work for peace, we develop a good mind, a good way of thinking. Kariwiio (good word) refers to ‘the shared ideology of the people using their purest and most unselfish minds. It occurs when the people put their minds and emotions in harmony with the flow of the universe and the intentions of the Good Mind or the Great Creator…When we work for peace and a good mind, we develop kasastensera (strength). Strength flows from the power of the good mind to use rational thinking and persuasion to channel the inherent good will of humans to work towards peace, justice and unity to prevent the abuse of human beings and mother earth.\textsuperscript{73}

The Kuswentah Theory sets the stage for mutual respect, peace and positive relationships between Haudenosaunee legal traditions and knowledge and Eurocentric legal traditions, both of which are utilized in this dissertation. As a Mohawk person who is also a researcher and academic, I am aware of these guiding principles and abide by them personally. These principles guide this research project and the research is also guided specifically by the Environment Program at the Mohawk Council of Akwesasne, which also incorporates the guiding principles of the ATFE.

\textsuperscript{72} ATFE, supra note 16.
\textsuperscript{73} Ibid at 1.
II. Research Methodologies

A Haudenosaunee Research Methodology (HRM), Eurocentric legal research methodology and archival research methods are utilized in this dissertation. These three methods are discussed in the next three sections.

II.1. Haudenosaunee Research Methodology

A HRM guides the empirical study in this dissertation and follows a process of clear thinking,\textsuperscript{74} universal intelligence\textsuperscript{75} and Haudenosaunee intellectualism.\textsuperscript{76} These processes integrate the knowledges of the late Seneca scholar John Mohawk and the late Oneida scholar Robert Antone. The late John Mohawk described the thought processes of Haudenosaunee Peoples as a “Universal Intelligence” as follows:

...the Peacemaker also expressed our need to understand that the Plan for Life has an origin - an origin that can be called a Universal Intelligence, is a state of perfection, and whose will requires that humans in society manifest a desire for Life - as opposed to simply a desire for lack of conflict...The Peacemaker perceived that it was this ability of the human mind to understand the relationship of human society to this Plan for Life, upon which could be built a lasting peace.\textsuperscript{77}

The late Robert Antone described Haudenosaunee intellectualism as a “holistic concept of knowledge” where:

[the] repository knowledge includes the stories, narratives, ceremonies, songs, recitals, ritual sounds, etc., that originate from four specific sources: the Creation story, ceremonies, Kayanhnehgowa (the Great Law), and Gaiwiio (Handsome Lake’s teachings). These sources are the foundation and original sources of Haudenosaunee repository knowledge. The four sources comprise all that became the moral code, legal

\textsuperscript{74} John Mohawk’s description of Haudenosaunee teachings of beliefs and values referred to in A John Mohawk Reader, supra note 15 at 275.
\textsuperscript{75} Ibid at 271.
\textsuperscript{77} Ibid.
standards, belief system, and practices of the Haudenosaunee. The repository knowledge is the foundational knowledge of the Haudenosaunee.\textsuperscript{78}

Antone also recognized that the repository knowledge of the Haudenosaunee “guides and directs the emergence of Haudenosaunee intellectualism, calling attention to the world community to understand the complexity of humanity’s relationship to the natural world.”\textsuperscript{79}

These are the responsibilities of Haudenosaunee people, as is further discussed in Chapters 4 and 5, that human beings have been given the duty to live in balance and harmony with each other and all of creation and “we are responsible for ensuring that the Creator’s original balance is maintained.”\textsuperscript{80} We also have to give thanks to Our Mother Earth as she “has given birth, as she has for many centuries. She has given birth to all Animal Creatures and to all Plants.”\textsuperscript{81} We also have to give thanks for the Waters, the Fish, the Small Plants and Grasses, the Berries, the Three Sisters, the Medicine Plants, the Animals, the Trees, the Birds, the Four Winds, the Thunders, Grandmother Moon, the Sun, the Stars, the Four Beings and the Creator. This process of giving thanks guides my research methodology in the analysis of the CBPAR / Photovoice participants and the Knowledge Holders, whose roles I will discuss shortly.

Haudenosaunee ways of learning include relational and ceremonial foundations which integrate principles of Haudenosaunee legal traditions. Pamela Johnson acknowledged that “Kanyen’kehaka [Mohawk] teachings emphasize three core synchronized values: the good mind, relational responsibility, and sense of reverence and gratitude (appreciation).”\textsuperscript{82} Darren

\begin{flushleft}
\footnotesize
\textsuperscript{78} \textit{Ibid.}
\textsuperscript{79} \textit{Ibid} at 129.
\textsuperscript{80} \textit{Words That Come Before All Else, supra} note 1 at 8.
\textsuperscript{81} \textit{Ibid} at 16.
\end{flushleft}
Thomas, in the development and description of his “Hodinohso:nih Research Methodology,” described this relational aspect as “visiting.” He provided further details about the processes of a HRM:

**Participating** is a process where you as a person seeking knowledge would participate in any aspects of our ways of knowing. **Reflecting** is another key aspect of attaining knowledge. The Hodinosohnih believe that since the Creator has provided each of us with our own minds, He inherently made a connection between our minds and His; therefore, we have the ability to think for ourselves. Discovering what and how we can contribute to knowledge happens through a deep reflective process. **Witnessing** is another method to use to come to form knowledge. This concept is difficult to explain, it has to do with being a witness to learning that comes from beyond human family. With the Hodinohsonih worldview, we understand our ways of knowing goes beyond our comprehension as human beings. There are events in our lives where we witness something more powerful, something spiritual. There are teachings or messages of ‘divine inspiration’ so to speak that help guide you, support you, and strengthen you; and incredible profound ‘aha’ moment that sheds light into your very being. **Observing** is a more passive way of discovering knowledge. It involves learning from how others experience their lives; this is a process of attaining knowledge through mentorship. When viewing the image of Ogwehowehneh, consider it a dynamic three-dimensional image. The spider web is constructed throughout, connects all of the elements, and can be used to create understanding in any areas of Hodinohso:nih knowledge.

When having conversations with Knowledge Holders, they may be telling a story that is relevant to a life lesson or they may be guiding you through lessons they have learned. This allows for the establishment of trust and good relationships with Knowledge Holders which then allows for respectful questions if the listener does not clearly understand the lessons being taught. Haudenosaunee legal principles of peace, trust and respect are integrated into relationships with Knowledge Holders and learners. This is part of the process in HRM - to ensure peace, trust and respect.

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83 Hodinohso:nih, which is spelled in the Cayuga language, is the same word as Haudenosaunee that I am using in this dissertation.
84 Thomas, *supra* note 3 at 43.
During recitals of Haudenosaunee legal traditions (i.e. *Kuswentah* and *Ohén:ton Karihwatéhkwen*), which were described above in Chapter 1), the person who is reciting is able to visualize in his or her mind and then tell a story about the vision. Haudenosaunee storytelling has been described as follows:

> Story telling is an essential part of Haudenosaunee culture. It isn't just about telling stories, it's a positive way to teach the beliefs and values the Haudenosaunee hold. Through each story the listener can learn the values, laws and acceptable behaviours of a community without having them simply listed off as rules.86

The storytelling enables a process of clear thinking. Margaret Kovach described storytelling as part of Indigenous methodologies. She described stories as follows:

> Stories remind us of who we are and of our belonging. Stories hold within them knowledges while simultaneously signifying relationships. In oral tradition, stories can never be decontextualized from the teller. They are active agents within a relational world, pivotal in gaining insight into a phenomenon. Oral stories are born of connections within the world, and are thus recounted relationally. They tie us with our past and provide a basis for continuity with future generations.87

Within Haudenosaunee culture, there have always existed dreamers and visionaries and they are the ones who are capable of telling stories so that we can actually visualize the story. HRM includes the process of storytelling and visualization.

The HRM that I have developed for this dissertation integrates knowledges of Haudenosaunee colleagues, Pamela Johnson, Darren Thomas, the late Robert Antone and the late John Mohawk as well as Cree/Saulteaux scholar, Margaret Kovach. My HRM is summarized as follows:

1) Relational Foundation – establishing participatory relationships between the learner and the interviewee (i.e. Knowledge Holders and Photovoice participants in this dissertation);

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87 Kovach, *supra* note 48 at 94.
2) Ceremonial Foundation – ensuring principles (i.e. Peace, Trust, Friendship, & Giving Thanks) of Haudenosaunee laws are respected and witnessed;

3) Storytelling – enabling a process of clear thinking and reflecting Haudenosaunee intellectualism;

4) Visualization – visualizing and discovering Haudenosaunee knowledge.

The first phase of my dissertation examines the relationship of the Akwesasronon to the lands and waters, their health and the environment and utilizes a HRM with a CBPAR\textsuperscript{88} method called Photovoice\textsuperscript{89} to determine what wholistic health means to Akwesasronon and to examine the impacts of industrial development on their wholistic health. CBPAR has become widely adopted in qualitative research and has been used with Indigenous peoples in Canada since the early 1970s.\textsuperscript{90} CBPAR includes action research, participatory research, participatory action research and collaborative inquiry.\textsuperscript{91} Photovoice is a form of CBPAR that enables participants “to identify, represent, and enhance their community through a specific photographic technique.”\textsuperscript{92} It is used primarily in a wide range of health research to empower marginalized recipients of health systems to tell their stories in an effort to create positive change.\textsuperscript{93} As noted by Dr. Caroline Wang:


\textsuperscript{90} Jackson, \textit{supra} note 88.


\textsuperscript{92} Wang, \textit{supra} note 89 at 185.

\textsuperscript{93} Castleden et al, \textit{supra} note 90 at 1396.
Photovoice provides people with cameras to photograph their perceived health and work realities. Photovoice has three main goals: to enable people (1) to record and reflect their personal and community strengths and concerns, (2) to promote critical dialogue and knowledge about personal and community issues through group discussions of photographs, and (3) to reach policymakers.\textsuperscript{94}

Castleden et al used this technique of Photovoice with the Huu-ay-aht First Nations in British Columbia.\textsuperscript{95} The Photovoice methodology was done in another First Nations community, the Yellow Quills First Nations, which is a Saulteaux First Nation community located in Saskatchewan. In this study the researchers modified Photovoice to Postervoice which enabled youth to share their perspectives on values associated with water and health in their community.\textsuperscript{96} The research in those communities suggests that another purpose of using Photovoice is to build trust just as using Photovoice in this dissertation was to build trust with Akwesasronon. The Photovoice research in Akwesasne focussed on the first goal of the Photovoice methodology as noted by Wang to better understand wholistic health and the impacts of resource development upon wholistic health based on the perspectives of Akwesasronon. I will collaborate with the community in the future to share the results of this dissertation and to share the Photovoice project with the community which will promote the second and third goals of the Photovoice methodology. This will also promote the relational principles of the HRM to give back to the community and to give thanks to the participants of this study.

Both HRM and CBPAR draw on the knowledge and experience of community participants. CBPAR goals follow the Relational and Ceremonial Foundations of HRM. Photovoice supports the Storytelling and Visualization aspects of HRM because it enabled

\textsuperscript{94} Wang, \textit{supra} note 89 at 185.
\textsuperscript{95} Castleden et al, \textit{supra} note 90 at 1396.
\textsuperscript{96} Lori Bradford, Rebecca Zagozewski and Lalita A Bharadwaj, “Perspectives of water and health using Photovoice with youths living on reserve” (2016) 61:2 The Canadian Geographer 178.
participants in this study to demonstrate through photographs their visual processes and then to
tell a story about their photographs.

As a Mohawk person who is from a different Haudenosaunee community (i.e. Six Nations of
the Grand River) and who is also a researcher, academic and lawyer, it was important for me to
also follow and abide by this HRM. As a Haudenosaunee person, I abide by and practice
Haudenosaunee legal traditions, so it was a natural process for me to ensure the HRM was
followed. Trust and good working relationships have enabled me to establish a partnership with
the Mohawk Community of Akwesasne and approvals were obtained from the Mohawk Council
of Akwesasne to allow this research study in the community. Approvals were also obtained
from the Conjoint Faculty Research Ethics Board at the University of Calgary (CFREB). My
research has been guided by the Mohawk Council of Akwesasne’s Tehotienawakon
Environment Program as well as the community's requirement that Henry Lickers,
Environmental Science Officer, be formally added as a member of my PhD Committee.
Attached as Appendix A is a copy of the approval letter from Mohawk Council of Akwesasne’s
Tehotienawakon Environment Program.

This research study was accepted by the community of Akwesasne on February 25, 2013
through the Mohawk Council of Akwesasne. Ethics approval from the CFREB was obtained in
July, 2013. Fieldwork began July 16, 2014 with the last date of fieldwork being March 8 to 12,
2015. I made a total of nine (9) visits each lasting between five (5) to seven (7) days within that
timeframe in the community of Akwesasne to complete the research fieldwork. I had one last
interview with a Photovoice participant on July 17, 2018.

I was able to recruit a total of eleven (11) Photovoice participants. These participants
were identified through discussions with Henry Lickers and the staff at the Mohawk Council of
Akwesasne’s *Tehotienawkon* Environment Program. One of the adult Photovoice participants, who was close to the youth age group, wanted to stay anonymous and she volunteered to assist me in recruiting more youth. Of the eleven Photovoice participants, there were two youth (one male, one female) ranging in age between 18 – 25 years old, five adult females and four adult males. None of the youth participants were under the age of 16 in which case consents would have been required of their parents. All Photovoice participants, including the youth, consented to being named except for two who wanted to remain anonymous. The rest of the Photovoice participants are named. Some of the participants only have a Mohawk name and this will be noted when their photographs are introduced in Chapter 4. The two Photovoice participants who remained anonymous are described as Photovoice Participant 1 and Photovoice Participant 2. One of the difficulties in this study was the inability of youth to commit to this project. There was a total of fourteen (14) youth who originally signed up as participants; however, when following up with them, they either declined to further participate or they did not respond at all.

The process included one-on-one meetings with each of the participants to explain the Photovoice process, to explain its purpose within this dissertation and to record the explanation of their photographs. Those who participated in the Photovoice process took photographs, forwarded me their photographs by email and consented to all of the photographs being used in this dissertation. Their photographs and stories to describe them answered the following research questions:

1) What does wholistic health mean for the Akwesasronon?

2) What are the industrial and resource developments impacting the Akwesasronon?

3) What are the effects of industrial and resource developments on:
   
   a. the physical health of the Akwesasronon?
b. the emotional health of the Akwesasronon?
c. the spiritual health of the Akwesasronon?
d. the mental health of the Akwesasronon?
e. the environmental health of the Akwesasronon?

4) Is there a connection between having healthy lands and waters and wholistic health?
   If so, what is that connection?

The CBPAR aspect of this study also included one on one interviews with ten (10) Elders/Traditional Knowledge Holders\(^7\) who are all respected members of the Akwesasne community. The names of the Knowledge Holders to interview were discussed with Henry Lickers and the staff at the Mohawk Council of Akwesasne’s Tehotienawakon Environment Program. Many of them were known to me so it was not difficult to contact them and set up a time to visit with them. Some of the Knowledge Holders, after their interviews, suggested the names of other Knowledge Holders whom I should interview. The interviews with the Knowledge Holders were scheduled and their in-depth knowledge was audio-recorded and transcribed. They answered the following questions:

1) What does wholistic health mean to you?

2) What are the industrial and resource developments impacting the Akwesasronon?

3) What are the effects of industrial and resource developments on:
   a. the physical health of the Akwesasronon?
   b. the emotional health of the Akwesasronon?

\(^7\) Elders and Traditional Knowledge Holders are typically one and the same. They are people who have knowledge that they have been taught and who share that knowledge. They may not necessarily be elderly people. The term used throughout this dissertation is Knowledge Holder. In western literature and research, some may utilize the term “key informant”; however, to respect Indigenous Knowledge, they are more than informants; they are Knowledge Holders.
c. the spiritual health of the Akwesasronon?

d. the mental health of the Akwesasronon?

e. the environmental health of the Akwesasronon?

4) Is there a connection between having healthy lands and waters and wholistic health? If so, what is that connection?

The Knowledge Holders were presented additional questions relating to Phase Two of this study and they answered what they could of these questions. The additional questions presented to the Knowledge Holders were:

1) How can Indigenous legal traditions, specifically Haudenosaunee legal traditions be used to protect the wholistic health of the Akwesasronon?

2) How can Aboriginal and Treaty Rights law (i.e. Eurocentric law) be used to protect the wholistic health of the Akwesasronon?

3) What are the Knowledge Holders’ views about utilizing Eurocentric law to enforce their rights/interests?

As the Knowledge Holders are not lawyers or legally trained, their responses to question #2 was limited to the knowledge that they had of some specific legal cases, which will be discussed in Chapters 4 and 5.

All Knowledge Holders and Photovoice participants signed consent forms; see Appendix B and C, respectively. The results of the interviews with the Knowledge Holders and Photovoice fieldwork are formulated within the framework of the Ohén:ton Karihwatéhkwen and are presented in Chapter 4, and further discussed in Chapter 5 and applied in the Findings section in Chapter 6.
II.2. Legal Methodology

Chapter 5 abides by the *Kuswentah* theoretical approach to analyze both Haudenosaunee legal traditions and Eurocentric legal traditions. I analyze both a human responsibility approach according to Haudenosaunee legal traditions as well as analyzing a rights-based approach according to Eurocentric legal traditions to protect the wholistic health of Akwesasronon.

a. Haudenosaunee Legal Methodology

Indigenous legal traditions of the Haudenosaunee Peoples originate from oral history passed down from generation to generation and are wholistic in nature. It is the Creation Stories, various wampum belts (including the Two Row Wampum and Akwesasne Wolf Belt), the teachings of the Great Law of Peace and the *Ohén:ton Karihwatéhkwen* that set the groundwork for Haudenosaunee Peoples’ way of life including all spiritual, legal, social, educational, political and relational aspects. An interview was also recorded with Darren Bonaparte, a community member of Akwesasne, who explained the oral history of the Akwesasne Wolf Belt and consented to its incorporation into my dissertation. This discussion is provided in Chapter 5.

In describing Haudenosaunee legal traditions, Cayuga Bear Clanmother Carol Jacobs stated in her address to the United Nations that:

In making any law, our chiefs must always consider three things: the effect of their decision on peace; the effect on the natural world; and the effect on seven generations in the future. We believe that all lawmakers should be required to think this way, that all constitutions should contain these rules.\(^98\)

Haudenosaunee legal traditions are based on responsibilities to the natural world and to the next seven generations. Haudenosaunee Peoples are reminded over and over again that “rights” are responsibilities and that we, as human beings, have a responsibility to future generations.

\(^98\) Jacobs, *supra* note 54 at 116-117.
Haudenosaunee Peoples continue to live according to their laws and customs and have never forgotten about sacred relationships as set out in the *Kuswentah*. Haudenosaunee legal traditions have been aptly described as follows:

> We have a law that came from the creator and in that law was *absolutely* everything that we needed! Kanien’keha:ka call it KAIANERE’KO:WA. Some people call it the Great Law, or the Great Law of Peace, and it is. This law, our law, does not define ‘rights’; it does not defend ‘rights’. In our ways, there are no ‘rights’, only responsibilities: to observe the clans, to bring honour, trust, friendship and respect; to share; to be kind, honest and knowledgeable; to maintain a relationship with all of the natural world.\(^99\)

Oren Lyons, an Onondaga (Haudenosaunee) Sub-Chief and Faithkeeper, has stated that Aboriginal rights are the law of the Creator. He stated that “we share land in common, not only among ourselves but with the animals and everything that lives in our land. It is our responsibility. Each generation must fulfil its responsibility under the law of the Creator.”\(^100\)

The Haudenosaunee Legal Research Methodology that I use in this dissertation follows the guiding principles of the HRM; that being the Relational and Ceremonial Foundations wherein I was required to establish a trusting relationship with the Knowledge Holders. The one-on-one interviews with Haudenosaunee Knowledge Holders who live in Akwesasne reflected their in-depth knowledge about Haudenosaunee legal traditions. Haudenosaunee legal traditions are analyzed for their ability to protect the wholistic health of the Haudenosaunee Peoples, specifically Akwesasronon. This analysis of Haudenosaunee legal traditions guides the discussion towards answering the first question of Phase Two of this dissertation: How can

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Indigenous legal traditions, specifically Haudenosaunee legal traditions, be used to protect the wholistic health of Akwesasronon. This is found in Section II of Chapter 5.

b. Eurocentric Legal Methodology

The Eurocentric legal methodology I use in this dissertation is based on an analysis of literature and case law that is relevant under section 35(1) of the Constitution Act, 1982, which states that “the existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.” The purpose of focussing on the analysis of section 35 of


the *Constitution Act, 1982*, is based on the *Kuswentah* theory that Eurocentric laws are metaphorically reflected within the “ship”, and so the legal analysis in this dissertation requires a Eurocentric legal methodology.

By focusing upon the protections in Canadian law as it applies to Aboriginal people (section 35 of the *Constitution Act, 1982*), the second question of Phase Two of this dissertation is answered: How can Aboriginal and Treaty Rights (i.e. Eurocentric Law) be used to protect the wholistic health of the Akwesasronon? As noted earlier, the Knowledge Holders provided some feedback to this question; however, the analysis required to answer this question is based on a Eurocentric legal analysis. This question is answered in Section III of Chapter 5 relating to Canadian law that applies to Aboriginal people.

**II.3. Archival Research**

There are many secondary sources (i.e. previous scientific research, cultural impact studies, various other studies and documented community reports) that have been documented regarding the wholistic health of the Mohawk community of Akwesasne. These secondary sources are cited within the literature discussed in Chapter 3 and are analyzed throughout this dissertation.

**Conclusion**

The theoretical framework of this dissertation is based on what I have developed as the *Kuswentah* Theory which presents two very different worldviews: Haudenosaunee and Eurocentric. The guiding principles of this relationship are peace, trust and friendship. It is the intention of this dissertation to respect those guiding principles. The development of a Haudenosaunee Research Methodology respects a Haudenosaunee worldview. Haudenosaunee Peoples have always had methods of learning and acquiring knowledge, which are integrated into the empirical component of this dissertation. Finally, my analysis of solutions relies on
Haudenosaunee Legal Methodology and Eurocentric Legal Methodology and is also based in *Kuswentah* Theory.
CHAPTER THREE: UNDERSTANDING WHAT HAS BEEN WRITTEN

Introduction

This dissertation is interdisciplinary in nature, encompassing several disciplines and areas of discussion, including Indigenous research methodologies and Indigenous legal research methodologies, wholistic Indigenous health, and law. It also includes research in which the author partnered with members of the Mohawk community of Akwesasne. There are many research studies that have taken place in the community as well as academic literature that relates to each of these areas and disciplines, which are discussed in this chapter.

The first topic of discussion is the research and research studies that have already been undertaken in the community of Akwesasne concerning industrial and resource development and health. It is important to note that many of the research studies that have taken place in the community also included Haudenosaunee researchers and scientists from the community. Many of the studies were, however, completed by non-Indigenous researchers and were done prior to any of the current ethical responsibilities for researching in Indigenous communities were established. Their findings may not be invalid according to the scientific guidelines at that time; however, any studies currently undertaken in the community are required to follow the ethical guidelines of the community.

After a discussion of the previous research undertaken in Akwesasne that is relevant to my study, I will review the major findings from the literature in the three disciplinary areas encompassed by this dissertation: Indigenous research methodologies and Indigenous legal research methodologies, wholistic Indigenous health, and law, specifically Indigenous legal traditions, Haudenosaunee legal traditions and Euro-Canadian law (Aboriginal and treaty rights recognized under section 35 of the Constitution Act, 1982 of Canada).
I. Prior Research in Akwesasne

The community of Akwesasne has been a place of scientific, academic and community study in history, health and law. Historian Aren Akweks wrote a short piece about the “History of The St. Regis Akwesasne Mohawks” which provided some background and history of the community. As early as 1979, academics came into Akwesasne to study the impacts of resource development in the community. Irving J. Selikoff’s report was “an evaluation of adverse human health effects” and was contracted by the Federal Health and Welfare Department and the Akwesasne St. Regis Mohawk people. Selikoff’s study took a western scientific approach and its overall objective “was the assessment of the health status of the people of the St Regis Reserve [Akwesasronon] in relation to their estimated degree of exposure to fluorides, methyl mercury, PCBs and mirex.” The researchers in this study designated fluoride exposure areas: high, medium and low, and they did household interviews with “approximately 98% of the adult residents of the ‘high’ or ‘low’ exposure areas.” A preliminary feasibility study of the dental status of approximately 70 children between the ages of 10 to 20 years, who had been living on the Reserve during the decade from 1961 to 1971, was

104 See e.g. Irving J. Selikoff, E. Cuyler Hammond & Stephen M. Lewis, Environmental Contaminants and the Health of the People of the St. Regis Reserve Volumes I, II, & III (Mount Sinai School of Medicine of the City University of New York, Environmental Sciences Laboratory, year unknown) [Selikoff].
105 E. J. Dickson-Gilmore, Communities, contraband and conflict: considering restorative responses to repairing the harms implicit in smuggling in the Akwesasne Mohawk Nation (Ottawa: Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police, 2002).
106 Akweks, supra note 103.
108 Selikoff, Volume I, supra note 104 at 34.
109 Ibid at 41.
also completed. They also studied the content of ambient air and plant life downwind from the Reynolds aluminum plant.

The research team worked with volunteers from the community and transformed a public school on the reserve into a “mini-hospital.”\textsuperscript{110} This enabled the researchers to interview volunteer members of the community to participate in an in-depth clinical health study that included filling out consent forms, questionnaires for clinical evaluation (i.e. history of residence, diet, occupation history, smoking, Medical Research Council bronchitis/dyspnea, reproductive, past medical, dental, alcohol use and symptom review); clinical examinations (i.e. physician’s physical examination, oral examination, neurobehavioral studies, performance testing, nerve conduction velocity testing, pulmonary function testing) with a focus on “physical abnormalities reported to be associated with fluoride, mercury and PCB exposures, involving in particular the musculo-skeletal, central and peripheral nervous system and the skin;”\textsuperscript{111} and laboratory evaluations (i.e. blood, thyroid, urine, hair, fingernail and skin testing).\textsuperscript{112}

The findings of the Selikoff clinical health study resulted in the following conclusion regarding the impacts of fluoride exposure:

\begin{quote}
In summary, no indication of clinical illness was found to be associated persuasively with fluoride exposure or assessed in this study. The possibility that clinical disorders, resulting from fluoride exposure may arise in the next one to two decades cannot be excluded entirely; however, there is evidence in the lack of such findings among those exposed occupationally to fluorides to suggest that this possibility is unlikely. Nevertheless, it would be prudent to continue monitoring individuals who have high serum fluoride levels.\textsuperscript{113}
\end{quote}

\begin{footnotes}
\textsuperscript{110} Ibid at 44.
\textsuperscript{111} Ibid at 47.
\textsuperscript{112} Much more clinical language was used in the study. Ibid at 48-49.
\textsuperscript{113} Ibid at 351.
\end{footnotes}
Selikoff’s clinical health study related to methyl mercury exposure found that there was no indication of clinical illness associated with this exposure. The report did recommend the following, however:

Since no evidence of methyl mercury-related illness was detected in relation to indices of exposure among the people of St. Regis, a general proscription against the consumption of locally caught fish would not appear to be warranted at this time. Nevertheless, because of the likely increased sensitivity of the fetus to methyl mercury, pregnant women (and those who plan a pregnancy within several months) would be well advised to limit the amount of such fish in their diet. Similarly young children may be more vulnerable to neurotoxic agents generally and perhaps should not be permitted to consume excessive amounts of such fish.  

The Selikoff study was guided by Henry Lickers, the Director of the St. Regis Environmental Division at that time, and I was advised by him that I was not to do a technical western-scientific study like this.115

Another research study was done by historian Bruce E. Johansen, conducted in response to the community requesting him to write about an internal community conflict which resulted in death in 1990.116 As noted in the foreword of this publication, Douglas M. George-Kanentiio, who is a member of the Akwesasne Mohawk Nation and a writer,117 recognized the “jurisdictional nightmare” with Canada and the United States imposing “colonial governments upon its territory…resulting in three councils vying for power over 8,000 people on 28,000 acres of heavily polluted lands astride the St. Lawrence River” which was felt to be the underlying...
source of the conflict.\textsuperscript{118} Thus, these colonial systems have had an impact upon the community. This historical piece assisted in understanding the horrific layers and layers of impacts of colonization upon the community of Akwesasne.

The most recent publication relating to the community of Akwesasne’s resilience regarding environmental health, environmental cleanup and preservation of food culture was completed by Elizabeth Hoover in 2017.\textsuperscript{119} Hoover’s work provides important background by identifying the enormous amount of research studies and community work that has been done in Akwesasne. The community straddles many jurisdictions (i.e. United States, Canada, Ontario, Quebec, and New York State), and Hoover focused on the United States’ legislation, which:

\begin{quote}
Gave the U.S. federal government broad authority to respond directly to releases of hazardous substances that might endanger public health or the environment, established prohibitions and requirements concerning closed and abandoned hazardous waste sites, and provided for the liability of persons responsible for releases of hazardous waste. The trust fund part of Superfund, which was established to pay for cleanup when no responsible party could be identified, was funded initially through a tax on chemical and petroleum industries.\textsuperscript{120}
\end{quote}

Most of the historical aspect of Hoover’s work focuses on the environmental justice movement and the relationship between Akwesasne and the United States. She notes that much of her book “is about method – and about what happens when Indigenous methods are brought together with conventional academic practice in pursuit of environmental justice.”\textsuperscript{121} Her own method was “shaped by the history shared in this book.”\textsuperscript{122}

\textsuperscript{118} Johansen, supra, note 116 at ix.
\textsuperscript{119} Elizabeth Hoover, The river is in us: Fighting Toxics in a Mohawk Community (Minneapolis, MN: University of Minnesota Press, 2017) [Hoover].
\textsuperscript{120} Ibid at 3. Hoover focused on The Comprehensive Environmental Response, Compensation, and Liability Act, 94 Stat 2767, known as Superfund and amended by the Superfund Amendments and Reauthorization Act, 42 USC 9601.
\textsuperscript{121} Hoover, ibid at 15.
\textsuperscript{122} Ibid.
Hoover’s work supports the research that I completed in this dissertation in many ways. Many of her interviewees were the same as the Knowledge Holders and Photovoice participants in this study. Although her focus has been in the context of environmental justice, environmental health and food production as well as the impacts of resource development upon the environmental health of Akwesasnon, she also provides the historical account of the academic research done in Akwesasne. She provided a detailed account of a CBPAR project, the “First Environment Research Project”\(^\text{123}\) and the reactions and responses of community members to being active participants in the research. She described the responses of Katsi Cook – a Mohawk midwife, environmental justice activist and scientist (and Knowledge Holder in this study) - to researchers in another study as follows:

> At the very outset, I demanded that the only way we’re going to work with Mohawk women in the precious intimacy of Mohawk mothers’ milk and our relationship to our young is to ensure the mothers that they are co-investigators in this study. There’s not going to be any one of you researchers that stand taller than the Mohawk mothers. We’re all of the same height, which is a traditional principle in our longhouse. That we’re not going to be guinea pigs. You’re not going to run back to your funding agency with our analyses before you tell us. Those are our tissues. That’s our data. It doesn’t belong to your funding agency first. We want to control over how this happens.\(^\text{124}\)

This finding of Hoover supports the approach taken in this dissertation in that the Akwesasne community is a partner in this research and they made the decisions about the process of working with community members.

In the second half of Hoover’s book, her findings about “the impacts of contamination on Akwesasne’s food culture”\(^\text{125}\) (i.e. how diets have changed over generations, the decisions to rely or not rely on fishing, farming, gardening, harvesting), the “health issues that developed as a

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\(^{123}\) *Ibid* at 138.

\(^{124}\) *Ibid* at 139.

\(^{125}\) *Ibid* at 22.
result,”¹²⁶ (i.e. increase in rates of diabetes) and the “community’s efforts to remedy them”¹²⁷ (i.e. community gardening projects, programs to support traditional Mohawk cultural practices) assist in supporting the findings of this dissertation. This will be reflected in Chapter 6.

Hoover’s work supports the heart of this dissertation: the connection between the healthiness of the land and the healthiness of the people. For example, she highlighted that:

Some members of the community told me that they were convinced that if the environment could be healed, the community’s health and social ills would be healed at the same time. They viewed the health of one as intrinsically tied to the health of the other.¹²⁸

Katsi Cook has been both a subject of study and interviews¹²⁹ as well as an author and researcher herself about the historical environmental struggles and encroachment of industrial development in the community of Akwesasne. As a researcher, Cook has co-authored numerous academic articles on reproductive justice,¹³⁰ environmental justice¹³¹ and on the toxic contaminants in Akwesasne.¹³² The majority of Cook’s work is in relation to the environmental injustice that has been perpetuated against her people in Akwesasne. She was a Principal

¹²⁶ Ibid.
¹²⁷ Ibid.
¹²⁸ Ibid at 26.
Investigator with other Mohawk mothers and collaborated with the State University of New York, Albany, New York to complete a study of the PCB levels in Mohawk mothers’ milk. The findings of this study were that:

From 1985 to 1991, Mohawk mothers had twice the level of PCB congeners in their milk as controls living near Albany. Because the Mohawk mothers were co-investigators in this study, they understood that the PCB congener fingerprints found in the fish from the St. Lawrence were identical to the PCB congeners found in their milk. This further motivated the Mohawk women to become involved with the issue and culminated with an NIEHS Superfund Basic Research Program.

Cook’s work provides the background to the impacts of the industrial and resource development that are discussed in Chapters 4, 5 and 6.

In 2009, Taiaiake Alfred conducted a qualitative study that assessed the “cultural impacts of environmental contamination at the Akwesasne Mohawk Territory.” The study was based on a “review and analysis of materials related to the environmental contamination of Akwesasne and subsequent impacts on local cultural practices of the Mohawks of Akwesasne” as well as the results of interviews of community members in an Oral History Project. The objective of this study was to determine how the degree of hazardous substances released by Alcoa, Reynolds and General Motors “affected the natural resources by the Mohawks of Akwesasne.”

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133 Tyson, Cook, et al, supra note 131 at 1790.
134 It was noted by the author that, “In a strictly scientific perspective, the survey data and the overall protocols, framework and indicators presented in the Report may indeed support a quantitative analysis. The researchers found that it may be possible to generate statistical correlations based on variables such as resource sharing, economic conflicts, significant environmental symbols, contamination’s effect on income, causation of conflict, varieties of species harvesting, income levels, changes in diet, etc. may be possible to generate using data in the SRMT database. But the time and expense…were beyond the capacity of the project as currently formed and staffed.” Taiaiake Alfred, “Cultural Impact Study. Assessment and Overview of the Effects of Environmental Contamination on the Mohawks of Akwesasne,” September 27, 2006. In Author’s Possession.
135 Ibid.
136 Ibid at 2.
Akwesasne, and what impacts has this had on their cultural practices?" Alfred’s report was based in anthropology “but draws on multiple sources of insight in developing its approach to ‘culture’ and ‘cultural impacts.’” Alfred dispensed with “Eurocentric interpretive tendencies” and utilized a conceptual framework developed by Anishnaabe environmental scholar Deborah McGregor, which “approaches culture as not just knowledge about Mohawk relationships with Creation, culture is the relationship; its locus is the way the people relate to creation.”

Alfred’s findings reflect on the direct effects of environmental contamination on the cultural practices of Akwesasronon, which include the loss of use of the rivers, fishing, eating fish, picking traditional medicine plants, knowledge of the medicine plants, hunting and trapping. As noted by Alfred:

Until the time of the heavy industrialization the people of Akwesasne were able to assert an effective measure of control over the impacts of the outside world; this autonomous existence and balanced organic pattern of change was effectively changed by the industrialization of the area and the ensuing effects of its toxic by-products on the environment.

The impacts on Akwesasronon were also identified by Alfred, including psychological and emotional effects. For example, his study found that the “psychological effects of being cut off from the most important aspect of one’s culture and way of life are profound and innumerable” and “being unable to fulfill responsibilities to the environment one is responsible for has very real detrimental psychological and emotion effects – these have been

137 Ibid.
138 Ibid at 3.
140 Alfred, ibid at 14.
141 Ibid at 15.
observed and are clearly represented in the data for Akwesasne.” 142 The study also found that the impacts of hazardous substances on the environment affected the animals, children and adolescents, Elders, women of childbearing age and men.

The conclusion of the report provided evidence that various contaminants released into the natural environment by resource development companies impacted the traditional resources and the resource-based cultural practices of the Akwesasronon. As noted by Alfred, “virtually all activities were cultural practices related to the land, ecosystem and aquasystem of the Mohawk Peoples of Akwesasne.” 143 Alfred’s work supports the findings in this dissertation regarding the impacts of resource development upon the wholistic health of Akwesasronon, which is reflected in Chapters 4 and 5. I also argue in Chapter 6 that Alfred’s description of culture and practices of culture are the same as the practice of Indigenous legal traditions.

Tom Porter is another traditional leader in the community who has published on Haudenosaunee history and culture 144 and has been the subject of many interviews and research studies. For example, Winona LaDuke, whose research has focused on the stories of Indigenous peoples who are reclaiming their ways of life, interviewed Tom Porter. 145 Tom Porter is described by LaDuke as a “rock-solid foundation of the Mohawk Nation” 146 who remembers the stories that his grandmother told him of the traditional territory of the Mohawk Nation called Kanatohareke. It is in this reclamation of the Mohawk traditional territory that Porter, his

142 Ibid at 16.
143 Ibid at 2.
146 Ibid at 160.
family and other Mohawk families restored the land and territory to ensure that they reconnected
to Mother Earth and spiritual practices. He is quoted by LaDuke as follows:

The ceremonies are all about our relationship to Mother Earth, from planting to the trees. If you don’t work with Mother Earth, they have no meaning.\textsuperscript{147}

After more than ten years of reconnecting with the traditional territory, Porter advised that traditional ways, like living and working off the land, revitalizing the Mohawk language, eating healthy foods, sharing seeds and stories and continuing the Mohawk way of life, are being revitalized at Kanatiohareke. His work supports the argument that Haudenosaunee legal traditions protect the wholistic health of Akwesasronon in Chapter 5.

There have been numerous studies, specific to Akwesasne, published in academic journals and books on community health,\textsuperscript{148} various environmental contaminant subject matters,\textsuperscript{149} impacts of environmental contaminants upon the men in the community,\textsuperscript{150} impacts of environmental contaminants upon the women in the community,\textsuperscript{151} the impacts upon girls in the community,\textsuperscript{152} and the community’s resistance to cultural and environmental damage.\textsuperscript{153}

\textsuperscript{147} \textit{Ibid.}
\textsuperscript{153} Tarbell & Arquette, \textit{supra} note 36 at 93.
Members of the Akwesasne community who are scientists and members of the ATFE have co-authored many publications and published numerous articles, including online articles (i.e. not published in journals). These authors bring a cultural perspective to the topic of environmental health and they are critical of the federal and state agencies’ risk assessment tools that are not culturally appropriate. For example, one of the questions brought forward by Alice Tarbell and Mary Arquette in their article is as follows:

How can we discuss issues involving cultural, human health, and ecosystem impacts with federal and state agencies when their narrowly focused risk assessment models are often completely inappropriate for native nations, who long ago developed integrated, holistic models of health?

They further note that:

[T]he decisions being made by U.S. federal and state agencies, as well as those made by local industries, are preventing the Mohawk people from fulfilling their duties to the natural world and their people.

Their solution includes their own involvement as Mohawk scientists with research in their community at Akwesasne through studies like a “full toxicological analysis of ecosystems, including analyzing mammals, turtles, frogs, waterfowl, fish, invertebrates, vegetation, sediment, water, air and human serum samples for contaminants such as PCBs”, which is similar to

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154 Ibid; Arquette et al, supra note 11; Arquette, Cole and ATFE, supra note 18 at 332. The Mohawk scientists/authors highlighted in these articles include Mary Arquette, Maxine Cole, Brenda LaFrance, Margaret Peters, Elvera Sargent and Vivian Smoke who were members of the Akwesasne Task Force on the Environment, Katsi Cook of the Iewirokwas Program and James Ransom of the Haudenosaunee Task Force on the Environment. Some of these authors are interviewed as Knowledge Holders in my study. Elvera Sargent is the same Photovoice Participant who is named Konwanahktotha Sargent in this study.


156 Tarbell & Arquette, supra note 36 at 93.

157 Ibid at 100.

158 Ibid.
Katsi Cook’s “discussions with scientists to perform chemical analysis of the breast milk of nursing mothers.”

Maxine Cole, another scientist, member of ATFE and community member (and Knowledge Holder in my study) was the Principal Investigator for the “cultural resource study regarding the socio-cultural effects of the St. Lawrence-FDR Power Project” on the Akwesasronon which she co-wrote with Mary Arquette and the ATFE. She also completed a thesis-based Master of Science degree in Epidemiology in August of 2004. Cole’s Masters’ thesis was a survey of health risk, which was conducted on 297 randomly selected residents of Akwesasne out of a population of 13,000. As noted by Cole, “the survey was conducted to understand how residents of Akwesasne perceive different types of health risks, and how attitudes about such risks are formed.” The results “demonstrated higher perceptions of risk among older as compared to younger respondents and among women as compared to men. The media represented the primary source of information on risk, followed by traditional healers, although traditional healers were perceived as being more credible than the media.” An important recommendation based on her findings is relevant to this dissertation:

The health of the community is connected to the health of the environment. Therefore, increased responsibility needs to be put on polluters to clean up contaminated sites in concert with the application of political pressure by local government for acceptable remediation.

159 Ibid.
160 Arquette, Cole and the ATFE, supra note 18 at 332.
162 Ibid at i.
163 Ibid.
164 Ibid at 121-122.
Joyce King, one of the Knowledge Holders interviewed in this study, published an article about the value of water and the meaning of water law of the Haudenosaunee Peoples. In this article, King focused on the original “Law of the Land” in which she described the Haudenosaunee responsibilities to Mother Earth and noted how “the sacredness of water was acknowledged in treaties and agreements with other nations.” More specifically, she described four components of Haudenosaunee law as inherent laws; those being the Ohén:ton Karihwatéhkwen, the Thanksgiving Address, the Great Law of Peace, Kuswentah and other treaties. She concluded in her article that these treaties “were designed to protect Haudenosaunee rights, and believe it or not, our existence as Haudenosaunee of this day.”

King’s publication supports the findings of the Knowledge Holders about the differences between Haudenosaunee laws and Eurocentric laws – the differences between being responsible and having rights which is reflected in Chapter 5.

All of the literature and research studies that are included in this section assisted in understanding the vast amount of research that has been done in the community of Akwesasne not only by outside researchers but also Mohawk scientists in the community of Akwesasne. The researchers from inside the community provided a deeper understanding of the issues in

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166 King, ibid at 459. There were many treaties made between the Haudenosaunee Confederacy and other Indigenous Nations prior to colonization. There were also many treaties made between the Haudenosaunee Confederacy with early European colonialists. A list of these treaties was reproduced and attached as Appendix A to my LL.M. thesis. Jacobs, supra note 4 citing Francis Jennings et al (eds.) The History and Culture of the Iroquois Diplomacy. An Interdisciplinary Guide to the Treaties of Six Nations and Their League (Syracuse, NY: Syracuse University Press, 1985) at 157.
167 King, ibid at 453.
168 Ibid at 470.
their community and some were able to provide further traditional knowledge associated with the impacts of resource development. These studies support the community’s steadfast and consistent message that there are adverse impacts of industrial and resource development on the health and well-being of Akwesasronon. What I will be adding to this discussion is the transformation of cultural and traditional knowledge and the discussion of health into the concepts of Haudensoaunee legal traditions, wholistic healthiness, the impacts of development upon wholistic health. as well as the protection of wholistic health of Akwesasronon based on Kuswentah, including Haudenosauene and Euro-Canadian laws.

II. Indigenous Research Methodologies

There are many scholars who have been the frontrunners in writing about Indigenous research methodologies, as noted in Chapter 2. As they advise, Indigenous research methodologies are premised on the need to decolonize the western approach, which was the focus of Bagele Chilisa’s research and publication.\(^{169}\) Chilisa’s publication is very detailed and informative and could be utilized as a course book in an Indigenous Research Methodologies course. She recognizes the knowledge systems of:

formerly colonized, historically marginalized, and oppressed groups, which today are most often represented as Other and fall under broad categories of non-western, third world, developing, underdeveloped, First Nations, indigenous peoples, third world women, African American women, and so on.\(^{170}\)

She describes these knowledge systems as postcolonial Indigenous research methodologies. She also provides a comparison of these methodologies with the “dominant” Euro-western research paradigm and demonstrates through excerpts from HIV/AIDS studies that “mainstream research


\(^{170}\) *Ibid* at 2.
in postcolonial societies still ignores, marginalizes, and suppresses other knowledge systems and ways of knowing.”171 The continued marginalization of the worldviews of Indigenous knowledges is demonstrated through “deficit theorizing, the written literature on the colonized, and the use of the dominant languages.”172 Chilisa defines postcolonial indigenous research paradigms as the “other’s” use of language, oral literature and storytelling and she also discusses Indigenous knowledge and research. In some areas, I do not necessarily agree with her definitions, specifically her comment that “Indigenous knowledge is a relatively recent phenomenon”173 as Indigenous knowledges have existed since time immemorial.174 If she is locating her definition within academia, then I would definitely agree that Indigenous knowledges and research is new to academia.

Chilisa provides a description of a Kuapapa Maori Research Methodology that supports the HRM developed and used in this dissertation. For example, she quotes Marewa Glover who describes Kaupapa Maori as “a desire to recover and reinstate mautaranga Maori, the indigenous system that was in place before colonization.”175 Kaupapa Maori research:

was summarized as research that (1) is related to being Maori, (2) is connected to Maori philosophy, (3) takes for granted the validity and legitimacy of Maori language and culture, and (4) is concerned with the struggle for autonomy of the Maori.176

Chilisa also identifies the role of the “researcher as the colonizer, researched as colonized; researcher as knower/teacher, researched as object/subject/known/pupil; and researcher as

171 Ibid at 73.
172 Ibid at 97.
173 Ibid at 98.
174 Loppie, supra note 59 at 276.
redeemer, researched as the problem.”¹⁷⁷ This supports my own understanding of being a Haudenosaunee researcher/academic and researching within one of our Haudenosaunee communities, Akwesasne.

Maggie Walter and Chris Andersen have published on Indigenous quantitative methodologies.¹⁷⁸ There are “three central premises” of their publication:

1) The Cultural Framework of Indigenous Statistics;

2) The Methodologies that Produce Indigenous Statistics; and

3) Understanding that Academic Research is a Situated Activity.¹⁷⁹

Although quantitative methodologies are not used in my dissertation, it is important to acknowledge these authors’ knowledges and principles in their publication because they take their methodologies outside of the mainstream quantitative definitions. They “argue for an accounting of modernity within first world Indigenous methodologies”¹⁸⁰ and they also argue:

against positioning Indigenous methodology dichotomously in opposition to western frames and against grounding it in a concept of traditional knowledge and culture ‘outside of modernity’.¹⁸¹

The authors acknowledge that data is powerful; however, they argue that the “dominant quantitative methodologies shortchange Indigenous communities.”¹⁸² Their work supports my dissertation in that a modern approach to a HRM in academia supports, respects and acknowledges the ancient traditional knowledge of the Haudenosaunee Peoples. My use of

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¹⁷⁷ Chilisa, *ibid* at 190-194.
¹⁷⁹ *Ibid* at 9–12.
¹⁸⁰ *Ibid* at 17.
¹⁸¹ *Ibid*.
¹⁸² *Ibid* at 21.
Kuswentah theory is supported by their point about avoiding a dichotomy between western and Indigenous methodologies.

Lorelei A. Lambert has published on Indigenous methodologies within the discipline of Behavioral Sciences. Lambert’s work has focused on her own voice as an Indigenous researcher and the voices of Indigenous peoples from Montana’s Flathead Indian Reservation, Queensland, Australia and Churchill, Manitoba.183 Her publication is a “personal journey that includes the theories and ideas of Indigenous cultural research methodologies that impact psychological behaviours.”184 In Lambert’s research methodology, she used an Indigenous epistemology of group discussions, called Sharing or Talking Circles. She described the concept of Circles within Indigenous ways of thinking:

Circles suggest inclusiveness and the lack of a hierarchy namely, interconnectedness, continuity, and equality…Circles are acts of sharing all aspects of the individual – heart, mind, body and spirit – and permission is given to the facilitator to report on the discussions.185

Although Lambert’s methodologies are within a different discipline, her work supports the development and use of my HRM in this dissertation. For example, she notes:

I envision that this work may create a smoother research plan for Indigenous scholars, and will contribute to their becoming expert researchers by applying Indigenous methodologies to their work; I hope they learn to love research that gives voice and self-determination to their own communities, and that they develop their own Indigenous conceptual frameworks as the path that they follow to conduct research. They will have the capacity to build the framework for a proposal from their own passion, values, ‘Place,’ and Indigenous or tribally centered epistemology…Indigenous scholars are working towards social change for their communities.186

184 Ibid at 7.
185 Ibid at 10.
186 Ibid at 8.
I do love the opportunity to apply a HRM to this dissertation and I believe that it does give voice to and allows for self-determination of Akwesasronon.

Margaret Kovach discussed her experiences as a graduate student presenting her research for the first time and the difficulties she had within the academic institution.\(^{187}\) She acknowledged that Indigenous peoples needed to “take back research”\(^{188}\) as one of our many tasks within the academy. Kovach then developed her own Indigenous methodology, *Nehiyaw Kiskeyihtamowin* (based on Plains Cree knowledges) and notes, “as an Indigenous presence surfaces within western universities, it brings with it all that is Indigenous: thought, custom, culture, practice, and self.”\(^{189}\) Like Kovach, I am developing my own HRM based on the knowledges, laws, practices of the peoples I have been raised with: Haudenosaunee.

In her health research, Métis scholar, Kim Anderson interviewed seven grandmothers from different Indigenous Nations about the role of Aboriginal women in health care in their communities, how women did research in their communities and how they solved health-related problems. She interviewed these grandmothers about research ethics and knowledge translation practices.\(^{190}\) Anderson found that the stories of the women Elders and their traditional roles, practices and knowledge systems have practical application in health and healing research. Overall principles from Anderson’s study with women Elders include:

Valuing relationship-building with all our relations, the importance of reciprocity, and the need for ongoing processes of intergenerational knowledge transfer. These principles can


\(^{188}\) Ibid at 59.

\(^{189}\) Kovach, *supra* note 48 at 156.

ground us in Aboriginal research that is based on our own ways of knowing, being and doing.\textsuperscript{191}

As a result of the teachings of these grandmothers, through their storytelling, Anderson noted their lessons regarding the responsibilities of researchers when doing research in Aboriginal communities:

researchers need to know the communities that they are working with; they need to establish relationships of respect; they need to invite the community to help in defining the work, or be invited in by a community that has already defined their own research objectives, and they need to consider how they are going to communicate in a culturally appropriate manner.\textsuperscript{192}

Cree scholar Shawn Wilson argues that there is a liberal ideal of the dominant research paradigm in that the individual is the source and owner of knowledge.\textsuperscript{193} I disagree because I believe that Indigenous research paradigms and ways of thinking reflect the collective thought of Indigenous knowledge. Indigenous scholars are now recognizing each other’s frustrations with the liberal ideologies of the dominant research paradigm. For example, Sami scholar Rauna Kuokkanen writes as follows about two other Indigenous scholars:

Métis political scientist Joyce Green refers to her condition in the academy as a ‘never fitting in’ phenomenon, commonly experienced by ‘women of all sorts.’ Mohawk legal scholar Patricia Monture talks about feeling homeless and in cultural peril in the university.\textsuperscript{194}

Non-Indigenous researchers have acknowledged that when they are working and partnering with Indigenous communities through CBPAR, they “must resolve the

\begin{flushleft}
\textsuperscript{191} \textit{Ibid} at 12.
\textsuperscript{192} \textit{Ibid}.
\textsuperscript{193} Wilson, \textit{supra} note 66.
\end{flushleft}
conflict…between the values of the academic setting and those of the community.”¹⁹⁵ They note the importance of considering the ways of knowing that exist in indigenous communities when developing research methods.¹⁹⁶ Both Indigenous and non-Indigenous scholars who acknowledged the importance of developing Indigenous research methods guided my approach in developing a HRM in this dissertation.

Shawn Wilson articulated fellow Cree scholar Patricia Steinhauer’s description of four stages of developing an Indigenous paradigm by Indigenous scholars. In stage one, Indigenous scholars chose “to situate themselves solidly in a western framework” and chose not to challenge that western framework – “In fact in order to have their work considered in scholarly academic realms they strove to be western researchers of the highest caliber.”¹⁹⁷ In stage two, Indigenous scholars introduced the concept of an Indigenous paradigm but maintained “mainstream western influences to avoid marginalization.”¹⁹⁸ In stage three, Indigenous scholars like Linda Tuhiwai Smith presented a process of decolonizing or “indigenizing” western methodologies. In this stage, Indigenous scholars were challenging western methods and western-focused researchers who have “studied” Indigenous peoples.¹⁹⁹ In stage four, Indigenous scholars “articulate[d] their own research paradigms, their own approaches to research and their own data collection methods.”²⁰⁰

¹⁹⁶ Ibid at 26.
¹⁹⁷ Wilson, supra note 66 at 52, citing Patricia Steinhauer, “Kihkapiw”: Sitting with the Sacred Circle of the Cree Way (Doctoral Candidacy Proposal, University of Alberta, 2001) at 15 [unpublished].
¹⁹⁸ Wilson, ibid at 53.
¹⁹⁹ Ibid at 54.
²⁰⁰ Ibid.
Along these lines, I am taking the fourth approach in this dissertation: a HRM approach. Because this dissertation is interdisciplinary in nature, with three different areas of study, the Haudenosaunee methodological approach in my research will bring all of these areas together in a wholistic way. The methodology has to capture the uniqueness and value of the Mohawk peoples’ relationship to the environment and their lands and resources, as well as Indigenous wholistic health, Indigenous legal traditions and Indigenous perspectives on Eurocentric law.

John Borrows, Val Napoleon and Hadley Friedland have published their work on Indigenous legal research methodologies. For example, they are bringing together the oral histories, narratives and stories of Indigenous legal traditions with the legal analysis and synthesis of standard common law legal education. Recently, Sarah Morales discussed Indigenous legal methodology and the importance of locating oneself within one’s own research and within one’s own Indigenous legal tradition.

This discussion is very important to the methodology undertaken in this dissertation. All of the Indigenous scholars before me have cleared a path for the recognition of Indigenous research methodologies, including those relating specifically to Indigenous laws. The HRM that

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202 Napoleon & Friedland, An Inside Job, ibid at 734.

is developed for this dissertation is also based on those Haudenosaunee and other Indigenous scholars working within a western academic institution. Lorelei Lambert recognized the words of Porsanger that:

indigenous approaches to research on indigenous issues are not meant to compete with, or replace, the western research paradigm; rather, to challenge it and contribute to the body of knowledge of indigenous people about themselves and for themselves, and for their own needs.204

The literature on Indigenous methodologies discussed in this section informed and guided my approach to a HRM. As earlier noted in Chapter 2, I identified the following principles to a HRM: a relational foundation, a ceremonial foundation, storytelling and visualization. I use these aspects of HRM in Chapter 4 when discussing the results of my CBPAR in Akwesasne.

III. Wholistic Indigenous Health

The focus in this dissertation is the connection of wholistic health of Akwesasronon to their lands and waters. Therefore, this portion of the literature review focuses on the concept of wholistic health in connection to the environment, including lands and waters. Literature on the topic of traditional medicines also emphasizes the connections between health and the land, language and culture of Aboriginal peoples.205 One of the most comprehensive studies that was completed in Canada is the Royal Commission on Aboriginal Peoples (RCAP).206 Although this report is 22 years old and has five volumes of research, of relevance to this dissertation is RCAP’s research about Aboriginal peoples’ health as a result of the devastation of environmental damage, which has been confirmed by “countless scientific studies of poor health

in a compromised environment.” The majority of the reports that RCAP cites are published in the United States, with only one published in Canada. Since then, a Federal Standing Committee on Health completed a report that addressed wholistic wellness of Aboriginal peoples, published in Canada in 1995. There have been numerous other national and provincial studies regarding various issues of the health and well-being of Aboriginal peoples in Canada, including Health Canada’s statistical reporting.

Some authors stress that there must be a change in thinking regarding the determinants of health. The “old” determinants of health include public health (sanitation, food and water quality, housing conditions) and basic medical care. The “new” determinants of health applicable to Aboriginal peoples must include economic factors, social factors, emotional factors and environmental factors. Studies in the determinants of health stress that “recovering

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207 Ibid at 184.
cultural as well as personal self-esteem is crucial to improving the health of indigenous peoples”.

A recent publication by editors, Margo Greenwood, Sarah de Leeuw, Nicole Marie Lindsay and Charlotte Reading, argues that colonialism needs to be recognized as a determinant of Indigenous peoples’ health and that there needs to be a rethinking of the social determinants of Indigenous peoples’ health in Canada. This publication presents a variety of authors who “expand health determinants discussions beyond the social.” These authors present expansions of determinants of Indigenous peoples’ health including geographic, economic, historical, narrative, genealogical and structural determinants, “most of which are not individually or biologically dictated, but all of which are unique because they interface with and are impacted by colonialism of the past and the present.” There are a few articles from this collection that I would like to highlight that are relevant and support my dissertation.

Mi’kmaw Elders Murdena and Albert Marshall discussed a guiding principle for Indigenous peoples walking in two worlds (Indigenous and mainstream) called “Two Eyed Seeing.” This concept refers to learning to see from one eye with the strengths (or best in) Indigenous knowledges and ways of knowing, and learning to see from the other eye with the strengths of (or best in) western knowledges and ways of knowing…and, most importantly, using both of these eyes together for the benefit of all. Two-Eyed Seeing adamantly, respectfully, and passionately asks that we bring together our different ways of knowing to motivate people, Aboriginal and non-Aboriginal alike, to use all our understandings so we can leave the world a better place and not compromise the

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215 *Ibid* at xiii.
216 *Ibid*.
opportunities for our youth (in the sense of Seven Generations) through our own inaction.218

Most relevant to this dissertation is Murdena’s comment about how important the ability of Two-Eyed Seeing is:

for the recovery and health of our communities and our community members, and especially for the nurturance of our children and youth in grade schools and for the ‘wholistic’ (Murdena says, ‘Spell that last word with a w to remind us of ‘whole’, not ‘hole’) health and professional capabilities of our older students studying in mainstream institutions of higher learning such, as for example, the professional schools of health sciences.219

Although the Marshalls’ focus was on traditional Mi’kmaw knowledges and medical science, the concept of “wholistic health” is an important recognition made by Murdena, which supports the utilization of this concept in this dissertation.

Other similarities of the traditional Mi’kmaw knowledges to Haudenosaunee knowledges that Murdena Marshall points out are the importance of the role of language within their social structure and worldview: “the language provides the ‘hard wiring’ for understanding relationships within the family, the community and the culture.”220 This is also related to the “healthy spirit of connectivity and interconnectiveness”221 with the clan system and identity, and relationships with creation222 (i.e. birds, trees, animals, Mother Earth). She also highlighted that these teachings of traditional knowledge would be told to children in the form of storytelling and that the children would be learning at a very young age. She said:

Stories are not merely narratives to fill time or lull a child to sleep; they are vehicles of cultural transmission that allow spiritual knowledge transfer... along with the emotional

218 Ibid at 17-18.
219 Ibid at 17.
220 Ibid at 20.
221 Ibid.
222 Ibid at 21.
(feelings conveyed by the story’s narrative), physical (sound vibration), and intellectual
(a traditional teaching).\textsuperscript{223}

Marlene Brant Castellano discussed “spiritual health” in her article and stated that
“holistic health” (physical, mental, emotional and spiritual dimensions) is a “mantra in the
discourse on Aboriginal well-being.”\textsuperscript{224} She recognized the work of the Aboriginal Healing
Foundation, from 1998 to 2012, which had gathered an enormous amount of research relating to
“community-based health initiatives” that went “beyond the conventional definition of
determinants of health to acknowledge historical, cultural and political influences on health, as
well and relationship with the land.”\textsuperscript{225} Brant Castellano acknowledged the influential voices
that affirmed “the importance of holistic healing and the ‘spiritual part of health’ in maintain
human well-being, not just the health of Indigenous peoples.”\textsuperscript{226} Brant Castellano’s work is
important to the discussion of wholistic health in this dissertation because she recognizes the
relationship of spiritual healthiness and the land.

With respect to the connection between the health of people, environment and land,
Chantelle Richmond moved beyond the social determinants of health and pushed “the limits of
critical thinking about what determines First Nations health.”\textsuperscript{227} The data presented in her
publication involved 46 Elders from the two Anishinaabe communities of Pic River First Nations
and Batchewana First Nation of Ojibways and was a small part of a bigger multi-year,
community-based research study. She recognized that the impacts of colonization, including

\textsuperscript{223} Ibid at 22.
\textsuperscript{224} Marlene Brant Castellano, “The Spiritual Dimension of Holistic Health” in Beyond Social,\textit{ supra} note 214 at 17.
\textsuperscript{225} Ibid at 35 citing Aboriginal Healing Foundation, \textit{Final Report, Volume III, Promising healing
practices in Aboriginal communities} (Ottawa: Aboriginal Healing Foundation, 2006).
\textsuperscript{226} Ibid at 37. Emphasis of author.
\textsuperscript{227} Chantelle Richmond, “The Relatedness of People, Land, and Health. Stories from
Anishinabe Elders” in Beyond Social,\textit{ supra} note 214 at 48.
“environmental dispossession and cultural upheaval,” are related to, or causes of, the “many health and social statistics we see in First Nations population today.”\(^{228}\) She paid attention to “the ways that land, cultural identity, knowledge, and health are interrelated.”\(^{229}\) Specifically, she sought:

> to widen the dialogue regarding critical population health thinking in both research and policy worlds about the important role that land plays for the cultural identities, social relationships and overall health and well-being of First Nations.\(^{230}\)

The “environmentally exploitive resource” developments that are impacting these two communities and that were constructed after the establishment of the Hudson’s Bay Company include:

> the construction of both the Canadian Pacific Railway and the Trans-Canada Highway; the introduction of white fur-trappers; the commercialization of the Lake Superior fishery; and the settlement of towns, cities, and other industry [and have] significantly changed the Anishinabe’s relationship with the lands, lakes and rivers. And too often industrial development in this natural resource-rich area has led to contamination of traditional lands and waters, resulting in little economic benefit for the communities themselves.\(^{231}\)

Richmond argued that “it is time to think more critically about dispossession from land as a root cause of these ongoing crises”\(^{232}\) and she challenged researchers to “conceptualize the wider body of ‘Indigenous health research’ from a resource-centred paradigm, rather than from the current redundant, deficits-based model.”\(^{233}\) In Richmond’s approach with the community, Elders and youth, she focused on the resilience of the community and “the role of human agency

\(^{228}\) *Ibid* at 47.
\(^{229}\) *Ibid* at 48.
\(^{230}\) *Ibid*.
\(^{231}\) *Ibid* at 49.
\(^{232}\) *Ibid* at 58.
\(^{233}\) *Ibid* at 59.
in initiating social movements that mobilize Indigenous communities to move from suffering and dispossession to equality and health.”

Richmond’s work closely supports the objectives of this dissertation to partner with the Mohawk community of Akwesasne, to listen to the Knowledge Holders and Photovoice participants (including the youth) and hear their stories to learn about what wholistic health means to them, the impacts of resource development and the resiliency of the community.

Sarah de Leeuw discusses geography, “as a physical and material entity – place, earth, land, space, ecology, territory, landscape, water, ground, soil, and the like.” de Leeuw is making an innovative finding within health research. She suggests moving beyond the discussion of social determinants of health by arguing that geography should be recognized as a determinant of Indigenous peoples’ health that encompasses an Indigenous world view that relates to humanness with “the earth, the sky, the rivers, and the cosmos.” She recognizes that the narrow discussion of social determinants of Indigenous peoples’ health is needed and important when “conceptualizing” individual health disparities; however, the activation of place should be added to the discussion especially when dealing with Indigenous peoples’ health disparities. She concludes that it is important:

at every turn, [to articulate] that human health (or lack thereof) unfolds in and is impacted by where its existence occurs. The ‘where’ of human health (or lack thereof) is not solely an extension of human or social projects; instead, it is an active agent unto itself. Imagine, then, if when theorizing health inequalities we always accounted for ‘where’ (or geographic) concepts like distance, ground, terrain, land claim, site, territory, ecology, or soil? Another aspect of activating place as a determinant of (especially Indigenous peoples’) health would be to vigilantly look at where research about health inequalities is originating from or focusing on – where is Indigenous voice in research about health

234 Ibid at 60.  
236 Ibid at 95.
disparities, and where (what regions, communities, countries or homes) is the research unfolding or focusing in upon?237

de Leeuw’s work supports the findings of the participants in this study in that they all situated themselves within their relationship to the land and water. The research already completed in the community has identified the geography of Akwesasne as a place where research needed to take place. ATFE and members of ATFE who are active Mohawk scientists ensured that their voices were included in any of the research that was done.

Yvonne Boyer discusses geographic factors as a health determinant as well.238 She discusses many other determinants of health of Indigenous peoples, including poverty, shelter, housing, overcrowding, water quality, environmental factors, colonialism, historical factors, as well as law (i.e. constitutional law, the Indian Act, and the Criminal Code239). With respect to environmental factors as a determinant of health, Boyer recognizes that “human health is intertwined with and indivisible from the natural environment.”240 She also acknowledges that:

Industry releases contaminants into the air, water, and soil. Traditional foods and medicines are affected by industrial contamination, which wreaks damage on the habitats of wildlife as well. Traditional Aboriginal lifestyles depend on the purity of the land, the water, and all living things. The environmental impact of industrialization constitutes a brutal assault on Aboriginal ways of being.241

When discussing colonialism as a determinant of health, Boyer states that colonialism “has caused acute trauma to the health and social fibre of Aboriginal people and their communities.”242 This issue has impacted Indigenous people globally:

237 Ibid at 97.
238 Yvonne Boyer, Moving Aboriginal Health Forward: Discarding Canada’s Legal Barriers (Saskatoon: Purich Publishing Limited, 2014) [Moving].
239 Criminal Code, RSC 1985, c C-46.
240 Boyer, supra note 238 at 21.
241 Ibid.
242 Ibid at 22.
In each country the legacies of colonial dispossession, land alienation, forcible relocation, suppression of indigenous cultural practices, values and beliefs, loss of language, disruption of families, violations of indigenous inherent sovereignty and right to self-determination, treaties, international law and indigenous cultural law, and other factors, have resulted in indigenous peoples experiencing a deplorable health status compared to non-indigenous settlers.243

Historical determinants of health are directly related to colonialism as a determinant of health.

As noted by Boyer:

Following European contact, the health of Aboriginal peoples declined dramatically [and a] number of factors contributed to this, including epidemics of new diseases; the loss of traditional lifestyles; the change to a nutritionally inadequate diet; the depletion of food sources; the dislocation of life styles; confinement to reserve land; and the implementation of laws to force assimilation, residential school system in particular.244

Boyer also recognized that federal government policies (which historically included the residential school system) and colonial Eurocentric health policies contributed to the detrimental impacts upon Indigenous health, and discussed law as a determinant of health. She noted that “law plays a major role in shaping the social and structural factors that affect health”245 and while focusing on both constitutional and criminal law, she noted that “the federal government holds tremendous power over health issues, because it can decide what is criminally harmful and what is permissible and good for human health.”246 Criminal law has an impact upon traditional Indigenous healers who have been practicing traditional medicines since time immemorial and

243 Ibid at 23, citing International Network for Indigenous Health Knowledge and Development, A Discussion Document: Knowledge Translation to improve the health of Indigenous Peoples (Townsville: 2003). Trauma is referenced as an issue that relates to the impacts of colonialism and all other horrific legacies as noted here. For literature that references trauma with colonialism as a determinant of health, see Greenwood et al, Beyond Social, supra note 214. See also Karina Czyzewski, “Colonialism as a Broader Social Determinant of Health” (2011) 2(1) The International Indigenous Policy Journal 1.

244 Boyer, Ibid at 56.

245 Ibid at 92.

246 Ibid.
those “who claim to be traditional healers.” Boyer provided a “a critical analysis of the dangers of not only practicing traditional medicine but accessing traditional medicine from someone who is not qualified.” She also noted that constitutional law, although it does not address health specifically, impacts Indigenous peoples’ health. She – like other researchers discussed below – identified that the Indian Act is also a determinant of health.

Boyer’s work is very important to this dissertation as she identified many of the determinants of health that have had an impact upon Akwesasronon and specifically on some of the Knowledge Holders and Photovoice participants interviewed in this study. As will be argued in Chapter 5, Eurocentric law impacts the self-determination of Akwesasronon; therefore, it is argued that Akwesasronon have the right to self-determination based on the practice of Haudenosaunee laws that protect their wholistic health.

Other researchers have included the state of the physical environment as a key determinant of health. Many Indigenous and non-Indigenous scholars have written about their concern about the health of Aboriginal peoples as a result of the devastation of environmental damage. For example, Irene Watson expanded the concept of wholistic health to include the healthiness of the land:

247 Ibid at 125.
248 Ibid.
249 Ibid at 125.
251 See e.g. RCAP, Vol. 3, supra note 23 at 185; Simpson, supra note 31; Lambert and Wenzel, supra note 20.
The land is a body interconnected, we are a part of the land, and as humanity continues to mindlessly allow the land to be violated, we violate ourselves...Indigenous peoples have a different way of knowing, a way which centres on the earth mother. Rights from an Indigenous perspective embrace the natural world; the exclusion of the natural world in discussions on Indigenous rights renders the process meaningless. Our culture, our laws and identities are written in the landscapes of our ancestors, without the land we are the empty shell of humanity.252

A study by Warry found that health epidemics amongst Aboriginal people like diabetes, HIV/AIDS, tuberculosis, and infant mortality are directly related to environmental conditions, including poor housing and sanitation, and nutritional deficiencies.253 Warry noted that:

The leading cause of death of Indian infants from 1985 to 1988 include congenital anomalies and birth asphyxia, but also such environmental illnesses as gastro-enteritis, pneumonia, injuries and poisonings. Such deaths are largely preventable and reflect not only poor environmental conditions, but also acute problems concerning access to medical care.254

Of major importance to Aboriginal peoples are traditional food sources as the major sources of subsistence for their health and well-being.255 The annual cycle of gathering, hunting, fishing and preserving from living off of the land was essential to the well-being of Aboriginal peoples’ lives.256 With the “arrival of Europeans and subsequent associated environmental changes,”257 their diet was changed. For example, fur-traders and early explorers introduced new food plants, domestic animals and infectious diseases to Aboriginal communities.258 A shift in the diet of Aboriginal peoples from animal protein to high-carbohydrate foods contributed

254 Ibid at 75.
257 Ibid at 25.
258 Ibid.
directly to diabetes and kidney disease. Further impacts of shifts in diet were noted by Wesley-Esquimaux and Smolewski as follows:

When a meat diet is changed to a diet high in sugar and flour, the change produces dental caries and a narrow dental arch with crowded, crooked teeth. A diet rich in sodium contributes to hypertension; non-iodized salt in a diet causes endemic goiter: enlarged thyroid glands and iodine deficiency lead to multiple neurological disorders. The western diet, high in refined starch, sugar and fact, but low in fibre has been implicated in many diseases of cholesterol metabolism, such as obesity, arteriosclerosis, coronary heart disease and gall bladder disease…diseases related to a diet lacking in fibre, such as diseases of the large bowel, vein problems and haemorrhoids, were seldom reported from hunter-gatherers.

The implementation of the Indian Act and the development of reserve land had a significant impact on the ability to gather, hunt, fish, preserve and live off of the land that was the traditionally used by Aboriginal peoples. As noted by Kelm:

Food is what makes people strong. Take away a people’s access to adequate quantities of nutritious food and soon you have a population of weakened bodies who must struggle just to survive, who cannot band together to make change, to fight back. When chiefs and elders approached the Canadian government to protest inadequate reserve allocations, restrictions on the food fishery, overhunting and over-trapping, images of weakening bodies of their people stood before them.

Types of Indigenous peoples’ diets are a product of environment and tradition. With the degradation of the environment, consumption of many traditional food sources, particularly cultural plants and game, is regarded as dangerous to human health. However, many Elders in Aboriginal communities continue to advise that eating traditional foods provides human beings

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259 Cynthia Wesley-Esquimaux & Magdalena Smolewski, Historic Trauma and Aboriginal Healing (Ottawa, ON: Aboriginal Healing Foundation, 2004) at 35.
260 Ibid.
261 Kelm, supra note 256 at 37.
262 Ibid.
263 Lambert and Wenzel, supra note 20 at 180-186.
with good health.\textsuperscript{264} Traditional foods grown in traditional territories have been impacted by colonization, as noted by Simpson:

Indigenous Peoples are concerned that the plants, animals, and fish are becoming sick. Elders have witnessed changes in the quality and health of the animals and fish. Traditional foods provide Indigenous Peoples with much more than just calories.\textsuperscript{265}

Simpson also stated:

If humans are in essence the environment, then when the environment is sick, humans will also be sick. This comes from an interconnection and interdependence that Indigenous Peoples have to and on the land, waters, air, sun, moon, animals, plants, and spirits.\textsuperscript{266}

Literature from various researchers discusses the impacts of industrial or resource development on the lives and health of Indigenous peoples.\textsuperscript{267} The natural environment is sick because of the consequences of “industrial contamination, large-scale corporate development, and massive deforestation.”\textsuperscript{268} Wheatley writes about the impacts of methylmercury pollution in four Indigenous communities in Canada (Grassy Narrows, White Dog, Salluit and Akwesasne), in which she found that there are not only direct health concerns but also social and cultural impacts.\textsuperscript{269} The mercury pollution has had an ecological impact in the waters, which then has an impact on the fish, and which in turn has an impact on the Aboriginal peoples eating those fish. Wheatley concludes:

\begin{footnotesize}
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\item \textsuperscript{264} Miriam McDonald, Luke Arragutainaq and Zack Novalinga, \textit{Voices from the Bay: Traditional Ecological Knowledge of the Inuit and Cree in Hudson Bay Bioregion} (Ottawa: Canadian Arctic Resources Committee and Environmental Committee of Municipality of Sanikiluaq, 1997) cited in Simpson, \textit{supra} note 31 at 129.
\item \textsuperscript{265} Simpson, \textit{ibid.}
\item \textsuperscript{266} \textit{Ibid} at 126.
\item \textsuperscript{267} RCAP, Vol. 3, \textit{supra} note 23; Wheatley, \textit{supra} note 31 at 85; Robert M. Van Wynsberghe, \textit{AlterNatives: Community, Identity, and Environmental Justice on Walpole Island} (Boston, MA: Allyn & Bacon, 2002).
\item \textsuperscript{268} Simpson, \textit{supra} note 31 at 128.
\item \textsuperscript{269} Wheatley, \textit{supra} note 31.
\end{itemize}
\end{footnotesize}
Degradation of the environment by western industrial development, including by contaminants such as mercury, is seen by Aboriginal people as lack of respect. The harmonious balance on which Aboriginal people’s philosophy is based has been disrupted by forces outside their control. The ability to provide for present and future generations, an integral part of this philosophy, is threatened…For Aboriginal people, taking action to restore or rehabilitate the environment is an essential step in the healing of both individuals and communities.  

Studies have focused on the links between human health and environmental health in various provinces and communities. Vlavianos notes that rural Albertans have intensified their concerns over the effects of oil and gas development on their health and have taken those concerns to the Alberta Energy and Utilities Board. There is also an acknowledgement of the direct link between human health and the environment in federal environmental legislation and provincial environmental legislation. Researchers Lori Lambert and Eberhard Wenzel also discussed the connection between Indigenous health and land:

For indigenous peoples, good health includes practicing cultural ceremonies, speaking the language, applying the wisdom of the elders, learning the songs, beliefs, healing practices and values that have been handed down in the community from generation to generation.

Parlee identified social-ecological health indicators adapted from complex systems literature and ecosystem health indicators as a part of her study on the traditional knowledge

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270 Ibid at 88.
271 For example, in Alberta: Vlavianos, supra note 8; See also Michael Hankard & John E. Charlton, eds, We Still Live Here: First Nations, Alberta Oil Sands and Surviving Globalism (Vernon, BC: J. Charlton Publishing Ltd., 2016).
272 See e.g. B. L. Parlee, Dealing with Ecological Variability and Change: Perspectives from the Denesoline and Gwich’ in of Northern Canada (Winnipeg, MB: Natural Resources Institute, University of Manitoba, 2006).
273 Vlavianos, supra note 8 at 1.
274 Canadian Environmental Protection Act, SC 1999, c 33, Preamble [CEPA].
275 For example, see Environmental Protection Act, RSO 1990, c E 19, s 1; s 8(1); s. 12; s. 14(1) [EPA].
276 Lambert and Wenzel, supra note 20 at 184.
277 Parlee, supra note 272 at 53.
of the Denesoline and indicators of ecological variability based on the knowledge of the Teetl’it Gwich’in.\textsuperscript{278} Her research discussed the social-cultural values associated with the land and resources and their importance to the well-being of Aboriginal communities.\textsuperscript{279} She connected the health of the land with the health of the people by doing a case study on Teetl’it Gwich’in berry harvesting by the women of that nation. The study confirmed that social-ecological health is about the relationship between human beings as well as to their environment or the land.

Ecological indicators were identified by the Denesoline:

\begin{quote}
to understand and communicate about change in the health of [various traditional food sources like the barren ground caribou, various types of birds and fish] revolve around four major themes: body condition, species abundance and distribution, quality of land and water and Denesoline cultural landscapes and land features.\textsuperscript{280}
\end{quote}

As a result of these types of indicators, the Denesoline understand and communicate about the complex changes in their environment and they can reflect on varying aspects of ecological health. As noted by Parlee:

\begin{quote}
the indicators also reflect on the interconnections between individual species and the ‘land’...The Denesoline conceptualization of the land is also based on the understanding that human beings and the environment are interconnected.\textsuperscript{281}
\end{quote}

Peoples who are “dependent upon the environment for their survival were, and are, in turn responsible for maintaining a healthy environment, so that it can support the future generations for whom they feel responsible”.\textsuperscript{282} Parlee also stated:

\begin{quote}
\end{quote}

\begin{flushright}
\textsuperscript{278} Ibid at 12.\textsuperscript{279} Ibid at 53.\textsuperscript{280} Ibid at 88.\textsuperscript{281} Ibid at 97.\textsuperscript{282} Wheatley, supra note 31 at 86.
\end{flushright}
In the case of many Aboriginal groups, this connection between people and environment is more than a matter of survival; the health of the land and the health of the community are one and the same.283

All of the reports and studies that reflect the similarities between the connections of healthy relationships to the land and with the people support this dissertation. The similarities will be reflected in the results of my research with Akwesasronon in the remaining chapters of this dissertation.

There is very little research on the term “Indigenous wholistic health” except by the Marshall Elders. The definition of “total health” by Anishnaabe Elder Jim Dumont is set out as follows:

The meaning of First Nations health and well-being is understood, in its broadest cultural perception, as: “The total (First Nations) health of the total (First Nations) person within the total (First Nations) environment”.

Total Health is all aspects and components of health and well-being seen as integrally interconnected with one another within an inclusive and inter-related and interactive web of life and living.

Total Person is inclusive of all levels of personhood – understood to be body, mind, heart and spirit:
- physical health, mental health, emotional health, spiritual health;
- healthy behaviour and life style, healthy mental function, cultural continuity with the past, as well as future opportunity;
- healthy connection to culture, healthy home life, community life, extended family connection, and, a healthy spirituality as a First Nations person.

Total Environment means a healthy connection and relationship with the living environment – this being constituted of the land, natural environment, cultural environment, context of activity, community, family, and the everyday living environment.284

As noted by Dumont, this is a “cultural” definition of health.285

284 Dumont, supra note 12 at 8.
285 Ibid.
The research on determinants of the health of Indigenous peoples is a growing topic and it is moving beyond the descriptors of social determinants of health as well as moving beyond the deficit-based models of Indigenous health research. What I take from the research on the determinants of health (i.e. colonial, economic, emotional, environmental, spiritual, geographic, historical, narrative, genealogical, structural, political, legal, cultural and social-ecological), is that the impacts of the outside world on Indigenous peoples are numerous. A researcher in their specific field is able to identify the detrimental impacts of these factors to Indigenous peoples’ health. One of the consistent findings from this research is that Indigenous peoples’ health has been impacted so much and by so many factors, all of which trace back to colonization. On a positive note, what I also find from this research is the resiliency and strength of Indigenous peoples which is a result of their direct relationship to the land and natural world.

IV. Legal Traditions

IV.1. Indigenous Legal Traditions

The discourse of “Indigenous legal traditions” is a recent and fast-moving development in the literature on Indigenous peoples and the law. In the research I completed for my LL.M. from 1994-2000, I specifically studied one of the sources of Haudenosaunee legal traditions - The Great Law of Peace - and argued that Haudenosaunee laws are one of the many Indigenous international laws. The terminology, “First Nations law and legal systems” was introduced by John Borrows (Kegedonce) and first described in an article published while I was researching and identifying Haudenosaunee “legal traditions” in my LL.M. thesis.

286 Jacobs, supra note 4.
This important area of Indigenous laws was further developed by Borrows as one of the leading Indigenous legal scholars in this field, using the terminology “Indigenous legal traditions”. Other Indigenous legal scholars who have lead and are leading the way to decolonizing colonial law through the recognition of Indigenous legal traditions in what we now call Canada include the late Harold Cardinal, the late Patricia Monture, Darlene Johnston, and several others. 

288 Borrows, Recovering, supra note 201; Borrows, Justice Within, supra note 5; Borrows, Indigenous Constitution, supra note 61; Borrows, Heroes, supra note 201; Borrows, Outsider Education, supra note 201.
Mary Ellen Turpel, Tracey Lindberg, Sakej Henderson, Irene Watson, Gordon Christie, Val Napoleon, Hadley Friedland, Sylvia McAdam [Saysewahum], Larry Chartrand, Tuma Young, Brenda Gunn, Sarah Morales, Jeffery Hewitt, Karen Drake, Naiomi Metallic, Hannah Askew, Robert Yelkatte Clifford, Kerry Sloan, Lindsay Borrows, Aaron Mills and Nancy Sandy. Some of these Indigenous legal scholars and practitioners have written specifically about their respective Indigenous laws. Also, scholars from other disciplines have written about their own Indigenous laws (ie. Haisla Law, Kwakwaka’wakw Laws, Mi’kmaw, Secwépemc). Indigenous scholars in other parts of the world have contributed to this area as


I apologize to any other Indigenous legal scholar who I may have missed on this list. This list is growing faster and faster every day.


Battiste, Living Treaties, supra note 289.

well. For example, Irene Watson has written about the “First Nations Law” applicable to her “First Nations Peoples of the Lakes and Coorong region in the south-east of South Australia.” 296

There are also Elders and Knowledge Holders in Indigenous communities who have transferred their knowledge through written publications which have not necessarily been termed as “Indigenous legal traditions”; however, the storytelling of spirit, land, ceremony and relationship to all living things falls within the definition of Indigenous legal traditions. 297 This includes Haudenosaunee Elders and Knowledge Holders, as will be discussed in the next section on Haudenosaunee Legal Traditions.

Some of the major findings from the above-noted literature on Indigenous Legal Traditions, which I will draw on in subsequent chapters, are:

1) Indigenous Legal Traditions are universal concepts in that all of the Indigenous academics with their own Indigenous knowledges and Knowledge Holders from various Indigenous nations (i.e. Haudenosaunee, Anishinaabe, Cree, Coast Salish, Mi’kmaw, Metis, Haisla, Kwakwska’wakw, Secwepemc) recognize similar worldviews of their Indigenous nationhood;

2) The sources of Indigenous Legal Traditions (i.e. Creation Stories, clan systems, Indigenous legal concepts, relationships to the land, etc), are very similar; however, their languages and practices of ceremonies are very different;

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3) The understandings about Indigenous peoples’ relationship to Mother Earth and all of Creation are universal;

4) The research about respective Indigenous Legal Traditions is allowing for a broader understanding within the Eurocentric legal worldview and within law schools;

5) The broader themes of Indigenous legal theory and Indigenous legal orders must be recognized.

The literature in this area is very relevant to my work on Haudenosaunee legal traditions as it adds to an important discussion in the recognition and respect of Indigenous laws. Indigenous legal traditions have been practiced since time immemorial in Indigenous communities and it is time for them to be recognized. We are at a turning point within the broader discussion about truth and reconciliation. The research on Indigenous legal traditions allows for Indigenous peoples to highlight and reinforce their laws in practice. Next, I will highlight the research on Haudenosaunee legal traditions, which also reinforces the fact that our Knowledge Holders and communities have been able to maintain our own practices of law despite the detrimental impacts of colonization and impacts upon the healthiness of our peoples.

IV.2 Haudenosaunee Legal Traditions

Much has been written by both Indigenous (Haudenosaunee\(^{299}\) and non-Haudenosaunee\(^{300}\)) and non-Indigenous researchers\(^{301}\) about the history and laws of the


Haudenosaunee Peoples. Patricia A. Monture in her writings always recognized Haudenosaunee legal traditions as “living in the way of peace.”

Although the laws of the Haudenosaunee are mainly oral in nature, meaning that the traditional knowledge is orally transferred from one generation to the next, many have written down the traditional knowledge in various publications. I am aware that there are discreet areas of Haudenosaunee legal traditions that remain as oral laws and customs (i.e. sacred spiritual ceremonies, medicinal ceremonies, and speeches and songs that are attached to those ceremonies) and I respect that this should remain so. Those who did decide to write down some portions of traditional knowledge include: Kahente Horn-Miller, who in her PhD dissertation, presented the “master narrative of the Iroquois and Kanienkehaka women by retelling the story

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303 See e.g. John Arthur Gibson, Concerning the League: The Iroquois League Tradition as Dictated in Onondaga (Winnipeg: Memoir/Algonquin and Iroquoian linguistics, 1992).
of the Sky woman” within the Haudenosaunee Creation Story; the late John Mohawk, who edited an ancient translated and transcribed version of the Haudenosaunee Creation Story; and the late Haudenosaunee Confederacy Chief Jake Thomas, who wrote about Kaianerakowa: The Great Law of Peace and the Code of Handsome Lake. From the teachings of the late Cayuga Chief Jake Thomas, I also wrote about the Great Law of Peace and the Code of Handsome Lake in my Masters in Law dissertation. Brian Rice, who also learned from many of the Knowledge Holders that I learned from, has written about the history of Haudenosaunee oral traditions which is the same as what is termed “Haudenosaunee legal traditions.” For example, Rice provided a written version of the oral history of the Creation Story, the story of the Clan System, the Great Law of Peace and the Code of Handsome Lake. Many authors have written about the Two Row Wampum and its significance to the “constitutional, social

307 Jacob Thomas & Terry Boyle, Teachings from the Longhouse (Toronto: Stoddart Publishing Co. Limited, 1994).
308 Jacobs, supra note 4.
and political relationships that were to exist between two sovereign Nations\textsuperscript{311} as well as the significance of wampum belts in today’s society.\textsuperscript{312} Susan M. Hill has illustrated the importance of Haudenosaunee land and environmental ethics through her discussion of the Two Row Wampum belt\textsuperscript{313} as well as her role as a Haudenosaunee woman doing research in the community.\textsuperscript{314} The Thanksgiving Address has been discussed by many Haudenosaunee authors\textsuperscript{315} including the late Haudenosaunee Confederacy Chief Jacob Thomas\textsuperscript{316} and the late Haudenosaunee Confederacy Chief Jake Swamp.\textsuperscript{317}

The key findings from the literature on Haudenosaunee legal traditions is that they all highlight the various sources of Haudenosaunee laws and customs and the writers have acknowledged that Haudenosaunee laws have been in existence since time immemorial. The findings of this literature support the Knowledge Holder’s oral traditions that were told to me in this study. What I add in this dissertation is a discussion of how the application or practice of Haudenosaunee laws (i.e. recitals, storytelling, ceremonies, teachings), through the voices of the

\begin{footnotesize}

\begin{enumerate}
\item For Seven Generations: An Information Legacy of the Royal Commission on Aboriginal Peoples, Research Reports: Treaties (Project Area 1, “Early Treaty Making in Canada”) (CD-ROM, Ottawa, ON: Libraxus, 1997). Kaswentha is the same word as Kuswentah that I am using in this dissertation.\textsuperscript{311} Goodleaf, \textit{supra} note 25 at 9.
\item Jose Barriero, “Return of the Wampum” in Barreiro, \textit{Indian Roots, supra} note 144 at 135; Paul Williams, “Reading Wampum Belts as Living Symbols” in Barreiro, \textit{ibid} at 160; Doug George-Kanentiio, \textit{supra} note 299.\textsuperscript{312} \item Susan M. Hill, “Travelling Down the River of Life Together in Peace and Friendship, Forever? Haudenosaunee Land Ethics and Treaty Agreements as the Basis for Restructuring the Relationship with the British Crown” in Leanne Simpson, ed, \textit{Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations} (Winnipeg, MB: Arbeiter Ring Publishing, 2008) at 23 [\textit{Travelling}]; Hill, \textit{Clay, supra} note 310.\textsuperscript{313} \item Susan M. Hill, “Conducting Haudenosaunee Historical Research from Home” (2009) 33:4 American Indian Quarterly 479.\textsuperscript{314} \item Words That Come Before All Else, \textit{supra} note 1.\textsuperscript{315} \item Jacob Thomas, Words That Come Before All Else, \textit{ibid} at 10.\textsuperscript{316} \item Chief Jake Swamp & Erwin Printup Jr., \textit{Giving Thanks: A Native American Good Morning Message} (Reading Rainbow Books, 2002).\textsuperscript{317}
\end{enumerate}
\end{footnotesize}
Knowledge Holders and Photovoice participants, protects the wholistic health of Akwesasronon from the impacts of resource development.

IV.3 Eurocentric Legal Traditions

Many legal academics have written about Aboriginal peoples’ rights under section 35 of the Constitution Act, 1982, with casebooks now being used in law school courses. Section 35 provides as follows:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. Definition of “aboriginal peoples of Canada”
(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Some authors have been critical of the use, interpretation and litigation of rights under section 35 of the Constitution Act, 1982, in the Canadian courts. For example, Patricia

320 Constitution Act, 1982, supra note 10, s 35.
Monture-Angus “did not accept Canadian law as the single, viable and legitimate way of resolving disputes.” She was critical of the colonial legal system and its inability to systemically change. Of her many criticisms, she did not herald the Delgamuukw decision on Aboriginal title to land as “a great victory” as most commentators did, because she had difficulty with the conclusion that it be sent back for a re-trial after 374 days at trial with 141 days spent on deciding on evidence. She agreed that there was significant progress in that the Supreme Court of Canada adapted evidentiary rules to allow oral history as evidence; however, she analyzed the language of the judiciary in its ruling and stated that “the Court has ‘adapted’ their own rules of evidence to ‘accommodate’ oral history”, which supported her argument that the “overall structure was not challenged, just one unfortunate consequence of the evidentiary rules.” She also noted that:

   Every place where evidentiary rules do not fit with our ways must be brought to the courts for review. This will be both a time consuming and money consuming process. Nonetheless, I recognize that the decision in Delgamuukw may make this change easier to accomplish. Regardless, it still leaves the burden on Aboriginal people continually to challenge the system forced on us.

Another critique is that when litigating rights under section 35, the focus is on individual rights. As noted, “The impact of the individualization of our legal relations moves Aboriginal nations further away from our traditions which are kinship based and collective.”

Although Jeff Corntassel’s focus was on international human rights, he was highly critical of rights discourse for four reasons:

1) Rights discourse can take indigenous peoples only so far…and has resulted in the compartmentalization of indigenous powers of self-determination by separating questions

322 Patricia Monture-Angus, “Standing Against Canadian Law: Naming Omissions of Race, Culture and Gender” (1998) 2 Yearbook of New Zealand Jurisprudence 7 at 7 [Standing].
323 Ibid at 14. See also Delgamuukw, supra note 102.
324 Monture-Angus, ibid at 14.
325 Ibid at 10.
of homelands and natural resources from those of political/legal recognition of a limited indigenous autonomy within the existing framework of the host state(s); 326

2) Rights discourse has led states to deny the identities or very existence of indigenous peoples residing within their borders (or to reframe them as minority populations or other designations that carry less weight or accountability under international law); 327

3) The framing of rights as political/legal entitlements has deemphasized the cultural responsibilities and relationships that indigenous peoples have with their families and the natural world (homelands, plant life, animal life, etc.) that are critical for their well-being and the well-being of future generations; 328

4) Rights discourse has limited the applicability of decolonization and restoration frameworks for indigenous peoples by establishing ad hoc restrictions. 329

Mary Ellen Turpel, in a 1991 publication, was critical of Canadian constitutional law that has imposed its “alien political and legal culture” 330 and controls Indigenous peoples’ experiences in Canadian society. 331 One of the main points she makes regarding the section 35 Aboriginal rights decisions of Sparrow and Sioui is similar to Monture-Angus’ points that people hail these decisions as progressive because they include “a so-called generous approach to the legal interpretation of constitutionally-protected aboriginal and treaty rights;” however, the decisions fit “squarely within the colonial legal tradition.” 332 She states:

The acceptance without critical examination, in Sparrow for example, of the underlying sovereignty of the Crown over aboriginal peoples, situates the decision of the Supreme Court of Canada squarely within the colonial tradition. The aboriginal land interest, or right, is conceptualized as lesser than that of the Crown. 333

326 Corntassel, supra note 321 at 107.
327 Ibid.
328 Ibid.
329 Ibid.
331 Ibid at 19.
332 Ibid at 20. See also Sparrow, supra note 102 and Sioui, supra note 102.
333 Turpel, ibid.
Borrows also critiques the “downgrading of Aboriginal rights”\textsuperscript{334} that gives Canadian governments the power to infringe upon those rights. As he notes about Gladstone,\textsuperscript{335}

the majority provided strong obiter dicta stating that Aboriginal rights must be capable of being limited and, as such, could be infringed by justifiable government legislation. This potentially widens the government’s power to interfere with Aboriginal rights.\textsuperscript{335}

Borrows further questions the limitations placed on Aboriginal rights. He states:

Aboriginal peoples have laws which dictate the appropriate exercise of a right. Furthermore, non-Aboriginal peoples exercise exclusive rights all the time. In fact, exclusive rights are one of the distinguishing features of western legal systems. Why should an extra concern arise when Aboriginal peoples exercise exclusive rights? What can explain the concern assigning Aboriginal peoples exclusive rights, when the Court generally shows no anxiety when allotting them to non-Aboriginal peoples?\textsuperscript{336}

Borrows then notes that as a result of Chief Justice Lamer’s test for Aboriginal rights under section 35 in Van der Peet, “Aboriginal practices that developed solely as a response to European culture are now frozen.”\textsuperscript{337} Borrows’ critique demonstrates his attempt “to show how Aboriginal rights in Canada’s Constitution remain partial and incomplete.”\textsuperscript{338} He suggests that:

It is not specific practices that are necessarily important to the definition of Aboriginal rights; what counts in determining Aboriginal rights is whether these practices contribute to the survival of the group…However the courts are operating under the assumption that protecting specific ‘Aboriginal’ activities satisfies the Constitutional purpose for the entrenchment of Aboriginal rights (and they get to decide what is Aboriginal). They do not interpret aboriginal in a ‘large, liberal and generous manner,’ with ‘sensitivity to the Aboriginal perspective on the meaning of the rights at stake.’ Thus, they interpret Aboriginal in an incomplete way, and do not take account of their physical and cultural survival in North America.\textsuperscript{339}

\textsuperscript{334} John Borrows, “Frozen Rights in Canada: Constitutional Interpretation and the Trickster” (1997) 22 Am Indian L Rev 37 at 58 [Frozen Rights].
\textsuperscript{335} Ibid. See also R v Gladstone, [1996] 2 SCR 723 [Gladstone].
\textsuperscript{336} Borrows, \textit{ibid} at 59.
\textsuperscript{337} Ibid at 60. See also \textit{Van der Peet, supra} note 102.
\textsuperscript{338} Borrows, \textit{ibid} at 63.
\textsuperscript{339} Ibid at 63-64.
This is so even though the “frozen in time” concept was purportedly rejected by the Supreme Court of Canada in Sparrow.\textsuperscript{340}

In a recent section 35 case, Tsilhqot’in Nation was successful in its claim to an Aboriginal right to title of land.\textsuperscript{341} It sets a precedent for any future claims to an Aboriginal right to land. The Supreme Court also recognized the evidence of Tsilhqot’in Elders in the case. As noted by John Borrows, in his writing on the case, this meant that the “Tsilhqot’in law was a key ingredient in ousting the view that so-called nomadic Indigenous peoples resided on legally vacant lands at the time of European ‘discovery.’”\textsuperscript{342} This case will further be analyzed in Chapter 5, but it is important to note Borrows’ point about the Court’s recognition of Indigenous law at this stage.

Sarah Morales discussed the use of Indigenous legal traditions and methodologies within the application of section 35 as a process of reconciliation\textsuperscript{343} and Constance Macintosh also discussed the Tsilhqot’in case an example of reconciliation in Canada.\textsuperscript{344} Kuswentah provides an example of an original reconciliation between nations so Morales’ and Macintosh’s discourse supports the use of Kuswentah theory in this dissertation.

Research was completed by Sari Graben\textsuperscript{345} to identify circumstances where expert assessments under the Canadian Environmental Assessment Act\textsuperscript{346} “fail to reproduce the

\textsuperscript{340} Sparrow, supra note 102 at 1093.
\textsuperscript{341} Tsilhqot’in, supra note 102 at para 433-34.
\textsuperscript{343} Sarah Morales, “a ‘lha’tham: * the re-transformation of s. 35 through a Coast Salish legal methodology.” (2017) 37:2 National Journal of Constitutional Law 145 [lha’tham].
\textsuperscript{344} Constance Macintosh, “Tsilhqot’in Nation v BC: Reconfiguring Aboriginal Title in the Name of Reconciliation” (2014) 47:1 UBC L Rev 167.
\textsuperscript{346} RSC 1992 c 37, s 16.1 [CEAA].
valuation of sacred sites evidenced by Indigenous epistemologies.”³⁴⁷ She critiqued the “application of rationalized methods for assessing risk to cultural loss.”³⁴⁸ Her critique applies to cases like Clyde River and Chippewas of the Thames First Nation, wherein environmental review boards and other tribunals are making decisions on behalf of Canada. In summarizing these cases Graben concluded that Euro-Canadian law has “failed to generate sufficient certainty around the protection of rights to traditional territories, leaving them vulnerable to development.”³⁴⁹ Graben further acknowledges that the use of Indigenous Traditional Knowledge in Euro-Canadian law would help to understand how Aboriginal Peoples use the land and to understand the “significance of impacts resulting from proposed development”.³⁵⁰ However, she recognizes that the use of Indigenous Traditional Knowledge poses challenges to processes where decision makers in Environmental Assessment Boards are quantifying harms and the decision makers may not understand Indigenous Traditional Knowledges.³⁵¹

Deborah Curran, in her study of the Great Bear Rainforest [GBR] Agreements,³⁵² focused on how, in the face of reconciliation, colonial law changed in order to come to a legal agreement between Canada, the Province of British Columbia and the respective Indigenous governments in their territories. She discusses the differences in meanings of reconciliation in Canada and in the “colonial courts.”³⁵³

The success of reconciliation, like society, is dependent on the health of its many components. It does not just involve access to and stewardship of land with the opportunity for a livelihood. It is also embodied in processes and approaches to children's health, access

³⁴⁷ Graben, supra note 345 at 85.
³⁴⁸ Ibid at 86.
³⁴⁹ Ibid. See also Clyde River, supra note 102; CTFN, supra note 102.
³⁵⁰ Graben, ibid.
³⁵¹ Ibid at 97.
³⁵³ Ibid at 821.
to safe drinking water, and criminal justice. There is also a real threat that the embedding of reconciliation agreements in colonial law could fail when confronted with the silos of colonial law, where ecosystem elements and the determinants of health are treated as distinct jurisdictional and managerial responsibilities. …It is arguably the nested decision-making processes embedded in the GBR agreements that allow for creative solutions fostering reconciliation despite jurisdictional silos.\textsuperscript{354}

Other discourse also discusses whether Indigenous legal traditions should or should not be applied within the Canadian legal system and specifically within section 35.\textsuperscript{355} This aspect of determining whether Indigenous legal traditions should be applied within the Canadian legal system will be reflected in Chapter 5 and 6.

With the number of critiques about utilizing section 35 and its protections under Canadian constitutional law, the question is whether this leaves any continued space for Indigenous legal traditions to be brought into the Eurocentric legal system. Although there have been “successes” (i.e. Sparrow, Delgammukw, Tsilhqot’in), another question is whether it is worthwhile to continue to pursue section 35 claims when it is obvious that the courts’ biased opinion will continue to support Canadian sovereignty. I am always hopeful; hopeful that the system might change soon; that the actors within the system might in the next generation have the understanding and knowledge to respect Indigenous law as law and utilize it as a source of law to resolve conflict. In any conflict, a leader/mediator/decision-maker is required. I am hopeful that Canadian society will become knowledgeable about Indigenous legal traditions and acknowledge that the principles of Indigenous legal traditions are based on healthy relationships. So, I will continue down this academic path and utilize section 35 as a potential tool for change and reconciliation and hope that judges who are the decision makers will have the required knowledge to make appropriate decisions. I am hopeful because I believe that the original

\textsuperscript{354} Ibid at 857.
\textsuperscript{355} Gunn, supra note 291 at 31; Morales, supra note 203.
purpose and principles of *Kuswentah* were to establish reconciliation between Indigenous nations and the colonizers. There is not a lot of literature that relates to the application of section 35 to Haudenosaunee peoples (other than that relating to *Adams*\(^\text{356}\) and *Mitchell*\(^\text{357}\)) so this dissertation is an important piece to that discussion. In utilizing the *Kuswentah* theory, Eurocentric law should recognize the right to self-determination of Indigenous peoples just as much as Indigenous peoples respect Canadian sovereignty. This is where the notion of reconciliation (peace, trust, respect, which are principles of the *Kuswentah* relationship) must be rooted.

**Conclusion**

As noted earlier, this dissertation is interdisciplinary and involves an intersection of research areas. My research included previous studies completed in the community of Akwesasne, which helped me to understand the community and to understand the overwhelming issues presented in the numerous research studies that have already been done in the community. Although all of these studies and research have been done in the community of Akwesasne, my dissertation brings a Haudenosaunee worldview and a HRM into the discussion and research.

The studies of Indigenous research methodologies that I reviewed assisted me in the support and development of a HRM for this dissertation. The movement towards Indigenous research methodologies within academia is happening at a very fast pace so it was very important to keep updating the research in this area of study as the research progressed. I am appreciative of those researchers before me who have lead the way into a process that we, as Indigenous scholars, have known is necessary for a long time, but we now have the ability to develop and support each other.

\(^{356}\) *Adams, supra* note 102.
\(^{357}\) *Mitchell, supra* note 102.
The research about Indigenous wholistic health was very complex because there are so many areas and topics that have been studied and researched about and with Indigenous peoples. The studies that are the most helpful for this dissertation are those that specifically relate to the connection between wholistic health, land and the environment as this is the focus of my study with Akwesasronon. This connects specifically to the next area of research which is Indigenous and Haudenosaunee legal traditions. The research in these areas is also moving at a fast pace and Indigenous scholars are now writing, researching and highlighting their respective Indigenous legal traditions. They, too, have lead the path for Indigenous scholars to feel comfortable about writing about their legal traditions. Their work is important to this dissertation. With the process of reconciliation in the air, 358 we are now at a better academic place to enter into a safer space to recognize, respect and acknowledge Indigenous legal traditions. This dissertation provides that respect, acknowledgement and recognition of Haudenosaunee legal traditions.

The body of literature regarding Canadian law that applies to Aboriginal Peoples in Canada, specifically, section 35 of the Constitution Act, 1982, as well as the critiques of utilizing this process of law, has assisted me in understanding the complex Eurocentric legal process that is required to mount a rights-based claim. The research that has been collected for this study is both critical and supportive of Indigenous peoples bringing their claims of Aboriginal and treaty rights to the courts. These studies help to clarify specific legal concepts that the courts have identified to define the Aboriginal and treaty rights of Aboriginal Peoples in Canada, which I draw on in Chapters 5 and 6.

358 See TRC Report, supra note 298.
CHAPTER FOUR: RELATIONAL & CEREMONIAL FOUNDATIONS, STORYTELLING AND VISUALIZATIONS OF AKWESASRONON

Phenomenologically, the experience of the individual is what needs investigation because of each individual’s experience. So when we talk about the environment, you are going to hear stories that are based in phenomenon of the individual’s experience in their environment. Now we know environment is everything. It is everything you see. Everything you feel. Everything you hear. Everything you eat. Everything you touch. Everything you drink. Everything. Because there is now an understanding of ourselves at the minutest level of the function of our being.\(^{359}\)

Introduction

This chapter reflects the responses of the community members of Akwesasne who participated in the CBPAR Project. There was a total of 21 participants: ten Knowledge Holders and eleven Photovoice participants.\(^{360}\) The first section of this chapter reflects the participants’ responses to the meaning of wholistic health. The second section reflects the participants’ answers regarding the types of industrial and resource developments that have existed and continue to exist near the community of Akwesasne and what the impacts have been to their wholistic health. The third section reflects the connection between having healthy lands, waters and wholistic health. Although there was no specific question posed to the participants about solutions, some Knowledge Holders did provide positive solutions for healthy change which are reflected in the fourth section. Finally, a concluding section provides a summation of this chapter which reflects the connection between having healthy lands, waters and wholistic health.

\(^{359}\)Interview of Katsi Cook (13 April 2015) [Cook].

\(^{360}\)Attached as Appendix D is a list of the community members who participated in this community research project, a description of their roles and responsibilities in the community and a summary of their responses utilized in this dissertation.
This chapter is organized by analyzing the responses from the Knowledge Holders and Photovoice participants through the framework of the *Ohén:ton Karihwatéhkwen*, the Thanksgiving Address, as explained at the end of the next section.\(^{361}\)

I. MEANING OF WHOLISTIC HEALTH TO AKWESASRONON

The first question that was posed to all participants was what wholistic health means to them. Most of the Knowledge Holders\(^ {362}\) repeated the same responses: that wholistic health means wholeness in the person. It encompasses mental, physical, emotional, spiritual and environmental connections. To further elaborate, the specific responses of the Knowledge Holders and Photovoice participants follow.

Louise McDonald, a Mohawk Bear Clanmother, described the process in which healers assist in healing a person who is ill and how the process of wholistic health is utilized. For example, she stated:

> All the healers and all the elements and all of the forces, the medicines, the ceremonies, the medicine man and woman wrap themselves around that person to bring healing. It’s not just healing to the symptom but to the whole person which means you’re not just putting a Band-Aid on the wound or trying to get the illness out but you’re also dealing with the well-being, the spiritual uplifting of that person. This also includes bringing them back to a better way of thinking, bringing them back to physical strength, bringing them back to better emotional health because sometimes in illness there tends to be depression. You’re looking at lifting out the illness but also lifting up the whole being of that person.\(^ {363}\)

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\(^{361}\) A short English version is provided in the introductory paragraph of Chapter 1, supra note 1

\(^{362}\) *Cook, supra* note 359; *Lickers, supra* note 115; Interview of Della Adams (11 September 2014) [D. Adams]; Interview of Maxine Cole (29 January 2015) [Cole]; Interview of Joyce King (7 August 2014) [J. King]; Interview of Louise McDonald (9 September 2014) [McDonald]; Interview of Emmy Mitchell (8 September 2014) [E. Mitchell]; Interview of Richard Mitchell (10 September 2014) [R. Mitchell]; Interview of Elizabeth Nanticoke (12 August 2014) [Nanticoke]; and Interview of James Ransom (5 September 2014) [Ransom].

\(^{363}\) McDonald, *ibid*. 
Emmy Mitchell, who developed the Traditional Medicines Program for Akwesasne and is former Director, reflected on her responsibilities as a medicine person, spiritual healer and helper. She defined wholistic as follows:

Wholistic means your mind is whole, your spirit is whole, our medicines are whole and that we have a connection to it all. So, wholistic is mind, body and spirit connection from our ceremonies, language, culture and the values we hold as native people. But you’re using all of this that kahsatstenhsera (strength) from here, from your mind. And then they will say ka’nikonhri:yo (good mind). You’re combining all of that to be who you are.364

Mitchell, who grew up knowing about the medicines, knew that she did not have to depend on western medicine to heal or to depend on grocery stores for food. She said:

[At home,] when we went downstairs, it was like WalMart down there. Everything was down there. Our grocery store was down there. If you needed anything to be made, it was all down there. We barely left the reservation. If we did, it was once a month. And, it was just for the basic things. We were just living day to day, a long time ago. So, I’m grateful that I grew up in that environment and I can still survive that today, for me. Knowing what I was brought up in. What I can do. That’s what I’m trying hard to do for my grandchildren who live here.365

Mitchell talked a lot about her relationship with her grandchildren and how important that is to her. She said that she tells them some of the stories about her life growing up, including a time when her father got hurt from the top of his head and right down. She shared:

They found him walking on St. Regis Rd. He never got no stitches. He put the wound together as close as he could and he wrapped his head and that’s how he healed. Because he knew the medicines. Everybody knew everything back then. I lived in a life, where hardly anybody went to the hospital. Now, every little thing. You get a migraine; you go and get migraine medication. You get a headache; you go and get Tylenol and all of that stuff. I can see the difference of what’s happening with our people. And it’s like, that to me is what you would call wholistic.366

364 E. Mitchell, supra note 362.
365 Ibid.
366 Ibid.
She also talked about when her sisters were pregnant and the wholistic healthiness of utilizing a midwife who lived just down the road from them. At that time, this midwife delivered all of the babies in the community.

Katsi Cook, who is a midwife from the community and a trained scientist, stated that:

I have to look at each individual woman in front of me, in terms of the underlying philosophy of her way of being in the world because we all live in our own universe of meaning. What you train your spirit, your mind, your body, is very different from mine and very different from my daughter-in-law’s; although we have a lot of commonalities. It is gene-environment interactions all of the time. Everything. The smell from the stove; how the sun and the sky can make a difference to our mood.

Wholistic health to me is, at the level of these gene-environment interactions, the fireplace of each of our cells, the mitochondria, that’s literally a fireplace. That’s where our metabolism happens. That is where the energy that keeps us in motion happens. And yet, you cannot possibly go through a day thinking about stoking the fires in each of the cells as there are about three trillion cells in our bodies. All of those interacting wholistically. So what is going on in one cell inside of a tissue inside of a system inside of a body inside and going up and up into the universe. So all of it is wholistic health and there are some impacts that we do not intellectualize or keep in our awareness of this neo-cortex, the new brain. The fact that falling from the sky all of the time are molecules, compounds. Look at the periodic tables. All of that is what we are made of. It comes from the rings of Saturn. What is going on up there. There is a constant creative movement that is as big as the universe but as miniscule as each little cell.367

Della Adams is the current Director of the Traditional Medicine Program in Akwesasne and she reflected on the differences between going to a western-science physician and a traditional Indigenous healer. She said that the western-science doctor “only wants to investigate the physical part of you, your symptoms” so that means “he’s only paying attention to 25 percent of who you are.”368 So, she felt that this doctor will never get to the root of the problem but will only treat the symptoms. With respect to utilizing a traditional Indigenous healer, “they are

367 Cook, supra note 359.
368 D. Adams, supra note 362.
working with that person wholistically, where the root of the problem is, the source of the pain”.

She provided an example about high blood pressure:

> We all know and even the medical field knows that high blood pressure is caused by stress. Stress is unresolved emotion. When we start to look at that person, we can treat them with traditional medicines for it. But, if we don’t treat the stressors, there is no point in giving them medicines. Because the stress is always going to be there. What we try and do is to encourage the person to really work on the stressors and on the emotional part. That is where I find a lot of people are stuck. They’re stuck in that emotional part of the wheel. And, they don’t know how to get themselves out of there. One of my jobs is to try and help a person to work on trying to get themselves out of that emotional part of the wheel and to get themselves unstuck. So, to me, you look at that person, that whole person, that entire person. And then, we have better success at trying to help. Treat the problem, not the symptom.\(^{369}\)

Maxine Cole reflected on the meaning of *skenneh* (peace) and what it means to carry that peace within ourselves, in relation to wholistic health. She stated that:

> [I]f something should disturb me and I cannot carry that peace within me that is part of my health - perhaps it is a thought that is not right with me – perhaps something that bothers me physically. If I am sick, it disturbs my peace of mind. I come across things all day long and I have to remind myself about the peace that we are to carry within ourselves. It creates that good mind that we talk about being open to people and having empathy and love and compassionate as a people - welcoming different ideas to think about. From that, getting the strength to do what I have to do - the inner strength. We talk about *skenneh, ka’nikhronhi:yo and kahsatstenhsera* - if I attain those are my goals every day. If something should be bothering me, then it is not healthy for me.\(^{370}\)

Katsi Cook also discussed the context of wholistic health from the medicine wheel model of the four directions: the mind, body, spirit, and emotion. She acknowledged that the model of the medicine wheel has been used all over “Indian country” but she thought people may not totally understand what this means:

> unless they’ve [participated] in an actual Sundance because this spiritual ceremony is an actual physical, spiritual, emotional - total body immersion into the four directions. You don’t get a sense as to what we mean by *kayé:ri niyonkwé:take* (the four beings) until you’ve physically participated in that ceremony. I have gone so far as to think about what that means to Sundance, to save and support a life. I remember in our longhouse, our old longhouse. That generation that I grew up with are all gone. The one section of

\(^{369}\) *Ibid.*  
\(^{370}\) *Cole, supra* note 362.
Thanksgiving address, he would say ‘kayé:ri’ and I’d think, why is he saying ‘four’? What does that mean? It means number ‘four’. So I thought, some say ‘yoh’ or ‘toh’. And I thought about it…the number four means it is whole, it is complete. It is [a] number of architecture. [A] House has four corners. The Universe has four directions which goes along with that real fundamental thinking of our Indigenous people and this holds true in every Indigenous community I’ve ever been to, in this hemisphere, in the Andes to Mayan Highlands to North American Indigenous communities and First Nations in Canada. I was at a Society of Obstetricians Gynecologists Canada [SOGC] meeting in Ottawa writing up a policy piece for health professionals working in First Nations, Métis and Inuit communities. They were talking about the four directions and I made a comment and one of the secretaries for SOGC was taking notes and said ‘not every First Nations believes in the four directions’. I said that is ridiculous because there are four physical laws that hold up this whole universe: gravity, electromagnetivism, small and weak nuclear bonds – four things that hold up at the level of our cells: argenine, gwaning, cysteine and tyrosine.

It’s all about four no matter where you come from on the earth. It is a matter of translating across knowledge systems because it is not any less scientific or phenomenological or whatever measure you are going to use from any of the ‘ologies’. So, when we come to the word ‘whole’, we’re usually talking about ‘complete’ and the Thanksgiving Address will address the four beings.371

Three of the Knowledge Holders, Henry Lickers, Jim Ransom and Elizabeth Nanticoke, acknowledged that the concept of wholistic health for Haudenosaunee Peoples is included in

Ohén:ton Karihwatékwen, the Thanksgiving Address, which mentions the relationship of human beings with all of creation. Specifically, Jim Ransom stated that wholistic health is about:

our relationship with ourselves, with others and with the natural world. It is about having healthy relationships. It refers to all the parts of creation as being part of one family. The earth is our mother. The waters are the blood lines of our mother. The animals and the plants are our brothers and our sisters. The sun is our eldest brother the sun, our grandmother moon, the grandfather thunderers. So, you get that sense of all being part of a family. If you’re looking at wholistic health and you are looking at it in a context of not only your physical health but the health of your family. Because there is an inter-relationship and there is a connection. It’s not just native people but it’s the Amish, it’s the Mennonites, any earth-based society in terms of wholistic health. In looking at the teachings there’s a spiritual aspect to it, your mental and emotional health is affected by it. It’s also interrelated and there’s a balance there.372

371 Cook, supra note 359.
372 Ransom, supra note 362.
The Knowledge Holders acknowledged that the *Ohén:ton Karihwatéhkwen*, the Thanksgiving Address, reflects the wholistic healthiness of Haudenosaunee Peoples because of the relationality and connection between all living things. Therefore, it is important to analyze the results of the both the Knowledge Holders and the Photovoice participants according to the methodological framework of the *Ohén:ton Karihwatéhkwen*. Specifically, the participants reflected upon wholistic healthiness and connection to them as People, the connections to Mother Earth, The Waters, The Fish Life, The Food Plants, The Medicine Herbs,

373 The Animals, The Trees, and finally, the Four Winds, the Thunderers, the Sun and the Moon, the Stars and Our Teachers. The following sections will address these connections through the Knowledge Holders’ and Photovoice participants’ words and photographs.

I.1 The People

The *Ohén:ton Karihwatéhkwen* begins with an acknowledgement of the people and to give thanks to each other as a people:

Today, we have gathered and we see that the cycles of life continue. We have been given the duty to live in balance and harmony with each other and all living things. So now, we bring our minds together as one as we give greetings and thanks to each other as people. 374

There were many Photovoice responses by the youth, the women and the men as well as by the Knowledge Holders about the importance of family and the connection to healthiness. Henry Lickers acknowledged the wholistic state of pregnancy in stating:

wholistically thinking, the pregnancy is of that family. So, you know that if they have other children, it will impact them. So, those kids are pregnant. Now, that family is pregnant and should be cared for in an appropriate manner. You have a lady who, for example, does a lot of different things or teaches in the community. Now, she’s pregnant. Well she’s not quite as agile as she used to be. She’s got this husband fawning

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373 Please note that the participants made connections to The Medicine Herbs in Section I regarding wholistic health but did not mention any specific impacts of resource development upon The Medicine Herbs in Section II.

374 Taiaiake Alfred, “The People”, in *Words That Come Before All Else*, supra note 1 at 8.
over her. Her kids are at her feet. She may require a little bit of rest. As a community then, the community looks to see how they would lighten her burden. Now, it’s the community that is pregnant. This pregnancy keeps moving its way right straight through to the Nation. If you have a lot of pregnancies in the community, it can affect whether you’re going to go to ceremonies or not.\textsuperscript{375}

An adult male Photovoice participant\textsuperscript{376} also acknowledged the importance of family and children that has assisted in his healthiness and wellbeing as follows:

\begin{center}
Figure 4: Photo by Participant 1, Photovoice Participant
\end{center}

This picture is my family in the mountains by a pond in early spring. We’re looking at a new growth coming up and at the little fish in the pond. We’re just enjoying everything out there in the mountains. It’s part of my wholistic health, I guess. It’s where I’m most happy with my family out there. I have been taking my son and daughter out there ever since my oldest son was four or five. What I found is being [in] the mountains, being in the woods, being by the stream, just walking around. Looking for a spot to just sit down and relax. Or, even just with the kids and showing them different animals, different plants and different things. To me it’s all water; the water is my connection.\textsuperscript{377}

\begin{footnotesize}
\textsuperscript{375} Lickers, \textit{supra} note 115.
\textsuperscript{376} Interview of Photovoice Participant 1, who wished to remain anonymous (14 August 2014) [PV 1].
\textsuperscript{377} \textit{Ibid.}
\end{footnotesize}
Another Photovoice participant, a 27 year-old female community member, used the following picture because she said that it represents family and that family assists in her well-being.

![Image of an oak tree]

**Figure 5: Photo by Participant 2, Photovoice Participant**

I remember my grandmother would always tell me of this oak tree on the highway. She would say that is an oak tree. She must have wanted me to remember it because she would tell me every time we went by it. I remember the day I took this picture it was the day my aunt and I went to go pick medicine. This was after when we stopped here at this park.

Katsi Cook described her understanding that “women are the first environment. Because as women, this is the form, the substance through which we perceive all of that.” For example, in her explanation of the development of the embryo, she stated that it is a wonder that “any of us make it into this world intact.” She said:

So you ask someone what is the most important moment in your life. And they will say when I graduated from high school or when my child was born. But really, it’s in that

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378 Interview of Photovoice Participant 2, who wished to remain anonymous (22 February 2015) [PV 2].

eighth week when we are forming [in the womb] and there’s a cleft in that eighth cell embryo that begins to unfold and differentiates into everything that we are and what we are capable of as we come into this world.\(^\text{380}\)

Cook further explained the meaning of her quote “women are the first environment” in two publications: \(^\text{381}\)

We are an embodiment of our Mother Earth. From the bodies of women flows the relationship of the generations both to society and the natural world. With our bodies we nourish, sustain and create connected relationships and interdependence. In this way the Earth is our mother, our ancestors said. In this way, we, as women, are earth.\(^\text{382}\)

When acknowledging this concept that women are the first environment and connecting this to healthiness, it is interesting how Photovoice participant, Konwanahktotha Sargent\(^\text{383}\) recognized her role as a grandmother and as a teacher and what she was taught by her mother, who was a single mother:

\(^{380}\) Cook, supra note 359.


\(^{382}\) Cook, www.ourbodiesourselves.org/about/contributors/katsi-cook/, ibid.

\(^{383}\) Interview of Konwanahktotha Sargent (7 August 2014) [Sargent].
I guess now, at my age and in the last 15 years have I really thought about health. Before, I just took it for granted that I’m going to be healthy and to be able to run around forever. I’m realizing I can’t. There are a lot of things that I can’t do anymore that I used to do a lot of. I want to be able to do that with the both of my grandchildren.³⁸⁴

Cynthia Lazore, an adult woman Photovoice participant, recognized her relationship with her mother and how she taught her to say prayers and to give thanks. She reflected this relationship in the following picture:

I feel a real strong connection with everything, from [my mom] teaching me. This is a picture of us after we got our nails done at the nail salon. I just thought it was a good picture showing the connection. It is also linked to the teachings I got from her. But, we have to go to the nail salon to learn it.\footnote{385 Interview of Cynthia Lazore (12 August 2014) [Lazore].}

I.2 Our Earth Mother of All

The next acknowledgement in the \textit{Ohén:ton Karihwatékwen} is giving thanks to Mother Earth:

You will acknowledge our Mother, the Earth, as your adoptive Mother, for such will be your respectful relationship. You have the honor of giving Her love and praise and
gratitude. You will give thanks for the Creator for all the accomplishments of Mother Earth.\footnote{386}

Adult Photovoice participant, Charlotte King,\footnote{387} used an image of her own powerful artwork that described the many layers of Our Mother Earth.

Figure 8: Photograph of Art Work\footnote{388} by Charlotte King, Photovoice Participant

As human beings, we have different layers: inner layers, outer layers. Earth is no different than that. The spirits are all around. Everything has spirit. Stones have spirit. Stone spirits are all in there and as native people, this is how we perceive the environment. Non-native[s] perceive the environment as a commodity and as a weapon. The faces are there to let you know they are there and they are very subtle. If spirit decides to leave your body, then we are dead. This is [the] same message in the painting. If the spirit of the Earth decides to leave, then it is dead.\footnote{389}

\footnote{386} Adapted by Ernest Kaientaronkwen Benedict, from his Closing Address at the Sacred Assembly in Ottawa, December 9, 1995 in Haudenosaunee Environmental Task Force \textit{Words That Come Before All Else. Environmental Philosophies of the Haudenosaunee} (year unknown).

\footnote{387} Interview of Charlotte King (6 May 2015) [C. King].

\footnote{388} The artist is also Charlotte King.

\footnote{389} C. King, \textit{supra} note 387.
I.3. The Waters

After the thanksgiving to Our Mother Earth, there is an acknowledgement of the “Waters of the World”:

We give thanks to the Waters of the World for fulfilling their responsibilities given by the Creator. These responsibilities are many. Central to them is to quench the thirst of all life. This is perhaps best captured in the words of Sakokweniokwas, a respected Mohawk elder, as he states ‘Our Creator made those rivers and lakes and he said whenever you’re dry and thirsty, go there, any river, any stream, and it will quench your thirst, for that is the way I make the world.390

All of the Knowledge Holders acknowledged the water and especially mentioned the St. Lawrence River as important to wholistic health. Katsi Cook mentioned all three rivers that are within the Akwesasne territory which are the St. Regis River, Grasse River and the St. Lawrence River. Cook recalled a story from her cousin Beverly:

She told me a wonderful story about her mother when my uncle ask[ed] her to marry him. He went out there in the middle of the river thinking about it because this whole movement of the water is medicine itself and even how you would go to the river in the olden days to make medicine. You’d have to go get water to make medicine. You’d follow the direction of the way the current flows. Or if it’s a medicine made to stop a hemorrhage, you would get water that goes against the current. There is something in the flow of all of the wholism that we are a part of. So even in a ceremony, the way you have to move in a certain space like a Sundance or a teepee meeting, you would have to carry the energy of the peoples’ intent of their prayer. You’d have to move a certain way because it is not just the words or it’s not just the song or the dance but the way we move.391

Curtis Lazore392 stated the importance of the healthiness of movement and activities on the water through his photo:

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391 Cook, *supra* note 359.
392 Interview of Curtis Lazore (14 August 2014) [C. Lazore].
It’s like a holiday when you get on the river. You can just get away. There is no hustle and bustle. You can see life all along the water. This picture is pretty interesting because I was out with a wildlife technician and one of our summer students. This picture is taken in the Snye Channel. There are some young people here swimming. They have a rope tied to a willow tree and they’re swinging off a dock. This is a good image to see because on this whole stretch of water every summer, the kids are swimming. I’d rather see them out swimming than sitting inside playing video games. Obesity and diabetes are running rampant in all First Nations communities. Let’s get them active. Let them do something that everybody can enjoy because not every boy is a lacrosse player and not every girl is a soccer player or volleyball player. I think this is an activity anybody can enjoy. You don’t have to be a natural or practice at it. Swimming is just fun. I remember growing up. We would ride our bikes to different swimming holes. We would go to Leo Swamps, down Swamp Road. There was a swing there. We’d swim off the shore of the St. Regis River. We’d play lacrosse in Hogansburg and after practice we’d get on our bikes. We’d go to the dam in Hogansburg and swim at the dam. Sometimes we’d end up at the stone quarry down St. Regis Road or at the point in the village of St. Regis. There was always a nice swimming hole around, where we would gravitate to in the summer time. So, that was pretty good to see these young people enjoying the water.393

393 Ibid.
Many of the participants talked about the relationship between water and the fish, as described in the next section.

I.4. The Fish Life

The next acknowledgement in the Thanksgiving Address is to the Fish life:

We turn our minds to all the Fish life in the water. They were instructed to cleanse and purify the water. They also give themselves to us as food. We are grateful that we can still find pure water. So, we turn now to the Fish and send our greetings and thanks. Now our minds are one.394

Katsi Cook had a very powerful story of an Obstetrician whom she worked with in Massena and who was pregnant:

She said she was out fishing while she was still full term. She knew she was going into labour but she finished her fishing. Then she came in and unloaded the fish and then had her baby. That was a wonderful story. To me, that is the efficiency of having a baby which is directly tied to the efficiency with which a woman engages her environment. She walks and swims and enjoys.395

Cook also acknowledged the sacredness of the dances to wholistic health and specifically made reference to the connection of the fish to the Fish Dance:

Dancing is a classic example [of movement like the movement of water]. We always move a certain way within a certain prescription. Dancing is part of a prescription of our health and well-being. For example, in the fish dance. To me those fish dances and really this is in essence the meaning of the book, ‘The Dance of the Moving Masters’). It recapitulates the action of our genetic material of our chromosomes when the cell is replicating. We are always breaking down and rebuilding cells in our bodies and of course the classic is the embryo, the fetus and the baby. We learned about it in the corn and we learned about that process from the corn. That was first noticed by a Nobel prize winner named Barbara MacGlintick at Cornell University whose research in the 30s was pooh-poohed by her male colleagues. She was one of very few women in the sciences who saw under her microscope the chromosomes. They call it translocation. She described translocation of the chromosomes in the cells of corn as it was developing. This happens to us too and I think the fish dance replicates that pattern of nature.396

394 Neil Patterson, “The Fish” in Words That Come Before All Else, supra note 1 at 44.
395 Cook, supra note 359.
Curtis Lazore acknowledged the fish life as follows:

This is me holding up a fish. This is on the Racquette River. It is a favorite ice fishing spot of mine. I usually go with a friend that lives up the road from this boat launch. We have a group of guys that go out there. We just hang out. It’s like therapeutic sitting out in the middle of the ice in the winter time. You know, even if we don’t catch anything. Your mind just travels and you sort things out. Even if you’re alone. You’re working things out in your mind and you’re doing it in nature. Just kind of letting that stuff go.\textsuperscript{397}

Adult male Photovoice participant, Kevin King, provided abstract photographs of himself, including Figure 19, regarding the impacts of resource and industrial development. In describing his photographs, he provided in-depth stories of his relationships with the water, with the fish,

\textsuperscript{397} C. Lazore, \textit{supra} note 392.
with others who fished and with his family. In this section, he refers to the healthiness he felt while fishing when he was a child and youth. He remembered his fishing days from when he was about ten years old (which was approximately 40 years ago) and he recalled the abundance of fish. He described the St. Lawrence River like a "fish market" and he also remembered how there was so much respect on the water amongst the fishermen. He said:

They would say, ‘what do you want for dinner tonight? Do you want bass? Do you want perch? Do you want walleye? Or, do you want pickerel?’ Because I was just a small kid at the time we knew where to go to get the perch and enough for dinner. It was almost like a chore. You tell the kids to do the dishes now. Well, then, you tell the youngest kids, go and get some fish. We need ‘x’ amount of fish for dinner...

[The sea grass was] like a lawn down at the bottom of the water. Once you saw that lawn, that’s where the perch are at. Because that’s exactly what they look like. They go in there and disappear because when they move in there the shining of their scales and their movement is just like that sea grass moving with the current. So, they disappear in there. But, that’s what we would do when we were kids, we would go along in the boat and we would duck our head down in the water and look for that sea grass. Once we saw the sea grass, you drop your anchor over and you start fishing there and that’s where the perch are. And, you would catch them.

Like I said, you need ten fish. Well, we’re probably going to catch 30 or 40 but we want ones that are within this size. Do you know what I mean? A good maybe 2 pounds for a perch and that will give you about four good size filets. Once you got that, geez unbelievable, dinner. You can bring them home, clean them up. Give them to your mom or your sisters. The next thing you know they’re battered and then they’re on the table. You just fed the family and it was satisfying.

The pike were kind of like a bonus fish because they were the ones that would take either a small rock bass or a small perch. You cut them up and you throw that in the water and you’re going to catch pike because they are a predator. That’s the kind of fishing that we used to have here and you knew where to go. We all knew where to go. People talk about that oh, that’s where I go fishing. You kind of marked out a territory. Kind of like that’s where our family goes fishing. Because there were so many places, you could just not go into somebody else’s territory, even though it’s never marked. There’s nobody saying that you can’t go there but it’s just like a common courtesy. Don’t fish out this spot. It’s basically what you would be keeping an eye on.

The guys who were netting, they would be going on the other side of St. Regis Island and down below. There’s much better netting down there. So, they would never be interfering with you either because also at the same time they understood that the area that’s around the front of St. Regis and St. Regis Island was where the people who want supper tonight, that was their place. They would honor that by going elsewhere to net. They would put in their
nightlines elsewhere. There’s that whole thing, that part of that culture of that river that all changed.

People have respectable boats, I call them. They are small fishing boats with a little motor on it. You’re not in a hurry to get anywhere. Fishing isn’t a hurry up, let’s get there, kind of thing. You pack a lunch, couple soda pops, steal a couple of cigarettes from your dad and you would go out there and sit on the water and you would fish. You would strip down to your shorts and you would just be fishing all day. You’d come back and you’re all brown and everything like that.\(^{398}\)

The changes that King referred to will be reflected in Section II of this chapter regarding the impacts of resource and industrial development on wholistic health.

King also reflected on his relationship with the ‘netters’ along the St. Regis River. He said that:

When I was eight or ten years old, maybe even younger. I remember, that it was a whole lot safer place for a kid. You could roam around during the day. I remember, I used to always go down to the river. [The fisherman] would always be there by the time I got there at 8:00 – 8:30 in the morning. There was John Thompson; he was right at the end of the road, down from my dad’s place. This is all in about 200 yards of the corner there. There was John Thompson, a Lazore but he didn’t live on the river. But, he still had his fish boxes and he had his. And, all of them had these counters where they would bring their fish up and they would chop them up. They would do the cleaning and everything like that. The next one along was Tom Stack, I’m not sure what his name is. Then, the Francis. The next door to them was Bill Lafrance. Then, Jerry King. Then Shine George. And then, geez it’s terrible I forget his name. The next one up was the Thomas’s. These were like netters, not just fishermen. They were netters.

I could go right along that line. I could talk to them. Just as a little kid, just sitting over there and asking what kind of fish they have. The thing is they also knew where they were getting their fish from. The Thompsons, they set out a night line, which is with the hooks. John Thompson, he was always getting mus kelunge. He was big into the muskies and sturgeon. The Lazores as well; he was a night line fisherman. Tom Stack fished for perch. The river was abundant like that. Those fish tended to school together and they went to different parts of the river. Like I said, that’s how you could do it. Because there’s a lesser of a population now. Those fish because the predators have to roam in larger areas. The fish that eat the plants and stuff like that, like the perch and stuff. Because they eat the plants, they have to roam in a larger area. So, these different fish get kind of their territories get mixed up. If you were to net now, you’re going to get a whole variety of fish. You couldn’t do what these guys were doing, which was specializing and knowing exactly what they had. They always had a big fish, or two or three or six, in their fish boxes. They would come and they knew where to get the fish. They wanted to come in and they wanted to

\(^{398}\) Interview of Kevin King (10 September 2014) [K. King].
choose a live fish. They say, okay I want that one. They would come down and spear it and put it up on the thing there and chop it up. There you go, you got your fresh fish. That was that little industry that was going on just at the end of my road.  

I.5 The Food Plants

The next acknowledgement in the Ohén:ton Karihwatékwen is to the Food Plants:

With one mind, we turn to honor and thank all the Food Plants we harvest from the garden. Since the beginning of time, the Food Plants, especially the Three Sisters, the corn, beans, and squash have helped the people survive. We gather all the Food Plants together as one and send them our greetings and thanks.

Curtis Lazore took a picture of the garden that he planted on Kawehno:ke at the Cornwall Island Administration for the Mohawk Council of Akwesasne. The Environmental program plants a garden every year. Although Curtis grew up with a garden all of his life until he went to high school and university, this was Curtis’s first year with the program and he started the garden program. He is part of different groups that do plantings for our community. He also travels to other communities to exchange seeds. He described his photograph as follows:

Ibid.  
Brenda LaFrance, “The Three Sisters” in Words That Come Before All Else, supra note 1 at 69.
In the picture, you’ll see some corn stocks and that’s strawberry popcorn. The seed comes from Tyendinaga. I planted them in a fashion that’s accustom to our people. The Haudenosaunee people are agricultural people. Our traditional method of planting is in mounds. I along with our summer students, our youth planted about eight mounds. We also planted Deseronto potato beans, organic butternut squash, and the odd zucchini plant in the mounds. The mound keeps the plants out of the water because it’s in a low spot in a drainage area. This is really a teaching as well as functional sustenance for our people. We also planted tomatoes from seedlings, some string beans and some other plants that some other members of our program planted. But, I just wanted to get it started and initiate that garden into a three sisters garden on half the sides just so that we could bring back some of these seeds and we can show our people. At least, we’re trying to practice what we preach. So, that is what we do.⁴⁰¹

Richard Mitchell, one of the Knowledge Holders, recognized the connection between plant food and wholistic health:

A long time ago, people didn’t get sick as much as it is today. People long time ago planted the things that they used for their food. They farmed their own animals. They planted their

⁴⁰¹ C. Lazore, supra note 392.
gardens, that’s where they got their food from. More or less, they were using Indian food, like corn, beans and squash.\textsuperscript{402}

Katsi Cook also referred to the importance of the “Three Sisters”: corn, beans and squash. Specifically, she said that we have to acknowledge “the gift of the corn” and that “corn is the law”.

She stated:

\begin{quote}
In the Mohawk language for example, I have been writing about maize, about \textit{o:nenhste} - the corn. In order to learn midwifery, you have to plant a field of corn. I believe this because I have been in the practice of planting our original corn. There are teachings that came along with that from the different communities that would help us harvest it. I noticed first, preparing the field, you express your intention to everything that is on that ground before you dig it up. You can even put the four colours at each end. This is the same thing that women should be doing at conception: preparing the ground. Other behaviours like that began to settle down into an understanding of why the corn is the wholism of reproduction. In that you will find everything there is to know about human reproduction. Medicines of the corn silks is used for urinary tract infections and kidney diseases. The silks are the fallopian tube of the corn because that is where the male pollen from the \textit{sajitsowa}, the corn flower is made and lands in the embryo bed on the cob. The pollen was mixed with tobacco in some of the tribes who used pollen in a sacred way as part of prayer and connection to sky world. So there’s all of these kinds of connections and in fact, pregnant women are more susceptible to urinary tract infections because of the weight of the uterus on the bladder.

The most common practice was pulling back the husk of the corn. Everyone would exclaim, ‘Oh look, this one has one red kernel in one white cob. Or look at this one, this one has kernels completely covering the top’. The one that covers the top, this is what Betty Isaacs said from Onondaga about the corn at the top. If a mother died at childbirth, they would make a gruel out of the top cob and spoon feed it to the baby to remind it that it still had a mother: the corn.\textsuperscript{403}
\end{quote}

Cook continued to talk about the connections of the corn to water and fish life as traditional medicine for healing. In her words:

\begin{quote}
When a person was in trauma, they laid a blanket on the ground next to a flowing river and that person who was doctored would kneel on that blanket and whatever that was bothering them, maybe a grief, a guilt, or a fear, or something they experienced, shame, or something negative, they would treat that person and pull that out of them and wrap it up in white corn husk and bundle it. With intention, the bundle was thrown into the flow of the stream. The speakers would say that the water carried it ‘way out to the deepest part of the ocean where there is no light.’ That bundle would go down there and there is a fish down there that is called \textit{Ot: gajoh} and the closest translation is ‘devil fish’ - anything bad. It has a big mouth
\end{quote}

\textsuperscript{402} R. Mitchell, \textit{supra} note 362.  
\textsuperscript{403} Cook, \textit{supra} note 359.
and the bundle would go in its mouth and it would hold it in there. It wasn’t long after that someone said ‘I was looking through National Geographic and there was a picture of this really ugly fish with a little thing on its head that they found at the bottom of the ocean south of the African continent near Madagascar. They called it a devil fish. And it lived so darn dark in the bottom of the ocean. It had an illuminous bump on its head a coelacanth fish (Latin name for it)’. And I thought ‘Wow! How would Six Nations communities know about the depths of the ocean? How would they know?’ Over time, when you live as long as we have and you focus on a particular concern or area of inquiry in our ways of onkwehonwe’neha, it gets shown to you. It gets shown in practice. These things that you know, your mind, body and spirit is willing to accept it and filter it through the site you developed in that particular area of our self-determination and you begin to understand what being human is and that there is always the possibility for recovery from injury.

Now there is all kinds of language around adverse child experiences and trauma and reducing trauma and treatment methodologies but our people already understood what this was that human beings could be injured just from fright alone. And there are a lot of ceremonial practices to deal with that to relieve the burden of those injuries and insults that don’t even have to be from historic trauma, it could be something that just happened this morning, anything that stimulates the fight or flight or immobilization response. When I think of this word, wholism – you will find in a kernel of corn, everything. It is how you think about it and how you enquire about it. You look at how it lays out. For example, the membranes as part of our bodies. If you were to lay out all the membranes of the nose, covering of each cell, lungs, reproductive tracts and laid it out flat, it would be the size of three football fields. That’s huge. It’s folded in the DNA. It is all folded, there is a lot to us; a lot more to us. Wholism has to do with that – the whole picture. How did our people know about the bottom of the ocean?\(^{404}\)

Adult Photovoice Participant Waylon Cook recognized the connection between having healthy foods, traditional medicines and healing. His picture is of his garden:

\(^{404}\) *Ibid.*
The first picture I have is of a garden, it’s got corn, cucumbers in there and beets. We have zucchini in the back. The reason I picked this picture to answer part of my question was that I believe that in order for us to process a traditional medicine internally and for them to work right is that we have to start off at a base line with the types of food that we eat. When we eat healthy, when we eat our traditional foods that our bodies are able to absorb the medicine or any type of healing that we have. It’s able to work properly. It’s just that baseline for that. This is why I picked this one. This is why I see the connection between the Traditional medicines and holistic healing was because I just believe it starts from the food. And, that’s what I always thought too. In order for it to work, that’s where you start off with your food and then, when you take the medicines, it just enhances it that much better.\footnote{Interview of Waylon Cook (10 September 2014) [W. Cook].}
I.6. The Animals

The next acknowledgment of the Ohén:ton Karihwatéhkwen is to the Animals:

We gather our minds together to send greetings and thanks to all of the Animal life in the world. They have many things to teach us people. We see them near our homes and in the deep forests. We are glad they are still here and we hope that it will always be so. Now our minds are one.\textsuperscript{406}

Knowledge Holder Emmy Mitchell acknowledged the use of sacred medicine ceremonies and the spiritual connection to animals. For example, Mitchell described a ceremony for the otter that assists in healing. She had assisted the Inuit peoples in Labrador with the otter ceremony. She said that as soon as they were finished the ceremony, two otters jumped in and out of the water. She said, “that’s the spiritual connection because then people believe”\textsuperscript{407} and they can see that connection.

Knowledge Holder Elizabeth Nanticoke recognized the relationship between human beings and the animals. She stated that:

If a hunter went out to hunt for a deer and he did come upon one, he didn’t kill it. What he did when he saw it, was that he gave thanks that there was a deer. He’d leave tobacco and give thanks that he could see it again. Because he didn’t want to be responsible for taking a life of the last deer. He has to ensure that there will be deer life for the future. Not the kind that would go there and take every deer that he sees in his sight. So, there’s that respect. The deer have that knowledge within them to know that I’m living my life so that all of these poor human beings that might need me to survive, by living off of my meat, for clothing. This was the instruction that they were given. So, there is a respect there between the animals and the people. Everything has an instruction in life and all of the humans have to acknowledge that. This is their main instruction is to acknowledge that life and how important it is on earth. We’re all related.\textsuperscript{408}

I.7. The Trees

The next acknowledgment of the Ohén:ton Karihwatéhkwen is to the Trees:

\textsuperscript{406} Mary Arquette, “The Animals” in \textit{Words That Come Before All Else}, \textit{supra} note 1 at 82.
\textsuperscript{407} E. Mitchell, \textit{supra} note 362.
\textsuperscript{408} Nanticoke, \textit{supra} note 362.
We now turn our thoughts to the Trees. The Earth has many families of Trees who have their own instructions and uses. Some provide us with shelter and shade, others with fruit, beauty, and other useful things. Many peoples of the world use a Tree as a symbol of peace and strength. With one mind, we greet and thank the Tree life.\footnote{Dan Longboat, “The Trees” in Words That Come Before All Else, \textit{supra} note 1 at 44.}

Knowledge Holder Kevin King recalled his childhood memories regarding the sound of his uncles pounding black ash logs. He said that that sound was “like the rhythm of the morning”\footnote{K. King, \textit{supra} note 398.} within the village. His recollection of that memory was a story about the relationship with the trees, with his family, and an acknowledgement of a skill that the men had in pounding black ash tree logs for basket weaving – a skill that is inherent with the Akwesasronon and other Haudenosaunee Peoples. His very descriptive story acknowledges his wholistic healthiness as a child and connection to the trees:

\begin{quote}
It’s really a beautiful sound because those logs ring especially on a cold crisp morning as soon as the sun would come up and sometimes before. Just before the sun would come up you can hear that sound ‘doom, doom, doom, doom’. And, that second sound is the echo coming back at you and it sounds like a water drum. It was almost like a contest in the morning, who’s going to be first? You’d always hear this guy down the road from me. He was called Louie Chicken. I think he was called Louie Chicken because he was really skinny. He had this chicken neck on him, a real long neck anyways. Louie chicken was the first guy in the morning. He would beat everybody in the morning. You hear ‘doom, doom’. And, that would wake you up. You hear ‘doom, doom’; it’s time to get up. And then, you hear more “doom, doom, doom, doom, doom, doom’ and then you would hear it all over the village. All of a sudden, maybe on a summer’s morning starting at about 5:00 in the morning until maybe to 8:00 in the morning at the latest, because the log has to be wet as well. By that time, it’s starting to dry out. Once you peeled off those splints for that morning, you take the log and put it back into the water and you wait. It has to soak overnight and then you start on it again. However many splints you’re going to get during that morning that’s how productive you’re going to be for the afternoon for making baskets. Once again, that was another part of my rounds, for whatever reason. Like I said, as a kid, I used to wander. My wife always said, you’re like Huckleberry Finn. I always had these adventures that I was going on, you know? Just around the town.

I think part of that was I knew who cooked the best. I’d go and knock on somebody’s door and sometimes I wouldn’t even have to knock because I know that they’re up because I heard the men out there pounding the logs. His wife is inside and she’s waiting for the splints. While she is waiting for the splints, she’s making his breakfast. I would
go in and sit at the table and ‘jaw’ with her. And, she would make me breakfast. I would just sit there and talk with her about what she is making and stuff like that. I was shown the baskets, the splints and everything like that. This is stuff. Like I said, now that it came up. I remember this. But, you know to say, on any given day that I remember this. Now, when I make a basket. It’s almost like a sense memory coming back, even though, all I did was watch them make them. It’s a real good feeling to get your hands in there and do that weaving. And then, just see it come out the way it’s supposed to be. Because I’m watching these other people who’ve never experienced that before. And, they’re weaving their basket for the first time and they’re all over the place. The teacher in this case was Henry Arquette. He come up to me and said have you ever done this before? I said ‘no, I’ve never done this before’. He said, ‘you’re pretty good, where did you learn this?’ I just told him that story...that is what I would see in my little rounds in the morning.\footnote{Ibid.}

One of the youth female Photovoice participants also acknowledged the importance of trees. She said, “The trees are important to us because they are medicine. They are used for shelter and for heat. The trees also help clean the air that we breathe.”\footnote{PV 2, supra note 378.}

Figure 13: Photo by Photovoice Participant 2
This picture of the tree reminded me of the Tree of Peace. I took this one summer after a community gathering. It was a good time but sometimes you don’t feel good if there are hard feelings between people. So in the end you need to be at peace because everyone is one and we need to live in peace with each other.\textsuperscript{413}

I.8 Final Acknowledgements

This last photo by Photovoice Participant 2 represents all of the final acknowledgements of the Thanksgiving Address. It also represents everything in the sky world: the Four Winds, the Thunderers, the Sun and the Moon, the Stars and Our Teachers.

\textbf{Figure 14:} Photo by Participant 2, Photovoice Participant

I was driving and looked up. I saw that sun was going down and I looked again and then saw the eagle in the clouds. It surprised me. It represents ‘wholistic health’ to me which means the well-being of the whole body – mind, body, spirit.\textsuperscript{414}

This first section of this chapter reflected the Knowledge Holders and Photovoice participants’ responses to the meaning of wholistic health. The concept of wholistic health for

\textsuperscript{413} Ibid.
\textsuperscript{414} Ibid.
Akwesasronon, as Haudenosaunee Peoples, is captured in the *Ohén:ton Karihwatéhkwen*, the Thanksgiving Address, in which the words spoken establish a healthy relationship between human beings with all of creation and the connection between all living spiritual beings. Although each participant provided his or her own understanding of wholistic health through his/her words and photographs, each of them acknowledged a spiritual, emotional, mental, physical and environmental inter-connection to one or more of the spiritual beings that are acknowledged in the *Ohén:ton Karihwatéhkwen*. This is a powerful example of the Haudenosaunee intellectualism described by the late Robert Antone “to understand the complexity of humanity’s relationship to the natural world.”\(^{415}\)

The next section continues with a presentation of results from Knowledge Holders and Photovoice participants on the impacts of industrial and resource development on wholistic health.

**II. INDUSTRIAL AND RESOURCE DEVELOPMENTS AND ITS IMPACTS**

This section follows the same methodology set out in Section I. The *Ohén:ton Karihwatéhkwen*, the Thanksgiving Address,\(^{416}\) provides and acknowledges all of the elements of creation and as noted by the Knowledge Holders, it is the framework that establishes wholistic healthiness for Akwesasronon. This section highlights the many telling and thorough descriptions of industrial and resource developments in Akwesasne and the impacts they have had on the lives and healthiness of the Knowledge Holders and Photovoice participants in this study. The participants made specific reference to the connections and impacts on themselves, as The People, to the

\(^{415}\) Antone, *supra*, note 76 at 129.

\(^{416}\) Thanksgiving Address, *supra* note 2.
Earth Mother of all, the Waters, the Fish Life, the Food Plants & Medicine Herbs, the Animals, the Trees, the Four Winds and the Birds.

II.1. The People

Knowledge Holders Emmy Mitchell, Elizabeth Nanticoke and Katsi Cook equated the process of colonization upon Indigenous peoples with the onslaught of industrial and resource developments. Emmy Mitchell stated:

When they took that language away from us, we lost who we really were. They didn’t really understand. I saw this from going to a non-native school. It was like a cultural shock for me, even though I tried to speak their language. I still can’t speak right. When I read, I can’t read right. When I speak in our language, it’s so calming and it’s fun. But, I’m having a hard time; a lot of times when I speak I’m translating.

Mitchell further reflected on her emotional and mental wellbeing and how colonization was forced on her. She said:

So, you’re seeing a lot of the grieving from our people and it doesn’t matter what religion you come from, I’m seeing that. I didn’t realize when they did this study. They did the study on me in Montreal. The study was as long as you’re native. When you try to read another language, you do not comprehend it the right way. That’s why we read over, over and over because it didn’t make sense. Because you’re reading somebody else’s language. And, it’s worse for speakers. Because I went into like a shock. Because the reason they studied my brain was because I failed. I failed the test twice and everybody else was passing. And, I felt so stupid. When that dean of nursing come over to me, he says, Emmy if I was to come to Akwesasne and write that test in Mohawk, do you think I would pass? He said, no way. He said it’s the same thing with you. I looked at him. He goes this is why we studied why Aboriginal women don’t score high in school, in nursing, psychology or anything like that. He says you as your main language, there’s a lot more to offer because your language is descriptive. And then, only after that when they did that was when I started to feel that holy I am smart. Do you know what I mean? I’m thinking about all of this stuff. But, going to school in a non-native society makes you feel stupid.

Mitchell also talked about how colonization has impacted everyone in the community:

But, that’s all affected, even our minds from that colonization process. And, I see it all of the time with all of the people that I deal with. I deal with youth, I deal with Elders, I deal with people who are my age in particular.

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Knowledge Holder Elizabeth Nanticoke said that colonization was an attack on their spirituality and caused a disconnection with living off of their lands. She explained:

You know how you are raised and you believe that you are part of the land. We’re equals with everything that grew from the earth and to be told that we couldn’t live like that anymore. We almost lost that spiritual connection. It reminded me of when children were forced into residential schools and how they were taken away from the family that they knew. When we were told that we couldn’t live off the land anymore, it had the same affect. Taking away the children and taking away the land is the same.\footnote{Nanticoke, \textit{supra} note 362.}

Katsi Cook also discussed how the whole system of colonization has had an impact on everyone and every living thing in the community:

With all of that emergence of literatures coming from the peoples themselves, oral and written, scholarly and homebased, we have this vision of who we are supposed to be. And this moment of attack from the intervention of western thinking, different way of seeing, a different language with which to express and understand, a way of life that is divisive, destructive, that separates the individual from the natural world. So that’s what the industrial and resource development extracted from our bodies, from our minds, from our spirit, from our families, from our original instructions. It took that and redefined it. It changed our very desire as human beings.

And we were looking at these fish that had ugly sores on them. Or the air smells bad. But we never asked the question, is it safe they play outside today? So in these investigations of finding a place to plant food with which to feed this community, when the oil economy begins to shift and the big trucks role into Walmart. How do you feed your people when the climate changes so much that there is no more planting season and the seasons are slipping.\footnote{Cook, \textit{supra} note 359.}

Cook also discussed the impacts of chemicals from the industrial development on the human lives of the Akwesasronon:

So we could see in the data, that in the 70s when the federal policy in the US changed under Nixon administration, food would be made cheaper. The way you make food cheaper is to replace with high fructose corn syrup in place of beet sugars and cane sugars. And so from my children’s generation on, that food supply was tainted with mercury because the “code -exalimentarium” in Italy which oversees the global food supply allows for a certain amount of exposure of mercury in these chemicals that the chlorine tree developed in the industrial age of the 30s, 40s, 50s and were used to flood the market. All these pesticides, herbicides, chemical compounds of every kind come
from that chlorine tree. You can look up the chlorine tree on line and you will see what it is. It is a tree of death. We have a tree of peace and a tree of life and the tree of knowledge. The west brought us the tree of death which is the chlorine tree. Some scientists realized that if you drive an electricity current through brine water, you’ll cleave off compounds that are at the base of all of these questions of industrial and resource development issues.

So, the mental health issues like ADHD, Autism Spectrum, Lower IQs, are the impacts which begin in womb from mothers eating foods that are exposed to industrial development that is connected to mercury compoundor pesticides like chlorparapols, which is a persistent organo-phosphate that used to be sprayed in schools, in homes and in buildings, on foods. It is still sprayed on vegetables in Central Valley where we all buy our vegetables from.

Looking at the US Department of Agriculture online that anyone can access, you will see from 70s until now, a sharp increase of per capita consumption of corn and wheat that are exposed to organo-phosphates but mostly chlorparapols in these industrial gardens. It is sprayed in silos so that stuff will sit in those silos for five years and can be shipped all over the world. But then it gets into a woman’s body and it causes neurological deficits and impairments in the developing nervous system. Everything in our health is driven by our nervous system. That is why diabetes is increasing. It’s the mercury in the air from the Chinese coal fired burning power plants. This is not a good story.422

Emmy Mitchell also talked about the impacts of colonization on the spiritual wellbeing in the community. She said:

There’s no more spiritual health in our communities. Even though you are longhouse and you belong to these ceremonies. There’s no more spiritual health happening. And, I saw that about 20 years ago. I’m mad at you and we belong to the same ceremony and we have to go and heal this person. But, we’re going to sit in opposite rooms here because we’re not talking to this person, right? I said that right off the bat to the ceremonial people, this is not going to work. If you have one negative person in that room, it’s not going to work. So, I pulled back. I said, I have to build up myself more.423

Knowledge Holder Jim Ransom, Director of the Tehotiiennawakon, Environmental Program, talked about how the impact of resource development (including resource extraction) and colonization severed the relationship to the land and water. He said "it had an impact on

422 Ibid.
423 E. Mitchell, supra note 362.
planting, hunting, fishing, trapping and gathering. It hurt all those parts of our economy. It
drove us away”. He recalled:

I remember. I don’t remember if it was Tom Porter or Julius Cook talking about leaving
their fishing nets on the bank to rot after we issued our fish advisory. It severed that
relationship. You can see over time and all of the ways, the efforts to assimilate us from
residential schools from the introduction of alcohol, drugs into communities. And then,
the actual harm to the environment that we so closely depended on.424

Elizabeth Nanticoke described how she was raised with a large family on a farm. She said
that they lived well off of the land because they always had sustenance and that everything they
needed was there. She then talked about how devastating it was to be told they could not live off
the land any more as a result of the impacts of resource development. Elizabeth described the
aluminum plant which was emitting high rates of fluoride thus causing poisoning of the animals
and the General Motors plant which was emitting high rates of PCB into the ground and ground
water. She stated that the impacts were connected to not being able to consume vegetation and
animals that they had always relied on. She said:

At one time, it was found that the people couldn’t even depend on the gardens anymore.
They didn’t trust to eat the food from the gardens because it was carrying PCB
contamination. It had a big effect on the animals that we use to trap for food sources. For
instance, a while back a lot of people ate muskrat. It was a good supplement for meat sources
and fish. But, when we found out that there was a lot of contamination found in these animals
and fish, it was recommended that people don’t eat it as well as not eating from our gardens.
So, we started to depend on grocery store items and it just created a lot of obesity, I think.
When we could live off the land we were very physical people. Then we were steered away
from our traditional methods of physical activity to being dependent on driving to the store,
getting fast foods and bringing it back. So that had a big impact on our physical health and
from there a lot of diabetes developed. People weren’t physical anymore and were eating
the wrong foods all of the time.425

424 Ransom, supra note 362.
425 Nanticoke, supra note 362.
Nanticoke also felt that the impacts began very early because she remembered that her
grandmother had died of stomach cancer when she was a six-month old baby. She noted that
there were a lot of Akwesasne community members who had cancer and diabetes.426

Della Adams reflected on the colonial education of western science and how it had a huge
impact on the wholistic health of Akwesasronon. She described it as a “huge mind changer
because there’s been so much shame put onto our people by the western education system”.

Adams said:

It’s really influenced our people…a lot. The scientific way of thinking has affected our
people. So that they need actual evidence. They need an x-ray. They need to see that
yes there is a black spot on your lung, right here. Even though the healer or the seer or the
medicine person might have said that. Here’s the medicine, you should take this. But,
they won’t actually believe it until they actually see the proof. I think a lot of that has
come from that education system. It has warped our way of thinking that we need [to
depend on] science now.427

Sargent noted how the resource development impacted Mohawk culture and language.

She commented that "when all of the developments came that was when people decided that
their kids had to learn the ways of the outside. It's sad that it has taken over."428 She felt that
they were struggling to maintain the Mohawk culture and language all of the time and
specifically when referring to the Akwesasne Freedom School,429 she stated that:

426 Ibid.
427 D. Adams, supra note 362.
428 Sargent, supra note 383.
429 Sargent noted that “The Akwesasne Freedom School is the first of its kind in an Indigenous
community and was founded in 1979 by Mohawk parents who were concerned with the lack of
cultural and linguistic education available in local public schools. In 1985, parents, who
administer the school made a historic decision to adopt a total Kaniênekha (Mohawk) immersion
curriculum. They did so without approval or funding from state or federal governments. They
believed that by focusing on the young people, parents knew it could reverse the assimilation
process and ensure that the Mohawk people would not lose their language, culture, and identity.
The Akwesasne Freedom School is dedicated to: 1) preserving the Kaniênekha language; 2)
continuing Kaniênekha ceremonies, songs, dances and traditional, land-based cultural practices;
3) promoting the principles of good mind, peace and strength given to us by the Creator through
the Peacemaker; 4) preparing students to be active participants in both our traditional community
Sometimes the culture is really strong and at other times, when new parents come in, they want more of the academics. Now we’re at the part where again where they want more culture and language. We have to come up with a really new system where we don’t want to look at the kids in grade levels (i.e. Grade 1 to 12). We want to have them at different levels of language and culture. Then there will be times when parents are surprised when their kids don’t know how to read in English. We’re like you knew that coming in here. And then, all of a sudden they say, ‘How come they don’t know how to do this...or that?’ It’s like, oh my god. ‘How come you don’t come in to see what your kids [are] learning?’ Because that’s the whole thing with the school that they have their freedom to do that and they don’t. They just want to drop their kids off. Not everyone is like that. But, there are a lot that are like that. We have so many people with such control issues that they want to change everything. I always wondered what attracts people to this place. There is something but yet when they come in here, it’s almost like the first thing they want to change.

Maxine Cole spoke about the impacts of resource development on the emotional well-being of the people, and that despite the settlements of law suits against the aluminum plants:

it did not really bring anything back for us. Yes, you have money, but there are now broken relationships with the land. We were emotional healthy by being outdoors and having a relationship with farm animals. Then the people were told not to garden anymore because of air pollution. We talked about those relationships for years and years and generations of people were told not to do that anymore - don't plant, don’t hunt, don't fish – well, then, you can, but then told don't eat it. When we talk about the plants, we were and still are an agricultural society and told not to do that anymore. It became in our mind, mentally, our health, became sad, frustrated, angry, and grieving over past practices and how our lives used to be and what comes in place with that and when people are angry and grieving, they

and Western society; 5) encouraging students to have pride in, understanding of and sufficient knowledge to participate in traditional, land-based practices and customs thereby promoting cultural values; 6) teaching students to be responsible, independent and hold a positive self-concept at the same time they display respect for others, especially Elders and the knowledge they possess; and 7) preparing students to be teachers of future generations. A new addition of an old concept began in June 2, 2014 with the Owiraneha Tsi Raotinonsothe (“baby’s house”). This program was developed in an effort to revitalize and restore a lost practice of teaching the babies’ first language, Kanié̱nkeha. It opened its doors for up to 10 toddlers of the Freedom School’s staff and siblings of students. Since that time, they have a waiting list of families who want to enroll their toddlers in the language nest so they can learn the language naturally through play, singing, mealtimes and throughout the day. The little ones are provided healthy homemade breakfast, lunches and snacks each day. Today, after much growth the school continues to immerse its students ages 1 to 16 years of age from the language nest to grade 9 in the Kanié̱nkeha language and culture. All instruction, as well as recess periods, outdoor activities, field trips, meals and extracurricular activities are conducted in the Kanié̱nkeha language.

Konwanahktotha Sargent, Second Interview, 17 July 2018.

430 Sargent, supra note 383.
cannot come to resolution with that. So in my mind the addictions started coming in at that
time too. People left the community, started working at those plants and started travelling
more for work. Here, when people did leave the community, this created loss for the
family.\footnote{Cole, supra note 362.}

Photovoice Participant 2 provided this photograph about the relationship between
colonization and the impacts of industrial and resource developments:

![Photograph of a sign with text](image)

**Figure 15: Photo by Participant 2, Photovoice Participant**

This picture was taken at the Onchiota Museum. The picture explains it all. In the picture
it talks about how the people were before and what has affected us as a people.\footnote{PV 2, supra note 379.}

A majority of the Knowledge Holders and the Photovoice participants made reference to the
industrial development of the St. Lawrence Seaway which has had an impact on their wholistic
Henry Lickers provided a brief account of the industry that was developed after the opening of the St. Lawrence Seaway in the 1950s. Lickers stated that:

it brought in industrial developments like Reynolds Metals and ALCOA [aluminum], General Motors [car manufacturing], Domtar [paper mill], Canadian Industries Limited [C.I.L.]…and Cortalls [textiles]. Some of the industrial development companies like Domtar, C.I.L., and Cortalls … may have now shut down but they still had an impact and that the major industrial development companies like Reynolds Metals, ALCOA and General Motors continue to exist and have made some environmental modifications.433

Katsi Cook said that it was not difficult to notice the industries especially because of the rotten egg smell of the Domtar plant. She remembered when they were building them when she was five years old. She said that she was riding her bike down one of the main roads and she ran right into one of the big sand trucks. She recalled:

I was only five years old and I wasn't very big. Wow! It was in the newspaper and my grandmother had cut it out and put in a scrap book. In there, it says “Girl Hits Truck” [Katsi laughs hard]. It's not “Truck Hits Girl” [laughter]. Anyway, I lived. I remember going to Massena on the old road, which is 11 or 57 and then seeing a new road being built and all of these factories. We’d be swimming in Snye and the channels and you begin to notice things. We would go to the fish boxes, when we had a meal. That’s where we went to the fish boxes. There were plentiful gardens – you could eat and feed family from everything right around you. So, in my lifetime, I have seen that shift.434

Waylon Cook, a youth Photovoice participant, identified the ALCOA plant as one of the industrial developments that has had an impact on his people:

433 Lickers, supra note 115.
434 Cook, supra note 359.
Our way of life, our food systems and our medicines were impacted. Our people depended on the river. We fished a lot. Some of the people had farms. Once these industrial plants started and released toxic PCBs or what have you, into the waters and into the air, you saw our social structure kind of fall apart too. It all changed once we started getting the effect of all of that pollution. How I remember it is that I don’t hardly ever remember eating fish because of that, because it was polluted. Just the stories that my grandparents told me. How they grew up and they lived off the land. And just from those two generations between them, between my father and my mother and me, how the lifestyle changed just because of everything. They said that economics changed too after the farming collapsed because everything was polluted. They said they noticed crime and smuggling increasing too. I just learned from the stories of my grandparents and that we could have benefitted from that way of life. And now, we’re trying to revert back to those old ways because that’s how we’re going to be able to survive. The old ways were always about living off the land and having that connection with the land. It [was] just good for your overall well-being. Being connected and having a garden and taking your medicines, picking your medicines and all of that. This is what we are losing is that connection because of the impacts of the industrial and resource developments.435

Both Knowledge Holder, Elizabeth Nanticoke and Photovoice Participant 2 identified the international bridge as an industrial development that has had a fundamental impact on their

435 W. Cook, supra note 405.
people and community. The following are the photographs that Photovoice Participant 2 presented:

Figure 17 & 18: Photos by Participant 2, Photovoice Participant

Elizabeth Nanticoke described the impacts of this international bridge:

The one thing that bothers me a lot is that I know our ancestors moved to this area because of the river and the land. Everything was here in abundance. And now it’s divided. They put the international boundaries right through the water, the river. That river was here and it connected us to the land. The other governments think that it’s a thing that can divide us from who we are and that really bothers me every day. It’s a fight every day when I have to go across, when I do cross. It’s an argument every time and there’s a lot of arrogance. I call it mental abuse when you go to them and say that border doesn’t exist. How can you put a border between me and my family on the other side of the river? They can’t understand that river was there to connect us to this land. This is why our people settled here because it was there and it was part of the land that we moved. Yes, it was part of the territory. It always seemed like divide and conquer. Whatever they can do to divide and conquer us, they will try it. I think that we were very powerful people. And it’s almost as if now, we’re giving up the fight. How can we really? It’s always been a tool of theirs to divide and conquer us. But, we’re pretty resilient, I think.  

436 Nanticoke, supra note 362.
Photovoice Participant 2 also identified another resource development plant that she drives by every day. She said, “I remember seeing at night all the smoke that they put into the air.”

A youth Photovoice participant, Waheson, identified the Casino as an industrial development that has impacted the wholistic health of Akwesasronon. She worked there for four years and saw how unhealthy the environment was. She said that when she finally “got out of there, during the light of day”, she saw what it did to her people.

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437 PV 2, supra note 378.
438 Interview of Waheson (23 February 2015) [Waheson].
I really saw why we are told not to gamble. I saw people coming in that I knew could not put food on the table for their children; yet, they could sit and put money in that machine. I saw how unhealthy of an environment it is. It was such a fast-paced life and I got used to it. It really pulled me away from my spiritual connection. I wasn't able to participate in the ceremonies as much as I would have liked to. I just got used to that way of thinking that money was everything. It was almost like...I really don't know how to explain it. It's like I couldn't be onkwehon:we when I was there. During the whole time I worked there, I was the youngest person working in the cage. One of my aunts came there and I spoke to her in kanien’keha and I got yelled at for speaking our language. Well, how can the Casino be promoting all this stuff about being Mohawk and then yell at me for carrying on what we have. Before my grandfather died of cancer, I was taking care of him. He always called me lazy because I slept all day and then when he found out he said he didn't realize that I worked all night. That was my life, working at night. He said that wasn't right and that I shouldn't be doing that. I found that being away from family, it broke me down mentally. I found that things really bothered me often. I was so depressed and didn't even know it.  

439 Ibid.
II.1.a. Impacts on the Women

Knowledge Holders Katsi Cook and Louise McDonald made specific reference to the impacts of resource development on the healthiness of the women in the community. Katsi Cook discussed the impacts of resource development in relation to her concept that “woman is the first environment.” She recalled the work regarding a children’s environmental health network that she was doing with Henry Lickers and Jim Ransom and stated that they needed to create policies that looked at the impacts on the children and to study the fetal experience with the baby in utero. Cook stated:

Pregnancy is one of those moments. All of that got changed by a control from a world that we had no say in developing. We had no say in the centralization of education, of social services, of hospitals, of any of that. It was all taken out of the family, the production of health and wellbeing was removed to be institutionalized by the state. The control went from the woman to the state which was a masculine enterprise. That is really what has been going on.

She made reference to a classic image that was done by the late Brad Bonaparte in the mid-1980s, which later became the cover illustration for the 1989 Report of the Great Lakes Science Advisory Board:

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440 Cook, supra note 359.
441 Ibid.
442 “Briefs” (1990) 15(1) Focus on International Joint Commission Activities 6 (online: https://scholar.uwindsor.ca/ijcfocus/vol15/iss1/1/).
Cook made reference to this image to reiterate the connection between the impacts of resource development and the violence against women’s bodies, especially pregnant women’s bodies.

She stated:

They violated the women from the get go by changing the status, her power, everything. They took it all from us. They want to take every last bit of our family. That is their agenda. And so what they would do was to reinterpret the definitions of our women.\footnote{Cook, \textit{supra} note 359.}

Adult Photovoice participant, Konwanahktotha Sargent provided a photograph of herself and her granddaughters.\footnote{Sargent, \textit{supra} note 383 and accompanying photograph, Figure 6.} When Sargent explained her photograph further as to the impacts of industrial and resource development, she specifically said that it had impacted the women and caused a lot of damage to them. She was hoping that it would not impact her granddaughters.
She felt that the women were not treated with the respect that they should be given and she felt that it was because of colonization, the influx of resource and industrial development and the impacts of these developments.

**II.1.b. Impacts on the Men**

There were many participants, both the Knowledge Holders and the Photovoice participants, who identified the impacts of resource development on the healthiness of the men in the community. Knowledge Holder Louise McDonald stated:

[The industrial development occurred] right at the edge of our reserve, right next to our water ways - the places that we used to hunt, fish, swim and got a livelihood from, got our medicines from. The industrialization came in and just killed the whole culture for us. Instead of our men working the land, they went to work on these structures that were being put up. So they were removed from their connection to the land. They started to work with these hard metals which started to create residue on themselves and their families. And then, the end product of molding those kinds of metals had waste and all of that seeped into our waterways and our aquifer.\(^{445}\)

Photovoice participant Curtis Lazore talked about his father who worked at the ALCOA plant for 34 years as a general mechanic. Curtis is now living with him and taking care of him. He talked about the impacts that he has seen with his father:

This is a man who was the mountain in my life and he was always there for us. He was a role model for my brothers and I. He’s losing his hearing because of working in the industrial settings and losing his eyesight because he was a welder. He has arthritis in his hands from working in the cold. But, it was a good job. It was close to home. He got good pay. He put us through college and university. He kept clothes on our backs and food on our table and paid the bills. He was a provider. But, to see him getting old and starting to deteriorate, I know that his working at ALCOA did a large number on him. So, that’s the direct impact from industry and development. It’s emotional in that way.\(^{446}\)

Two male Photovoice participants, Kevin King and Participant 1, talked about the negative impacts of resource development in a very abstract way through their photographs. Kevin King provided photographs that he took of his face and put them together in ways that he

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\(^{445}\) McDonald, *supra* note 362.  
\(^{446}\) C. Lazore, *supra* note 392.
felt described himself and how he was feeling about himself as a man, a husband and a father.

Participant 1 photo shopped himself into a movie scene from “Pulp Fiction”. Both are described below.

    Kevin King gave an in-depth two-hour interview to explain what his pictures meant to him:
Figures 22, 23, 24, 25: Photos by Kevin King, Photovoice Participant
King talked about his childhood, living on the river with his parents and grandparents and his life of fishing and swimming in the St. Lawrence River. He also talked about very specific childhood memories that have had an impact upon his life today and the specific impacts of resource development that have had a negative effect upon his life as a man, a father and a fisherman as well as a member of the community.

In reflecting on his relationship to the St. Lawrence River, King passionately discussed his belief that the resource development not only had an impact on him as an individual but an impact upon the community as a whole. He felt that the sense of community had changed to very individualistic ideals. For example, he discussed this in his reflection about the boat launches:

It used to be that you couldn’t launch your boat unless you either dug it out or you went to the natural areas and there were very few of them - they were kind of like community sites. You could go there and that’s where you pull your boat out. It’s almost like an unwritten rule as well. You knew whose boat was which one. As a kid and when I was about 10-12 years old, we were allowed to take out a row boat but not a motor boat. We couldn’t just take anybody’s motor boat. But, you could take anybody’s row boat. It was there, it was kind of like community property. Because they knew you were going for only a little while. You were going out a certain distance and you were coming back. Because you’re using oars and you’re just a little kid. As kids, what we would do is go up river. And then, we would drift back down. And then, we’d go up river again and drift back down. By the end of the day, we’d come back in. Those guys who had the row boats. Those were the guys who would set their night nets and their night lines. So, they weren’t using their boats during the day. That was part of that community thing. Once again, that was gone because the usage of the river was declining as well during that time. The fish were going away. The people just couldn’t go and net anymore. Because now, their neighbors start saying, ‘look your netting all of the time but what about the rest of us?’ It kind of dwindled off.447

Photovoice Participant 1 talked about how he felt he needed to wear a mask because the impacts of resource and industrial development had an impact on his physical and emotional health. The following is his picture:

447 K. King, supra note 398.
I look at what’s going on here too [pointing at himself] and what we are doing to ourselves. I have to put on that mask when I’m out there. Otherwise, I’m not happy just because of how we’re destroying ourselves. But, then at the same time, the same people who are destroying our community by polluting ourselves have the biggest mouths and voices to say well it’s those companies on the outside that are doing it. It’s hard for me, seeing everything like that, not seeing everything but a lot of it in my position where I work, even at home. It’s easy for our community members to lay blame on the outside communities rather than look at themselves. While they are the ones that are doing it the most right now, anyways. This is where I have to put my mask on and that is what this photo depicts. If you look at the movie, the context is funny. Because the characters playing in this movie are hit men. The character that I put my face on in that one is the one that gets shot. Because like I said, that’s what I feel our own community is doing to us. But, that is how I felt before, I didn’t want to be native anymore. I wanted to become a white man. I just
wanted to forget about all the responsibility we are supposed to have towards everything. It would be easier that way. This is why I chose this one.\textsuperscript{448}

This same Photovoice participant also mentioned how the Moses-Saunders Power Dam on the St. Lawrence Seaway had stripped away at his and his uncles’ lives:

I don’t even mean traditional way of life. I don’t even mean traditional in a sense of Longhouse or Catholic. It’s just the way that we were. We were always brought up on the river and the land. It took our river away and made it into a lake. In a way, it took away our power as people. That was how I was for a long time...just blank. That’s what is funny, when I was growing up. I was raised on the river. I was raised in a marsh and started to be raised in the woods after a while. But, when I got too old and until the Community health nurses came down and said you can’t do that anymore, that’s where that came in because of the pollution. Yep, I couldn’t fish anymore. I was between 10 and 13. That’s when they told my uncles that they shouldn’t be fishing anymore. That’s what we were doing a lot was netting and fishing and living off of what we caught. When that happened, I was like okay. He went back iron working. I moved off, like not moved off but I forgot about it. If we’re not supposed to do it then. They know, like these nurses should be giving us the best information, is what we thought, I guess. My uncles were Catholic, so that had no bearing on anything what they were teaching us - like I said a traditional type of lifestyle - not Longhouse, not Catholic.\textsuperscript{449}

Photovoice Participant 1 also talked about how industrial and resource development had an impact on his spiritual and mental well-being. He said:

It took it away from me. I just wanted to drift out and be someone else. I didn’t even want to be from here. I just seen it as: what’s the use if we can’t use it anymore? What are we going to do next? And then, seeing what happened next was ‘holy smokes!’ Holy smokes, that was a big drastic shift in such a small amount of time but I guess our people had been going through that for years, for hundreds of years.\textsuperscript{450}

Photovoice Participant 2 provided this photograph which describes the impact of industrial development on the men:

\textsuperscript{448} PV 1, \textit{supra} note 376. \hfill 449 \textit{Ibid.} \hfill 450 \textit{Ibid.}
This picture was taken on the way to a doctor’s appointment. It reminds me of our men who have to travel away to go to work. This picture reminds me of how the men used to hunt and gather for their families but now they have to work to provide for their families.\textsuperscript{451}

II.1.c. Impacts on the Children

Emmy Mitchell talked about the impacts of resource development on the well-being of her grandchildren.\textsuperscript{452} She would rather have them home learning the language and learning to live on the land than to send them to school because she felt that the urgency to get a "piece of paper" was more important than understanding language and the connection to their lands and waters.

\textsuperscript{451} PV 2, \textit{supra} note 378.
\textsuperscript{452} E. Mitchell, \textit{supra} note 362.
Cynthia Lazore provided the following photograph of a kindergarten graduation and described the empty chairs. She felt that people are living in a “fast-paced world now” and that everyone is always in a “hurry to go back to work, to get back across customs and to deal with the traffic.” She felt that some families are not as connected as they once were and that the community was not as supportive and critiqued the principle that “the next generation is very important.”

![Figure 28: Photo by Cynthia Lazore, Photovoice Participant](image)

They don’t realize how important it is to all of these kids who are learning. They don’t even notice that the only cultural part in some of these kids’ education is how they dress for their graduation. The kids don’t know why they have three feathers on their gustowa [traditional headdress]. All these people are in a fast-paced world. Yet, everyone talks about oh, the next generation is very important. Our children their future. They say that and yet they don’t sit through the entire afternoon of a graduation to support every other kid. As soon as their kid is done, they’re gone. Twenty years ago, the audience was still packed for the last class to graduate. When I went Snye School it went up to Grade 6. When we had our concerts, little awards ceremonies, everyone was packed there until the last class finished. We didn’t see empty chairs. I don’t know what kind of message that

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this is now but it is reverse to what they said about our future when they’re not there to support it. They’ll probably argue, ‘I have to hurry back and pay my bills’.\textsuperscript{455}

\subsection*{II.2 Our Earth Mother of All}

Knowledge Holder Jim Ransom made reference to the impacts of resource development upon Mother Earth. He stated that:

If the earth is sick then, how do we expect to be healthy? If our food sources are not healthy then how do we expect to be healthy? What we’ve seen here in Akwesasne, we’ve been sort of like 'the canary in the coal mine', in a sense of what we’ve experienced locally what it takes people in other locations many years to experience in terms of industrial pollution. Quite often the decision makers are so far removed from the immediate impacts whereas we see them. What I’ve found is that any society that lives closer to the land becomes that 'canary in the coal mine'.\textsuperscript{456}

Knowledge Holder Della Adams similarly referenced these impacts. She said:

The land. We lose sight of that and we don’t take care. We don’t take care of our Mother anymore. We don’t take care of the water. We take everything for granted. We take everything for granted, these days. We start to not really understand where that water from that tap is coming from because we don’t see it. We don’t acknowledge it anymore where, before you had to go right to the river and you saw. You saw where the water comes from. You had to go and lug your water. And, take it right from the river. You saw how clear it was. You just couldn’t wait to get a drink of that water. How much it quenched our thirst. And, even with the land.\textsuperscript{457}

Photovoice participant, Charlotte King, discussed a photograph of one of her powerful paintings as noted above in Figure 8 to describe the overall impacts of industrial and resource developments upon Mother Earth. In 1973, King was asked to do a painting of a woman's dream. This woman had described everything in her dream to King and she interpreted it in her painting as follows:

She described to me a being, an Earth spirit, a Medicine Man, who was leaning on his arm and propping himself up. He was exhausted. I painted him laying down. The Earth is represented as North and South America because that is who we are as native people original to this hemisphere. The Earth is painted translucent with Africa, China and Islands of Hawaii are in the background. You can't see it well because of the texture. This represents how the

\textsuperscript{455} \textit{Ibid.}
\textsuperscript{456} Ransom, supra note 363.
\textsuperscript{457} D. Adams, supra note 362.
earth relates to human, our physical bodies. The winds and airs and how they flow around the Earth are reflected in the Medicine Man's chest though his heart, lungs and veins. The bone marrow is the gold in the Earth. Europeans (non-natives) and powers that be that run countries and businesses and large companies use this gold and it runs [the] economy. Gold is a valued mineral and the ingots, crowns, gold jewellery, chalices in the painting represent power and wealth. Gold runs the economy and they built their commerce on that. The ships, trains, trucks, buses and cars that transport economy and the twin towers represented business offices where it is all housed. The trees are represented by the hair on his head. Foliage and trees are turned into lumber for housing, fire wood, paper mills – all types of quality of paper – business[es] are run on that. Papers and files are used to document. Our people do not benefit from all of this. We are part of it but really we are not, but laws were legislated to hire brown people. Without these laws, we would not be in this system.

The blood in our veins that flows through our body is our circulatory system. Everything in our bodies, our limbs, body parts, needs that oxygen, everything that flows from the heart to the rest of our body. This represents the water that flows through the Earth, so the damming of the water is like changing the blood flow in our bodies. Damming changes the blood flow and blocked it in different places in the Earth. The blood turns into water. Water flow is used for hydro to run cities and it affected our environment, polluted our waters, fish, lands and was done without consideration to the environment and to the people who lived off the land. They were dislocated and removed from homelands and was not necessarily a good environment where they were moved to.458

II.3. The Waters

Knowledge Holder Maxine Cole reflected on the impacts of the construction of the St. Lawrence Seaway wherein the actual flow of the river changed. She said that the river had a strong flow on the north side of the island and then the flow of the river changed to the south side. She stated that:

as a result of diverting it, it impacted the fishing areas. The way people talked about it, that the fish was abundant. So much so that it was all you could see and it was quite something to see. The Seaway excavated the river bed then dumped the clay on our islands and on the mainland and transformed the land. Clay is clay and not much grows. It’s treeless [with] just grass growing. You can see that at Kawehno:ke. I hear they have trouble with their drainage because of the clay. The Seaway was a big event when it was constructed. It affected all of our lives in many ways.459

458 C. King, supra note 387.
459 Cole, supra note 362.
Photovoice Participant, Charlotte King, in her description of the impacts of the St. Lawrence Seaway development, said that we can look at it like an "open wound", she added:

No one monitored the ships and its cleanliness – they discarded their garbage into the pristine rivers and lakes. Larger ships have parasite fish with them and when they clean the ship, the parasites on those ships ended up in the St. Lawrence then into the Great Lakes and now we have the non-native habitat within the waters and territories.\(^{460}\)

In following that line of thought, Knowledge Holder Henry Lickers discussed the impacts of resource development upon the rivers and Great Lakes as follows:

A natural resource development was the St. Lawrence Seaway and there’s an impact from the St. Lawrence Seaway on our people. We had a number of studies on that. The other impact from the St. Lawrence Seaway is not so much the Seaway as the Great Lakes. The Great Lakes and its infrastructures all have to come through Akwesasne at some point in the future. So, even Lake Superior and it takes about 500 years for the waters and those things to get here. But, it means that we can clean up our area completely. But, we still have to wait 500 years for the waters from Lake Superior to pass through. Even if we were all at clean up at exactly the same time. Lake Ontario would be 25 years. Lake Erie would be 50 years. Lake Huron and Lake Michigan would be about 200 years. Lake Superior is about 500 years.\(^{461}\)

Katsi Cook talked about the industrial harm and human waste that was dumped into the St. Regis River by the industrial development plants. She said:

Mike Jock talks about, down St. Regis River, he worked in the paper plant for newspaper company and they would just dump all of their stuff in the rivers. All of these factories and townships upriver in the 50s literally dumped their sewage. I used to swim in the St. Regis River and I’d see a turd go floating by. The white people dumped their sewage right into the river. Gee, talk about filthy people. There was no way to deal with this. They didn’t talk about federal policy or state policy. It was about money. It was industrial development, Post World War II – cheap hydroelectric power. So they all showed up here.\(^{462}\)

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\(^{460}\) C. King, supra note 387.

\(^{461}\) Lickers, supra note 115.

\(^{462}\) Cook, supra note 359.
Cook also stated that there was an impact on the peoples’ spiritual health which caused a disconnect from the river. She recalled a story from one of the men working on the environment in the community who said:

I used to go out on the river, throw out a line, fall asleep in my boat and the river would rock me like I was in my mother’s womb. I would sleep and would feel line tug and I’d grab the line in and there was my dinner. You can’t do that anymore.\textsuperscript{463}

A Photovoice participant talked about the impacts of resource development upon the waters in Akwesasne.

Figure 29: Photo by Participant 2, Photovoice Participant

This picture is where I was raised. I lived along the water. I remember I use to go swimming here as a kid. Being by the water makes me feel good, but when people talk about the water not being healthy, then you don’t feel good. Today is different we cannot go swimming in certain areas because of the high levels of contaminants. I remember my grandmother talked about drinking the water when she was young and now we cannot even drink the water. I thought the water was the most important aspect to talk about and to talk

\textsuperscript{463} Ibid.
about that connection that we have with the water is that human beings cannot survive without clean water.\textsuperscript{464}

Knowledge Holder Joyce King and Photovoice Participant Kevin King, who are not related, began their discussions with their childhood memories of drinking water from the St. Lawrence River and the sadness that they felt when they were no longer connected to the water because of the impacts of industrial and resource development. Joyce King said:

First of all, I guess I need to go to one prophecy that I was told when I was probably in grade seven or eight. The prophecy said, ‘one of these days you will buy water’. This was ridiculous to me because our entire family used the river as our drinking water, our washing water, our everything. And then… well here’s a river that is probably 200 miles long and sometimes a mile wide and they’re going to tell me that I have to buy that water? When we can just go down to the river, which was 500 feet from my house and dip in and use it? I thought, well I know that we are getting a waterline but I really liked the taste of that water. It was something that was very pleasing to me. I could drink, drink and drink it and the water system that we had through the St. Regis village was horrible tasting. I really never liked it and because of that I stop drinking as much water. I knew that there were problems with the water later on, hearing about the contamination, starting to hear about fluoride poisoning. Starting to hear about and seeing the pulp paper factory dumping not only sewage into the river but also the smell of gases. I knew that was affecting me. When we started growing up we stopped using river water.\textsuperscript{465}

Kevin King's discussion of drinking water from the St. Lawrence River was very similar to Joyce King's. He said:

When I was a kid from earliest memory to probably about seven or eight years old, I remember that every boat that I ever got into had two scoops in it, two cans. One can was the dirty can, which was the can you used to scoop the water. Whenever, we got in the boat you bail out your boat. The other one was the clean can. When you got thirsty, you just reached over the side and took a drink of water. Because that’s how clean the water was. It was an old habit, my parents, my grandparent’s habit. Because nobody told us not to continue to do that and that’s what we did. Up until, like I said probably six years old, that would be 1972. There’s a lot of guys that I grew up with and I asked them about that and they remembered that too. I asked, ‘when did it stop?’ It just seemed to be that they didn’t ever remember anybody telling them not to. It’s just that kind of like almost all of a sudden, the second can, the clean can disappeared. It disappeared from the boat.\textsuperscript{466}

\textsuperscript{464}PV 2, \textit{supra} note 378.
\textsuperscript{465}J. King, \textit{supra} note 362.
\textsuperscript{466}K. King, \textit{supra} note 398.
Kevin King also described the clearness of the water based on his childhood memories. He said:

When you were a child, you'd look over the edge of the boat and the adults would say 'be careful. The water is a lot deeper than you think it is'. Because it’s so clear, you can see the bottom. Basically, everywhere you went, you could see the bottom. You could see these schools of fish going by and everything like that.\textsuperscript{467}

Kevin King also discussed how the next generation of children did not know how to swim because they were no longer allowed in the river. He said “It just never dawned on me that idea that there were people that didn’t know how to swim. And especially Indians.”\textsuperscript{468}

He also described his frustration with the impacts of the resource development in being “down river”. He said:

The bulk of that industry was right here. Right on our doorstep. And, it was right behind the dam, rather. There’s nothing else in front of it. So, that’s where all of the white people would live and they got to fish, they got to swim. They got to enjoy the river. But, you come on this side of the dam, which is Akwesasne Territory. Now, the fish you can’t eat. You can’t swim in the river. And, there are all these different restrictions on the river. When I went to Cornwall, I was telling some of the people that I went to school with there. They were puzzled with that idea. ‘What do you mean, the river’s so polluted? We go swimming all of the time.’ And that’s when it dawned on me that they’re not even swimming in the same river. They’re on the other side of that dam. They’re on the other side of the dam where it’s safe. The ALCOA plant was in Massena for about 75 years or something like that. They were on the Grasse River. The outlet for that Grasse River is below the dam. So, those white people, they never swam in the Grasse River. They would only swim in the St. Lawrence where the water is all nice and clean. To this day, they still talk about it. There’s a fishing tournament next week in Ogdensburg where they’re still advertising, ‘it’s some of the best fishing in the world. Best fresh water fishing in the world’. And, it’s the same river but really it’s not. It’s that division there.\textsuperscript{469}

II.4. The Fish Life

Knowledge Holder Jim Ransom discussed the impacts of the resource and industrial development on the fish. He talked about the fish advisory that was imposed upon the American side of the community of Akwesasne in 1985. Women of child bearing age and children under

\textsuperscript{467} Ibid.
\textsuperscript{468} Ibid.
\textsuperscript{469} Ibid.
the age of 15 were advised not to eat any fish from the St. Lawrence River due to PCB contamination found in sturgeon. Ransom said:

At the time, we thought it was the wise decision to make. We had collected samples of lake sturgeon that a fisherman had caught. It was like a 200 pound sturgeon. By the time we had the results back that indicated that it was unfit for human consumption, they had consumed the fish.\footnote{Ransom, supra note 362.}

Ransom noted that the community did a study five years later in 1990 and it was found that fish consumption had dropped tremendously by both men and women. He noted that there are health benefits of fish which are a nutritious food source, high in protein. When families stopped eating fish and they could also not afford to buy high quality food, this meant that they had to buy and eat processed foods. Families started having a lower quality, more fat-oriented diet. Knowledge Holder Richard Mitchell made a similar comment about "the younger people relying on canned stuff and instant stuff where you just put things in a microwave and eat it. Sometimes it tastes good, but it's not good for your body. You can see the sickness that is going around."\footnote{R. Mitchell, supra note 362.}

Jim Ransom also said that when the fish advisory was issued, community members stopped fishing, so this also became a change of a lifestyle. He stated that as a result of the fish advisory, community members "went from a physically active lifestyle to a less healthy diet and a less active lifestyle". He also said:

We wonder today, did that trigger the diabetes outbreak in the community? We think it has had a large role in it. We’ve seen the upper respiratory illnesses on the increase. The endocrine disruptive diseases all occurred over the last 15 – 20 years and that has been alarming here. Now, looking back, if we had to do it over again, I think that we would have taken the additional step of replacing that nutritious food source with something else. We’ve looked a little bit into it. Could we have started aquaculturing at that time? It would have been an alternative. Could we have done deer farming? Deer were less susceptible to fluoride poisoning than cattle. There are different things that’s easy in hind-sight to say that we could have done this. But, I think that we made the best decision at the time. It’s created a huge problem for the community. All the resources now are going into diabetes prevention,
diabetes treatment. You’re seeing growing numbers of community members losing limbs to this disease and it’s heartbreaking.\textsuperscript{472}

When asked about how this had impacted the wholistic well-being of community members, Ransom made reference to the Thanksgiving Address. He commented:

It’s used to open and close all of our gatherings. It’s used by many individuals to start their day. It was used by fishermen. If you catch a fish, you give thanks to it for giving up its life for you so that you could survive. We used to say that giving thanks to a box of fish sticks did not have the same effect. There is just no comparison. You’ve got a whole generation now that has lost its connection to the natural world.\textsuperscript{473}

Knowledge Holder Maxine Cole also reflected on the impacts of the resource development on the physical health of the people because the loss of eating fish had a negative impact on their diets. She, like many of the respondents, recalled a childhood memory about the loss of certain species of fish as well as the numbers of fish:

I remember when I was five, six or seven years old – late 50s, my father would still buy fish out of fish boxes along the river. Fish was still abundant but I been told that they started to see a decline in the fish species. Diversity of the fish declined soon after. Damage to the eels. When they blasted the channel for depth of [the] river bed, many fish [were] along [the] top of [the] water. People would go out and pick them up and eat them. That was just [the] beginning of certain losses of types of fish and losing numbers of fish. Many consumed them anyway – [the] beginning of what was to come - loss of certain species of fish - and then losing numbers of fish.\textsuperscript{474}

Confirming this message, one of the male youth Photovoice participants, Owen Mitchell, took this picture of the St. Lawrence River:

\textsuperscript{472} Ransom, \textit{supra} note 362.  
\textsuperscript{473} \textit{Ibid.}  
\textsuperscript{474} Cole, \textit{supra} note 362.
The resource development negatively affected my well-being by affecting my ability to fish and to eat fish because of the high level of contamination in the St. Lawrence River. When my grandfather was around, he was able to fish out of the water and eat it without having to worry about any pollution. Because of the St. Lawrence Seaway and pollutants along the river now, we cannot trust eating fish and I have to be cautious with what I eat now. Physically, it was part of exercising and it helped me to be physically well. Spiritually, it helps as I am happy to be out there where it is relaxing and quiet.\footnote{Interview of Owen Mitchell (23 February 2015) [O. Mitchell].}

When Kevin King described the St. Lawrence River like a "fish market", he added that this is almost inconceivable today. He described the teachings he had to give to his children and what to look for now when studying the fish they caught:

Now, to say okay we need ten fish, go and get some fish. Now, you go out there and you hope to get one. You hope to get one when you do catch it that it’s got to be big enough. Then, it’s got to be cleaned as well. One of the things that I taught my kids this year. One of my sons is six years old; the other one is ten years old. One of the things that I taught
them. When you clean the fish, what to look for. First of all, is there anything on the outside of the fish? If there’s something on the outside of the fish, you reject it. Even though, this is a nice big fish. An adult fish, this is what we eat, this is food. Now, we can’t even look at it as food until we go through these other steps. First of all, examine the outside of it. If there is nothing wrong with it, well, we can take it home. But, once we get home, we can’t trust it yet. So, we have to cut it open and then examine the inside of it now. We have to look for worms inside the belly. We have to look for the mud vein in there. There’s a certain colour to it as well. The back side, the color of the fish itself. Is it grey? Or, is it pink, the way that it’s supposed to be? There’s all these different rules now that we have to abide by now.\textsuperscript{476}

King also described the impacts of eating fish with his daughter and his wife:

My daughter can have fish once a year that we catch. She’s not allowed to have a meal with us. Now, my wife can have fish. Why? Because she’s older now. She’s no longer having children. Now, she’s got the freedom to eat fish. She was at one time restricted from eating fish here. She’s from Six Nations, the river there wasn’t ever as productive as it is here. So, she doesn’t have that taste for fish that we have.\textsuperscript{477}

He described his disconnection with the river and with fishing as a result of industrial development:

I probably left the river by the time I was about 13 years old. I left for college when I was 16. During that time, that little brief period and even in my young life, at that time, there was a very pronounced degradation of that river to the point where we were no longer even fishing. It’s like, why fish if there’s so many things that are wrong with it? They were even telling us young men, well boys at that time. They were even telling us, we can’t eat that much fish either. It’s like, ‘well geez. We went fishing last week.’ My dad always said that. He always said you can’t hunt unless you’re going to eat it. Don’t shoot anything that you’re not going to eat. Don’t fish unless you’re going to eat it. Don’t bring that fish out of the water. That’s why I don’t like this whole idea of this so-called sports fishermen where you catch and release. You catch all of these fish and then, you throw them out again. You kind of mark yourself as a fisherman. I say, that’s not fishing. Because you fished to feed yourself. So, that’s why I really don’t fish anymore.\textsuperscript{478}

As an adult, King said that he brought his kids fishing and that is one of the adventures he brings his family together to do today. He said to them:

Let’s go and get some dinner and I’m trying to do the same thing that I did as a child. The crazy thing is it wasn’t for want of trying, I haven’t caught a fish in 25 years. We go fishing but it’s not anything like it was before. I mean for a while there. But now, like I said, I’m 50 years old now and between then and now, you have to go looking for the fish.

\textsuperscript{476} K. King, supra note 398.
\textsuperscript{477} Ibid.
\textsuperscript{478} Ibid.
now. The fish are starting to come back. But the places that they are, they are different from what they were. We used to get catfish at the dam. You don’t catch catfish there anymore. You catch bass there. The bass used to be around trees. You look for a dead tree that’s in the water. As long as it’s been in the water for at least a year. You go underneath that tree. And you tie your boat to the tree limb and then you start fishing in there. And, you’re going to catch bass, that’s how you catch them.479

Photovoice Participant 2 also portrayed how resource development impacted the fish in the following photo:

![Photo](image.png)

Figure 31: Photo by Participant 2, Photovoice Participant

I took this picture when I went camping a few years ago. The sunset is so beautiful and the water but it is known that the water that runs through our territory is polluted. This picture was taken of the St. Lawrence River just downstream from the many plants that polluted our waters, our lands and even the air that we breathe this affected our people our food sources. That day we fished and one fish that was caught was sick. The guy who caught the fish said the fish was filled with cancer.480

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479 Ibid.
480 PV 2, supra note 378.
II.5. The Food Plants & The Medicine Herbs

Knowledge Holder, Emmy Mitchell, recalled her involvement as the Director of the Traditional Medicine Program in some health studies along the river where medicines were picked. She said:

You could already see carcinogenic in a lot of the plant life. So, we couldn’t pick them there, we had to go further up more to get medicines. Even tomato plants. What bugged me the most was this older couple that lived on Cornwall Island. He always had nice pickles and tomato plants. He would bring it to me all of the time. After we did the study of his tomato plants, there were carcinogenic in the tomato plant. They told him that he couldn’t eat it. So, they gave him money to do away with his planting. Do you know what? Ever since that happened when he stopped his planting, his health went down. Because that was something he did all the time. They were nice red juicy tomatoes but as soon as it was full of carcinogenic, then, I’m wondering what they died of, do you know what I mean? So, that to me, I can see those two plants, Reynolds and General Motors really did a lot of damage to our people. It was probably more the aluminum because it was further up the river. But, you could see the fire at night with that thing. And he had it on both sides. They had that paper company on the other side too. So, it was a lot.481

Cynthia Lazore, Photovoice Participant, recognized that she had to learn how to eat healthy because “everything is all fast food now.” She also stated that she was concerned with growing food in the soil from the community because “there are some contaminates in it and even the smallest contaminate could have an effect if you’re going to have a child.” She talked about “bioaccumulation” which she described as a transference of unhealthy foods from parents to children. Lazore provided a picture of her garden, which she was planning to transfer to a raised garden. She said: “I don’t know where the soil came from. I bought the soil from the store. I hope it has less contaminates than mine.”482

The following is a picture of Cynthia Lazore’s garden and her words to describe it:

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481 E. Mitchell, supra note 362.
482 Lazore, supra note 385.
A lot of our soil, you can’t really plant gardens in there. I just have a small garden and I have to plant everything inside my house and then, slowly bring it out on the porch. I had to make a raised garden bed to put it in. A lot of peoples’ gardens are bigger than this but this is the biggest my garden has ever been and I was really proud of it. I’m trying to get back to [gardening and planting] and this garden isn’t even that big. Two are apple trees. All the ones in the black are the three sisters, some zucchini, cucumbers and turnips. The other pails in the back those are sunflowers. So, I could collect the seeds in the fall.\(^{483}\)

II.6. **The Animals**

Knowledge Holder Richard Mitchell reflected on the impacts of industrial development on the animals as a food source, as he recalled that hunting was a traditional way of life and harvesting them for food was a healthy diet. Jim Ransom mentioned this impact to harvesting fish in his interview as well, as noted above.\(^{484}\) Mitchell said that he is worried about eating wild meat because he felt that it was not safe to depend on them because of the impacts of resource development on the environment. He stated that:

\(^{483}\) *Ibid.*

\(^{484}\) Ransom, *supra* note 362.
They are probably sick too. So it's hard to say whether I am going back to my tradition to hunt animals. You have to make sure of whatever you eat that there is a check and balance so you try and not to get sick.\footnote{R. Mitchell, supra note 362.}

Knowledge Holder Maxine Cole stated that hunting, trapping and farming were affected the same way that fishing was impacted. She said:

There was a loss of animals for hunting. There was a good fur trade going on at one time. I think they still do it but there is not much money in furs anymore. The water animals are gone like the muskrat and beaver so we lost those animals to eat. I remember visiting people when I was a little kid and I saw muskrat on the table. I knew it was muskrat because I could see the head. So people were eating those foods for a very long time.

Farming was affected because of the aluminum smelter plants. There was a large cattle population on Kawehno:ke but the pollution from the industrial plants impacted the earth, the grasses and the cattle consuming the grasses. People would come and check out my grandfather's cattle. He said the cows were losing their calves from miscarriage or aborting. Things started happening to the animals. Then people quit farming because they couldn't get by with all the harmful effects of pollution on the cattle and this was proven to be so. This definitely created a change of life so with that change it not only affected us physically but also emotionally. We are still grieving because our way of life was changed. People got angry about it. The aluminum plants were sued and there was a settlement but it did not really bring anything back for us. Yes, you have money, but there are now broken relationships with the land.\footnote{Cole, supra note 362.}

Waheson, a youth Photovoice participant, described the impacts of the development of the casino,\footnote{See Figure 20 by Waheson, Photovoice participant.} specifically on the beaver animals:

It used to be a marsh before they built the casino over top of it. I remember one time they were clearing out behind for an expansion and there was a beaver hut back there. We went out to look out at it. A couple guys from the construction company that they hired came in and said "oh, there's nothing in there, so we can just destroy it". So they took a bulldozer right through it and you could see little critters take off running. It was so sad. I am an animal person and they were put out of a home. And everything they promote, I find it two-faced. I do not like it at all.\footnote{Waheson, supra note 438.}
II.7. The Trees

Knowledge Holder Louise McDonald described the connection of the healthiness of the trees to the healthiness of the people:

The trees are assigned duties to filter that air that we breathe because this whole Universe is held in balance. And, [Creator] assigned them those duties. In order for them to continue, they have to increase in their intensity because the elements thrown at them are harsh. Even here, two summers ago, we had a really hot summer and because of the lack of water, it affected a lot of the root system of our trees. So, our trees became frail. If our trees are frail, they can’t filter that carbon monoxide that becomes the oxygen that we breathe.489

Cynthia Lazore, Photovoice Participant, provided this photograph to describe the impacts of foreign entities that come off of the ships that travel down the St. Lawrence River:

![Figure 33: Photo by Cynthia Lazore, Photovoice Participant](image)

I feel lucky that my mom has been teaching me a lot. She does baskets and she’s been teaching me how to do baskets. One photo is a longhouse basket she’s been helping me make. I’m excited about it but I’m kind of have to worry about trying to remember everything perfect. Because of the developments moving up river, they bring invasive pests, like the emerald ash borer. I think it’s in Cornwall and it’s right across the river.

489 McDonald, supra note 362.
When are we going to notice it here? The emerald ash borer. Their larva eat the ash trees. They eat the Cambrian part and they kill the tree. Even the logs that the split makers get, they pound that and the splints would be all messed up. Because they are all riddled with those trails the larva left. I know they are saving seeds and they are trying to do stuff to protect the ash trees that we get splints from for the baskets. But, there is a chance that if all of the trees die within the next 10 – 20 years, we have to wait for the bug to die off. Who knows how long it will be for generations. How am I going to remember how my mom taught me everything so perfectly to maybe wait for my grandkid to plant an ash tree and someday I’m going to make a basket? Let me hope I remember how to teach you this. I don’t think I’ll be able to do that with my daughter.

The ash borer came from Asia. He piggy backed over here on shipping crates, down south and every time. There are different things that contribute to him moving around. But, if the world wasn’t so in a hurry to build everything and trade with everywhere else and especially without checking to see if they could get local. Or, checking their ships before they let these crates off.490

II.8. The Winds

Knowledge Holder Louise McDonald also talked about the impacts of resource development on the winds and the imbalances occurring:

The winds have increased in intensity. When you take a look at Hurricane Katrina and all of the others following her and the damages; they are just doing their job. Even yesterday, I heard there is a new fruit fly that has been invading our community. It’s pretty much wiped out the blue berries, the wild blueberries. It’s a new strain of fruit flies. So, we didn’t get many blueberries this year. As little as they are, they can wreak havoc. So, there’s a lot of things that are totally, totally out of balance.491

II.9. The Birds

Knowledge Holder Kevin King discussed the erosion of the river banks and the impacts that this had on barn swallows. He said:

That part of the erosion of the land along the St. Lawrence River is another big change that I’ve seen in my life. When I was a kid, there were birds everywhere. There were barn swallows - clouds of barn swallows. They used to be on every tree, fill the trees, as many birds on there as leaves. You would come out some days and all you could hear every morning. It started at 4:00 a.m. and things just got loud. You had that also happening at the same time, with that deterioration by the river by the big ships. Their waves would be crashing against the shore. What it would do is erode the banks on the river. When you look at the river now, it’s totally different from when I was a kid. Now you see the land

490 Lazore, supra note 385.
491 McDonald, supra note 362.
slopes down to the river. There were always these clay cliffs and that’s where these barn swallows lived. They lived right underneath the grass, right at the top of those little cliffs. They would come in and they would have thousands of nests right across that - everywhere, right along the whole river. Every one of these islands had them. Now, they don’t. What happened is they would collapse and literally collapse the colony. Because the waves would bombard this clay and then it would hit a weak spot and the whole 20 – 30 yards of clay would fall into the river. Every time that happened. What would happen is it would be changing the look of the land. Basically, you’re undermining the whole river. So, instead of having a flat and then a drop off into the river. You would have a flat and then a sharp slope but a slope now, down to the river. 492

This concludes the discussion of the impacts of industrial and resource development on wholistic health as illustrated by the specific feedback from Knowledge Holders and Photovoice participants. Many Knowledge Holders and Photovoice participants responded by first describing the type of resource development that is in or near the community and then providing details of the impacts the resource development has had on their well-being as human beings, as well as to their families, their community and the environment. Some were very gender specific and noted the impacts specifically upon the women and men and some focussed on the impacts upon children in the community.

The next section discusses the participants’ overarching comments about the connections between healthy lands and waters and wholistic health.

III. CONNECTIONS OF HEALTHY LANDS AND WATERS AND WHOLISTIC HEALTH

As noted throughout this chapter, participants – both Knowledge Holders and Photovoice participants – always made the connection between their healthiness, their relationships to the lands and waters and species through all of connections made in the Ohén:ton Karihwatékwen. Many participants were very specific about these connections and made it very clear that that the

492 K. King, supra note 398.
healthiness of the land, the healthiness of the water and the healthiness of plant and animal species are connected to wholistic healthiness. Their comments are set out in this section.

Knowledge Holder Katsi Cook’s powerful words reiterate these connections:

Connection is to me one of the most important words in the English language. We are hard wired for connection in our evolution as human beings. If we do not have the connections to the land, to the water, to each other, to the sky world, we would not exist as human beings. Most Indigenous peoples conceive of three worlds: the sky, the earth and the underground - that world that we do not see. I have always felt intuitively that the body of the earth and our bodies are one and the same. There is no separation. I began to understand the eco-systemic nature of our creation story where the story of Sky Woman is the Creation Story of all of the nations who occupy the Great Lakes basin. The Great Lakes and St. Lawrence River are the circulatory system of the earth and the lungs of the earth because they are 25% of the fresh water in the world. You don’t have to go too far in elementary school to understand the cycling of water so that the clouds and the waters and the rivers and the oceans and the lakes are all the same water. We are 99% of water - what is the difference. It’s all the same water. This idea of lands and waters, it becomes our language of metaphor. Even science uses metaphor. When that French guy discovered the benzene, it was from a dream of snakes. One snake had another snake’s tail in its mouth till they formed a ring and they were rolling in his dream and when he woke up, he realized that’s the shape of the molecule that accounts for a particular compound. It was an intuitive insight that came to him in a dream. This is the same way that a pregnant mother who has a dream about her baby or her birth or her fright or something she is carrying deep in her subconscious in order for it to emerge for her to be well.493

Knowledge Holder Louise McDonald said she didn’t know how one could think that there is not a connection between wholistic health and the healthiness of lands and waters. She too reiterated the connections:

There is an Indigenous philosophy that we are all related. Our Ohén:ton Karihwatéhkwen, the Thanksgiving Address, is about relationships and how we’re connected to that because we refer to it all. It’s a kinship based system and you refer to the Earth as our Mother. The creatures upon it are our brothers. The moon is our grandmother. The sun is our brother. The thunders are our grandfathers. We have the three sisters. It’s all relationship based. So, how can you not be connected? Even, when we do the welcoming speech and after we introduce the baby to its human family. We introduce the baby to its universal family. So, how can one think that we’re not connected to it? If one strand of the web gets broke, we’re all affected by it. So, industrialization has definitely broken a lot of strands in the web that holds us together. There’s a certain simplicity of our philosophy: we’re just thankful and grateful for those things that sustain you. In our Creation story, our story of origin, Creator assigned everybody duties, from the bugs to the sun, to the moon, to the

493 Cook, supra note 359.
winds, to the thunders, to the human beings. We all have instructions. We all have original instructions in what we’re supposed to do.\footnote{McDonald, \textit{supra} note 362.}

Knowledge Holder Elizabeth Nanticoke said: "I think that we’re getting healthy again. The river is getting healthier. The land is getting healthier and we can return to who we are meant to be, part of the land here."\footnote{Nanticoke, \textit{supra} note 362.} Because of what has occurred in the community, Knowledge Holder Jim Ransom stated that it is the community's goal to restore the connection of being well wholistically, to have healthy lands and waters.\footnote{Ransom, \textit{supra} note 362.}

Photovoice Participant 1 depicted his wholistic healthiness through the following photograph:

![Figure 34: Photo by Participant 1, Photovoice Participant](image)

It shows the medicine wheel. I need that whole part of myself to keep grounded, to keep myself healthy, to keep my everything, my mental, my spiritual, physical, everything in
connection. So I got it printed on myself. Again, it’s after a comic book character. I saw that on the movie that was made after the comic book came out. He puts it together, like he’s protecting the medicine, that’s what that resembles to me anyway. It’s to remind myself every day that I can’t avoid it.\footnote{497}

Photovoice Participant 1 also provided the following photograph:

![Photo by Participant 1, Photovoice Participant](image)

Figure 35: Photo by Participant 1, Photovoice Participant

This one is along one of the ponds in the Adirondacks. It shows the mountains, the forest and the marsh. So that’s got everything in there. I am starting to see it again because I am out there. It’s basically where I grew up right there. That’s one of the things I was told growing up. If you have this, you’re never going to go hungry. You’re never going to have to visit a hospital. Everything you need is in here. Now, that I’m getting back to it. I’m actually learning that holy smokes, it’s true.\footnote{498}

Photovoice Participant 1 took the next photograph from a mountain top. He described the change he went through once he shifted mentality as a result of living off the land:

![Photo by Participant 1, Photovoice Participant](image)

Figure 36: Photo by Participant 1, Photovoice Participant

I just like to say that there is nothing dark in there anymore. That’s the way that I see it now seeing more people doing it and that is what’s uplifting.\footnote{499}

\footnote{497} PV 1, \textit{supra} note 376.  
\footnote{498} \textit{Ibid.}  
\footnote{499} \textit{Ibid.}
Curtis Lazore provided a picture of a sunset that he took at the boat landing of his uncle’s in Snye, near the Sugarbush area. He described his wholistic healthiness with his relationship to the lands and waters as follows:

These are major wetland complexes in our community. This is looking towards Cornwall Island and St. Regis Island. It’s just beautiful, the clouds are just moving, the sun is dropping. You got these fall colors coming into view. It’s just natural beauty like that, you know. It’s quiet or if there is any sound, it’s birds. There will be fish jumping and the occasional boat going by. But, this time of day, it’s just relaxing. I’ll just sit there. It’s those little things in life that you just take the time to recognize what you got. I’m happy to live in a place where we can experience all four seasons and enjoy it. I enjoy all of them. This is where I live, this is where I’m from and I hope I can enjoy it the rest of my life.\footnote{C. Lazore, \textit{supra} note 392.}
Katsi Cook described the role of ceremony, its wholistic health meaning and the connection to the human body and reproduction:

My own relationship to the white corn like with everyone is ceremonial use and home based use but there is an underlying meaning of o:nenhste. I talked to Louise about these things – about o:nenhste – and interpreted that word. ‘o:’ means the covering for the male and female; ‘nenh’ from ka’nenha – the seed – the sound that means the spirit. And ‘te’-two – teka’ne. So you can see the sacred covering for the girl and the boy and from that, she took that and talked to her sisters. There was a word that we heard our mothers say, o:hero:ko – under the husk which was referencing Skywoman, during puberty, was kept under the husk. The down was encircled around her. The meaning was to ensure that there was no intrusive presence on her body that was changing. The notion of down bending in this community was about 20 years ago when there were investigations into the language and into the narratives that underlie the Longhouse philosophies.  

This background to O:hero:ko leads into the response of Katsiatso:ni, a Photovoice participant.

She provided a powerful statement about wholistic health and how the community has responded to returning the youths’ connection to the land, water and healthy bodies. She mentioned that because of some of the effects of the pollution from the industries:

We lost our connection to the land and not as many people planted gardens and not as many people fished and hunted and did those traditional practices. So this ceremony, the O:hero:ko, the Rites of Passage ceremony, helps reteach the male and female youth some of these things. We have people come in and talk about hunting or teaching how to make baskets or traditional practices, or making sweat lodges, to give them that connection to the earth and understand that spiritual connection that had been lost at one time.  

Katsiatso:ni’s first picture is the O:hero:ko, the Rites of Passage ceremony, which, in the photograph, was in its tenth year for the young men:

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501 Cook, supra note 359.
502 Interview of Katsiatso:ni (7 August 2014) [Katsiatso:ni].
Mothers, all in skirts are carrying pack baskets with their sons’ belongings in it and in front of them are their sons standing by the water. What it symbolizes is that the mothers are carrying the basket one last time. So, all of these young men are first year initiates. It was a ceremony that went underground for a long time. So much so that people didn’t remember it. When we met with the young people to follow their uncles and their aunties and grandparents, they would all say, ‘I wish they had this when I was young’ because they didn’t have the opportunity. It really brought the community together to support all of these young people. Right after this photo was taken, we sang for them as we walked up the hill. They gave their basket to the boys’ uncles whom they had all chosen beforehand. They gave the basket to the uncle and they asked the uncle to take care of them and to help them become young men. They said, ‘from now on the young men will carry their own basket’. It is not the mother’s responsibility anymore to do that. The whole community was involved to prepare and do this ceremony. It wasn’t just the moms and the sons. The uncles were involved and people from the community were involved. People helped sing or cooked food or did different things during that time. It really brought our community close together and it really helped these young people to start to be good men.\textsuperscript{503}

\textsuperscript{503} Ibid.
This next photograph by Katsiatso:ni was of the young women’s O:hero:kon:

![Figure 39: Photo by Katsiatso:ni, Photovoice Participant](image)

This picture shows Katsi Cook, who is really well known in the community and throughout the Confederacy for her work she has done as a midwife. She has also helped a lot, when she can for the O:hero:kon by coming in to speak to the girls about different things. This photo shows a whole line of young women in the front of her on the right. Those are all young girls that are in their second year of O:hero:kon. There is a lot of them. On the other side of them is all of their aunties that were helping them. They chose aunties that would help them to go through the ceremony. It takes a lot of discipline to do what they had to do. They had to actually go out and stay in a lodge for two days with no food and no water. Their aunties helped them. They are honored when they come out. They have their shawls on. The whole community sees them and what they accomplished and what they set out to do. This group is the largest group that we’ve ever had come through. Usually, we’ll start with a big group, maybe a dozen or so and by the time it gets to the fourth year, they are then fasting for four days and four nights. We end up with just one or two or three. So, this is a huge group.\textsuperscript{504}

Katsiatso:ni describes a powerful connection between the wholistic healthiness of the youth and their relationship to the land and water, which are all included in this ceremony.

\textsuperscript{504} \textit{Ibid.}
Photovoice Participant 2 provided the following photographs to show her connection to the land:

![Photo of a fire and a longhouse](image)

Figures 40 & 41: Photos by Participant 2, Photovoice Participant

She stated that “the fire represents your spirit. And the longhouse represents our way and how we used to live off the land.”\(^{505}\)

\(^{505}\) PV 2, supra note 378.
Photovoice Participant 2 also provided the following photographs of the corn, vegetables, strawberries and the apple tree to show the connection between being wholistically healthy and having healthy lands which are needed to grow our own foods.

Figures 42, 43, 44, 45: Photos by Participant 2, Photovoice Participant
She stated: “If the land is healthy, then we, as people, are healthy.”

Knowledge Holder Louise McDonald made a very important statement about the connection between being healthy wholistically as human beings and the relationship to the land, medicines and food:

[All of the changes and impacts upon Akwesasronon] are trying to awaken the people to bring us back to a place where we return to the land. Our medicines come to the land. When you work the land, you’re less prone to depression and mental illness. You’re physical so you’re less prone to those early diseases and obesity. Less diabetic. Having your gardens. My husband made a wonderful stuffed pepper dinner last night and all the food was from our garden. Do you know what I mean? We’ve got to begin to create a food shed, where our food is grown locally. Here in Akwesasne, we’re making movement towards that. There has to be a tipping point. And you think Indigenous people are the only ones affected? I don’t think so. It affects everybody, we’re all connected.

IV. SOLUTIONS & CONCLUSION

Although not asked specifically, a few Knowledge Holders talked about solutions to the impacts of industrial and resource development that have been implemented or that can be implemented.

Jim Ransom commented on his own role and responsibilities to his people and his community which are tied to the principles described in Kuswentah:

I try to follow the three principles in the Two Row. The skenneh, ka’nikonhriyo, kahsatstenhsera; peace, using a good mind and integrity. Making sure my words and actions match. When you do those three things consistently, it shows that you’re trustworthy. The trustworthy is what builds trust into relationships with others. This is where our focus has been. If we’re going to change non-native people’s minds and then, we got to educate them about ourselves. Do it in a way that they are not threatened and it adds value to them. And then, build a relationship around common interest.

It’s easy to talk about the negative things, the pollution, the contamination but those are the things that many times divide us from others. If we talk about the positive things that everybody wants a healthy world for all of our children, clean water for everybody, clean food sources, that’s the common interest. So, it’s a positive approach versus the negative.

506 Ibid.
507 McDonald, supra note 362.
Let’s agree that we need to eliminate the negative but we need to replace it with something positive. I think that is where we made a difference.

Here it sort of permeates through everything that we try to do, especially environmentally. I look at the work of the Akwesasne Task Force on the Environment and that here we’re doing a seed give away every year. It is to promote the people to go back to the earth and going back to planting. We do the yearly cleanup of our ditches and removing garbage. I know ATFE and working with our environment programs has planted thousands of black ash trees. We not only do the seed give away but we do a tree give away. It’s doing those types of things that return us back and strengthens our relationship with the natural world. Those are some of the things that need to happen again here. I think times are changing. And, we’re restoring that connection.\(^{508}\)

Katsi Cook stated that her father has figured out a form of agriculture where you remove PCBs, PAHs, chemicals found in the soil as well as in our bodies, through planting crops like sunflowers, certain funguses, certain mushrooms, certain plants that will pull those chemicals from the soil. She was excited about living within these “interesting times.” However, she said that “these resource extraction economies have to face Indigenous rights and campaigns.”\(^{509}\) She felt that governments also needed to understand the impacts of resource development on the physical health, emotional health, spiritual health, mental health and environmental health so that they are able to fully implement the necessary funding to restore the harm that has been done as a result of government policies to allow for resource and industrial development.

Cook also talked about her brother’s responsibility to develop the tribe’s Department of Agriculture so he is obtaining the views and feedback from community members, from “all the relatives, the extended families, different leaders, going to the different longhouses, listening to what peoples’ agendas are and what concerns are.”\(^{510}\) She said that she is so happy that he is doing that work so that the community can develop their own methods of agriculture and to return to connecting to Mother Earth.

\(^{508}\) Ransom, supra note 362.  
\(^{509}\) Cook, supra note 359.  
\(^{510}\) Ibid.
Emmy Mitchell also talked about ceremony, emotional healing, mental healing and utilizing the wampum to assist in restoring the connection to healthy lands and waters:

And now, when you look again at universal laws, we need to bring those wampum beads right at the beginning of any ceremony. So, all you can do here is re-educate a lot of our people. And, that’s all I’ve been trying to do. In every community that I go to, all the other Mohawk communities. When I talk about this Two Row wampum and I talk about the wampum beads and I talk about the universal laws. I talk about mental, emotional and spiritual healing. And, I put myself into each level that they are at. And, that’s where you can see that. When you teach them about the emotional healing and you teach them the laws. Once you know the laws, nobody can take that from you because that’s what got me to start talking to my older sister. And she was strict Catholic, right? Even when I started learning all of that, it got me to be what I believe in today and who I am today. And, I’m not any different that I don’t go to church, anymore. But, it’s believing in who I am. I think I’m a good person. I connected to everybody in the community and to me like with this death benefits is pulling all of the Elders back together. It’s pulling the community back together. And, there’s a lot of teachings that happen even when we gather here. Like, people come in and sometimes they visit all day. They don’t realize it’s a part of healing, they’re missing each other. And, that’s a lot of healing too because you’re helping people through the grieving. And then, I help with the grieving throughout that whole family because nobody knows the way anymore. Be open, be helpful, be caring and that’s in our wampum. That’s how my father used to think, you always help people.511

Throughout this CBPAR project with the community of Akwesasne, very powerful and resilient Knowledge Holders and Photovoice participants were interviewed. They all had many rich and thorough responses to the research questions. They gave thoughtful answers. Some of the responses were over two hours long while others were not more than 15 minutes long. The Photovoice participants were able to use their visionary and storytelling talents by taking pictures and explaining them to answer the research questions. And although every participant was interviewed separately, it is amazing to see the similar responses. This demonstrates the strength of the teachings of the community and the strengths of the traditional knowledge of all of those who were involved in this study.

511 E. Mitchell, supra note 362.
My methodology was following the Thanksgiving Address and it was designed before any interviews were completed. The methodology is ancient and it became quite apparent how strong this methodology is in reviewing the responses amongst the participants because all of their responses could be integrated into the methodology. This confirmed the connectedness amongst participants and the thought processes of Haudenosaunee traditional knowledge – the connectedness of all living things – the universal intellect.

One of the many messages that has come out of these interviews with community members, both young and old, is that Akwesasronon are very resilient peoples. Despite the impacts of the resource and industrial development that occurred and continue to occur in the community, those who participated in this study have learned from those impacts and continue to find various ways to come up with positive solutions (i.e. Akwesasne Freedom School, planting gardens). In most instances, they are returning to traditional teachings and knowledge (i.e. traditional basket making, living off the land and water, O:hero:kon).512

There were numerous powerful statements made by both the Knowledge Holders and Photovoice participants. There were strengths in both the male and female participants, both adults and youths. With respect to the impacts, the powerful statements reflected the emotional responses of many of the participants. This was especially so when the participants talked about the impacts on the men, women and children. As was noted by Clanmother Louise McDonald, it is the strength of the women that has maintained the healthiness of family and community. Kevin King was also very adamant about his responses in reflecting upon the impacts upon himself and the men in the community.

512 Ibid.
The solutions provided by the Knowledge Holders add to the conclusion of this chapter because their knowledge continues to educate the community and continues to strengthen the positive changes in the community. It is the strengths and gifts of all of the participants that continue to educate every generation and continue to be transferred to the next generations. This is a powerful message from the community members who participated in this study.
CHAPTER FIVE: *KUSWENTAH* (RIVER OF LIVE) – TWO ROW WAMPUM

The Two Row has become a symbol of the desired relationship of Indian nations and the world – separate but equal ... [The Two Row Wampum] reflects contemporary thinking about Indian sovereignty, based upon generations of belief by Indians that the words and values contained in the Two Row are true.\(^{513}\)

![Figure 46: Kuswentah Wampum Belt](image)

**Figure 46: Kuswentah Wampum Belt**
Photo Credit: Patricia Sayer, used with permission

**Introduction**

To recall the “separate but equal” relationship of *Kuswentah*, the description provided in Chapter 2 is repeated here:

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us shall try to steer the other’s vessel.\(^{514}\)


The *Kuswentah* is a legally binding pre-confederation peace and friendship treaty that acknowledged the principles of healthy and complementary relationships between two sovereign nations – first with the Dutch, then later with the French, British, and Swedish colonies. The principles of this healthy relationship were peace, trust, and friendship. All Knowledge Holders who were interviewed for this study said that according to Haudenosaunee ways, everything is relational – that there is a relationship between and amongst everything. I am implementing this relational, complementary and positive relationship of the *Kuswentah* to explain and analyze Haudenosaunee legal traditions and Canadian law as a means of protecting the wholistic health of Akwesasronon in this chapter.

Knowledge Holders were asked the following questions about legal traditions that protect wholistic health:

1) What are the Indigenous legal traditions of the Kanienkehake Peoples of Akwesasne related to wholistic health? To what extent can protection of their wholistic health be grounded in Indigenous legal traditions?

2) Can the right to wholistic health be included as existing Aboriginal and/or treaty rights under section 35 of the *Constitution Act, 1982*? Could violations of any Aboriginal/treaty rights to wholistic health flowing from resource/industrial development be justified under the *Sparrow* test?

3) What are your views of using Eurocentric law to enforce your rights and interests?

When these questions were responded to by the Knowledge Holders, it became quite apparent that there are two very different worldviews about Haudenosaunee laws and Euro-Canadian laws. A description of these differences is set out in Section I, including a visual effect to demonstrate the differences as shown in the *Kuswentah* wampum belt: “Responsibilities” and

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515 Berman, “American Indian Sovereignty” in *Exiled*, supra note 299. The author provides a historical account of the *Kuswentah* treaty relationships with the early colonizers from the Netherlands in 1613, Sweden in 1643, Great Britain in 1664, and France in 1665.
“Rights”. Section II is set out in two parts. The first part describes Haudenosaunee legal traditions that protect the wholistic health of Akwesasronon and the second part sets out the responses of the Knowledge Holders regarding their views of using Eurocentric law to enforce their rights and interests.

Section III and IV of this chapter provide an analysis of Euro-Canadian law based on the findings of the community project (i.e. that when practicing Haudenosaunee laws – ceremonies, recitals of the Great Law of Peace, knowing your clan and clan systems, learning and speaking in the language, picking medicines, planting gardens, having clean water and lands to fish, hunt and gather, etc. – these laws protect wholistic health). It is the practice of and living within Haudenosaunee laws that protect wholistic health, which ultimately is self-determination. Section III describes the complex Euro-Canadian legal framework that the Supreme Court of Canada has set out within its common law analysis to determine whether an Aboriginal claimant has an Aboriginal and/or treaty right protected under section 35 of the Constitution Act, 1982 and whether a violation of the right can be justified by government. Section IV brings together the findings of the Knowledge Holders and Photovoice participants and academic literature with this legal analysis. This section sets out a section 35 claim that Kuswentah provides a treaty right to self-determination based on Haudenosaunee laws that protect wholistic health of Akwesasronon.

I. Differences in Worldview of Law

There are different ways of thinking and analyzing between Haudenosaunee Legal Traditions and Eurocentric/Canadian Legal Traditions. For example, when Joyce King discussed Haudenosaunee water laws, she stated:

From the perspective of the traditional Haudenosaunee, we speak in terms of responsibilities with respect to the water, not in terms of water rights…What matters here are human relationships of responsibility. Responsibilities, like rights, are terms that have different implications depending on the individual’s learning and experience. In
law, some will associate it with the professional responsibility code emphasized in law school training. Others will think of fiduciary responsibilities, a familiar part of trust law. But moral behavior towards other people and towards the natural world brings together personal and legal responsibility; it is left to responsible individuals acting on their own good judgment rather than on the basis of legal prerequisite to behave morally and responsibly. 516

I am providing a visual to explain the protection of wholistic health through Haudenosaunee legal traditions and through the voices of the Knowledge Holders who were interviewed for this part of the project. The following visual is the *Kuswentah* Wampum Belt517 that depicts the differences in worldviews between Haudenosaunee laws and Eurocentric laws that were reiterated by all of the Knowledge Holders:

![Kuswentah Wampum Belt]

**Figure 47: Kuswentah reflecting Differences in Worldview of Law**

Haudenosaunee legal traditions are visualized on the top purple line of the *Kuswentah* as “responsibilities”. To be more specific, this section will demonstrate that the wholistic health of the Akwesasronon is protected by Haudenosaunee laws held in their “canoe”. Euro-Canadian

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516 King, Water, *supra* note 165 at 454.  
517 This belt is a replica of *Kuswentah* and is owned by the author.
legal traditions are visualized on the bottom purple line, “rights”, which reflects the Euro-Canadian worldview as codified in section 35 of the *Constitution Act, 1982*.

A number of Knowledge Holders that I interviewed for this project commented on the meaning of the *Kuswentah*. Knowledge Holder, Jim Ransom described *skenna* (peace) and *kanekonri:io* (good mind) as principles of *Kuswentah*. He said, “Peace doesn’t just happen. You have to be communicating to keep the peace. It has to be a type of communication that’s positive, that’s open, that’s frank. *Kanekonri:io* means that we use a good mind around common interests.”

He also stated that the *Kuswentah* was “one of the first treaties that defines relationships between two different societies.”

Knowledge Holder, Richard Mitchell noted that the *Kuswentah* was an agreement based on the knowledge of the Haudenosaunee Peoples and their relationship with Mother Earth. He said, “We based our thinking with what the Creator has made as a witness – that means that the concept, ‘as long as the river flows, as long as the grass is growing on this earth and as long as the sun is shining,’ was reflected in the meaning of the agreement.”

Knowledge holder, Emmy Mitchell, described the *Kuswentah* as “the strongest universal law – the natural law.”

Bear Clanmother Louise McDonald said that this agreement was based on “co-existence…the health of the people and for the continued health of both sides.”

All of the Knowledge Holders noted that when discussing Haudenosaunee legal traditions, the focus is on the roles and responsibilities of human beings within the bigger picture.

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518 Ransom, *supra* note 362.
519 *Ibid*.
522 McDonald, *supra* note 362.
of the natural world and natural laws and that when discussing Canadian/Eurocentric laws, the focus then became about rights. Joyce King stated:

It’s really rights and responsibilities where Haudenosaunee legal foundation comes from. Rights and responsibilities, do you really have a right? Or, do you have a responsibility? Most people need to learn that it’s a responsibility not a right. We are here on this earth because we have a responsibility to work with creation, not to be the caretakers. Creation can take care of themselves. We’re not caretakers of land. We have a responsibility to the land. So, the legal right is a legal responsibility, if you want to say that. It is the Creation story because that sets up your responsibility. All of creation has a responsibility and it is acknowledged in the Ohén:ton Karihwatéhkwen. Mother Earth provides for us. The Three Sisters sustain us. The people are to gather and to have good health. How are we going to do it? Well, we can’t do it without the rest of creation. You could have this idea that maybe you can maintain your health but no, you need good food, you need good water, you need good skies and you need good whatever. Look at creation. So, you have the Creation Story and that sets up everyone’s responsibility.

King further discussed the concept of responsibilities within Haudenosaunee laws as follows:

It is a responsibility and if you have to say law, okay a law. But, we self-poled. We didn’t need to have a police officer come and take you away. I just had this discussion this morning when we were talking about the Akwesasne Mohawk Court - the law and its development. This is why sometimes, 30% of the Aboriginal population occupies the prisons because we still know as a People. We have that responsibility. The responsibility of being honest and that gets us in trouble because we’re in the prison. Because we own up. We are taught responsibility. The western culture is saying, you prove it. My rights, what are my rights? A right to a lawyer. Us, you are right, you know that’s what they’ll say, I did do it. Yes, our honesty works against us.

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523 Cole, supra note 362. Oren Lyons wrote about the responsibilities to listen to natural law: “the spiritual side of the natural world is absolute. The laws are absolute. Our instructions, and I’m talking about for all human beings, our instructions are to get along. Understand what these laws are. Get along with laws, and support them and work with them…In the spring when the sap runs through the trees we have ceremonies, thanksgiving. For the maple, chief of the trees, leader of all the trees, thanksgiving. Thanksgiving for all the trees. Planting thanksgiving. Thanksgiving for the strawberries, first fruit. Thanking for the bees, the corn, green corn, thanksgiving. Harvest thanksgiving. Community, process, Chiefs, Clanmothers, everybody is there. Families are there. How do you inspire respect for something? By giving thanks, by doing it.” Chief Oren Lyons, “Listening to Natural Law” in Nelson, supra note 7 at 24-25.

524 Lickers, supra note 115.

525 Emphasized by interviewee.

526 J. King, supra note 362.

527 Ibid.
King asked: “Do we have an inherent right to wholistic health? Is it inherent?”

She responded that all of society has a responsibility to protect wholistic health and that “we were responsible to keep this entire continent clean… When the Europeans arrived to this land, the Indigenous peoples taught them about responsibility.”

She stated that “John Locke studied us. He started the environmental stuff based on watching us and what we did to protect the environment.”

She reflected on one of the Haudenosaunee prophecies about buying water:

> Going back to that prophecy, where I will buy your water. This happened in the 1700’s before the industrial revolution…our culture watched the other culture and realized how they were abusing our creation. One of the prophecies that came out of it is that we’re going to buy our water. Because they probably saw them being abusive to creation. They saw them dumping and having all of this pollution going into the water and hurting us. We knew that one of these days, we’re going to have to buy it. And, it’s come true, it’s very true. This was before there was any such thing as pollution.

King made it quite clear that the right to wholistic health is the same as being responsible to keep the lands and waters clean. She said:

> Our wholistic health includes creation. We’re always talking about restoring the balance within ourselves, within our environment, within creation. This happened when we moved the longhouses or moved our village over to another site. They started preparing it slowly. When they moved the entire one they would let it seed for every ten years or 20 years and let it go back to its natural state.

Henry Lickers also discussed the difference between the concept of rights and responsibilities. He said that Haudenosaunee Peoples do not have rights but have a lot of responsibilities. He further stated:

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Why can a Haudenosaunee person stand on a road and block the road? Because even though it may be against the law but it’s not against my responsibility. I have to do this. I don’t need a judge to tell me; I know what that is.\textsuperscript{534}

Della Adams also reflected on the major responsibilities that Haudenosaunee Peoples carry. She said:

We have always been told that just being born Haudenosaunee that we have a responsibility and connection to the earth, our mother. When I talk to people, I say that’s one of the first things you should be finding out. What is your purpose? As soon as you’re born, you already come with responsibility. No matter how much we want to shed responsibility, our people are born into this. Just being \textit{Onkwehon:we}, already you are responsible to Mother Earth. That’s our job, that’s what Creator gave to us. We came here with that responsibility and that is a huge responsibility that we have to carry. It’s our responsibility to stand up when we see our Mother Earth being raped. It’s our responsibility to not let that happen.\textsuperscript{535}

As noted by many of the Knowledge Holders, Haudenosaunee legal traditions are based on the responsibilities of all of creation, including human beings. It is therefore important to set out these responsibilities in order to protect the wholistic health of the Akwesasronon.

\section*{II. Responsibilities: Haudenosaunee Legal Traditions to Protect Wholistic Health}

\subsection*{II.1. Understanding Haudenosaunee Laws}

The term “Haudenosaunee legal traditions” is a very new term and most Haudenosaunee Peoples do not think about Haudenosaunee laws or culture in this way.\textsuperscript{536} Maxine Cole stated that she would not use the word “legal” because she does not think like that. Instead, she said:

In our community, what we practice on a daily basis is our Indigenous traditions and about building relationships that are long lasting, respectful and healthy. So having these things in place helps us to make good decisions about what we do not only today but for the future too. That’s what I think Indigenous legal traditions are of the People here.\textsuperscript{537}

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\begin{itemize}
  \item \textsuperscript{534} \textit{Ibid.}
  \item \textsuperscript{535} D. Adams, \textit{supra} note 362.
  \item \textsuperscript{536} Nanticoke, \textit{supra} note 362.
  \item \textsuperscript{537} Cole, \textit{supra} note 362.
\end{itemize}
Della Adams, when asked what Haudenosaunee laws are, said: “What kinds of laws do we have? I don’t know of any except it’s just who we are. It’s just basically being who we are: being responsible to ourselves and to our families.”

When I did my LL.M. thesis, one of the questions in that study was what did “law” mean to Haudenosaunee Peoples. The term that was told to me, in the Cayuga language, was “onkwenowenhya” which literally translates as “our way of life.” Henry Lickers confirmed this term and described Haudenosaunee legal systems and traditional systems as “ways of life, not imposed structures…they were purposes.” Specifically, he said:

They weren’t structure; they were purposes. Our frameworks were the Longhouses as well as the Tribes of the Confederacy, the sacred circle of 50 Chiefs. We never separated church and state because human beings are smart enough to integrate the concept of law and the concept of nature. This to the western society was just unheard of.

Knowledge Holder Elizabeth Nanticoke stated that Haudenosaunee laws are what enable the people to be healthy – that the laws are healthiness and that that is what wholistic health means. The Knowledge Holders provided various sources of Haudenosaunee Laws:

- Kuswentah and Wampum Belts
- Creation Story
- Mother Law/Law of the Women

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538 D. Adams, supra note 362.
539 Jacobs, supra note 4.
540 Lickers, supra note 115.
541 Ibid.
542 There is emphasis on the word “are” because it highlights the feedback from the Knowledge Holders that when abiding by Haudenosaunee legal traditions, then one is healthy wholistically. Nanticoke, supra note 362.
543 J. King, supra note 362; Lickers, supra note 115.
544 J. King, ibid; McDonald, supra note 362.
545 McDonald, ibid.
546 Cook, supra note 359.
Songs and Dances\textsuperscript{547}

Art\textsuperscript{548}

The Great Law of Peace\textsuperscript{549}

\textit{Ohén:ton Karihwatékwen}, the Thanksgiving Address and Natural Law\textsuperscript{550}

The Law is in the Corn\textsuperscript{551}

Ceremonies,\textsuperscript{552} Sacred Places,\textsuperscript{553} Medicines,\textsuperscript{554} and Planting\textsuperscript{555}

Each of these sources of Haudenosaunee Law that protect wholistic health will be presented in more detail through the words of the Knowledge Holders.

\textit{Kuswentah}, the Two Row Wampum Belt and all wampum belts, including peace and friendship wampum treaties made between Indigenous nations prior to colonization (e.g. The Dish With One Spoon) were described as a source of Haudenosaunee Law.\textsuperscript{556}

The Creation Story of the Haudenosaunee Peoples was discussed by both Joyce King and Louise McDonald. Joyce King stated that the Creation Story set up everyone’s responsibility and “all of Creation has a responsibility and is [acknowledged] in the \textit{Ohén:ton Karihwatékwen}, the Thanksgiving Address.”\textsuperscript{557} Louise McDonald described the Creation Story as “the supreme law of the land”\textsuperscript{558} and “is not one of dominance but

\textsuperscript{547} R. Mitchell, \textit{supra} note 362.
\textsuperscript{548} Cook, \textit{supra} note 359.
\textsuperscript{549} J. King, \textit{supra} note 362; Lickers, \textit{supra} note 115; D. Adams, \textit{supra} note 362.
\textsuperscript{550} King, \textit{ibid}; Lickers, \textit{ibid}; Cole, \textit{supra} note 362.
\textsuperscript{551} Cook, \textit{supra} note 359.
\textsuperscript{552} Cole, \textit{supra} note 362; D. Adams, \textit{supra} note 362; R. Mitchell, \textit{supra} note 362.
\textsuperscript{553} \textit{Ibid}.
\textsuperscript{555} Cole, \textit{ibid}.
\textsuperscript{556} J. King, \textit{supra} note 362.
\textsuperscript{557} \textit{Ibid}.
\textsuperscript{558} McDonald, \textit{supra} note 362.
of co-existence...and is founded upon the uterine line and the continuity of that lineage.\textsuperscript{559} McDonald described this “supreme law” as follows:

When Sky woman, Otsitsison, fell from the Sky World, she set into motion immediately for us that we’re a culture of procreators and we’re a culture of cultivators. She brought with her the seeds of our consciousness. She danced and made that earth grow, that’s precedence. She made the earth grow from the abundance of her fertility because of the richness of her womb and of her blood. That’s the law, that’s clear.\textsuperscript{560}

McDonald said Haudenosaunee philosophy is based on a feminine and collective connection “to a greater eco-universal law...no one stands alone...the men do not stand alone.”\textsuperscript{561} She reflected on the work that she and other women in the community were reasserting: “Kahnistenserah:\textsuperscript{562} The Binding Strength of Mother Law”. The powerful words of Mother Law include:

Matrilineal influence is a continuous sisterhood of clanship that derives from our celestial mother (Otsitsison), Sky Woman and our intimate connection to the land.

Our Haudenosaunee generations came into being upon the continuous, natural flow of primordial vital life force embodied in matrilineal clanship.

We acknowledge Ronikonrohwa:non, the Great Thinker and messenger of ancient times, who reminded us of our original instructions and pointed our foremothers to the patterns of intricate relations among animals, so that the wolf, bear, turtle, deer and others are still appreciated for their familial teachings.

Our Grandmothers of the distant past stood beside the rivers of life and distinguished the identities of kinship based on the characteristics of our animal relatives who symbolize our clan identities.

\textsuperscript{559} Ibid.
\textsuperscript{560} Ibid.
\textsuperscript{561} Ibid.
\textsuperscript{562} This Mohawk word, Kahnistenserah, is comprised of the following root words: Ista, which means “mother”; kahni which means “real or true”; sten which means “strength”; sherah, which means “always or all over”; and kahniot which means “this is it”. Document presented by Louise McDonald entitled “Kahnistenserah: The Binding Strength of Mother Law” in author’s possession.
As daughters descended from ancestral Clanmothers, we Haudenosaunee (Onkwehona:we) women adhere to principles of peace, power, justice (fairness) which promotes a system of conduct based on natural law that connects our Onkwehona:we society to a Matrilineal Order of partnerships.

Matrilineal Order or Mother Law is inherent in the natural human pattern of life’s vital flow. It is essential to the continuity of life. Mother Law is a natural order of principles that is guided by a higher instruct, it is free and cannot be dictated by man’s law.

…Woman is the land and land is woman: from her comes all sustenance and nurturance. Our earth mother is held in common by a sisterhood of clans, lands we held in absolute independence without being subject to any rent, service, or acknowledgement of a superior.

…The good health of our mothers and their infants are the foundation of our sovereignty. 563

McDonald also stated that “Mother” is the “heart and the core of any Indigenous community and of human kind” 564 and further noted that when we protect Mother, we are protecting wholistic health:

When Mother is taken care of and she is at peace, then she has the ability to work at her capacity to nurture and to nourish. When she’s not worried about being continuously assaulted and when we can uphold the Mother, the centre then you have a healthy family. You have healthy men. You have healthy leaders. That’s what’s Haudenosaunee is - that is the base of the law. When our Ancestors founded the status of continuing generations upon the Mother, they did it right because they knew that the women are connected to the land and the land is connected to the woman. We’re one and the same. So, when you protect that, that’s wholistic health. Because if the woman isn’t healthy in the home, neither are the kids, neither are the men. In order to protect that, you have to reawaken it inside the hearts of the women. They have to return to their rightful place of authority. It’s not to be better or above the men but it’s to hold her in a sacred way again. It’s just not to hold her but to convince her to hold herself in that way. 565

563 Ibid. The whole document is not presented here but highlights to the specific aspects of the femininity of Haudenosaunee laws. The “…” represents the points that were skipped over.

564 McDonald, supra note 362.

565 Ibid.
She elaborated further about the responsibilities of the women because it was the women who raised the male leaders. She said:

It was the women who decided whether they went to war or not. It was the women who weaved our wampum belts. It’s the women who prepared for those ceremonies. It’s the women who tended to the continuing lines of our families. They’re the ones that tend to the names. To make our communities whole again, your investment has to go into the empowerment and the protection of the mother.\(^{566}\)

Katsi Cook talked about the relationship of songs and dances to the respect of the women. She said:

In the Longhouse, when we did the women’s dance as a young girl, I remember when I was 15, I asked my Clanmother, ‘why do we do this women’s dance? Why don’t the men dance with us?’ And she said, ‘the men sing to honour us. When we shuffle our feet, it never leaves the earth. It is to remind us that just like our Mother Earth, we have to provide for the laws of our community, the housing, the care, the well-being.’ Women are responsible for all of that. When I thought about the laws, I thought about the kinship, the matrilineal piece, mitochondrial DNA, the women and women as the first environment.\(^{567}\)

When Katsi Cook made reference to “women as the first environment,” she referenced to the image of Figure 21.\(^{568}\) Cook had asked me to find it and to add it to the discussion because she felt it was important to include art as a source of Haudenosaunee laws. She said that “the joy of living in the community is that the artists would join in the conversation and flesh it out in their artwork.”\(^{569}\) I found the late Brad Bonaparte’s powerful image on the cover of a research report by the International Joint Commission of Canada.\(^{570}\) This piece shows a woman carrying a baby in her womb, which Cook refers

\(^{566}\) Ibid.
\(^{567}\) Cook, supra note 359.
\(^{568}\) Ibid. Figure 21 appears at page 139 of this dissertation.
\(^{569}\) Ibid.
to as woman as the first environment of life (the spirit of the baby). The first environment for the baby is water. It also demonstrates the mother’s sadness as she lays at the bottom of the water which is polluted from the industrial development – the buildings shown at the top of the image. This image also demonstrates the mother and baby’s relationship with the natural world – the bird, the fish, the turtle and the water.

Joyce King, Louise McDonald and Maxine Cole all referred to the teachings of the Great Law of Peace. Specifically, Maxine Cole said the Great Law of Peace:

shows us how to have relationships with people and how to behave well as human beings. Those things speak of natural law and what we grow up knowing well and absorb them into our life. It is hard to take it out and say...specifically, that is a natural law...because it is the way we live our lives. Skenneh, kanestensera, kanikohiyoh...we are abiding by these that we have been given. The Great Law, but in kanienkehah...it means to be used as a guidance. Natural law is only enforced by Creator.571

Cole said that Haudenosaunee laws were always protected by natural laws and that “our practices like planting, ceremonies in sacred places were protected over generations and protocols were in place specific to picking medicines.”572 She also stated that Haudenosaunee laws were protected through the acknowledgement of Ohén:ton Karihwatéhkwen, the Thanksgiving Address. She said:

Those things that Creator gave us is what speaks about or dictates about how we behave every day. For example, when we talk about the sun and our relationship with the eldest brother the sun, he not only heats the earth and provides bright light and we give thanks to that bright energy and creation of life itself. We would not have life on earth without it including all of life on earth. We also acknowledge our relationship with grandmother moon and the thunder beings. In natural law, I believe that it upholds and protects those relationships with the natural world as we know it. Natural law is what Creator gave us as responsibilities as human beings. We are reminded of this in many ways during our ceremonies and any healing that we do. We are reminded about those three breaths of life to protect what we have and to cherish those relationships. To acknowledge these

571 Cole, supra note 362.
572 Ibid.
relationships with all families on earth too including the trees. It is what guides our behaviour to the trees. We know there is a leader of the trees. We have ceremony to acknowledge and give thanks to the trees and to the sap - an acknowledgement and giving thanks. It is a very wholistic way, physically, spiritually and all of those ways. The Ohén:ton Karihwatékwen, the Thanksgiving Address is a reminder. Ceremonies are reminders.573

Elizabeth Nanticoke said that the respect, the founding and “the way that we address all of the living things in the Ohén:ton Karihwatékwen, the Thanksgiving Address” was “the main thing that kept us healthy or whole – spiritually, mentally and physically”. She also stated that:

Everything has an instruction in life and all of the humans have to acknowledge that. This is their main instruction is to acknowledge the life and how important it is on earth…. We have a responsibility to make sure that everything is protected. The trees for instance. They all play a big role in who we are. They play a role in our breathing. But, they find that they have the rights to clear cut. So that they can make sure that their industries grow. I think of that all of the time too. Why don’t they see the destruction? When you see what they are doing with the hydro fracking or the rivers that have the tailings out in BC. And, they think that is a right. That’s their right to do that? They go against everything that we know. They’re not thinking about that. They don’t think about the cost at the end of it. All they are thinking about is surviving today and not even thinking about the future. Their only concern is that their pockets are filled up while they are here.574

In her interview, Katsi Cook cited a poem by Alex Jacobs, stating that it was important to make reference to his words when discussing Haudenosaunee legal traditions.575 Alex Jacobs’ poem entitled “The Law Is in the Seed” is as follows:

The Law is in the Corn
the people of the southwest say this…
to be there with the morning star in that sacred time…
to talk to the corn, to hear it talk in the wind
in the language of movement…what to do.
Out here at the Eastern Door, we say, it is the Original Instructions,
but also that a sacred thing happened when we were given the Great Law for we had forgotten

573 Ibid.
574 Nanticoke, supra note 362.
575 Cook, supra note 359.
the Original Instructions…
when crooked men arise and become dictators,
murderers, thieves, cannibals…
The people would take the seed and move
to plant their Corn in a new place,
one again under the shelter of the Tree of Peace,
This is called Democracy,
it is in the land, it is in the seed.

The Law Is In The Corn
The Law Is In The Seed.

Cook noted her interpretation of “The Law Is In The Corn”, that Alex Jacobs is “talking about the relational aspects of how we organized our society.”

Knowledge Holder Della Adams also made specific reference to the responsibilities to Mother Earth and Richard Mitchell made the connection of Mother Earth to the ceremonies that give thanks to the natural world year-round. Mitchell said that the ceremonies are the most important part to understanding Haudenosaunee ways of being because “that’s your connection to the earth when you do your ceremonies; everything is connected in our ways to the natural world.”

Maxine Cole recognized that the sacred places in Haudenosaunee territories are a part of Haudenosaunee legal traditions that require protection. These sacred places are where traditional medicines and healing plants are. These sacred places are known by traditional healers and medicine peoples who have been practicing healing methods and medicines for a very long time. She said, “they know what they are doing and they know how to heal people. These spaces are

576 Alex Jacobs/Karoniaktatie, “The Law Is in the Seed” in Barreiro, Indian Roots, supra note 144 at vi.
577 Cook, supra note 359.
578 R. Mitchell, supra note 362.
not shared publicly and need to be respected.” These sacred places are on the land, within the environment and on Mother Earth.

The Knowledge Holders provided powerful responses to the first question regarding the legal traditions of Haudenosaunee peoples. They acknowledged that there are differences in worldviews between Haudenosaunee legal traditions and Euro-Canadian legal traditions and what came out of that discussion loud and clear was that Haudenosaunee laws reflect human responsibilities to all of creation and that Euro-Canadian laws are more about rights of human beings. What also became very clear was that when the people practice Haudenosaunee laws, they are practicing their way of life – their way of being. When abiding by Haudenosaunee law, then one is wholistically healthy, which means having healthy relationships with all of creation including Mother Earth – that there is a balance because everyone is abiding by their responsibilities.

The Knowledge Holders also recognized the strengths and responsibilities of the women and female leadership as well as the femininity of Haudenosaunee laws. The powerful imagery of “women as the first environment” as highlighted by Katsi Cook provides for the respect of women, the relationship to water and carrying life. The Knowledge Holders also acknowledged the Great Law of Peace and that it provides for the responsibilities of Haudenosaunee people to have good relationships with each other and to learn how to behave well. Peace, strength and having a good mind are principles of Haudenosaunee laws. The relationships with all of creation is also acknowledged in the Thanksgiving Address. The Law of the Corn is also a powerful principle of Haudenosaunee laws as it refers to having healthy relationships as well. Ceremonies are also a significant practice of Haudenosaunee laws because they also provide connection to

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579 Cole, supra note 362.
the natural world and establish the responsibilities of the people to give thanks to the natural world. So, when Haudenosaunee laws are being practiced, the people have a healthy relationship with all of creation including the land and water.

When the Knowledge Holders moved on to the next question about their views of using Eurocentric laws to enforce their rights and interests, which they had described as responsibilities, some were more knowledgeable about the Eurocentric laws than others. The next section provides their responses to that third question.

II.2 Reflections of Knowledge Holders about Eurocentric Laws

All of the Knowledge Holders who were interviewed for this study were very well aware of the broad reach of Eurocentric laws, specifically Aboriginal and treaty rights laws, their application to Indigenous Peoples as well as the impacts of these laws on Indigenous Peoples. However, they are not lawyers and not legally trained so they were limited in providing responses about the specific analysis for Aboriginal and treaty rights. Some of the Knowledge Holders were able to respond with specificity and this is reflected in this section. Most expressed the view that it was not worth bringing an Aboriginal rights claim to self-determination utilizing Haudenosaunee laws that protect the right of wholistic health of Akwesasronon to the courts under section 35 of the Constitution Act, 1982. Jim Ransom felt that the instigation of a lawsuit would enable successful negotiations for settlement and he provided an example of this strategy which is set out below. Henry Lickers was of the opinion that the decision makers (i.e. judges) needed to be further educated about Indigenous legal traditions prior to any cases being brought before them. And finally, Katsi Cook recommended that interpreters should be required before any cases were brought to court. This section reflects an explanation by the Knowledge Holders as to why they take the stances they do on the use of Eurocentric laws.
Richard Mitchell reflected on the purpose of *Kuswentah* and raised a Eurocentric legal principle called “laches.” He said that when *Kuswentah* was made, the “Creator was the witness” and that “all of a sudden the colonial governments created all kinds of laws and now there are so many land claims in the courts. And then, when you make a complaint about it, they’ll say ‘well so many years have passed and we call it laches’. But they never said that in the beginning. There was no such thing as laches when we made the *Kuswentah.*” Mitchell commented further on the distrust of colonial laws and felt that they were created to provide “guidelines on how much they can pollute.” He questioned whether settlers abide by their own laws. He said, “That’s the whole thing, do they follow their own laws? When it doesn’t suit them, they can break their laws, rewrite them or change them to suit them.” Mitchell further elaborated by saying that he has watched how the courts operate and stated:

> It’s not very often a judge will let you sit in court and tell your story because in their system, you have lawyers and you have judges. When you answer, you either say yes or no and that’s your answer. You can’t tell a whole story. I’ve seen people get torn apart in court because if they tell more than what they should, right away, the judge will say ‘we didn’t authorize you to do that. You answer with a yes or a no.’ So, how are you going to win? Or, how are you going to make them understand? You have to keep going and going and going, going but you don’t go anywhere. They got it so that you have the courts and then, they take you to the next court and then to the Supreme Court, they make sure that you don’t win. That’s the dangerous part of going to court.

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580 Deirdre R. Wheatley-Liss explains that “The doctrine of laches is based on the maxim that ‘equity aids the vigilant and not those who slumber on their rights.’ (Black’s Law Dictionary) The outcome is that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party. Elements of laches include knowledge of a claim, unreasonable delay, neglect, which taken together hurt the opponent.” See LexisNexis® Legal Newsroom, Estate and Elder Law, on-line: https://www.lexisnexis.com/legalnewsroom/estate-elder/blog/archive/2012/01/26/doctrine-of-laches-means-you-are-quot-out-of-time-quot.aspx.


When referencing section 35 of the *Constitution Act, 1982*, Maxine Cole was very aware of the *Sparrow*\(^{585}\) and *Adams*\(^{586}\) cases and the role of the court to define Aboriginal rights. She stated:

Aboriginal rights seem to be not clearly defined. It is a very broad sweep. I am not assured that the right to wholistic health can be included or that it would actually be upheld in a court of law. I am not assured of that when I read that section. I think that’s how the machine works in government: a broad picture is drawn and then tested. With *Sparrow*, we have to test it in court to see if it will be upheld. I find that very ridiculous and unnecessary. I worked with one of the lawyers in Akwesasne and began to understand. We worked together and I’d ask different questions. ‘Keep the wording more broad’ I was told. I did not understand at the time but I do now. *Sparrow* means proving the right first. *Adams* took it to court and he won…And we had to prove that fishing was done always. Eurocentric laws are not about protecting my rights as they would be under natural law. It would be like introducing but no place for it. For example, the regulations of traditional healers under Canadian law. This was too much for me to even think about. That’s just one case. The things we do, our ceremonies, our gathering, trapping, hunting fishing. We’ve been doing these things forever, then under someone else’s law, they are restricting us in what we do and it goes against all that we know, all that we’ve been and all that we’ve learned. I don’t see how this can be protected using Eurocentric law. It’s like mixing oranges and apples together. They don’t talk about healthy relationship building or about good community practices. The underlying principles don’t reinforce it. How can it possibly enforce my rights? In the *Sparrow* test they were able to go back many years and prove that people had been doing that practice for years. It was part of culture, embedded in language, fish used for certain ceremonies, embedded in culture. So many dimensions in our community life, it could not be separated. This is why *Adams* was able to win their case. I teach Science too. In Science, they say there are living and non-living things. So in class, I talk about how science says rocks are non-living things. The kids say that the rocks are living beings and that everything has a spirit. How can you protect my rights and interests when you believe that a rock does not have a spirit? Eurocentric law does not accept this…unless it is evidence-based it is a ‘no go’.\(^{587}\)

Both Emmy Mitchell and Elizabeth Nanticoke stated that utilizing the court system and a rights-based argument was not useful. Mitchell said that “there’s nothing there to protect our ways – it’s always one-sided”\(^{588}\) and Nanticoke said that “[the courts] haven’t protected us up to

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\(^{585}\) *Sparrow*, *supra* note 102.

\(^{586}\) *Adams*, *supra* note 102.

\(^{587}\) Cole, *supra* note 362.

\(^{588}\) E. Mitchell, *supra* note 362.
this time. I think the only way that it’s going to work is if we rise up.”

Della Adams also stated that she is not a “believer of the court system at all and to take our ways and to put it into that ship creates a lot of internal conflict and confusion.” She said:

In today’s world, it’s like you need to do this to safeguard our ways and to continue with our ways. We need to go to that ship and we need to explore what’s in that ship. It’s really hard to jump into that. Even though, realistically we are in there, right? But, we’re always trying to pull ourselves out of that and not get trapped in there. So, it’s almost like every day we’re trying to plan our escape route. How the heck do we get out of this? How do we get out of this mess? Our people really didn’t realize what we were getting into. Yeah, so it’s quite difficult. But, ideally, I would say no, never, never, never put our ways into that foreign way of government. But, realistically we have to in order to continue to protect our inherent rights. It’s just like a catch 22. I don’t know, it’s very confusing.

Joyce King provided much critical feedback about the Eurocentric legal system. Her first critique was about Eurocentric law itself because she recognized the colonial roots of State sovereignty:

What they brought over was that Christian doctrine, the doctrine of discovery. So, you see that in Christianity is to rule over the earth, meaning take it by force or do what you need because it’s yours. That ego in there means that it is yours for the taking. But, you can only take so much.

King also critiqued the “adversarial system within western society” as well as its inability to understand “inherent rights” as responsibilities. She said:

Isn’t that kind of an oxymoron because wholistic health means protecting the environment and creation and to me, it’s also the individual’s mind and spirit. If you want to call it an inherent right, sure. But, inherent right means all of creation, not just me. It’s our society. If you say you have an individual right, is it also a right that that creation should be healthy? It’s our responsibility to ensure that happens. If you have a responsibility to protect creation and inherently that translates up to section 35 of the Canadian constitution and you stop a diamond mine from happening. You can claim that’s my inherent right because I’m trying to protect this bear den or this endangered

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589 Nanticoke, supra note 362.
590 D. Adams, supra note 362.
591 Ibid.
592 J. King, supra note 362.
King also discussed the impacts of the foreign Eurocentric systems upon the community members themselves:

When the Europeans [and their] foreign [systems] came, they never used that concept [of responsibility]. It damaged our way of taking care of ourselves because we could no longer utilize the medicines to be able to survive anymore. In fact, there’s one medicine that is a now a protected species [under the *Species at Risk Act*] that is very good medicine. If we were caught picking it, we would be arrested. This is the cardinal plant. Yes, we would be arrested if we were caught picking it. But, that is essential to our wholistic health…our equal rights to wholistic health. It’s eroding; everything that was promised to us is eroding. Even in the treaties [and] the oral history behind it. It doesn’t weigh so much in the courts. It’s there and it always has been there. It means, how can we address it, knowing that once it goes up to the Supreme Court like in the *Mitchell* case. It gets watered down and it doesn’t even address the issue anymore.\(^5\)

She then thought deeply about using a rights defence under section 35 of the *Constitution Act, 1982*, should someone get charged for picking that “protected” medicine. She agreed that that medicine needed to be protected but according to Haudenosaunee laws, there was a process of self-regulation and a “right to self-regulate.” The difficulty she found was that:

The people coming up from the ground [the new generation] now doesn’t know that. They’re not being taught that. So, hunting and fishing is definitely a right of us. But, we’re translating that wrong because I know in a walleye spawning area, we have a right to go in there and spear the fish. But, our society started spearing that fish so much that the walleye aren’t producing anymore because they’re killing them off too fast.\(^6\)

She felt that the younger generation did not understand the teachings of responsibility so that the solution to re-educate the community about responsibilities was reiterated by her:

We’ve learned from the outside society that we have a right. But, [the new generation] haven’t learned that we have a responsibility. It’s a recreation now, instead of a food source. When we can’t rely on the outside society, there is going to be some eye-openers. You can’t point fingers but we need to be re-educated according to our own values.\(^7\)


\(^6\) *Ibid.* See also *Species at Risk Act, SC 2002, c 29; Mitchell, supra* note 102.

\(^7\) *King, ibid.*

\(^8\) *Ibid.*
King reiterated the responsibilities to creation, inherently and wholistically. She provided an example of that responsibility to the chickadee:

I think that is really important to inherently and wholistically protect species. You need all that creation to help you wholistically. If even, they will say ‘oh, it’s just a chickadee.’ If it’s just a chickadee, why do we need to protect it? That’s part of my wellbeing. Because, when those chickadees come over and they are crying, ‘feed me some sunflower seeds’. It was like, I better get out there. I have a responsibility to them. If I can’t provide the sunflower seeds to them and they are out there making noise, it’s like children; you really want to do what is right for them. There is not enough for them to live anymore. So, we have to help them along.  

King’s final comments about utilizing Eurocentric law to enforce rights and interests brought her to a discussion about the Mitchell case. She reflected on the decision by the former Grand Chief Michael Mitchell to make a case out of border crossing rights. She said:

The customs people at the time said, go ahead and if you win, we’ll settle this. So, Mike wins in the lower court. But then it’s appealed by the customs people. So, you go to the Appeal court. You lose there and then you go to the Supreme Court. In the Supreme Court, you need clarification. The entire issue is diverted. They say something else. It doesn’t even touch border crossing. It starts to limit what you can do. What that does is it waters down our rights. It’s totally different from those original Treaty rights. If the court, would just say, ‘what are those Treaty rights? Let’s examine the paper.’ If they just did that everything would be fine because when our Chiefs signed those documents, they were looking ahead seven generations. We have a right to protect seven generations into the future also. I think going through the Eurocentric courts might not be the best way to protect our seven generations.  

Although Jim Ransom agreed that Eurocentric laws should not apply to Haudenosaunee Peoples, he did state that he advocates for best practices and that:

If in Eurocentric law there is a best practice, why not, if it achieves what you’re after. The real test is whether the laws are developed to protect the natural world. If it means holding somebody accountable to it, and then why not? The problem is that a lot of the laws, they say don’t apply to us. Or, that we can’t use it and that’s a different type of a problem. It’s been a matter of getting your foot in the door. And then, using it to your advantage.

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597 Ibid.  
598 Ibid. See also Mitchell, supra note 102.  
599 Ransom, supra note 362.
Ransom was very strategic in his leadership decision to bring a law suit regarding the St. Lawrence Seaway because there was a national concern that there would be shipping year-round.

He said:

Around 2004/2005, I was the Tribal Chief on the American side and I got together with Grand Chief Mike Mitchell. We were watching US Senators and Congressmen and we were trying to get them to be more forthcoming about what their plans were for St. Lawrence Seaway. Of course, the Seaway goes right through here, so we had an interest. I said to Grand Chief, ‘here’s what I want to do. The Seaway is divided into a Canadian and an American portion. I’m going to sue the St. Lawrence Seaway Development Corporation in the United States. I want you to sue the St. Lawrence Seaway Administration in Canada. We’re going to sue them on the same day and the same time and we’re going to sue them on the same issue. It is over how the decision is made to open the shipping season. Our concern will be that it has potential to cause environmental harm to our communities.’ We did that. It was the first time that I’m aware of that a Canadian First Nations and an American Tribe got together to sue respective agencies in two countries over the same issue.  

Ransom’s strategy was to utilize western law to provide an opportunity to deal with the issue with the St. Lawrence Seaway Corporation. Although they began a claim against the Seaway, it provided them with the option to negotiate and settle out of court. Ransom explained:

They decided to take a chance with us so we started meeting with both entities. This is where the Haudenosaunee, the Traditional side comes into play. We applied the principles of the Two Row Wampum. In our case, we said that we recognize that you have to operate the Seaway. We acknowledge that it’s your responsibility. We know it is your decision as to when to open and close. We’re not here to take that away from you. But, we said we can give you information so that you can make a better and more informed decision. Why wouldn’t you consider that? In the end, they agreed. We used that to change the relationship with the entities from a confrontational court base, to one of cooperation. We built around common interests of the river. In a year, we met and we settled out of court and reached a settlement. Today, we meet every winter, around January or February to talk about the upcoming shipping season. When they’re going to open the season, we’re given an opportunity to provide input to that decision. It’s still theirs but we contribute towards it. It went so well that we have an open invitation to participate on their ice breaking vessel when it goes through Mohawk Territory. 

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600 Ibid.
601 Ibid.
Ransom acknowledged that after years working together, the positive relationship that was established was based on the strength of their words and actions. He highlighted that:

Our relationship is such today that we’ve gone from using the western law process, combined it with traditional thinking and arrived at a solution that we probably couldn’t have gotten to otherwise. We have a written agreement and a positive relationship with them now. And, that is how it is supposed to work.  

Della Adams also turned to the positiveness of the relationship of Kuswentah and Haudenosaunee laws. She remembered one of the teachings of an Elder she knew. She said:

We also have that respect too, right? If there’s something good that our White brothers have brought to us and then, by all means, let’s use it. Everything comes for a purpose too. If there’s something good, use it to the benefit of our people and to Mother Earth, herself. If we can get laws to throw people in jail for throwing garbage on the ground, well, do it then because it’s protecting her. What保护s her, protects her health. In the end, it’s not only us who’s going to benefit. We’re not the only ones that’s going to benefit from having clean air and breathing clean air. The whole population is going to benefit from that. The whole population will benefit from having clean water.

Realistically, to look at it that we do have to use those ways, today. We have to use those ways in order to protect our teachings and everything that’s in our canoe. Yeah, that’s a tough question; it’s a tough position to be in.

Henry Lickers discussed his own responsibilities to himself, to his family, to his community, to his Nation and to the Haudenosaunee Confederacy. He acknowledged that the protection of wholistic health includes his own responsibilities as a spiritual person. He said, “People say to me, ‘Henry, you’re such a spiritual person.’ No, I’m just being me. I’m just being the things that I’m supposed to be.” When asked whether he thought wholistic health can be protected under Eurocentric law, he said it could, “but it’s going to take incredible integrators and incredible thinkers among our own people and their people in order to do it.” He said that he had hoped for this to occur because he felt that there were many examples, “whether good or

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602 Ibid.
603 D. Adams, supra note 362.
604 Lickers, supra note 115.
605 Ibid.
of Haudenosaunee legal traditions integrated into western institutions. As examples, he cited the *Species at Risk Act*\(^\text{607}\) and the *Parks Act*.\(^\text{608}\) He said, “as bad as they are and as many problems as we have with them, at least there’s an attempt there to integrate that. We’ve got to work at that a little bit longer.”\(^\text{609}\)

He provided an example of the work he is doing with a community-based organization called the Eastern Ontario Model Forest organization.\(^\text{610}\) He has been working with them and teaching them the Great Law of Peace, about what it means and how it works. He said:

> What’s so funny is that they have written two papers now. I co-authored the both of them on the naturalized knowledge systems as it’s used in forestry. One is by Story and the other one is by Holmes, the two ladies that worked on it. What we did was that we taught them how to do this. Now, they’re using it. So, after 20 years of using it, they’re saying this is the right way to do it. And, the government cut funding and yet, they’re still going. They just said, it doesn’t stop the partnerships. It doesn’t stop the communication. It doesn’t stop the peace. So, the peace is still going but scaled back. What’s happening now is the people involved with it are putting up more and more equity. Their putting up more of their own time, more of their own effort. So, that spiral of peace doesn’t change. But, they have their own way. I kind of laugh all the time when we meet together and everything just goes to religion in two seconds. But, that’s the way that they work and that’s the way they think.\(^\text{611}\)

Lickers was knowledgeable about *Adams*\(^\text{612}\) and *Delgamuukw*\(^\text{613}\) as cases where Indigenous legal traditions were integrated into the courts. He felt that with this understanding within the courts, that “it will cause dramatic change to their system.” He felt that there is hope for the future because:

\(^{606}\) *Ibid.*

\(^{607}\) *Species at Risk Act*, *supra* note 594.

\(^{608}\) *Canada National Parks Act*, SC 2000, c 32.

\(^{609}\) Lickers, *supra* note 115.


\(^{611}\) Lickers, *supra* note 115.

\(^{612}\) *Adams*, *supra* note 102.

\(^{613}\) *Delgamuukw*, *supra* note 102.
Native and non-native peoples are getting together and are saying, forget what the government says. How are we going to work it? When they do that most of our People will at least have a mechanism for doing it. The Haudenosaunee way of doing it. As I would say, are the best. But, that’s just arrogance.\textsuperscript{614}

He also felt there was hope because there are other countries that have a Gross National Happiness Index rather than a Gross National Product. He said:

The Gross National Happiness Index measures whether the Nation is happy because what they found was they had so much conflict and strife that they needed something to measure happiness. The Gross National Product doesn’t do it. So, they brought up this indicator and there is a lot of other countries now that are looking at it, looking at community wellness. We have to measure it. Who did they give it to? The doctors. Done and they start destroying it. Now, they are beginning to realize you don’t give it to the doctors. You give it to the community and have them come up with their own criteria. You can see a change in methodology and then see a change in policy. This was to protect health. Every time I see one of those wellness indicators and people doing it the right way, I know what that will do. It will start protecting that concept of health.\textsuperscript{615}

Lickers suggested another way to protect wholistic health was by using the principles of \textit{Kuswentah} and to understand its implications. He said that we need to get peoples’ attention and that there are a number of positive and negative ways to get attention. He acknowledged that Indigenous people’ rights are getting attention at the academic levels and that these rights are being talked about. He said:

We do this by shouting at people. I’m not allowed to get into their boat and steer it. But, I see a prophecy coming and it’s a big one. It’s going to destroy us and destroy them. How do I get their attention? I can get their attention in a number of different ways. One is to violate their laws. Soon as you do that they’ll mind what you are doing. I can do that by combat. Actually, fighting them, that gets their attention. I can do that by ruining their economic system. So, there is a whole bunch of negative things that I can do, in order to get their attention to say, ‘hey, this is coming guys.’\textsuperscript{616}

\textsuperscript{614} Lickers, \textit{supra} note 115.
\textsuperscript{615} \textit{Ibid.}
\textsuperscript{616} \textit{Ibid.}
A positive way to get attention is through the arts. He acknowledged Indigenous artists like A Tribe Called Red\(^{617}\) and noticed that they are getting the attention of both Indigenous and non-Indigenous peoples. He said:

`What’s that saying? As a type of shouting, we’re shouting to them and saying. Do you realize that even in this level, we might have something to say? We’re not supposed to go over there and jump in their boat and actually tell them what to do. But, it doesn’t stop us from shouting. It doesn’t stop us from saying, this is it. The problem with this is that a lot of our People believe that they can go into the other canoe. When they do that, they try and come back again. They bring back horrible things into our side.\(^{618}\)`

So, Lickers asked, “What do we need?” He said:

`I look at the sacrifices that our People have always made. We need to maintain and hold our traditions, languages and all of those things dear. And there are people who do that; they are the peoples we have in our Longhouses. There are people that we will send out to shout and they are sacrificed. We know that as soon as you step that line. Regardless of how good you are, you’re sacrificed. You can’t go back. You can’t go back and exist in the canoe again because you carry within your mind all of those other concepts. So, it’s really difficult to go back. But, our people would say ‘Well, Henry you’re doing a good job. We know you’re sick and we’ll help you the best we can.’ So, once they cross, they are now in the boat on the other side. Because I bring with me my own thinking as an individual. I can help them to start steering the boat. Why? Because I’m not in the canoe anymore. We have a lot of people that are out there that still remember their own Traditions. They’re the ones who are sacrificed. Because, what we say to them in a spiritual way is teach them. Teach them the right way to look at the world. So, Henry goes to the Eastern Ontario Model Forest organization and says ‘Do you do an opening at every meeting?’ Now, they say, ‘yes we do.’ ‘Do you know what the Great Law of Peace is? The way that they’ve translated it and we’ve translated it is ‘oh, yes we do.’ That’s respect, equity and empowerment in how we build partnerships. And then, we say, ‘you’re getting it!’\(^{619}\)`

So, metaphorically, Lickers is stating that once we bring these issues into the courts, then we are bringing it “into their boat”\(^{620}\) within their system and that what is needed is to change the

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\(^{617}\) A Tribe Called Red’s website states: “Bursting forth from Canada’s capital, native Producer and DJ crew A Tribe Called Red is making an impact on the global electronic scene with a truly unique sound. ATCR is a duo made up of 2oolman, and Bear Witness.” See online: http://atribecalledred.com.

\(^{618}\) Lickers, _supra_ note 115.

\(^{619}\) _Ibid._

\(^{620}\) _Ibid._
people who “steer that boat” or those who are decision makers or in charge of that system. He is stating that those who are teaching and changing minds are not necessarily “steering their boat” or controlling the system, but influencing the minds who do. When applying this to the Eurocentric legal system, or stepping in to “their ship”, then the influence of educating and training minds within that system is what is required. He said some empowering words to those who are willing to educate and train the minds of those who “steer the boat”:

…when you step into that [legal system], you know that you’re moving out of [the Haudenosaunee system] and into that boat. And yes, it hurts and you feel alone. You feel like you are almost betraying who you are. But, know that our People know that. We know that we have to sacrifice some of our own People. [Tom Porter] and everybody talks about it in this way. Sacrifice some of our own People to go out there and do it. So, you’re no different than the warrior that stood on the front lines and got killed during a battle. No different. It’s just that here it’s not a physical death. It’s more of a spiritual death. The beauty of our people is that we believe that the Creator knows the difference. When you do these things, you strengthen their way of thinking and you are doing exactly that. You’re stepping into their court and not telling them how to do something. But, showing them there’s a better way. It’s up to them to decide how to steer their boat. We are not going to steer their boat for them. Again, I think we’re fulfilling the function of the Two Row. We need the courage to do this. The same way we need the courage to fight….We’re still here. While we’ve sacrificed our People and pushed them out there and said help them to understand. Don’t guide them. Don’t steer them but help them understand. And, I understanding that a reasonable person will always come to wave the peace. So, they can’t win, the land will change them. 621

Lickers then told a story of his grandfather:

He said, ‘I wanted to be White. I wanted to be out here and doing what they do.’ He says to me about the brains, you know. The Creator gave us this. He says but think of it this way. He said the White people came here and said that they were going to make North America. They were going to make it. ‘So, how many acres did they add? How much did they make?’ I said, ‘well maybe a couple hundred acres, a thousand or maybe a million on the sides where they filled in the land and all of that.’ They really didn’t make any land, they just got here. He said ‘what they forgot is the land can make them.’ He said, ‘as soon as they arrived here, what did they say?’ ‘I want to get out of my big ship. I don’t want to be in that ship. I’m being persecuted for my religion for my race and for all of these things. I want to get out of that ship.’ And, they stepped over here and built a new ship. The problem is that they didn’t know how to build it. So, it’s leaky, it’s all falling apart, it’s got a real big mass but not a hull, it’s not a good construction. What did they do? They looked around to see who had built a better boat.

621 Ibid.
And, they found all of our People. They weren’t old enough to be able to know the knowledge and the wisdom enough to see it. But, the land will make them. The spirit of the land will change them. As it changes them, they will be surprised.  

When asked specifically whether Eurocentric laws should be used to enforce the rights of wholistic health of Akwesasronon, Lickers said that:

Traditional laws will be supreme in the end and that [Eurocentric laws] will disappear. I hate to say this but I think it will disappear right across the world. So, it’s not just a fight we have. It’s a fight that all of us have, the whole world has. I don’t see doom and gloom when we talk about this stuff. I see good stuff that we have been doing. And that each of us are fighting in the way that we fight are different type of warriors as the ones that we had in the past. Will some of us be sacrificed? Yes. But, I will say to you this I’d go willingly because I know it’s for our own people.

Katsi Cook reiterated that if we are going into their courts, then it is very important that a language interpreter is present. She said “we need this in all of the institutions that we did not create [i.e. in law]. We can shift it and create it from our own peoples’ experiences - good and bad.”

So overall, the majority of the Knowledge Holders did not trust the Eurocentric legal system but were hopeful that positive changes and relationships can be further developed through the principles of Kuswentah: peace, trust and friendship.

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622 Ibid.
623 Ibid.
624 Cook, supra note 359.
II.3 Conclusion

![Figure 48: Artwork Designed by Patrick Sandy – used with permission of the artist](image)

This artwork design captures the voices of the Knowledge Holders who all stated that Haudenosaunee legal traditions and the responsibility to protect wholistic health are one and the
same. Art, in itself, was described as a source of Haudenosaunee law. This visual image speaks to the Haudenosaunee Creation Story as noted by Knowledge Holders Joyce King and Louise McDonald through the burst of the Sky World and Sky Woman as well as the sacredness of Water, as noted by Knowledge Holder Katsi Cook, through its ripples. The praying centred woman represents the femininity of Haudenosaunee legal traditions and she assists in the leadership and healing of her clan families, communities and nations which was highlighted by Clanmother Louise McDonald. It represents balance through the Great Law of Peace in which the Wampum Circle of 50 Chiefs was created once the Haudenosaunee Confederacy was formed. It represents the Thanksgiving Address through the movement of the four seasons which represents the relationship with Mother Earth, the natural world, natural law, ceremonies, and medicines that are thanked year-round through language, songs and dances. The Knowledge Holders have said that when the people adhere to their laws, traditions, languages, ceremonies, songs, dances, medicines, and follow them the way that their ancestors have always done, then this maintains the healthiness of the peoples. So, it is all one and the same: abiding by Haudenosaunee legal traditions equates to a wholistic relationship with Mother Earth and wholistic healthiness of the people. The protection of wholistic health is inherent within Haudenosaunee legal traditions and through the responsibilities of the Haudenosaunee Peoples, including Akwesasronon.

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625 Cook, supra note 359.
III. Rights: Canadian Law Applied to Aboriginal Peoples

Figure 49: Kuswentah Reflecting Differences in Worldview of Law

Aboriginal peoples are defined under section 35(2) of the Constitution Act, 1982, as “Indians, Métis, and Inuit” peoples. Under section 35(1) of the Constitution Act, 1982, “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.” These rights were not defined specifically in the Constitution Act, 1982, which has allowed the courts to define and analyze these rights. The analysis of rights is visualized on the purple line of the Kuswentah, above. This section provides an analysis of whether the right to self-determination, based on the practice of Haudensosaunee laws that protect wholistic health of the Akwesasronon, is protected as a treaty right under section 35(1). The reason why I chose the right to self-determination as opposed to the right to wholistic health is based on the responses of the participants in this study. As noted earlier, the Akwesasronon who were
interviewed for this study, both the Photovoice Participants and the Knowledge Holders said that when Haudenosaunee peoples are practicing ceremonies, participating, listening to and abiding by the Great Law of Peace, Ohén:ton Karihwatékwen, knowing your clan and clan systems, learning and speaking in the language, picking medicines, planting gardens, having clean water and lands to fish, hunt and gather and living our ways of being; then these actions mean that they are practicing and living Haudenosaunee laws that protect wholistic health, which ultimately is self-determination. In this section, I am now analyzing laws that have been enacted within the “ship.”

In the majority of the Supreme Court of Canada (SCC) cases addressing Aboriginal and treaty rights under section 35 of the Constitution Act, 1982, the focus has been on:

1) defining Aboriginal rights to land (i.e. Aboriginal title);\(^{626}\)

2) determining an Aboriginal right to harvest resources;\(^{627}\)

3) determining the right to self-government;\(^{628}\) or

4) determining treaty rights to hunting, fishing, trapping or gathering prior to\(^{629}\) and after\(^{630}\) 1982 and the enactment of section 35 of Constitution Act, 1982. A lot of the litigation has surrounded individuals who have been charged under various criminal or quasi-criminal offences

\(^{626}\) Guerin, supra note 102; Delgamuukw, supra note 102; Marshall/Bernard, supra note 102; Tsilhqot’in Nation, supra note 102.

\(^{627}\) See e.g. Sparrow, supra note 102; Van der Peet, supra note 102; Gladstone, supra note 335; R v Côté, [1996] 3 SCR 139 [Côté]; R v Nikal, [1996] 1 SCR 1013 [Nikal]. See also Lax Kw’alaams Indian Band v Canada, [2011] 3 SCR 535 [Lax Kw’alaams]; R v Sappier; R v Gray, [2006] 2 SCR 686 [Sappier & Gray]. See also R v Powley, [2003] 2 SCR 207 (regarding Métis rights).

\(^{628}\) See e.g. R v Pamajewon, [1996] 2 SCR 821 [Pamajewon].

\(^{629}\) R v White and Bob (1965), 52 DLR (2d) 481 (BCCA) [White & Bob].

\(^{630}\) Nowegijick v The Queen, [1983] 1 SCR 29 [Nowegijick]; Simon, supra note 102; Sioui, supra note 102; Badger, supra note 102; Marshall #1, supra note 102; Marshall #2, supra note 102; R v Morris, [2006] 2 SCR 915 [Morris]; Horseman, supra note 102.
and they had used the protection of an Aboriginal or treaty right as their defence. All of these major SCC cases set out the common law or legal analysis that defines that particular right. The analysis of these cases is set out in this section of the chapter.

John Borrows has recognized that the cases that are currently being litigated are narrowly focused on Aboriginal and treaty rights relating to land. He stated that:

Indigenous peoples’ constitutional rights must be reframed and transformed in ways that address other pressing needs, including violence against women. Our political and legal leaders have been falsely bewitched by the idea that Aboriginal and treaty rights relate only to land. This is a harmful tradition. Aboriginal and treaty rights also directly implicate the health, safety, and welfare of Indigenous peoples’ bodies. Aboriginal and treaty rights exist to promote and protect physical survival.  

It is therefore important to expand the protection of rights claimed under section 35 of the Constitution Act, 1982, to include the right to self-determination, based on the practice of Haudensosaunee laws that protect wholistic health of the Akwesasronon.

There are only two SCC cases that involved the rights of Akwesasronon: the right to fish in R. v. Adams632 and the right to bring goods across the Canada and United States international border in Mitchell v. Minister of National Revenue.633 These cases are analyzed within this section. There has not yet been a case litigated where an Aboriginal individual or nation has claimed that section 35 of the Constitution Act, 1982, protects a specific Aboriginal or treaty right to self-determination, based on the practice of Haudensosaunee laws that protect wholistic health of the Akwesasronon.634

631 John Borrows, Freedom & Indigenous Constitutionalism (Toronto: University of Toronto Press, 2016) at 182 [Freedom].
632 Adams, supra note 102.
633 Mitchell, supra note 102.
634 There has been litigation brought by First Nations and Inuit communities involving resource development, the Crown’s duty to consult, and relationship to the land, see e.g. Clyde River, supra note 102; CTFN, supra note 102. These cases could indirectly address the issue of protecting wholistic health; however, the courts did not address this issue specifically. These
What is set out next is the complex analytic legal framework that the SCC has established to determine whether an Aboriginal claimant has an Aboriginal and/or treaty right and if so, whether a violation of the right can be justified by government. Generally, the Court has found that Aboriginal and treaty rights must be given a large, generous and liberal interpretation and the analysis applies to breaches by both federal and provincial laws. The right should not be defined beyond its actual purpose but be placed in its proper linguistic, philosophical and historical contexts. Any doubts or ambiguities about the right should be resolved in favour of the Aboriginal person or group claiming the right.

The framework under section 35 of the Constitution Act, 1982, can be synthesized into the following four parts:

A. Is there an existing Aboriginal and/or treaty right?
B. Has the right been extinguished?
C. Has the right been infringed?
D. Is the infringement justified?

Following this framework, I will provide an analysis evaluating whether the Akwesasronon have the treaty right to self-determination with respect to protecting wholistic health under section 35 of the Constitution Act, 1982.

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635 Van der Peet, supra note 102. See also Marshall #1, supra note 102.
636 Sioui, supra note 102 at 1043.
637 Tsilhqot’iyn, supra note 102 at para 101.
638 R v Blais [2003] 2 SCR 236 at para 18 [Blais].
639 Van der Peet, supra note 102 at para 25.
III.1. Is there an existing Aboriginal and/or treaty right?

The SCC has addressed the scope of Aboriginal and treaty rights in many cases. The Court noted that “an approach to the constitutional guarantee embodied in s. 35(1) which would incorporate ‘frozen rights’ must be rejected.”\textsuperscript{640} This means that an Aboriginal right cannot be frozen in time, rights “must be interpreted flexibly so as to permit their evolution over time”\textsuperscript{641} and ancestral rights may find modern expression.\textsuperscript{642} The Court has also addressed the practical aspect of claiming the relevant right in pleadings. For example, the SCC in \textit{Lax Kw’alaams v. Canada}\textsuperscript{643} confirmed that an Aboriginal claimant must ensure that the pleadings relied on at trial are set out with “no doubt about precisely what is claimed” and that if needed, the pleadings can be adjusted as fair to all parties based on the evidence.\textsuperscript{644}

III.1.a Aboriginal Rights

It was held in \textit{Van der Peet} that courts must take into account the perspective of the Aboriginal peoples claiming the right\textsuperscript{645} and they must identify precisely the nature of the claim being made in determining whether an Aboriginal claimant has demonstrated the existence of an Aboriginal right.\textsuperscript{646} To characterize an applicant’s claim correctly, a court should consider such factors as the nature of the activity which the applicant is claiming was done pursuant to an Aboriginal right, the nature of the governmental regulation, statute, or action being impugned, and the practice, custom or tradition being relied upon to establish the right.\textsuperscript{647} To be an

\textsuperscript{640} Sparrow, supra note 102 at 1093.
\textsuperscript{641} Ibid.
\textsuperscript{642} Mitchell, supra note 102 at para 13.
\textsuperscript{643} Lax Kw’alaams, supra note 627.
\textsuperscript{644} Ibid at 558.
\textsuperscript{645} Van der Peet, supra note 102 at para 49.
\textsuperscript{646} Ibid at para 51.
\textsuperscript{647} Ibid at para 53.
Aboriginal right, “an activity must be an element of a practice, custom or tradition integral to the distinctive culture.” 648

The SCC then set out factors that courts must consider when applying this “integral to a distinctive culture test” 649 as follows in Van der Peet:

1) A claimant must demonstrate that the practice, custom or tradition was a central and significant part of the society’s distinctive culture; 650

2) The practices, customs and traditions which constitute Aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact. 651

   a. The relevant time period is the period prior to the arrival of Europeans, not the period prior to the assertion of sovereignty by the Crown; 652

   b. ‘Existing aboriginal rights’ must be interpreted flexibly so as to permit their evolution over time’. The concept of continuity is, in other words, the means by which a ‘frozen rights’ approach to s. 35(1) will be avoided; 653

   c. The concept of continuity does not require Aboriginal groups to provide evidence of an unbroken chain of continuity between their current practices, customs and traditions, and those which existed prior to contact. 654

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648 *Ibid.* Treaty rights are subject to a different test, which will be explained below.
650 *Ibid* at para 55.
651 *Ibid* at para 60.
652 *Ibid* at para 61.
The SCC in *Adams*\(^{655}\) followed the reasoning in *Van der Peet* in that an Aboriginal right can be proven without having to be linked to an Aboriginal right to land. George Adams, a Mohawk man from Akwesasne, was fishing for perch in Lake St. Francis, which is part of the St. Lawrence River and, as argued by Adams,\(^ {656}\) is the traditional territory of the Mohawk Peoples of Akwesasne. The Province of Quebec and intervenor The Attorney-General of Canada argued that this was not the traditional territory of the Mohawk Peoples of Akwesasne. The SCC had to determine “whether Aboriginal rights are inherently based in Aboriginal title to the land, or whether claims to title to the land are simply one manifestation of a broader-based conception of Aboriginal rights.”\(^ {657}\) In following its reasons in *Van der Peet*,\(^ {658}\) the Court found that “it is the latter characterization of the relationship between aboriginal rights and aboriginal title that is correct.”\(^ {659}\) The Court highlighted that “wherever they were settled before or after contact, prior to contact the Mohawks engaged in practices, customs or traditions on the land which were integral to their distinctive culture.”\(^ {660}\)

In *Sappier & Gray*, the respondents were relying on their pre-contact practice of harvesting timber in order to establish their Aboriginal right.\(^ {661}\) The SCC, in modifying the *Van der Peet* test, added that the courts must characterize the claimed Aboriginal right and seek to understand how the resource at issue was harvested, extracted and utilized - practices that are

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\(^{655}\) *Adams*, supra note 102.

\(^{656}\) James O’Reilly, Martha Montour, Chantal Chatelain, Peter Hutchins, Diane Soroka, Anjali Choksi “Reply Factum of Appellant” filed in *Adams v Her Majesty the Queen and The Attorney General for Canada* 19 October 1995.

\(^{657}\) *Adams*, supra note 102 at 116-117.

\(^{658}\) *Van der Peet*, supra note 102.

\(^{659}\) *Ibid.*

\(^{660}\) *Adams*, supra note 102 at para 28.

\(^{661}\) *Sappier & Gray*, supra note 627 at 699.
necessary “Aboriginal” components in Aboriginal rights.\footnote{Ibid at 700.} Secondly, it is also necessary to “identify the pre-contact practice upon which the claim is founded to consider how it might have evolved to its present-day form.”\footnote{Ibid at 701.} Justice Bastarache analyzed the evidence and stated:

The way of life of the Maliseet and of the Mi’kmaq during the pre-contact period is that of a migratory people who lived from fishing and hunting and who used the rivers and lakes of Eastern Canada for transportation. Thus, the practice should be characterized as the harvesting of wood for certain uses that are directly associated with the particular way of life...I would therefore characterize the respondents’ claim as a right to harvest wood for domestic uses as a member of the aboriginal community.\footnote{Ibid at 702.}

The Court made specific reference to the word “domestic” to qualify the right by noting that the “right so characterized has no commercial dimension...[and] cannot be sold, traded or bartered to produce assets or raise money.”\footnote{Ibid.} The Court also specified that the right to harvest wood for domestic uses is a communal one and the right “is not one to be exercised by any member of the Aboriginal community independently of the Aboriginal society it is meant to preserve. It is a right that assists the society in maintaining its distinctive character.”\footnote{Ibid.}

Also important in \textit{Sappier & Gray} is the Court’s focus on practices that were essential to survival,\footnote{Sappier & Gray, supra note 627 at para 33.} which could be useful when applied to protecting wholistic health. Noteworthy in this analysis is the wording “particular way of life”\footnote{Ibid at para 46.} as this impacts the descriptive element of a practice, custom and tradition that is integral to an Aboriginal group’s distinctive culture.

In \textit{Lax Kw’alaams},\footnote{Lax Kw’alaams, supra note 627.} the Court, in building on the \textit{Van der Peet} test, set out a process for how a claim under section 35(1) of the \textit{Constitution Act, 1982}, would appropriately proceed:
a. First, at the characterization state, identify the precise nature of the First Nation’s claim to an Aboriginal right based on the pleadings. If necessary, in light of the evidence, refine the characterization of the right claimed on terms that are fair to all parties;

b. Second, determine whether the First Nation has proved, based on the evidence adduced at trial:

   i. the existence of the pre-contact practice, tradition or custom advanced in the pleadings as supporting the claimed right; and

   ii. that this practice was integral to the distinctive pre-contact Aboriginal society.

c. Third, determine whether the claimed modern right has a reasonable degree of continuity with the ‘integral’ pre-contact practice. Is the claimed modern right demonstrably connected to and reasonably regarded as a continuation of the pre-contact practice? At this step, the court should take a generous though realistic approach to matching pre-contact practices to the claimed modern right…the pre-contact practices must engage the essential elements of the modern right, though of course the two need not be exactly the same.

d. Fourth…in the event that an Aboriginal right to trade commercially is found to exist, the court, when delineating such a right should have regard to what was said [in Gladstone and Sparrow].

670 Ibid at 558-559.
Aboriginal rights are distinguished from treaty rights. The same four-part analysis noted earlier applies to both; however, the SCC has considered the determination of a treaty and the rights flowing from that treaty differently, as discussed in the next section.

III.1.b. Treaty Rights

The SCC in *Sioui*,671 held that treaties are *sui generis* or unique in nature,672 are made between the Crown and First Nations peoples, and – in other cases – that they are not international treaties like those between the Crown and another sovereign state.673 Treaties were described in the British Columbia Court of Appeal in *White and Bob* (and affirmed in *Simon* and *Sioui*) as follows:

> it embraces all such engagements made by persons in authority as may be brought with the term ‘the word of the white man,’ the sanctity of which was, at the time of British exploration and settlement, the most important means of obtaining the goodwill and cooperation of the native tribes and ensuring that the colonists would be protected from death and destruction. On such assurance the Indians relied.674

A summary of the characteristics of a valid treaty is as follows:

1) **Parties:** The parties to the treaty must be the Crown, on the one side, and Aboriginal nation, on the other side.

2) **Agency:** The signatories to the treaty must have the authority to bind their principals, namely, the Crown and the Aboriginal nation.

3) **Intention to create legal relations:** The parties must intend to create legally binding obligations.

4) **Consideration:** The obligations must be assumed by both sides, so that the agreement is a bargain.

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671 *Sioui*, *supra* note 102.
672 *Ibid* at para 42; See also *Nowegijick*, *supra*, note 630; *Horseman*, *supra* note 102.
674 *Sioui*, *supra* note 102 at 1041, citing *White and Bob*, *supra* note 629 affirmed in *Simon*, *supra* note 102 at 649.
5) Formality: there must be a ‘certain measure of solemnity.’

The Court in Sioui also set out five factors to determine the intent of the parties to enter into a treaty:

1) continuous exercise of a right in the past and at present;
2) the reasons as to why the Crown made a commitment;
3) the situation prevailing at the time the document was signed;
4) evidence of relations of mutual respect and esteem between the negotiators, and
5) the subsequent conduct of the parties.

Justice McLachlin, in her dissenting opinion in Marshall #1, gathered the following principles from precedent cases to interpret treaties:

1) “Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation”;
2) “Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories”;
3) “The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed”;

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676 Sioui, supra note 102, citing R v Taylor and Williams, [1982] 3 CNLR 114 (ONCA).
677 Marshall #1, supra note 102 at para 78, citing R v Sundown, [1999] 1 SCR 393 at para 24; Badger, supra note 102 at para 78; Sioui, supra note 102 at 1043; Simon, supra note 102 at 404.
678 Marshall #1, ibid at para 78; citing Simon, ibid at 402; Sioui, ibid at 402; Badger, ibid at para 52.
679 Marshall #1, ibid; citing Sioui, ibid at 1068-69.
4) “In searching for the common intention of the parties, the integrity and honour of the Crown is presumed”;\textsuperscript{680}

5) “In determining the signatories’ respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties”;\textsuperscript{681}

6) “The words of the treaty must be given the sense which they would naturally have held for the parties at the time”;\textsuperscript{682}

7) “A technical or contractual interpretation of treaty wording should be avoided”;\textsuperscript{683}

8) “While construing the language generously, courts cannot alter the terms of the treaty by exceeding what ‘is possible on the language’ or realistic”;\textsuperscript{684}

9) Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide their modern exercise. The involves determining what modern practices are reasonably incidental to the core treaty right in its modern context.\textsuperscript{685}

In addition to all of these different principles on interpretation, the overarching test for when a claimed treaty right will be seen as protected under section 35 by the courts is: what was the common intention of the parties at the time the treaty was entered into.\textsuperscript{686}

\textsuperscript{680} Marshall #1, ibid; citing Badger, supra note 102 at para 41.

\textsuperscript{681} Marshall #1, ibid; citing Badger, ibid at paras 52-54; Horseman, supra note 102 at 907.

\textsuperscript{682} Marshall #1, ibid; citing Badger, ibid at para 53; Nowegijick, supra note 630 at 36.

\textsuperscript{683} Marshall #1, ibid; citing Badger, ibid; Nowegijick, ibid; Horseman, supra note 102 at 907.

\textsuperscript{684} Marshall #1, ibid; citing Badger, ibid at para 76; Sioui, supra note 102 at 1069; Horseman, ibid at 908.

\textsuperscript{685} Marshall #1, ibid; citing Sundown, supra note 677 at para 32; Simon, supra note 102 at 402.

\textsuperscript{686} Marshall #1, ibid at para 14.
III.1.c Admissibility of Evidence in Aboriginal and Treaty Right Claims

As noted, the onus is on the claimant to prove an existing Aboriginal or treaty right. In the introductory paragraph of Mitchell, Chief Justice McLachlin stated, “At the heart of the case lies the question of the evidence that must be adduced to establish an aboriginal right.”

The claimant, former Grand Chief Michael Mitchell, claimed that the Mohawk Peoples of Akwesasne have an Aboriginal right that precludes the imposition of duty under the Customs Act on certain imported goods. On March 22, 1988, Mitchell crossed the Canada-United States international border into Canada arriving at the customs office in Cornwall. He crossed the border with blankets, bibles, motor oil, food, clothing, and a washing machine which he purchased in the United States. He declared the goods but asserted his Aboriginal right that the goods were exempted from paying duty. After some discussion, the customs agents notified Mitchell that he would be charged $142.88 in duty, and they permitted him to continue into Canada. Mitchell had gifted the goods except the motor oil to the Mohawk community of Tyendinaga, which is situated on the Canadian side of the border. The gifts symbolized the renewal of a historic trading relationship between the two communities. The oil was taken to a store in Akwesasne territory for resale to members of that community. In September of 1989, Chief Mitchell was served with a Notice of Ascertained Forfeiture claiming $361.64 for unpaid duty, taxes and penalties.

The issue on appeal in this case was whether the claimant’s Aboriginal right precluded the imposition of duty under the Customs Act on the imported goods. The issue was addressed in a

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687 Mitchell, supra note 102.
688 Ibid at para 1.
689 Customs Act, RSC 1985, c. 1 (Supp.).
690 Mitchell, supra note 102 at para 2.
manner which followed the precedents already set by the SCC but added further details regarding the evidentiary concerns in proving an Aboriginal right.691

In following the rulings in Van der Peet and Delgamuukw, the evidentiary guidelines presented in Mitchell were said to apply to both “the admissibility of evidence and the weighing of aboriginal oral history.”692 Further, they “must be applied flexibly, in a manner commensurate with the inherent difficulties posed by such claims and the promise of reconciliation embodied in s. 35(1).”693 As well, the courts must consider the various forms of oral history before them as evidence of an Aboriginal right.694 Chief Justice McLachlin made it very clear in Mitchell that Delgamuukw had established that:

The rules of evidence must be adapted to accommodate oral histories, but did not mandate the blanket admissibility of such evidence or the weight it should be accorded by the trier of fact; rather, it emphasized that admissibility must be determined on a case-by-case basis…Oral histories are admissible as evidence where they are both useful and reasonably reliable, subject always to the exclusionary discretion of the trial judge.695

The test for admissibility of oral history includes meeting the test of usefulness and reliability. There are two grounds to meet the test of usefulness:

1) Evidence of ancestral practices and their significance that is otherwise not available; and

2) Oral histories that provide the aboriginal perspective on the right claimed.696

The ground to meet the test of reliability is whether the witness represents a reasonably reliable source of the particular people’s history.697 As noted by Chief Justice McLachlin:

In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts and

691 Ibid at para 8.
692 Ibid at para 28.
693 Ibid at para 29.
694 Ibid at para 31.
695 Ibid. See also Delgamuukw, supra note 102 at para 87.
696 Mitchell, ibid at para 32.
697 Ibid at para 33.
traditions. Oral histories reflect the distinctive perspectives and cultures of the communities from which they originate and should not be discounted simply because they do not conform to the expectations of the non-aboriginal perspective. Thus, *Delgamuukw* cautions against facilely rejecting oral histories simply because they do not convey ‘historical’ truth, contain elements that may be classified as mythology, lack precise detail, embody material tangential to the judicial process, or are confined to the community whose history is being recounted.\(^{698}\)

Thus, it is important to ensure that the Elders/Knowledge Holders who are presenting the oral histories of their Nations in a claim under section 35 of the *Constitution Act, 1982*, are able to meet these tests of usefulness and reliability.

In the *Tsilhqot’in Nation v. British Columbia*\(^{699}\) case, a claim of Aboriginal title to land, the SCC recognized the Elders’ oral evidence along with archeological and historical evidence. The Court did not disturb the trial court’s findings that “indicated a continuous Tsilhqot’in presence in the claim area.”\(^{700}\) This is an important case that recognized the strong and clear evidence of the Elders of the Tsilhqot’in Nation.

**III.1.d The Interpretation of Evidence in Aboriginal and Treaty Right Claims**

The next step of the process is to interpret the admissible evidence and weigh the evidence “with a consciousness of the special nature of [A]boriginal claims.”\(^{701}\) This is the responsibility of the trial judge, “who is best situated to assess the evidence as it is presented, and is consequently accorded significant latitude.”\(^{702}\) Weighing the evidence is exercised on a case-by-case basis. The court then must determine whether the evidence supports the Aboriginal or treaty right, i.e. whether the evidence establishes that the practice claimed was integral to the

\(^{698}\) *Ibid* at para 34.
\(^{699}\) *Tsilhqot’in Nation*, *supra* note 102.
\(^{700}\) *Ibid* at para 57.
\(^{701}\) *Mitchell, supra* note 102 at para 37.
\(^{702}\) *Ibid* at para 36.
claimant’s distinctive culture and that it continues to the present day, or that it was protected by treaty based on the common intention of the parties.

In Adams, the Court found that:

If the exercise of such practices, customs and traditions effectively continued following contact in the absence of specific extinguishment, such practices, customs and traditions are entitled to constitutional recognition subject to the infringement and justification test outlined in [Sparrow and Gladstone].

The Court found that the evidence – which demonstrated Mohawks fishing in the Akwesasne area for four centuries - had proven that Adams did have an Aboriginal right to fish in the specific fishing area claimed.

In contrast, in Mitchell, based on the “sparse, doubtful, and equivocal evidence” presented at the lower courts, Chief Justice McLachlin concluded that “the claimant has not established an ancestral practice of transporting goods across the St. Lawrence River for the purposes of trade.” She distinguished Mitchell’s Aboriginal trading rights case with Adams’ Aboriginal right to fish case by stating that the evidence was “clearly demonstrated’ that fishing for subsistence in the area constituted a significant aspect of Mohawk life at the time of contact.” The Chief Justice also distinguished Mitchell from Gladstone by stating that in the latter case, the “claimant had provided clear evidence from which it can be inferred that, prior to contact, Heiltsuk society was, in significant part, based on such trade.”

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703 Adams, supra note 102.
704 Ibid at para 33.
705 Mitchell, supra note 102.
706 Ibid at para 51.
707 Ibid.
708 Adams, supra note 102.
709 Mitchell, supra note 102 at para 52 [emphasis added by the Chief Justice].
710 Gladstone, supra note 335. Gladstone involved a claim of the right to trade herring spawn on kelp.
711 Mitchell, supra note 102 at para 52 [emphasis added by the Chief Justice].
Justice concluded that Mitchell did not prove an Aboriginal right to transport goods across the St. Lawrence River, she did not address questions of extinguishment, infringement and justification.

There have not been any claims involving treaty rights brought by the Akwesasronon. This will be explored in section IV. The remaining parts of the test for Aboriginal and treaty rights are set out next.

III.2. Has the right been extinguished?

The Crown has the burden of proving the extinguishment of an Aboriginal and/or treaty right. The Crown has the burden of proving the extinguishment of an Aboriginal right and there must be a “strict proof of the fact of extinguishment.” Although most section 35 claims do not fail at this stage, the SCC in *R v Howard* made a determination that the terms of a 1923 Treaty between the Hiawatha Band and Canada had extinguished the Hiawatha Band’s fishing rights on Otonabee River in Ontario. The SCC agreed with the trial court and the Ontario Court of Appeal that any fishing rights were surrendered by the “basket clause” contained in the 1923 Treaty.

As noted by Thomas Isaac:

> In practice, few laws purporting to unilaterally extinguish Aboriginal rights have been recognized and the overall impact of extinguishment has been minimal. Instead, it is the power of the Crown to regulate and infringe Aboriginal rights…which has had the greatest impact on the exercise of these rights.

The fishing rights were extinguished by treaty in the *Howard* case.

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712 *Sioui*, *supra* note 102 at 1061; *Badger*, *supra* note 102 at para 41.
713 *Van der Peet*, *supra* note 102 at 1099; *Sparrow*, *supra* note 102 at 1099.
714 *Badger*, *supra* note 102 at para 41.
716 *Ibid* at 305.
717 Isaac 2012, *supra* note 318 at 32.
III.3. Has the right been infringed?

The individual or group challenging the legislation or other government action has the burden of proving a *prima facie* infringement of the Aboriginal or treaty right. The purpose or the effect of legislation may cause infringement and the courts must focus on whether the government action results in meaningful diminution of an Aboriginal right or a treaty right. Sparrow set out the first three factors below to determine whether an Aboriginal or treaty right has been infringed:

a. Is the limitation on the right unreasonable?

b. Does the regulation of the right impose undue hardship?

c. Does the regulation of the right deny the rights holders their preferred means of exercising that right?

d. Is there absolute discretion without criteria?

It was in Adams that the Court added the fourth factor when it found that the Quebec Fishery Regulations subjected “the exercise of the appellant’s aboriginal rights to a pure act of Ministerial discretion, and sets no criteria regarding how that discretion is to be exercised.”

The Court added to the Sparrow test as follows:

If a statute confers an administrative discretion which may carry significant consequences for the exercise of an aboriginal right, the statute or its delegate regulations must outline specific criteria for the granting or refusal of that discretion which seek to accommodate the existence of Aboriginal rights. In the absence of such specific guidance, the statute will fail to provide representatives of the Crown with sufficient directives to fulfil their
fiduciary duties, and the statute will be found to represent an infringement of aboriginal rights under the Sparrow test.\textsuperscript{725}

The Court found that because there were no criteria set out in the regulatory scheme, that the Crown’s failure to grant permits to fish with seine nets – the Mohawk’s traditional method of fishing for food - had infringed upon Adams’ Aboriginal right.

With respect to the infringement of treaty rights, the Court found in \textit{Côté} – another fighting rights case - that if the effect of government legislation is insignificant or “imposes [only] a modest financial burden on the exercise of th[e] alleged treaty right”, it will not be found to infringe treaty rights.\textsuperscript{726} The other four factors set out above apply equally to treaty rights cases.\textsuperscript{727}

In \textit{Grassy Narrows First Nation v Ontario (Natural Resources)},\textsuperscript{728} the Supreme Court held that provinces can place limits on treaty rights in some circumstances. Chief Justice McLachlin provided a brief history of Treaty 3, which was signed in 1873 between the Dominion of Canada and the Chiefs of the Ojibway.\textsuperscript{729} The brief history of Treaty 3 prior to signature was discussed by the Chief Justice which is important to understand the decision in this case:

In the early 1870s, Canada was a young country looking to promote western expansion and Confederation. Settlers travelled west along an immigrant travel route called the Dawson Route, and British Columbia agreed to join Confederation on the condition that Canada build a transcontinental railway. But the immigrant travel route and the prospective railway to the west ran through traditional Ojibway land in what is now Northwestern Ontario and Eastern Manitoba. Canada was concerned about the security of immigrant travellers and surveyors preparing for the construction of the Canadian Pacific Railway (‘CPR’), and feared that it may need to station troops in the area.

\textsuperscript{725} \textit{Ibid} at para 54.
\textsuperscript{726} \textit{Côté}, supra note 627 at para 88.
\textsuperscript{727} See e.g. Badger, supra note 102 at paras 90-92.
\textsuperscript{728} \textit{Grassy Narrows First Nation v Ontario (Natural Resources)} [2014] 2 SCR 448 [\textit{Grassy Narrows}].
\textsuperscript{729} \textit{Ibid} at para 2.
Securing a safe route through the Ojibway lands was critical for the addition of British Columbia to Confederation and to the development of the West.\textsuperscript{730}

The territory at issue was the Keewatin area and at the time of signing Treaty 3, the area “was under the exclusive control of Canada.”\textsuperscript{731} In 1912, the Keewatin area was annexed to Ontario through \textit{The Ontario Boundaries Extension Act}\textsuperscript{732} and since that time, Ontario has issued licences for the development of lands in that area. In 2005, the First Nations community of Grassy Narrows commenced a claim against the Province of Ontario and challenged the province’s forestry licence. The issue was “whether Ontario can ‘take up’ lands in the Keewatin area under Treaty 3 so as to limit harvesting rights under the treaty, or whether it needs federal authorization to do so.”\textsuperscript{733} The harvesting rights were set out in the “taking up” clause of Treaty 3 as follows:

\ldots they, the said Indians, shall have [the] right to pursue their avocations of hunting and fishing throughout the [said] tract surrendered as hereinbefore described \ldots and saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government…\textsuperscript{734}

Although Ontario was not a party to Treaty 3, the Court found that:

\begin{quote}
Ontario has the authority to take up lands in the Keewatin area so as to limit the harvesting rights set out in Treaty 3. By virtue of ss. 109, 92A, and 92(5) of the \textit{Constitution Act, 1867}, Ontario alone has the ability to take up Treaty 3 land and regulate it in accordance with the treaty and its obligations under s. 35 of the \textit{Constitution Act, 1982}.\textsuperscript{735}
\end{quote}

\begin{footnotes}
\item[730] \textit{Ibid} at para 1.
\item[731] \textit{Ibid} at para 3.
\item[732] SC 1912, c 40.
\item[733] \textit{Grassy Narrows, supra} note 728 at para 3.
\item[734] \textit{Ibid} at para 11, citing Treaty 3 at 6.
\item[735] \textit{Grassy Narrows, ibid} at para 4.
\end{footnotes}
As a result of this case, provinces may have the power to place limits on treaty rights even though they were not party to the original treaty.

III.4. Is the infringement justified?\textsuperscript{736}

The SCC in \textit{Sparrow} stipulated that Aboriginal rights “are not absolute”\textsuperscript{737} and that “legislation that affects the exercise of aboriginal rights will nonetheless be valid, if it meets the test for justifying an interference with a right recognized and affirmed under s. 35(1).”\textsuperscript{738} As detailed previously, the onus is on the Crown to justify an infringement of an Aboriginal and/or treaty right.\textsuperscript{739}

The justification test has evolved over time and was most recently set out as follows in the \textit{Tsilhqot’in} case:

\begin{itemize}
\item[a.] Did the Crown discharge its procedural duty to consult/accommodate?
\item[b.] Is there a compelling and substantial government objective?
\item[c.] Is the government action consistent with the Crown’s fiduciary obligations and the honour of the Crown?\textsuperscript{740}
\end{itemize}

These steps will be elaborated upon in the next sections.

III.4.a. Did the Crown discharge its procedural duty to consult/accommodate?\textsuperscript{741}

The general principles of the duty to consult were set out recently in \textit{Clyde River}\textsuperscript{742} as follows:

\begin{itemize}
\item[\textsuperscript{736}] \textit{Sparrow}, supra note 102 at 1113.
\item[\textsuperscript{737}] Ibid at 1109.
\item[\textsuperscript{738}] Ibid.
\item[\textsuperscript{739}] Ibid.
\item[\textsuperscript{740}] \textit{Tsilhqot’in}, supra note 102 at para 77.
\item[\textsuperscript{741}] Ibid.
\item[\textsuperscript{742}] \textit{Clyde River}, supra note 102.
1) “The duty to consult seeks to protect Aboriginal and treaty rights while furthering reconciliation between Indigenous peoples and the Crown.”

2) “It has both a constitutional and a legal dimension.”

3) “Its constitutional dimension is grounded in the honour of the Crown. This principle is in turn enshrined in section 35(1) of the *Constitution Act, 1982*, which recognizes and affirms existing Aboriginal and treaty rights.”

4) As a legal obligation, the Crown’s duty “is based in the Crown’s assumption of sovereignty over lands and resources formerly held by Indigenous peoples.”

5) The duty arises “when the Crown has actual or constructive knowledge of a potential Aboriginal claim or Aboriginal or treaty rights that might be adversely affected by Crown conduct.”

The SCC has determined that the honour of the Crown gives rise to different duties in different circumstances and that good faith is required on both sides.

The scope of the Crown’s duty “is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed.” The duty is found on a spectrum; at one end are cases “where the claim to title is weak, the Aboriginal right limited, or the potential

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743 Clyde River, *ibid* at para 19, citing *Rio Tinto*, *supra* note 102.
745 Clyde River, *ibid*, citing *Kapp*, *ibid* and *Rio Tinto*, *ibid*.
747 Clyde River, *ibid*, citing *Haida Nation*, *supra* 102 at para 53.
748 Clyde River, *ibid* at para 25 citing *Haida Nation*, *ibid* at para 35.
749 *Haida Nation*, *ibid* at para 18.
750 *Ibid* at para 41.
In these types of cases, the Crown may “give notice, disclose information, and discuss any issues raised in response to the notice.” At the other end of the spectrum are cases “where a strong prima facie case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high.” The highest end of the spectrum applies if Aboriginal title is established and requires consent. Each case must be approached individually and flexibly, and the “controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake.”

Analysis of the duty to consult may reveal a duty to accommodate. The SCC noted in Haida Nation that: “Where accommodation is required in making decisions that may adversely affect as yet unproven Aboriginal rights and title claims, the Crown must balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests.” If consultation is adequate, there is no duty to reach agreement. The Court stated in Taku River that:

The Crown may be required to make decisions in the face of disagreement as to the adequacy of its response to Aboriginal concerns. Balance and compromise will then be necessary.

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752 Ibid at para 43.
753 Ibid.
754 Ibid at para 44.
755 Tsilhqot’in, supra note 102 at para 79.
756 Haida Nation, supra note 102 at para 45.
757 Ibid.
758 Ibid at para 47.
759 Ibid at para 50.
760 Taku River, supra note 102 at para 39.
761 Ibid at para 42.
The duty to consult and accommodate applies to the federal and provincial
governments,\textsuperscript{762} territorial governments,\textsuperscript{763} and in relation to historical treaties\textsuperscript{764} and to modern
treaties.\textsuperscript{765} In \textit{Beckman}, the Court addressed the duty of the Crown in relation to modern treaties, specifically the Little Salmon/Carmacks First Nation Final Agreement in the Yukon. It found that “consultation can be shaped by agreement of the parties, but the Crown cannot contract out of its duty of honourable dealing with Aboriginal people.”\textsuperscript{766} The Crown’s duty to consult is simply part of the “essential legal framework within which the treaty is to be interpreted and performed.”\textsuperscript{767}

Tribunals may have the power to carry out the Crown’s duty to consult and the ability to adjudicate on the sufficiency of consultation.\textsuperscript{768} The Court found in \textit{Clyde River} that: “While the Crown always owes the duty to consult, regulatory processes [e.g. The National Energy Board] can partially or completely fulfill this duty.”\textsuperscript{769} Where the Crown relies on the regulatory processes:

\begin{quote}
to fulfill its duty in whole or in part, it should be made clear to affected Indigenous groups… Guidance about the form of the consultation process should be provided so that Indigenous peoples know how consultation will be carried out to allow for their effective participation and, if necessary, to permit them to raise concerns with the proposed form of the consultations in a timely manner.\textsuperscript{770}
\end{quote}

The Court added to this principle in \textit{CTFN} and held that the circumstances of the case should make it clear to the Indigenous community that the Crown was intending to rely upon a

\textsuperscript{762} \textit{Haida Nation, supra} note 102 at paras 57-59.
\textsuperscript{763} \textit{Beckman, supra} note 102.
\textsuperscript{764} \textit{Mikisew Cree, supra} note 102.
\textsuperscript{765} \textit{Beckman, supra} note 102.
\textsuperscript{766} \textit{Ibid} at 138.
\textsuperscript{767} \textit{Ibid} at 140.
\textsuperscript{768} \textit{CTFN, supra} note 102 citing \textit{Rio Tinto, supra} note 102 at para 58.
\textsuperscript{769} \textit{Clyde River, supra} note 102 at para 1; See also \textit{CTFN, supra} note 102 at para 1.
\textsuperscript{770} \textit{Clyde River, ibid} at para 23.
regulatory process to discharge its duty to consult. The regulatory agency must possess the statutory powers to do what the duty requires in the particular circumstances. The Court in CTFN added:

if the agency’s statutory powers are insufficient in the circumstances or if the agency does not provide adequate consultation and accommodation, the Crown must provide further avenues for meaningful consultation and accommodation in order to fulfill the duty prior to project approval. Otherwise, the regulatory decision made on the basis of inadequate consultation will not satisfy constitutional standards and should be quashed on judicial review or appeal.

Clyde River and CTFN demonstrate that the duty to consult has meaningful content but it is limited in scope. The Court in CTFN further clarified the duty to consult as follows:

The duty to consult is rooted in the need to avoid the impairment of asserted or recognized rights that flows from the implementation of the specific project at issue; it is not about resolving broader claims that transcend the scope of the proposed project. That said, the duty to consult requires an informed and meaningful opportunity for dialogue with Indigenous groups whose rights may be impacted.

The Court in CTFN also addressed the issue of the role of a regulatory tribunal when the Crown is not a party – for example in a project approval process for industrial or resource development. The Court found that:

a regulatory tribunal’s ability to assess the Crown’s duty to consult does not depend on whether the government participated in the NEB’s hearing process. If the Crown’s duty to consult has been triggered, a decision maker may only proceed to approve a project if Crown consultation is adequate. The Crown’s constitutional obligation does not disappear when the Crown acts to approve a project through a regulatory body such as the NEB. It must be discharged before the government proceeds with approval of a project that could adversely affect Aboriginal or treaty rights.

771 CTFN, supra note 102 at para 46.
772 Clyde River, supra note 102 at para 30; CTFN, ibid at para 32.
773 CTFN, ibid.
774 Ibid at para 2.
775 Ibid.
776 CTFN, ibid citing Tsilhqot’in, supra note 102 at para 78.
III.4.b. Is there a valid legislative objective?

The objective of legislation or government action must be compelling and substantial to be valid, i.e. to justify the rights infringement.\textsuperscript{777} In \textit{Sparrow}, conservation was found to be a valid legislative objective that could infringe upon an Aboriginal right to fish.\textsuperscript{778} The Court in \textit{Delgamuukw} identified other valid legislative and governmental objectives that can legitimately infringe upon Aboriginal title, such as:

the development of agriculture, forestry, mining, and hydro-electric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims.\textsuperscript{779}

The Court in \textit{Gladstone},\textsuperscript{780} which was an Aboriginal rights case involving commercial fishing, suggested that:

with regards to the distribution of the fisheries resource after conservation goals have been met, objectives such as the pursuit of economic and regional fairness, and the recognition of the historical reliance upon, and participation in, the fishery by non-aboriginal groups, are the type of objectives which can (at least in the right circumstances) satisfy this standard. \textit{In the right circumstances}, such objectives are in the interest of all Canadians and, more importantly, the reconciliation of aboriginal societies with the rest of Canadian society may well depend on their successful attainment.\textsuperscript{781}

This principle was followed in \textit{Marshall #2},\textsuperscript{782} which was a treaty rights case.

With respect to reconciling Aboriginal interests with the rest of society and moving forward in a process of reconciliation,\textsuperscript{783} the Court in \textit{Tsilhqot’in} found that:

\begin{footnotesize}
\begin{itemize}
    \item \textsuperscript{777} \textit{Sparrow}, supra note 102 at 1113.
    \item \textsuperscript{778} \textit{Ibid} at 1112 - 1113.
    \item \textsuperscript{779} \textit{Tsilhqot’in}, supra note 102 at 297 citing \textit{Delgamuukw}, supra note 102 at para 165.
    \item \textsuperscript{780} \textit{Gladstone}, supra note 335.
    \item \textsuperscript{781} \textit{Ibid} at para 75 [emphasis made in decision].
    \item \textsuperscript{782} \textit{Marshall #2}, supra note 102.
    \item \textsuperscript{783} \textit{Delgamuukw}, supra note 102 at para 186.
\end{itemize}
\end{footnotesize}
To constitute a compelling and substantial objective, the broader public goal must further the goal of reconciliation, with regard both to the Aboriginal interest and the larger public objective.\textsuperscript{784}

**III.4.c. Is the government action consistent with the Crown’s fiduciary obligations and the honour of the Crown?**

If the government establishes a compelling and substantial public purpose, it must then show that the proposed infringement of the Aboriginal or treaty right is consistent with the Crown’s fiduciary duty towards Aboriginal peoples.\textsuperscript{785} The test for this stage was set out in *Tsilhqot’in* as follows:

1) the requirement that the incursion is necessary to achieve the government’s goal (rational connection);

2) that the government go no further than necessary to achieve it (minimal impairment); and

3) that the benefits that may be expected to flow from that goal are not outweighed by adverse effects on the Aboriginal interest (proportionality of impact).\textsuperscript{786}

Other considerations at this stage include whether priority over a resource was given to the Aboriginal group, although priority is not exclusive. The Crown must take account of Aboriginal rights and allocate them respectfully.\textsuperscript{787} Further, any incursions on Aboriginal or treaty rights “cannot be justified if they deprive future generations of the benefit.”\textsuperscript{788}

**Conclusion**

This section has set out the law that the courts need to apply when there is litigation related to the utilization of section 35 protections in the *Constitution Act, 1982*. The Supreme Court of Canada has developed complex common law tests to determine Aboriginal and treaty

\textsuperscript{784} *Tsilhqot’in, supra* note 102 at para 82.
\textsuperscript{785} *Ibid* at para 84.
\textsuperscript{786} *Ibid* at para 87.
\textsuperscript{787} *Gladstone, supra* note 335.
\textsuperscript{788} *Tsilhqot’in, supra* note 102 at para 86.
rights, the potential legal extinguishments and infringements of those rights by the Crown and the justification of infringements by the Crown. There has been no litigation by any Haudenosaunee person that has utilized the *Kuswentah* as a treaty right to protect their wholistic health. The next section is an analysis to determine whether *Kuswentah* provides the Akwesasronon with the treaty right to self-determination based on Haudenosaunee laws that protect their wholistic health.

IV. Akwesasronon – Claiming A *Kuswentah* Treaty Right to Self-Determination

This section sets out a claim to a treaty right to self-determination based on Haudenosaunee laws that protect the wholistic health of Akwesasronon. The reason I have chosen a treaty right to self-determination (as opposed to a treaty right to protect the wholistic health of Akwesasronon) is based on the principles of *Kuswentah* as well as based on the responses of the Photovoice participants and the Knowledge Holders that participated in this study. One of the basic principles of *Kuswentah* is the nation-to-nation relationship between the Haudenosaunee peoples and the early colonizers, including the British. What the participants of this study told me was that the practice of Haudenosaunee laws protects their wholistic health and that the connection to their lands and waters assist in their healthiness – that when the lands and waters are healthy, they are healthy. When Haudenosaunee peoples, including Akwesasronon, are practicing Haudenosaunee laws, this means that they are being self-determined peoples, which is reflected in the principles of *Kuswentah*. Thus, it makes more sense to me to argue that Akwesasronon have the right to self-determination based on Haudenosaunee legal traditions that protect their wholistic health.
The analysis respecting the claim of Akwesasronon to have a treaty right to self-determination based on their Haudenosaunee legal traditions to protect wholistic health will be set out as follows:

1) **Is Kuswentah a valid treaty?**

2) Is there an existing treaty right within *Kuswentah* to self-determination that protects wholistic health through Haudenosaunee laws? Is the treaty right proven based on the common intentions of the parties?

3) Was the treaty right extinguished by the Canadian government?

4) If the treaty right was not extinguished, was the treaty right infringed by the Canadian government?

5) **Is the infringement justified?**

**IV.1 Is Kuswentah a valid treaty?**

In following the characteristics of a valid treaty as set out in *White & Bob* and confirmed in *Sioui*, the parties to the *Kuswentah*, also known as the Silver Covenant Chain treaty, were the British Crown on one side and the Haudenosaunee Confederacy on the other side. Both signatories had authority to bind their principals and both parties intended to create legally binding obligations. These obligations were assumed by both sides and there was a measure of solemnity involved. The *Kuswentah* treaty made between the British Crown and the Haudenosaunee Confederacy was formalized in 1664 at the Treaty of Fort Albany and as described by Bruce Morito:

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789 Lyons, *Exiled*, supra note 299 at 40. See also *White and Bob*, supra note 629; *Sioui*, supra note 102.

The Covenant Chain was certainly about the rule of law and negotiating agreements, but it was also about maintaining or restoring health, balance and trust, and expressing compassion…wampum-based communicative actions were attempts to go directly to the subjective and intersubjective worlds of moral feelings and responsibility.791

Susan Hill provided a description of the Silver Covenant Chain as follows:

The concept of the Covenant Chain continued to develop and was eventually described as a silver chain holding both the British sailing ship and the Haudenosaunee canoe to the ‘Great Mountain’ [Onondaga]. It was described as a three-link silver chain representing ‘peace and friendship forever.’ These metaphors became central to the ensuing relationship of the Haudenosaunee and the Crown. Furthermore, the Crown borrowed this ideology and terminology in their treaty making with other Indigenous nations in North America. British and Indigenous treaty records documented the Crown’s application of the Covenant Chain relationship to many other nations throughout the Northeast, including the Ojibwa, the Mississaugas, and the Delaware, to name but a few.792

Oren Lyons also noted that:

The ideas and principles expressed in the Silver Covenant Chain and other traditions of the Haudenosaunee have been central to our relations with other nations and states, whether Indian, European, or American. In these traditions, there is a recognition that peoples are distinct from each other. However, since the beginning of our memory this distinctiveness has been seen as a foundation for mutual respect; and we have therefore always honored the fundamental right of peoples and their societies to be different.793

There is an abundance of historical research that can be used as evidence to prove the existence of the Two Row Wampum/Silver Covenant Chain with the British Crown, the intention of the parties to enter into the treaty and the principles of interpreting the treaty.

Jon Parmenter highlights historical evidence as follows:

Explicit associations of the agreement with the concept of mutual security, reciprocal obligations, or brotherhood appear in eleven of the fifteen Haudenosaunee recitations (1656, 1678, 1689, 1691, May 1694, 1698, 1700, 1722, 1723, 1737 and 1744) and in each of the three European-authored versions. Nine of the fifteen Haudenosaunee recitations make specific associations of their European alliance partners with a ship or sailing

791 Morito, supra note 310 at 77.
792 Hill, Travelling, supra note 313 at 32.
793 Oren Lyons, “American Indians in the Past” in Lyons, Exiled, supra note 299 at 42.
vessel (1678, 1689, 1691, May 1694, 1722, 1723, 1737, and 1744) and this is echoed in the 1748 Johnson and 1752 Kennedy accounts.\textsuperscript{794}

Parmenter provided an account of these recitations as follows:

Haudenosaunee speakers explicitly mentioned or recited the [Kuswentha] tradition for Anglo-American and French colonial audiences on at least fifteen different occasions between 1656 and 1744. Additionally, William Johnson, an Irish-American fur trader who served the colony of New York as an Indian agent and in 1756 ascended to the Crown-appointed office of Superintendent of Indian Affairs recited the tradition on two subsequent occasions in 1758 and 1755 [transcriptions of these recitals are attached as an Appendix to his article], and a brief version of the tradition appeared in New York Council member Archibald Kennedy’s 1751 pamphlet [citation omitted].\textsuperscript{795}

Susan Hill provides a written historical record from 1755 with William Johnson, which provides an understanding of the mutual obligations between the British Crown and the Haudenosaunee Peoples:

Behold Brethren these great books, 4 folio volumes of the records of Indian Affairs which lie upon the table before the Colonel. They are records of the many Solemn Treaties and the various Transactions which have passed between your Forefathers and your Brethren the English, also between many of you here present & us your Brethren now living.
You well know and these Books testifie that it is now almost 100 years since your Forefathers and ours became known to each other. That upon our first acquaintance we shook hands & finding we should be useful to one another entered into a Covenant of Brotherly Love & mutual Friendship. And \textit{tho we were at first only tied together by a Rope, yet lest this Rope should grow rotten \& break we tied ourselves together by an Iron Chain. Lest time or accidents might rust \& destroy this Chain of Iron, we afterwards made one of Silver, the strength \& brightness of which would subject it to no decay. The ends of the Silver Chain we fix’t to the Immoveable Mountains, and this in no firm a manner that no mortal enemy might be able to remove it. All this my Brethren you know to be Truth. You know also that this Covenant Chain of Love \& Friendship was the Dred \& Envy of all your Enemies \& ours, that be keeping it bright \& unbroken we have never split in anger one drop of each other’s blood to this day. You well know also that from the beginning to this time we have almost every year, strengthened \& brightened this Covenant Chain in the most public \& solemn matter.
You know that we became as one body, one blood \& one people. The same King our common Father, that your enemies were ours that whom you took into your alliance &

\textsuperscript{794} Parmenter, \textit{supra} note 310 at 89-90.
\textsuperscript{795} \textit{Ibid} at 88.
allowed to put their hands into this Covenant Chain as Brethren, we have always considered and treated as such.796

With respect to the applicability of Kuswentah in this place now called Canada, the parties to that nation-to-nation agreement are the British and the Haudenosaunee Confederacy. The Mohawk Peoples of Akwesasne, as a nation within the Haudenosaunee Confederacy, are direct descendants of this treaty. The Canadian Parliament are the direct descendants of the British Crown through the enactment of the British North America Act, 1867, now known as the Constitution Act, 1867 of Canada.797 Kuswentah has never been litigated in the courts although the Royal Courts of Justice in the United Kingdom have identified that any treaties made with the Crown prior to Confederation are now considered to be treaties with the Crown in right of Canada.798 The Court in Sioui and Marshall #1 also identified a 1760 pre-confederation treaty as a valid treaty.799

It is also important to note that the principles of Kuswentah have been consistently addressed by the Haudenosaunee Confederacy during the Constitutional amendment discussions

796 Hill, Clay, supra note 310 at 98-99 [emphasis is in original quote].
797 The Constitution Act, 1867, 30 & 31 Vict, c 3 (formerly known as the British North America Act, 1867 – see the Constitution Act, 1982, supra note 10, Schedule).
798 R v Secretary of State, [1981] 4 CNLR 86 (Royal Courts of Justice, London, England). In this case, The Indian Association of Alberta, Union of New Brunswick Indians, Union of Nova Scotian Indians brought an application to the Royal Courts of Justice in London, England “for a declaration that treaty or other obligations entered into by the Crown to the Indian peoples of Canada are still owed by Her Majesty in right of Her Government in the United Kingdom” (at 1). The Indian Association of Alberta was addressing Treaty 6 and the other two organizations were addressing The Maritime Treaties. Lord Justice May found that “Any treaty or other obligations which the Crown had entered into with the Indian peoples of Canada in right of the United Kingdom become the responsibility of the Government of Canada with the attainment of independence, at the latest with the Statute of Westminster, 1931 (at 2).
799 Sioui, supra note 102; Marshall #1, supra note 102.
in 1983\textsuperscript{800} as well as during negotiations during the 1990 Oka crisis\textsuperscript{801} and most recently in the 2006 Caledonia reclamation.\textsuperscript{802} Haudenosaunee Peoples have consistently relied on the

*Kuswentah*/Silver Covenant Chain as a legal treaty that binds both parties. There were ceremony and protocols attached to the agreements by both parties. As noted by Knowledge Holder, Joyce King, *Kuswentah* was designed to protect Haudenosaunee Peoples’ rights and existence.\textsuperscript{803}

Therefore, the vast amount of oral history, written historical and contemporary evidence would likely prove that the *Kuswentah*/Silver Covenant Chain is a valid treaty for litigation purposes. The issue of admissibility of evidence and the weighing of Aboriginal oral history\textsuperscript{804} will be addressed after the next section that evaluates whether there is an existing treaty right to self-determination (including protection of wholistic health) within *Kuswentah*.

IV.2 Is there an existing treaty right to self-determination based on Haudenosaunee laws protecting wholistic health? Is the treaty right proven based on the common intentions of the parties?

Having established that *Kuswentah* should be recognized as a treaty, the next part of the analysis is to determine whether there is an existing treaty right. As noted earlier, treaty rights are not frozen in time.\textsuperscript{805} They must be interpreted flexibly to permit their evolution over time\textsuperscript{806} and ancestral rights may find modern expression.\textsuperscript{807} The overarching test is whether the right in

\textsuperscript{800} Canada, *Self-Government*, supra note 55 at 206.
\textsuperscript{802} McCarthy, *supra* note 299. I also have personal knowledge that the *Kuswentah* was utilized as a guiding principle of negotiations with Canada and the Province of Ontario as I was a legal advisor to the Haudenosaunee Confederacy during that time.
\textsuperscript{803} J. King, *supra* note 362.
\textsuperscript{804} Mitchell, *supra* note 102.
\textsuperscript{805} Marshall #1, *supra* note 102.
\textsuperscript{806} Van der Peet, *supra* note 102 at 1093.
\textsuperscript{807} Mitchell, *supra* note 102 at para 13.
question – in this case, the treaty right to self-determination based on Haudenosaunee laws protecting wholistic health – was within the common intention of the parties.\footnote{808}{Marshall #1, supra note 102 at para 78.}

There have been no treaty rights cases claiming a right to self-determination. However, in \textit{R v Pamajewon},\footnote{809}{Pamajewon, supra note 628.} the claimants asserted the Aboriginal right to self-government, which included the right to regulate gambling activities on the reservation. The Court found that the claimants did not have the right to regulate gambling activities so it did not address the issue of the right to self-government. However, Chief Justice Lamer did state that:

\begin{quote}
Assuming s. 35(1) encompasses claims to aboriginal self-government, such claims must be considered in light of the purposes underlying that provision and must, therefore, be considered against the test derived from consideration of those purposes. This is the test laid out in \textit{Van der Peet, supra.} In so far as they can be made under s. 35(1), claims to self-government are no different from other claims to the enjoyment of aboriginal rights and must, as such, be measured against the same standard.\footnote{810}{Ibid at para 24.}
\end{quote}

Chief Justice Lamer also pointed out that

\begin{quote}
Aboriginal rights, including any asserted right to self-government, must be looked at in light of the specific circumstances of each case, and in particular, in light of the specific history and culture of the aboriginal group claiming the right.\footnote{811}{Ibid at para 27.}
\end{quote}

That is exactly what is presented in this claim: the right to self-determination based on Haudenosaunee laws that protect wholistic health.

Many legal writers recognized that the narrow reading of \textit{Pamajewon} halted future claims to self-determination.\footnote{812}{See e.g. Borrows, \textit{Freedom, supra} note 631; Morse, \textit{supra} note 318.} I would argue that the right to self-determination does exist for Akwesasronon based on the common intention of the parties in \textit{Kuswentah}. As set out in \textit{Marshall #1}, the common intentions of the parties must be assessed at the time that the treaty
was entered into. The court can consider intentions based not just on the terms of the treaty but also extrinsic evidence as well.\textsuperscript{813} As noted earlier, the \textit{Kuswentah} wampum treaty made between the British Crown and the Haudenosaunee Confederacy was formalized in 1664 at the Treaty of Fort Albany.

The right to self-determination is set out in \textit{Kuswentah} which identifies the common intentions of both Haudenosaunee Peoples and the British Crown. As noted by Howard Berman, the co-existence and non-interference in the affairs of each other is symbolized as follows:

\textit{[Kuswentah]} is a long beaded belt of white wampum with two parallel lines of purple along its length. The lines symbolize the distinct identity of the two peoples and a mutual engagement to coexist in peace without interference in the affairs of the other.\textsuperscript{814}

The late Cayuga Chief Jacob Thomas and the late Onondaga sub-chief Huron Miller recited a longer version of the \textit{Kuswentah} and the following excerpt of that longer version provides a demonstration of both common intentions and self-determination:

The white man said, ‘I confirm what you have said and this we shall always remember. What we do about our own ways of belief, we shall both respect having our own rights and power.’ The Onkwehonweh replied, “I have a canoe and you have a vessel with sails and this is what we shall do. I will put in my canoe my belief and laws. In your vessel you shall put your belief and laws. All my people will be in my canoe, your people in your vessel. We shall put these boats in the water and they shall always be parallel, as long as there is Mother Earth, this will be everlasting.”\textsuperscript{815}

To reiterate the specific wording, “having our own rights and power” and belief in separate “laws” demonstrates the specific understanding of self-determined peoples.

There is plenty of ethnological, historical, ethnohistorical and political literature and research that demonstrates the common intention of both parties to enter into a treaty relationship

\textsuperscript{813} Marshall #1, supra note 102 at para 11.
\textsuperscript{814} Berman, “American Indian Sovereignty” in Exiled, supra note 299 at 135.
\textsuperscript{815} Hill, Clay, supra note 310 at 155.
that recognized the right to self-determination for Haudenosaunee Peoples. Reliance on oral history of Haudenosaunee peoples as well as historical and political documentation would provide enough extrinsic evidence to consider the parties’ intentions. As noted by Leonard Rotman:

In the early stages of British-aboriginal contact in North America, the British were few in number and militarily inferior to the Native peoples. Moreover, they were faced with the difficult task of adjusting to strange new surroundings, with little or no knowledge of the continent’s topography or the presence and edibility of its vegetation…It was obvious to Britain that if it was to obtain these necessary Native alliances, it was not going to acquire them by treating the Native peoples as objects of colonial domination. Rather, these alliances were to be secured by gaining the trust of the aboriginal nations and entering into agreements with them on mutual terms. The agreements that were ultimately entered into between Britain and Native peoples in North America were, in fact, sovereign-to-sovereign unions with reflected historical reality as well as the intention of the parties concerned at the time. They established peace and friendship, provided Britain and the Indian nations with partners in trade, and supplied them with political and military allies that could be used against their rivals. These agreements also provided for the mutual protection of the parties, ensuring military and economic support in times of war, and acting as deterrents to their enemies in times of peace.

As further noted by Rotman, the alliance between the British and the Haudenosaunee Confederacy in the Treaty of Albany, 1664 “is one of the earliest, and most noteworthy, examples of how Britain recognized aboriginal peoples as sovereign nations and treated with them in an appropriate manner.”

Having established that the common intention of the parties was to recognize Akwesronon’s right to self-determination, the following is an analysis of protecting the treaty right to self-determination based on Haudenosaunee laws that protect wholistic health.

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816 Jacobs, supra note 4; Jennings et al, Forgotten Founders, supra note 301; Jennings, Ambiguous Iroquois Empire, supra note 301; Johansen, supra note 116; Tooker, supra note 301; Berman, “American Indian Sovereignty” in Exiled, supra note 299.
817 Rotman, supra note 790 at pages 30-31, citing various historical literature, including Wilbur R. Jacobs, “Wampum and the Protocol of Treaty-Making” in Dispossessing the American Indian: Indians and Whites on the Colonial Frontier (New York: Scribner’s, 1972) at 160; Williams, supra note 301.
818 Rotman, ibid at 32.
According to the Knowledge Holders interviewed in this study, the protection of wholistic health includes the direct responsibilities of Haudenosaunee Peoples to practice their legal traditions. Haudenosaunee laws acknowledge the collective responsibilities of Haudenosaunee Peoples. The protection of wholistic health included the responsibilities of Akwesasronon to practice of their Haudenosaunee laws, customs, beliefs, language and ceremony. This is what was protected within the “canoe” and was acknowledged in the recitals of Kuswentah and noted above. Haudenosaunee sources of laws that the Knowledge Holders referenced earlier in this chapter include Kuswentah and Wampum Belts, Creation Story, Mother Law/Law of the Women, Songs and Dances, Art, The Great Law of Peace, Ohén:ton Karihwatéhkwen, the Thanksgiving Address and Natural Law, The Law is in the Corn, Ceremonies, Medicines, Planting, and Sacred Places. These are the Haudenosaunee laws that protect wholistic health, which is an aspect of the right to self-determination of Haudenosaunee Peoples.

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819 J. King, supra note 362.
820 All articles referencing Kuswentah and recognition of Haudenosaunee customs, beliefs, languages and laws are cited in supra note 195; See also Hill, Travelling, supra note 313; Hill, Clay, supra note 301.
821 J. King, supra note 362; Lickers, supra note 115.
822 J. King, ibid; McDonald, supra note 362.
823 McDonald, ibid.
824 Cook, supra note 359.
825 R. Mitchell, supra note 362.
826 Cook, supra note 359.
827 J. King, supra note 362; Lickers, supra note 115; D. Adams, supra note 362.
828 J. King, ibid; Lickers, ibid; Cole, supra note 362.
829 Cook, supra note 359.
830 Cole, supra note 362; D. Adams, supra note 362; R. Mitchell, supra note 362.
831 Cole, ibid; E. Mitchell, supra note 362; D. Adams, supra note 362.
832 Cole, ibid.
833 Ibid.
Many Haudenosaunee laws were transferred from one generation to the next through oral history, through storytelling. It is therefore important at this point to apply the test for the admissibility of oral history, which includes the tests of usefulness and reliability. The test of usefulness includes evidence of ancestral practices and oral histories that provide an Aboriginal perspective on the right claimed. The ground to meet the test of reliability is whether the witness represents a reasonably reliable source of the particular peoples’ history.834

All of the Knowledge Holders in this study would be considered reliable sources of Akwesasne and Haudenosaunee oral history. As noted by Richard Hill, “Haudenosaunee oral tradition has implicit validity and [Kuswentah] is worthy of examination and consideration as a seminal agreement between sovereign nations.”835 All of the Knowledge Holders are able to bring a particular source of Haudenosaunee laws and oral histories to life. For example, Emmy Mitchell’s and Della Adams’ expertise is in traditional medicines and ceremonies; Richard Mitchell’s expertise is in relation to ceremonies, songs and dances. Katsi Cook’s expertise is in relation to inherent ceremonial practices of giving birth and the role of “women as the first environment”, which includes the Law of the Corn. Louise McDonald’s expertise is with respect to Mother Law, the Law of the Women. Maxine Cole’s expertise is in Ohén:ton Karihwatéhkwen, the Thanksgiving Address, planting and understanding sacred places. Most of the Knowledge Holders in this study are fluent Mohawk language speakers and can only speak about Haudenosaunee laws based on the Mohawk language. This is the power of knowledge that each of the Knowledge Holders have. So, when they discuss various aspects of Haudenosaunee

834 Mitchell, supra note 102.
835 Hill, supra note 301 at 152.
laws, their reliability is excellent. They would also pass the test of usefulness as their evidence of ancestral practices and significance is not otherwise available other than through oral history. However, the test does not stop there in proving the protection of self-determination as a section 35 right.

IV.3. Was the treaty right extinguished by the Canadian government?

To highlight what was written earlier, the Canadian Parliament has the exclusive power under section 91(24) of the Constitution Act, 1867, “to derogate from rights recognized in a treaty agreement made with the Indians.” The Crown has the burden of proving the extinguishment of an Aboriginal and/or treaty right. There has to be a “clear and plain” intention to extinguish an Aboriginal right and there must be a “strict proof of the fact of extinguishment.” As noted earlier, the treaty right to self-determination has never been decided by the Canadian judicial system. Some lower court trial decisions denied the existence of an Aboriginal right to self-government; however, these courts did not take into account the effect of section 35(1), so the issue of whether that section includes a right to self-government “must be regarded as open.”

In Pamajewon, Justice L’Heureux-Dubé agreed that the claimants did not have a right to regulate gambling and she, too, found it unnecessary to consider the question of self-government.

836 I actually find it a bit disrespectful to Haudenosaunee Knowledge Holders to discuss the “passing” of these tests of reliability and usefulness of the Knowledge Holders’ knowledge. I will reflect on this in Chapter 6. 
837 Simon, supra note 102 at 411.
838 Badger, supra note 102 at para 41.
839 Sparrow, supra note 102 at 1099.
840 Badger, supra note 102 at para 41.
841 Logan v Styres (1959), 20 DLR (2d) 416 (Ont SC); Ontario (AG) v Bear Island Foundation [1985] 1 CNLR 1 (Ont SC); Delgamuuk v British Columbia (1991), 79 DLR (4th) 185 (BCSC) cited in McNeil, Envisaging, supra note 101 at 100.
842 McNeil, ibid.
However, in her obiter comments, she highlighted her reasons in *Van der Peet* and noted that “Canadian Parliament and to a certain extent, provincial legislatures have a general legislative authority over the activities of aboriginal people, which is the result of British assertion of sovereignty over Canadian territory.” Patricia Monture noted that “*Pamajewon* does not offer encouragement that a right to self-government is embraced in the constitutional protection of Aboriginal rights.” Despite Justice L’Heureux-Dubé’s obiter comments, the right to self-government was never addressed and there has not been any analysis to demonstrate any clear and plain intention to extinguish the treaty right to self-determination under the *Kuswentah* treaty.

The Crown has the burden of proof to demonstrate a clear and plain intention to extinguish the treaty right to self-determination. Darlene Johnston provided a historical account of the transfer of the British Imperial regime to Canada as follows:

The loss of military prominence was reflected in the administrative history of the British Indian Department. When it was established in 1755, the Indian Department was considered to be an operational arm of the military. In 1830, however, it ceased to be part of the military and became a branch of the public service as the Department of Indian Affairs. Finally, in 1860, responsibility for Indian affairs was transferred from control in England to that of the Province of Canada, under the Crown Lands Department. Under the British Imperial regime, *no legislation presumed to govern the internal affairs of the Six Nations Confederacy*. Rather, the British parliament's efforts were directed toward prohibiting British subjects from trespassing on Indian lands, from despoiling Indian resources, and from engaging in liquor trade with the Indians. The Province of Canada, however, would adopt a far more interventionist approach. By the time of Confederation, a pattern of colonial governmental intrusions into the internal affairs of the Indian nations, followed by indignant protests, had begun to emerge. This pattern became especially familiar in the case of the Six Nations Confederacy.

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843 Pamajewon, *supra* note 628 at para 42 citing *Van der Peet, supra* note 102 at para 117.
844 Monture-Angus, *Journeying Forward, supra* note 56 at 111.
845 Johnston, *supra* note 289 at 15 [footnotes omitted; emphasis is mine].
If the Crown is claiming sovereignty over Canadian territory through the *British North America Act, 1867*, then later through “delegated authority”\(^846\) of the British Parliament to Canada, I would argue that there is no clear and plain intention to extinguish the treaty right to self-determination under that constitutional document. In fact, I would argue that section 91(24) of the *BNA Act, 1867* or the *Constitution Act, 1867* violates the terms of *Kuswentah*, which identifies “pre-existing”\(^847\) Aboriginal sovereignty to be in coexistence with assumed Crown sovereignty.

Legal scholar Bruce Ryder wrote that Indigenous peoples “were not consulted or involved in the formulation and adoption of the *Constitution Act, 1867*. “\(^848\) He further noted the following, which supports my argument:

>The First Nations ‘did not consciously decide to enter the country.’ The only recognition of the special status of First Nations people in the *Constitution Act, 1867* is s. 91(24), which allocates exclusive jurisdiction over “Indians and Lands reserved for Indians” to the federal government. From the point of view of First Nations people, s. 91(24) simply granted the federal government the exclusive jurisdiction to administer the responsibilities assumed by Britain in the treaties, and the exclusive jurisdiction to enter into further negotiations and agreements with First Nations on behalf of the Crown.\(^849\)

The honour of the Crown is at stake and throughout time, since 1867, the *Kuswentah* has been consistently utilized by the Crown in various negotiations with Haudenosaunee Peoples.

As was noted above, the *Kuswentah* Treaty was utilized in negotiations in both the Oka crisis

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\(^846\) McNeil, Jurisdiction, *supra* note 91 at 3.
\(^847\) *Haida Nation, supra* note 102 at para 20.
and the Douglas Creek Estate Caledonia negotiations with the Haudenosaunee Confederacy. With the continued use of the principles of *Kuswentah*, the Crown cannot rely on its colonial legislation to extinguish the right to self-determination as the *Constitution Act, 1867* does not clearly set out its intention to extinguish the right. Section 91(24) states that the federal Crown has jurisdiction over “Indians and lands reserved for Indians.” Nowhere in that document does it clearly state that it extinguishes any treaty rights to self-determination and as noted by Darlene Johnston, “the singular concept that such legislation would govern the internal affairs of the Six Nations was inimical to their national integrity and sovereignty.”

The Crown, however, would most likely argue that section 91(24) did extinguish the rights to self-determination of Haudenosaunee Peoples as the *Constitution Act, 1867* is considered part of the supreme law of the land of Canada. It can argue that it asserted Crown sovereignty over Aboriginal peoples based on its own unilateral law. The Court in *Sparrow* took this “legislative authority for granted,” and noted:

> It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown.

Based on the Court’s support and historic reliance on parliamentary supremacy and Crown sovereignty, I would suggest that the courts might find that the Crown’s assertion of sovereignty extinguishes the treaty right to self-determination in *Kuswentah*.

I would argue, however, that section 91(24) of the *BNA Act* did not extinguish the right to self-determination of Akwesasronon or any other Haudenosaunee Peoples. The provisions of the

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850 Johnston, *supra* note 289 at 16.
852 *Sparrow*, *supra* note 102 at 1103.
BNA Act were to divide up sovereignty between Canada and the provinces so that the shared sovereignty of federalism works in Canada.\textsuperscript{853} The assumption was that the sovereignty of Canada and the provinces was the sum total of all sovereignty in Canada and I believe that the assumption was so powerful that there was no mention whatsoever of Indigenous sovereignty.

IV.4. Was the treaty right infringed by the Canadian Government?

If extinguishment is not proved by the Crown, the claimants’ next argument would be that their treaty right to self-determination based on their Haudenosaunee laws to protect their wholistic health was infringed. This stage focuses on the federal government’s actions when it passed the \textit{International Rapids Power Development Act}\textsuperscript{854} to construct the St. Lawrence Seaway and in allowing the resulting resource and industrial development in that area.

The Photovoice participants in this study identified many resource and industrial developments that have had a detrimental impact on their ability to practice Haudenosaunee laws that protect wholistic health. Some examples include: The St. Lawrence Seaway, The United States-Canada International Border, Reynolds Metals, General Motors Plant, ALCOA and Domtar. The focus in this claim would be with respect to the impacts from the St. Lawrence Seaway as none of the other industrial and resource development companies would have existed if the St. Lawrence Seaway was not built. Akwesasronon named the development of the St. Lawrence River-FDR Power Project and the St. Lawrence Seaway “the Project” and viewed it:

holistically because its proponents explained all the components of the development as a package deal…As part of the package deal, Project proponents encouraged several industries to move to the region, attracting them with the promise of cheap hydroelectric power provided by the dam. The General Motors Corporation…, Reynolds Metals, and the Aluminum Company of America (ALCOA) have utilized this inexpensive electricity for more than forty years.\textsuperscript{855}

\begin{flushleft}
\textsuperscript{853} See e.g. \textit{Reference re Secession of Quebec}, [1998] 2 SCR 217.  \\
\textsuperscript{854} RSC 1952, c 157.  \\
\textsuperscript{855} Arquette, Cole & ATFE, \textit{supra} note 19 at 335-336.
\end{flushleft}
The St. Lawrence Seaway Authority is governed by a federal crown corporation, established by an Act of Parliament in 1954:

to construct, operate and maintain the Canadian portion of the waterway between Montréal and Lake Ontario, including the locks in Canadian territory (five of the seven) and also the Welland Canal. In 1998, an Act of Parliament allowed for the Canadian part of the Seaway to be operated by Seaway users and other stakeholders as a not-for-profit corporation (St Lawrence Seaway Management Corp) under contract to the Canadian government.\(^{856}\)

The next question in the legal analysis is whether the federal legislation or other government action infringed upon the treaty rights to self-determination based on Haudenosaunee laws that protected the wholistic health of Akwesasronon.

The claimant has the burden of proof to identify that the legislation and/or the government regulation that limits the right of self-determination to protect wholistic health is unreasonable, poses undue hardship, denies them their preferred means of exercising that right, and/or involves discretion without criteria.\(^{857}\) As previously noted, the claimants must provide strong and clear evidence to identify that their rights were infringed upon.

The claimants from the community would have plenty of evidence to demonstrate that the St. Lawrence Seaway as legislated by the Canadian Government put limits upon their right to self-determination based on Haudenosaunee Laws to protect their wholistic health. Some strong and clear evidence was presented by the Photovoice participants and Knowledge Holders and they demonstrated that these limits were unreasonable. For example:

- Claimants from the community were unable to garden because of air pollution. This put limits on their agricultural society. In some instances, they were able to garden but then told don't eat it. It impacted their mental and emotional health which also allowed for the addictions to affect them;\(^{858}\)


\(^{857}\) Adams, supra note 102 at para 54. Note that the fourth factor is not relevant here.

\(^{858}\) Cole, supra note 362.
• The flow of the river changed because of the construction of the St. Lawrence Seaway. As a result of diverting it, it limited the areas for fishing;\textsuperscript{859}
• The water pollution impacted the ability to drink and swim in the water and to catch and eat healthy fish. The connection to water is the most important aspect to human life.\textsuperscript{860}

The development of the St. Lawrence Seaway and incumbent resource developments have also put undue hardship upon the rights holders. Photovoice participants and Knowledge Holders demonstrated undue hardships in the following examples:

• mental health issues like ADHD, Autism Spectrum, and Lower IQs, are the impacts which begin in womb from mothers eating foods that are exposed to industrial development that is connected to mercury compounds;\textsuperscript{861}
• not being able to live off the land any more as a result of the impacts of the resource development. They were not able to consume vegetation, animal meat and fish that they had always relied on;\textsuperscript{862}
• when development arrived, community members decided that their children had to learn the ways of the outside and this impacted Mohawk culture and language;\textsuperscript{863}
• their social structure fell apart;\textsuperscript{864}
• impacts on pregnant women’s bodies and healthiness of the women;\textsuperscript{865}
• the damming of the water is like changing the blood flow in their bodies.\textsuperscript{866}

The legislative scheme and its aftermath have also denied the rights holders their preferred means of exercising their right to self-determination (practicing Haudenosaunee laws) to protect wholistic health. For example:

• resource development severed the relationship to the land and water. It had an impact on planting, hunting, fishing, trapping, gathering and farming. It also hurt their economy.\textsuperscript{867}

\textsuperscript{859} Ibid.  
\textsuperscript{860} PV 2, supra note 378.  
\textsuperscript{861} Cook, supra note 359.  
\textsuperscript{862} Nanticoke, supra note 362.  
\textsuperscript{863} Sargent, supra note 382.  
\textsuperscript{864} Ibid.  
\textsuperscript{865} Cook, supra note 359.  
\textsuperscript{866} King, supra note 362.  
\textsuperscript{867} Ransom, supra note 362; Cole, supra note 362; W. Cook, supra note 405.
• the loss of traditional methods of physical activity (i.e. planting, hunting, fishing, trapping, gathering and farming), replaced by being dependent on store bought food impacted their physical health and diabetes developed;\textsuperscript{868}
• an attack on their spirituality which caused a disconnection with living off of their lands;\textsuperscript{869}
• their way of life, their food systems and their medicines were impacted;\textsuperscript{870}
• impacts on the healthiness of the men; instead of the men working the land, they went ironworking so they were removed from their connection to the land;\textsuperscript{871}
• men became disempowered because they lost the connection to the water and to the fishing culture;\textsuperscript{872} as fathers who worked at industrial plants are aging and unhealthy, it is the direct result of industry and development;\textsuperscript{873}
• they are no longer able to practice Haudenosaunee laws by protecting and taking care of Mother Earth;\textsuperscript{874}
• a whole generation has lost its connection to the natural world.\textsuperscript{875}

As noted, there is much evidence by the Photovoice participants and Knowledge Holders that can prove that the legislation that established the St. Lawrence Seaway and permits for industrial development by the federal government infringe upon the right to self-determination based on Haudenosaunee laws that protect wholistic health. This argument is also supported by case law finding infringement of Aboriginal and treaty rights in cases involving the harvesting of fish, animals, and other resources.\textsuperscript{876}

The next test is to determine whether the infringement of the treaty right to self-determination by an Act of Parliament, 1954 establishing the St. Lawrence Seaway is justified.

\textsuperscript{868} Nanticoke, supra note 362.
\textsuperscript{869} Ibid.
\textsuperscript{870} W. Cook, supra note 405.
\textsuperscript{871} McDonald, supra note 362.
\textsuperscript{872} K. King, supra note 398.
\textsuperscript{873} C. Lazore, supra note 392.
\textsuperscript{874} Ransom, supra note 362; D. Adams, supra note 362.
\textsuperscript{875} Ransom, ibid.
\textsuperscript{876} See Adams, supra note 102; Gladstone, supra note 335; Badger, supra note 102; Marshall #1, supra note 102; Sappier & Gray, supra note 627.
IV.5. Is the infringement of the treaty right justified?

The onus would be on the Crown to justify the infringement of the treaty right to self-determination.\(^{877}\) The justification test is as follows with detailed analysis of each step below.

IV.5.a. Did the Crown discharge its procedural duty to consult/accommodate?

Based on the Photovoice Participant and Knowledge Holder interviews, there was no indication that the federal government consulted with Akwesasronon when it legislated the *International Rapids Power Development Act*.\(^{878}\) Although there were no direct questions asked of the Photovoice participants or the Knowledge Holders, there was also no indication that consultations occurred when the federal government transferred lands to the Province of Ontario to develop the St. Lawrence Seaway.

The Supreme Court in *CTFN* held that “the duty to consult is not triggered by historical impacts. It is not the vehicle to address historical grievances.”\(^{879}\) The Crown has the onus to provide proof of its fulfillment of the duty to consult and accommodate. So the question is whether the Crown consulted with the Haudenosaunee Peoples when it legislated the *International Rapids Power Development Act* and permitted subsequent resource developments. If there is no proof, Canada would have failed its justification to infringe upon the rights to self-determination of the Akwesasronon.

IV.5.b. Is there a valid legislative objective?

There is now a balancing act that the courts have to analyze based on the Crown’s ability to demonstrate that the legislative objectives infringing upon the treaty right are compelling and substantial. Kent McNeil stated that:

\(^{877}\) *Sparrow*, supra note 102.
\(^{878}\) See *supra* note 854.
\(^{879}\) *CTFN*, supra note 102 at para 41.
Other compelling and substantial objectives might involve the balancing the constitutional rights of the Aboriginal peoples against the constitutional rights of non-Aboriginal Canadians in circumstances of potential conflict. But Lamer, C.J. went much further than that in *Gladstone*. For him, it appears that the objectives of sufficient importance to Canadians generally can be compelling and substantial, even where no conflicting constitutional rights are involved. This looks very much like the ‘public interest’ justification that the Court rejected in *Sparrow*.\(^{880}\)

With respect to reconciling Aboriginal interests with the rest of society and moving forward in a process of reconciliation,\(^{881}\) the Court in *Tsilhqot’in* found that:

> To constitute a compelling and substantial objective, the broader public goal must further the goal of reconciliation, with regard both to the Aboriginal interest and the larger public objective.\(^{882}\)

The Crown would most likely argue that the valid legislative objective of the *International Rapids Power Development Act* was to develop the St. Lawrence Seaway. Here, the Crown can rely on a few objectives listed in *Tsilhqot’in*\(^{883}\) which referenced other valid objectives found in *Gladstone* and *Delgamuukw* such as the general economic development, development of agriculture, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims to justify the infringement of an Aboriginal right.

**IV.5.c. Is the infringement consistent with the Crown’s fiduciary duties?**

Following the analysis in *Tsilhqot’in*, if a compelling and substantial legislative objective is established, the Crown must demonstrate that the infringement on the right to self-determination of Akwesasronon is consistent with its fiduciary duty to Aboriginal peoples.\(^{884}\) In

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\(^{880}\) McNeil, Infringements, *supra* note 101 at 35.

\(^{881}\) *Delgamuukw*, *supra* note 102 at para 186.

\(^{882}\) *Tsilhqot’in, supra* note 102 at para 82.

\(^{883}\) *Ibid* at para 83, citing *Gladstone, supra* note 335 at para 73 and *Delgamuukw, supra* note 102 at para 165.

\(^{884}\) *Tsilhqot’in, ibid.*
*Tsilhqot’in*, the Court noted that the right to Aboriginal title is held for the benefit of the Aboriginal group interest that inheres in present and future generations\(^8\) which meant “that incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land.”\(^8\) Therefore, the Crown cannot justify an infringement of the right to self-determination if it deprives future generations the benefit of the right to self-determination. Also, the Crown must infuse an obligation of proportionality into the justification process as follows:

1) the requirement that the incursion is necessary to achieve the government’s goal (rational connection);

2) that the government go no further than necessary to achieve it (minimal impairment); and

3) that the benefits that may be expected to flow from the goal are not outweighed by adverse effects on the Aboriginal interest (proportionality of impact).\(^8\)

In this case, the Crown must demonstrate that the valid legislative objectives are necessary to achieve its goal. The Crown – again, both federal and provincial governments - may be able to demonstrate that their goal was to develop resources for the benefit of Canadian society. However, there must be minimal impairment on the right to self-determination of Akwesasronon which means that the Crown must show that its objectives do not deprive future generations of the benefit.

It is important to note here that the impacts of the Crown’s actions to legislate resource development like the St. Lawrence Seaway and the resulting industrial developments are not

\(^8\) *Ibid* at para 86.
\(^8\) *Ibid* at para 85.
\(^8\) *Ibid* at para 87.
historic and this claim is not about historical grievances. The impacts are current and real and they were listed above.\textsuperscript{888}

Also, in analyzing whether there is justification for an infringement of an existing right, one must begin with the premise that elements of self-governance did survive which allowed the Akwesasronon to make provisions for the survival and protection of wholistic health. For example, Joyce King stressed that Haudenosaunee laws that were practiced in the past continue to this day. She said, “It’s there and it always has been there.”\textsuperscript{889} These laws were in existence to protect wholistic health at the time of building the Seaway.

Katsiatso:ni recognized that the practices of Haudenosaunee laws, like O:hero:ko,\textsuperscript{890} assist in the well-being of Akwesasronon youth, which indicates the importance of practicing Haudenosaunee laws (i.e. self-determination) that impact future generations and their well-being. I would argue that the Crown would have a difficult time justifying the infringement of the right to self-determination based upon the detrimental impacts on the future generations of Akwesasronon.

With respect to the third step, that the benefits that may be expected to flow from the goal are not outweighed by adverse effects on the Aboriginal interest, upon a review of the number and significance of the negative impacts on Akwesasronon, there is a definite disproportionate impact on them as compared to the overall public interest. They should not be made to suffer those impacts.

\textsuperscript{888} See above notes 858-875 and accompanying text.  
\textsuperscript{889} J. King, supra note 362.  
\textsuperscript{890} Katsiatso:ni, supra notes 502-504.
Conclusion

The first section of this chapter provided the Knowledge Holders’ feedback on the protection of wholistic health of the Akwesasronon through Haudenosaunee legal traditions. It was quite clear that Haudenosaunee legal traditions reflect the responsibilities of the people to the lands and waters, which in turn reflects the reciprocity of the healthiness of the lands and waters to the people. The Knowledge Holders advised that when practicing Haudenosaunee laws, this literally means that the wholistic health of Akwesasronon is being protected. They advised that there is already an inherent protection of Mother Earth when practicing Haudenosaunee laws so there is also a direct connection between protecting wholistic health of Akwesasronon and protecting Mother Earth. It is all connected. The Haudenosaunee legal traditions were described by the Knowledge Holders, which included the Great Law of Peace, the Thanksgiving Address; through the maintenance of the languages of all Six Nations (i.e. Cayuga, Mohawk, Onondaga, Oneida, Seneca and Tuscarora) and practice of ceremonies throughout the year; through the strength and leadership of the women; through the recognition of the clan system; through songs and dances and through the utilization of art as a form of law.

Based on the feedback of the Knowledge Holders in this portion of the study, the ideas and issues they presented can be summarized as follows: Haudenosaunee legal traditions protect wholistic health when Haudenosaunee ways of being are practiced and when they are transmitted from the present generation to the next generations. Haudenosaunee legal traditions are connected to Mother Earth and include human responsibilities to protect her through ceremonies and laws.

The Knowledge Holders also provided a clear response that they did not trust the ability of the Eurocentric legal system to recognize Haudenosaunee laws that inherently protect
wholistic health. They did say, though, that there is hope that with change and continued education, relationships could be reconciled. According to the Knowledge Holders, Kuswentah was formed to establish a healthy relationship with Eurocentric nations. Haudenosaunee Peoples have been consistent in its use and message to maintain sovereignty on both sides which is actually quite simple (i.e. we abide by our own laws and you abide by yours and we will not interfere in each other’s ways).

However, the Haudenosaunee worldview is not the same as the Eurocentric worldview. Haudenosaunee legal traditions are based on a wholistic relationship with all of creation in the natural world. Eurocentric legal traditions (e.g. section 35 analysis) disrespect and break Haudenosaunee legal traditions through the imposition of analyzing Haudenosaunee laws of self-determination through its convoluted legal processes and tests to prove the existence of Aboriginal and treaty rights and to justify the Crown’s infringements on those rights.

The second section of this paper provided an analysis of the right to self-determination based on Haudenosaunee laws that protect wholistic health under the very complex analysis of section 35 of the Constitution Act, 1982. The final conclusion is that the right to self-determination can, arguably, be protected as a treaty right under section 35(1) of the Constitution Act, 1982. However, once the onus moves to the Crown to justify any infringements upon the right, this is where the courts could potentially assist in the reconciling of Crown sovereignty with Haudenosaunee sovereignty. The courts have clearly set out from the beginning of their analysis under section 35 of the Constitution Act, 1982, that the Crown has sovereignty “over lands and resources formerly held by Indigenous peoples;” however, with the recent

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891 Clyde River, supra note 102 at para 19, citing Haida Nation, supra note 102 at para 53.
Tsilhqot’in Nation’s case and the success of the recognition of their right to Aboriginal title, there is potential for true reconciliation.

According to Haudenosaunee laws and principles, Haudenosaunee Peoples are required to respect the sovereignty of the Crown, as this was the basis of the relationship in Kuswentah. The relationship of the two sovereign nations was established over 400 years ago. However, as noted by the Photovoice participants and Knowledge Holders, the violations of this relationship by the Crown has resulted in deep distrust and lack of respect of the Canadian government and its enforced laws on Indigenous peoples, including Haudenosaunee Peoples. In order for trust, respect and friendship to be re-built according to the principles of Kuswentah, a legal/political process to “Repolish the Silver Covenant Chain” must occur. This means that the actors (i.e., judges and lawyers) within the Eurocentric legal system must be educated about Haudenosaunee legal traditions. Once educated, those “steering the boat”892 or those judges making decisions about Aboriginal and treaty rights under section 35 of the Constitution Act, 1982, of Canada will be better able to understand the wholistic nature of Indigenous legal traditions. Once all parties involved have that knowledge and training, they will be fulfilling the function of Kuswentah. Protection of wholistic health of Akwesasronon can only be accomplished through the self-determination of Haudenosaunee legal traditions as it has always been done.

The purpose of analyzing the treaty right to self-determination to protect wholistic health of Akwesasronon was to demonstrate that the right exists under section 35 of the Constitution Act, 1982, has not been extinguished, and that the right could not be justifiably infringed by the federal government. The section 35 Aboriginal and treaty rights tests that now have to be fulfilled in order to claim an “existing Aboriginal and treaty right” are complex and problematic.

892 Lickers, supra note 115.
The next and final chapter will, amongst other findings of this dissertation, reflect a critical analysis of the Supreme Court’s convoluted tests in section 35(1) of the Constitution Act, 1982 to identify existing Aboriginal and treaty rights and the justification of infringement of these rights by the Crown.
CHAPTER SIX – HONOURING THE VOICES AND KNOWLEDGES IN THIS STUDY

Introduction

This chapter provides an in-depth analysis of the various findings of this research study. It also follows the Kuswentah theory of this dissertation. The first section reflects various findings in the relationship to Haudenosaunee legal traditions, land and wholistic health. The second section reflects various findings regarding the Eurocentric Canadian laws that apply to Indigenous peoples. The third section brings us back full circle to the return of Kuswentah and re-polishing the Silver Covenant Chain which is to re-establish healthy nation-to-nation relationships based on peace, trust and friendship.

I. Haudenosaunee Universal Intellect

Haudenosaunee Peoples are described as great orators and speakers and storytelling is a process of learning Haudenosaunee laws. Haudenosaunee laws and teachings are transferred from one generation to the next through: visual mnemonic tools (e.g. wampum, wampum belts and art), the recital of oral histories (e.g. Creation Story and The Great Law of Peace), ceremony, songs and dances. It was no surprise that the Photovoice participants in this study were able to provide answers to the research questions with such powerful visuals and powerful descriptions. Haudenosaunee storytelling came to life through the photographs (visuals), through the storytelling (descriptions) of the visuals as well as through the interviews of the Knowledge Holders.

When I began this journey as a Haudenosaunee scholar/intellectual being, I wondered whether the answers that I would receive from the Photovoice participants and Knowledge

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Holders would be similar to my own and to my own perceptions of what their answers might be. I was ecstatic when the Photovoice participants returned with photographs and their stories about them, which easily enabled me to analyze their responses within the Haudenosaunee framework of the *Ohén:ton Karihwatéhkwen*. I was also very excited when the Knowledge Holders responded with amazingly similar descriptions of wholistic health and healthy relationships to land and water and to all of Creation. I was even more happy when the female Knowledge Holders honoured the role of women and the inherent equality that exists within Haudenosaunee ways of being. I trace these similarities to the ways of thinking (i.e. *Kuswentah* theory), to the practices (i.e. Haudenosaunee Research Methodologies) and to the ways of being (i.e. Haudenosaunee laws) of Haudenosaunee Peoples: the Haudenosaunee intellect/universal intelligence of Haudenosaunee Peoples. This study demonstrates that Haudenosaunee theories, methodologies and laws are the same whether we talk about their application to defining wholistic health, their relationships to the land and water or the teachings and practices of legal traditions.

II. Protection of Wholistic Health Using Haudenosaunee Laws: Self-Determination

II.1. Understanding Self-Determination

The participants of this study, the Akwesasronon, reiterated the teachings of Universal Intelligence\(^\text{894}\) through discussions about laws, customs, beliefs, and languages that have always been carried in the Haudenosaunee canoe along the River of Life. It was spoken more than once by the Knowledge Holders that the wholistic health of the Akwesasronon is the same as the concept of Haudenosaunee legal traditions. When one is practicing their laws, then he/she is

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protecting their laws and he/she is healthy in all aspects: physically, emotionally, spiritually, mentally and environmentally.

The participants in this study also acknowledged the responsibilities that we have as human beings as well as our relationships with all of Creation according to Haudenosaunee laws, customs and traditions. Everything is directly connected to our relationship as human beings to all of Creation and everything has to be in balance. The late Onondaga Clanmother Audrey Shenandoah spoke about the “balance between the responsibilities of the women, the responsibilities of the men, of the chiefs, of the faithkeepers.” She said:

All the people in between have a special job to do to help keep this balance so that at no time do we come to a place within our society where anyone has more power than any of the rest, for our leadership all have equal power. They must be able to listen to one another. Photovoice participants acknowledged this relationship of having balance within their families and connection to land and water. For example, Photovoice Participant 1, demonstrated in his photograph, Figure 4, that he was most happy with his family when they are together in the mountains, in the woods, by the stream, near the water and showing his children the different animals, plants and other natural beings. Photovoice Participant 2 demonstrated in her photograph of a huge oak tree, Figure 5, that it reminded her of her connection to her grandmother and her family and the connection to picking medicines.

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895 Shenandoah, supra note 299 at 36.
896 Ibid.
897 Ibid.
898 PV 1, supra note 376.
899 Ibid.
900 PV 1, supra note 378.
The connection between the people, land, water and the natural world is also a spiritual one. Emmy Mitchell described this spiritual connection with the otter medicine.901 Elizabeth Nanticoke described the hunter’s spiritual connection to the animals.902 Photovoice Participant, Cynthia Lazore, demonstrated her spiritual connection with her relationship with her mother, who has taught her to say prayers and give thanks, in Figure 7.903 John Mohawk, who was described as the “resident intellect of Iroquoia”904 by Onondaga Faithkeeper Oren Lyons, recognized this when he recalled our Haudenosaunee tradition: “words of peace.”905 He stated:

The Peacemaker spoke of a kind of peace that would be possible in the world as a result of a kind of divine inspiration. He said that there was a spirit that created life in the world and that by the manifestations of the Life one could see that the plan for that Life was perfection itself, that everything that humans needed to exist, and to be happy, and to prosper was placed in the world – plant life, animals, water, air – everything humans needed to survive.906

Spirituality is one of the foundations of Haudenosaunee law.907 John Mohawk stated that “spirituality is different from religion”908 and he described “old spirituality:”

‘Spirit’ is a word that has a lot of complex meaning. It's very powerful. But imagine yourself being part of that…The creator is the force that gave that plant consciousness, as manifested in its compounds and in its shape at that moment. When you're talking to that plant, you're talking to the essence of the spirit of life in the universe, not just on the earth. Whatever it is, is not confined to here. You can look up in the sky and see that we're not the only place that's occupied. There are other things in the universe besides us. That's the old spirituality. Acquire that consciousness and it becomes very hard to rationalize pollution. Acquire that consciousness and it becomes very difficult to rationalize cutting down trees…The same thing is true about our relationships to plants.

901 E. Mitchell, supra note 362.
902 Nanticoke, supra note 362.
903 Lazore, supra note 385.
904 A John Mohawk Reader, supra note 16 at ix.
905 Ibid at 271.
906 Ibid.
and animals, food, fibers, and everything else. We have [. . .] a spiritual relationship with them. A shared spiritual consciousness.  

Oren Lyons described this spiritual consciousness as spiritual law, the main law of survival and regeneration. He said that these laws never change because “you must drink water to live, you must eat to survive, that you must build shelter for your children, that you must plant, you must harvest, you must work with the seasons.” He also said that spiritual law is “the major law that governs all life on this earth. If nations don't make their law accordingly, they will fail eventually because no human being is capable of changing that particular law.”  

Photovoice Participant Charlotte King demonstrated this spiritual connection to Mother Earth in her powerful art work at Figure 8 and to reiterate her words to describe this connection, she said, “As human beings, we have different layers: inner layers, outer layers. Earth is no different than that. The spirits are all around. Everything has spirit…If spirit decides to leave your body, then we are dead…If the spirit of the Earth decides to leave, then it is dead.”  

Mother Law, the femininity of Haudenosaunee laws and customs, establishes and protects wholistic health. The Creation Story begins with a pregnant Sky Woman falling on to the turtle’s back and begins Creation. The seed songs acknowledge the connection of women to the Creator and Mother Earth. The planting ceremonies acknowledge the role and responsibilities of the women and their relationship to Grandmother Moon and water. All human beings are developed in water before they are born and thus, women and water are the

909 Ibid.
910 Lyons, supra note 907 at 668.
911 C. King, supra notes 388 to 390.
912 McDonald, supra note 362.
914 McDonald, supra note 362.
first environment. The leadership of the women and connection to the land is acknowledged in the Great Law of Peace. So, it is acknowledged that when our Mother the Earth is healthy, the people are healthy and when the people are healthy, our Mother Earth is healthy.

II.2. Decolonization

The Knowledge Holders provided innovative, yet ancient, ways to recover from the impacts of colonization and encroachment of resource development in their discussions about solutions in Chapter 4. They did not call this decolonization but their solutions directly relate to an understanding that to return to the connection to Mother Earth, the water and all of creation, they would have to continue, and to re-vitalize, the principles and practices of Haudenosaunee laws. It is, therefore, important to understand what colonization is and what it has done specifically to Akwesasronon. Arthur Manuel described three components of colonialism: “dispossession, dependence and oppression.” Patricia Monture-Angus described colonialism as:

. . . the belief in the superiority of your ways, values and beliefs over the ways, values and beliefs of other peoples. Colonialism is the legacy that the so-called discovery of the Americas has left to the peoples who are indigenous to these territories. Colonialism is the theory of power while oppression is the result of the lived experience of colonialism.

As noted in Chapter 4, the process of colonization upon Akwesaronon was equated with the onslaught of industrial and resource developments. The Knowledge Holders and Photovoice participants discussed at length the tremendous impacts of these resource developments and the
imposition of colonial law (i.e. *BNA Act* and the *International Rapids Power Development Act*).

A repeat of Katsi Cook’s powerful explanation of this imposition is required here:

And this moment of attack from the intervention of western thinking, different way of seeing, a different language with which to express and understand, a way of life that is divisive, destructive, that separates the individual from the natural world. So that’s what the industrial and resource development extracted from our bodies, from our minds, from our spirit, from our families from our original instructions. It took that and redefined it. It changed our very desire as human beings.919

Photovoice Participant 2 demonstrated her recognition of the impacts of colonization in her photograph, Figure 15, which is a picture of a quote from Chief Charlot at the Onchiota Museum. The quote in the picture states:

What is he, this white man? He promises to give us what he has not given, to do what he knows he would never do. Who sent him here? We were happy when he first came. We though he came with the light, but he comes like the dusk of the evening now, not like the dawn of the morning. He comes like a day that has passed, and night enters our future with him – he comes as long as he lives, and takes more and more, and dirties what he leaves.920

A summary of the impacts as noted by the youth and adults in Chapter 4 of this study is as follows:

1) changes in ideals from a collective to an individualistic way of thinking;921
2) impacts upon the roles and responsibilities of the men and men as fathers;922
3) impacts upon the women and women as mothers;923

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919 Cook, *supra* note 359.
920 PV 2, *supra* note 378.
923 Cook, *supra* note 359; McDonald, *supra* note 362; Sargent, *supra* note 383.
4) impacts upon how individuals treat themselves, how individuals in the community
treat each other and how they blame the outside communities rather than looking at
themselves;\textsuperscript{924}

5) impacts on loss of language;\textsuperscript{925}

6) impacts on the principle that “the next generations are being looked after”;\textsuperscript{926}

7) impacts on families disconnected from other families;\textsuperscript{927}

8) attacks on spirituality; the removal of children from residential schools was equated
with the disconnect to land;\textsuperscript{928}

9) spiritual disconnection with relationship to Mother Earth and water;\textsuperscript{929}

10) spiritual and emotional impacts and the shame that inflicted the peoples;\textsuperscript{930}

11) mental and emotional unhealthiness causing the loss of connection within family;\textsuperscript{931}

12) collapse of their social structure and economic systems;\textsuperscript{932}

13) impacts upon traditional food systems and collecting medicines from the land;\textsuperscript{933}

14) impacts on traditional lifestyle i.e. hunting, fishing, farming and gathering;\textsuperscript{934} and

\textsuperscript{924} PV 1, supra note 376.
\textsuperscript{925} E. Mitchell, supra note 363; Sargent, supra note 383.
\textsuperscript{926} Lazore, supra note 385.
\textsuperscript{927} Ibid; Waheson, supra note 438.
\textsuperscript{928} Nanticoke, supra note 362.
\textsuperscript{929} Nanticoke, ibid; Ransom, supra note 362; Cole, supra note 362; W. Cook, supra note 405;
D. Adams, supra note 362; King, supra note 362; Lickers, supra note 115; PV 2, supra note 378;
J. King, supra note 362; K. King, supra note 398.
\textsuperscript{930} D. Adams, supra note 362; PV 1, supra note 376.
\textsuperscript{931} Cole, supra note 362; Waheson, supra note 438.
\textsuperscript{932} W. Cook, supra note 405.
\textsuperscript{933} Ibid; E. Mitchell, supra note 362; Lazore, supra note 385.
\textsuperscript{934} Ransom, supra note 362; Cole, supra note 362; O. Mitchell, supra note 475; K. King, supra
note 398; PV 2, supra note 378; R. Mitchell, supra note 362.
15) impacts on natural entities i.e. fish, trees, winds, animals, birds.\textsuperscript{935} The impacts are real and all Akwesasronon have been impacted: the women,\textsuperscript{936} the men,\textsuperscript{937} and the children.\textsuperscript{938} 

The need for a process of decolonization was described by Arthur Manuel as follows:

There is only one program to solve this dependency and despair, and that is to get rid of the deadening weight of the colonialism that causes it. For us to once again have access to our land and for the settlers to recognize at last our Creator- given title to it.\textsuperscript{939} To decolonize means to recover from the impacts of colonization, to revitalize, re-learn and return to the practices of Haudenosaunee laws that protect wholistic health – to return to self-determination.

To return to self-determination for Haudenosaunee Peoples is to return to the true matrilocal and matrilineal society that it is. Louise McDonald was adamant that this needs to be addressed in order to return to Haudenosaunee laws.\textsuperscript{940} Katsi Cook made a powerful statement that “women are the first environment.” This statement encapsulates the strength of the matrilineal society of Haudenosaunee Peoples because it connects everyone to Mother Earth. Katsi Cook’s statement along with Louise McDonald’s important statement about returning to the land is empowering and revitalizing. Louise McDonald recognized these connections as follows:

Our medicines come to the land. When you work the land, your less prone to depression and mental illness. You’re physical so you’re less prone to those early diseases and obesity. Less diabetic. Having your gardens. My husband made a wonderful stuffed pepper dinner last night according to McDonald, supra note 362; Waheson, supra note 438; Lazore, supra note 385; K. King, supra note 398.

\textsuperscript{935} See Figure 21, Artistic Piece by Brad Bonaparte.
\textsuperscript{936} See Figures 22, 23, 24, 25, Photos by Kevin King, Photovoice Participant; See Figure 26, Photo by Photovoice Participant 1 and his accompanying explanation, supra notes 448 – 450; See Figure 27, Photo by PV 2, supra note 451.
\textsuperscript{937} See Figure 28, Photo by Cynthia Lazore and her accompanying explanation, supra notes 453-455.
\textsuperscript{938} Manuel, supra note 917 at 21.
\textsuperscript{939} McDonald, supra note 362.
and all the food was from our garden. Do you know what I mean? We’ve got to begin to create a food shed, where our food is grown locally. Here in Akwesasne, we’re making movement towards that. There has to be a tipping point. And you think Indigenous people are the only ones affected? I don’t think so. It affects everybody, we’re all connected.  

McDonald also felt that the principles of Mother Law need to be revitalized and acknowledged because she said: “when we can uphold the Mother, the center, then you have a healthy family. You have healthy men. You have healthy leaders. That’s what Haudenosaunee is, that is the base of the law.” She was angry about the impacts of the patriarchal notions of Eurocentric society that have had an impact, specifically on Haudenosaunee women. She felt that part of the protection in returning to Haudenosaunee laws was to return to the strong notions of respecting the women and understanding the laws that relate to the femininity of Haudenosaunee laws. For example, the Creation Story began with Sky Woman and McDonald provided a description of the strength of women coming from this source of Haudenosaunee law:

She set into motion immediately for us that we’re a culture of procreators and we’re a culture of cultivators. She brought with her the seeds of our consciousness and because she danced and made that earth grow, that’s precedence. She made the earth grow from the abundance of her fertility - because of the richness of her womb and of her blood. That’s the law, that’s clear.

The universal intellect of Haudenosaunee laws is engrained within Haudenosaunee women who have understood the intergenerational teachings of the Creation Story. For example, both Kahente Horn-Miller, who is Kanien’kehá:ke (Mohawk) and Lina Sunseri, who is Oneida, recognize the oral history of the Haudenosaunee Creation Story as the foundation to understanding the roles and responsibilities of Haudenosaunee women. Kahente Horn-Miller describes the Creation Story through a first-person account of the journey of Sky Woman, which

941 Ibid.
942 Ibid.
943 Ibid.
944 Horn-Miller, supra note 403 at 37; Sunseri, supra note 913.
she describes as a story that “shows us what is at the root of what it means to be a good Haudenosaunee woman.”

Her narrative of Sky Woman provided:

Many good examples of the good life and how corruption and distortion can be healed…[and through these examples], we learn from Sky Woman how to look after the plants and animals, the children, and our future generations. From her story, we learn how to turn adversity into healing and opportunity, how to be decent to one another, and how to be rational and deliberative human beings.

One of the major corruptions and distortions that Haudenosaunee women are healing from is the impacts of Eurocentric patriarchy. In order to turn adversity (i.e. impacts of colonization) into a healing opportunity, Lina Sunseri addresses the issue of decolonization by recognizing:

years of colonialist and racist practices, including dispossession of lands, cultural genocide, removal of children from their families, experiences of residential schools (either as students or as descendants of survivors of such schools), and the imposition of a foreign system of laws and policies.

In Sunseri’s study, she interviewed 20 Oneida women and summarized one of the women’s responses to this “persisting colonial system” as follows:

Colonialism has hurt us in many ways. Assimilation didn’t work; Canadian government’s ways don’t work for us. It is time that we take back our power, that we have a final say on decisions that happen in our nation.

Recognizable in these powerful women’s stories is that the foundation of Haudenosaunee law is very different than Eurocentric law. This is quite noticeable in the differences in analysis in Chapter 5 between Haudenosaunee laws and Eurocentric laws that protect wholistic health.

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945 Horn-Miller, *ibid.*


947 Sunseri, *supra* note 913 at 151.

Shiri Pasternak highlighted the differences of the two worldviews between Indigenous peoples and non-Indigenous peoples and their relationship to law. She said:

Indigenous law governs relations between human and non-human worlds, but it also signals a difficult relationship between two legal systems that come face to face on highways, logging roads, rail lines, and other sites of infrastructure and development throughout the country. Long before Canada was a country, and long past Confederation, Indigenous peoples have maintained their responsibilities to the land, despite Canada’s assertion of sovereignty and universal law. Colonial legalities did not eliminate Indigenous legal orders.\textsuperscript{949}

This rings true for Akwesasronon. Despite the impacts, there are Knowledge Holders like those who participated in this study who have maintained and practiced the Haudenosaunee legal order. This demonstrates the resiliency of Haudenosaunee Peoples/Akwesasronon.

Haudenosaunee Peoples have survived over 400 years of colonial genocidal practices since the first \textit{Kuswentah} agreement with the Dutch in 1613. Despite the impacts of colonization, Haudenosaunee Peoples have been able to consistently maintain their ancient practices because Clanmothers, Chiefs, Faithkeepers, Knowledge Holders, ceremonial peoples, language speakers, spiritual healers and medicine peoples continue to practice their gifts. Healing ceremonies, ceremonial practices and picking medicines (i.e. plants and herbs) to assist in healing people\textsuperscript{950} are a part of Haudenosaunee laws and that knowledge has been passed down from one generation to the next. Healing also establishes wholistic health because the healing practices assist in addressing the impacts of colonization.

An example of the resiliency of Akwesasronon is the re-establishment of the \textit{O:hero:ko}, the Rites of Passage, ceremony for the male and female youth. It is a response from the community to assist the youth with their connection to the land, water and healthy bodies.

\textsuperscript{949} Shiri Pasternak, “Blockade: A Meeting Place of Law” in \textit{Whose Land Is It Anyway?}, \textit{supra} note 917 at 32.
\textsuperscript{950} Cook, \textit{supra} note 359; D. Adams, \textit{supra} note 362; E. Mitchell, \textit{supra} note 362.
Katsiatso:ni recognized that the Akwesasronon were losing connection to their lands; they were not planting gardens as much anymore and they were not fishing and hunting as much as they did. The resource and industrial development have directly impacted the loss of connection to their lands and waters. However, O:hero:ko helps reteach the male and female youth those connections. Elders and Knowledge Holders are brought in to teach them about an old tradition of basketmaking; about hunting or fishing or to make sweat lodges. This allows them to reconnect to Mother Earth and feel that spiritual connection that had been lost at one time.951

III. Protection of Wholistic Health Under Eurocentric Canadian Laws: Self-Determination

III.1. Critique of Euro-Canadian Law

The principles of Eurocentric Canadian Law are not the same as Haudenosaunee legal principles. For example, the concept of liberalism (i.e. individualism) is inherent within the Eurocentric legal system, whereby an individual has basic human rights, an individual is charged with criminal offences and an individual can be sued or sue civilly.952 Patricia Monture-Angus describes the Eurocentric Canadian legal system as an “individualized system of law” and that it is inadequate to resolve Aboriginal issues.953 It is not capable of understanding the individual responsibility within the collective identity of an Aboriginal person, as Patricia Monture-Angus explained:

The impact of the individualization of our legal relations moves Aboriginal nations further away from our traditions which are kinship based and collective.954

951 Katsiatso:ni, supra note 502.
953 Monture-Angus, Standing, supra note 322 at 10.
954 Ibid.
In most instances with Aboriginal rights law, an individual is charged with a criminal offence or quasi-criminal offence (under provincial and regulatory laws) and the Aboriginal person then defends her/himself by arguing that he or she has an Aboriginal right. Knowledge holder Joyce King acknowledged the concept of an “individual right” within the Eurocentric system. This is where one of the principles of Eurocentric law is not the same as Haudenosaunee law. Joyce King identified the concept that Haudenosaunee individuals have “human relationships of responsibilities.” She also said:

Responsibilities, like rights, are terms that have different implications depending on the individual’s learning and experience. In law, some will associate it with the professional responsibility code emphasized in law school training. Others will think of fiduciary responsibilities, a familiar part of trust law. But moral behavior towards other people and towards the natural world brings together personal and legal responsibility; it is left to responsible individuals acting on their own good judgment rather than on the basis of legal prerequisite to behave morally and responsibly.

Adams and Mitchell are two SCC cases where Akwesasne men were charged under legislation that they argued infringed their rights under section 35 of the Constitution Act, 1982. The outcome, however, was different for both. In Adams, the SCC found that Adams’ right to fish as recognized under section 35 was infringed by provincial legislation. In Mitchell, the SCC found that former Grand Chief Mitchell could not prove an Aboriginal right to bring goods across the United States/Canada border free of duty and to trade these goods with other First Nations. I will critique both judgments not specifically on the outcome of each case but on certain decisions and comments made by the SCC Justices and will connect this critique to the Haudenosaunee legal traditions.

955 King, supra 362.
956 King, ibid; Emphasis made by King.
957 Ibid.
958 Adams, supra note 102.
959 Mitchell, supra note 102.
With respect to Adams, the case was heralded as a “win” for him because the Aboriginal right to fish was protected under section 35. What is difficult to understand, according to Haudenosaunee legal traditions, is the decision by the Court to separate the right to fish and the right to land. Adams did not have to argue that he had an Aboriginal right to land in order to have a right to fish. The Court noted:

aboriginal rights can be incidental to aboriginal title but need not be: they are severable from and can exist independently from aboriginal title…Put another way, the strict conditions for recognition of aboriginal title at common law…are not applicable when, as in this case, the appellant seeks, not the broadest right to occupy and use a tract of land, but only the limited right to fish upon it.\footnote{Adams, supra note 102 at para 65.}

As reflected by the Knowledge Holders, every living thing is tied together, including the relationship to the land and water. So, when the SCC decided to separate the law, per se (i.e. separating the right to land and right to fish), this actually violated Haudenosaunee law. Interestingly, this separation by the Court did make it easier to prove the right claimed; it would have been a much more difficult claim if Adams had to prove the right to land.

Another violation of Haudenosaunee law is the Court’s disrespect through its interpretation of oral history of Indigenous Peoples. The SCC developed a colonial legal test to determine the admissibility of oral history as evidence in Mitchell. To reiterate from Chapter 5, Chief Justice McLachlin stated:

Oral histories are admissible as evidence where they are both useful and reasonably reliable, subject always to the exclusionary discretion of the trial judge. In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts.\footnote{Mitchell, supra note 102 at para 34.}

The issue of utilizing oral history as evidence was recognized in Delgamuukw as follows:
… the laws of evidence must be adapted in order that this type of evidence can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents.\textsuperscript{962} 

The evidence presented by the Crown in \textit{Mitchell} was through historians and archeologists and was determined credible and reliable. The evidence of the “aboriginal perspective” was presented by oral histories of Knowledge Holders, including former Grand Chief Mitchell. Chief Justice McLachlin acknowledged that there “are no precise rules or absolute principles governing the interpretation or weighing of evidence in support of aboriginal claims.”\textsuperscript{963} Nevertheless, she applied the standard civil law rules of evidence that “claims must still be established on persuasive evidence demonstrating validity on a balance of probabilities”\textsuperscript{964} and added a caveat that “evidentiary principles must be sensitively applied to aboriginal claims but they cannot be strained beyond reason.”\textsuperscript{965}

Monture-Angus was critical of the SCC in \textit{Delgamuukw} when discussing the evidentiary rules related to oral history. She stated that the Court diminished Aboriginal forms of history and that it was therefore detrimental to bring Aboriginal claims forward. She referred to the following SCC’s statement about this issue:

\begin{quote}
Notwithstanding the challenges created by the use of oral histories as proof of historical facts, the laws of evidence must be \textit{adapted} in order that this type of evidence can be \textit{accommodated} and placed on an equal footing with the types of historical evidence that courts are familiar with which largely consists of historical documents.\textsuperscript{966}
\end{quote}

\textsuperscript{962} \textit{Delgamuukw, supra} note 102 at para 87.
\textsuperscript{963} \textit{Mitchell, supra} note 102 at para 36.
\textsuperscript{964} \textit{Ibid} at para 39.
\textsuperscript{965} \textit{Ibid}.
\textsuperscript{966} Monture-Angus, Standing \textit{supra} note 322 at 13, citing \textit{Delgamuukw, supra} note 102 at 49-50.
Her critique was that although the court accommodated oral history, the “overall structure [was] not challenged, just one unfortunate consequence of the evidentiary rules.” She felt that this still left the “burden on Aboriginal people to challenge the system.”

The burden is carried by Elders and Knowledge Holders who are challenged to present their knowledge in a form acceptable to the courts. This is very insensitive to those Elders and Knowledge Holders who are leaders, who carry the knowledge and who have taken the risk in presenting sacred knowledge, sources of Haudenosaunee legal traditions, into the courts.

Equally disturbing and disrespectful are the comments regarding self-determination made by Justice Binnie in his concurring judgment in Mitchell. The sovereignty issue was not addressed by CJ McLachlin but Justice Binnie did so, as follows:

Counsel for the respondent does not challenge the reality of Canadian sovereignty, but he seeks for the Mohawk people of the Iroquois Confederacy the maximum degree of legal autonomy to which he believes they are entitled because of their long history at Akwesasne and elsewhere in eastern North America. This asserted autonomy, to be sure, does not presently flow from the ancient Iroquois legal order that is said to have created it, but from the Constitution Act, 1982. Section 35(1), adopted by the elected representatives of Canadians, recognizes and affirms existing aboriginal and treaty rights. If the respondent’s claimed aboriginal right is to prevail, it does so not because of its own inherent strength, but because the Constitution Act, 1982 brings about that result.

First of all, Haudenosaunee people, former Grand Chief Mitchell included, would not challenge Canadian sovereignty as this relationship is respected in Kuswentah. However, the right to self-determination does not flow from section 35(1) of the Constitution Act, 1982. This is an outright distortion of the source of existing Aboriginal and treaty rights. Treaty rights do not derive from the Constitution Act, 1982. Section 35(1) rights are supposed to be constitutionally protected rights; however, their definitions have been litigated through Eurocentric courts. Treaty rights

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967 Monture-Angus, ibid at 14.
968 Ibid.
969 Mitchell, supra note 102 at para 70.
derived from the treaties that established the rights pre-confederation, especially within pre-confederation peace and friendship treaties like Kuswentah. As noted by Minnawaanagogiizhigook (Dawnis Kennedy),

> [Justice Binnie] is arguing that Aboriginal rights derive their legal basis from Crown sovereignty, an understanding that maximizes Euro-derived law’s influence upon the definition of Aboriginal rights and curtails the corresponding influence of Indigenous legal orders.\(^\text{970}\)

I agree with Minnawaanagogiizhigook when she identified that Justice Binnie’s “offer to Indigenous peoples … is to become partners in their own assimilation, and that the only reconciliation he proposes is for Indigenous peoples to reconcile themselves to their domination under Canadian sovereignty.”\(^\text{971}\)

The Courts have long disrespected Indigenous legal traditions. Minnawaanagogiizhigook highlighted four SCC cases (Sparrow, Van der Peet, Mitchell and Marshall/Bernard) that have denied the “existence, relevance, and legitimacy of Indigenous legal orders.”\(^\text{972}\) She identified the disrespect of Gitksan and Wet’suwet’en laws and customs in Delgamuukw. For example, the Court in Delgamuukw found that:

> Gitksan and Wet’suwet’en laws and customs are not sufficiently certain to permit a finding that they or their ancestors governed the territory according to Aboriginal laws even though some Indians may well have chosen to follow local customs when it was convenient to do so.\(^\text{973}\)

Also in Delgamuukw, the Court displaced the Gitksan and Wet’suwet’en sovereignty with a new colonial form of government:

\(^{971}\) Ibid at 94.
\(^{972}\) Ibid at 78.
\(^{973}\) Delgamuukw, supra note 102 at 449 cited in Minnawaanagogiizhigook, ibid.
which the law recognizes to the exclusion of all other systems…After that, Aboriginal customs, to the extent they could be described as laws before the creation of the colony became customs…they ceased to have any force, as laws, within the colony.\footnote{Delgamuukw, supra note 102 at 453 cited in Minnawaanagiizhigook, \textit{ibid.}}  

The displacement of Indigenous legal traditions, and specifically the right to self-determination, is disrespectful to the principles of treaty relationships.

As noted in Chapter 5, the Knowledge Holders in this study did not trust the Canadian legal system with applying Haudenosaunee legal traditions. Rightfully so. Indigenous scholars have discussed this issue specifically.\footnote{Gunn, \textit{supra} note 291 at 31; Morales, Iha’tham \textit{supra} note 345.} Part of the criticism of bringing Indigenous legal traditions into the Canadian court systems is that, apart from courts with Indigenous judges who are knowledgeable in Indigenous legal traditions, courts do not and have not understood Indigenous worldviews. The failure to accept Indigenous legal traditions is wrapped up in the belief that only one set of laws – Euro-Canadian laws – is valid in Canada. It goes beyond the disrespect of individual judges as it is a systemic failure to accept another legal order due to the ongoing systems of colonization in Canada.

It is interesting to note, however, that the Superior Court in Quebec in 1867 did recognize the Indigenous legal tradition of a marriage ceremony. Justice Monk, in this decision “reasoned that we must not abrogate indigenous traditions in favour of our own without good reason; rather, we ought to consider such traditions alongside our own legal traditions.”\footnote{Quebec Superior Court per Monk J, “Excerpts from \textit{Connolly v Woolrich et al} (1867) RJRQ 75 Exhibits, online: \url{https://exhibits.library.utoronto.ca/items/show/24}.} This is the respect that Indigenous legal traditions deserve; however with the current disrespect afforded to Indigenous legal traditions, it is difficult to imagine that any kind of reconciliation can occur, despite it being touted in SCC cases beginning with \textit{Sparrow}. This is where the complication
arises when discussions are made in the courts about reconciliation and the politics of Canada discuss reconciliation with Indigenous peoples in Canada – especially when reconciliation to the courts means that Indigenous Peoples must reconcile themselves to the idea of Crown sovereignty over their lands and peoples.

III.2. Transformative Change

In considering change within the criminal legal system, Patricia Monture-Angus articulated that although there were some culturally-related programs and processes implemented into the system, she did not accept that these were changes, rather they were “a misappropriation of culture.” She was interested in real “transformative change” which “requires structural change in the system when it is required and necessary.” She stated that:

Transformative change would require the courts or legislatures take it upon themselves to complete an ameliorative review which documents with the intent to remove all barriers which presently exist in Canadian law.

Twenty years after Monture-Angus wrote this, the Canadian legal system still has not made any transformative or structural changes even though, as Thomas Isaac noted:

it is arguable that s. 35 does more than protect Aboriginal and treaty rights from legislative intrusion; it requires a fundamental change in the way Canada views Aboriginal peoples and their Aboriginal and treaty rights.

Transformative change starts with true reconciliation with Indigenous Peoples.

III.2.a. An Example of Transformative Change: The Law of Mother Earth

In December 2010, Indigenous President Evo Morales passed a law to protect the well-being of Bolivian citizens “by protecting the natural world – its resources, sustainability and

977 Monture-Angus, Standing, supra note 322 at 12.
978 Ibid.
979 Ibid at 14.
980 Isaac 2012, supra note 320 at 17.
value – as essential to the common good981 and protecting the rights of Mother Earth including the rights: to life, to the diversity of life, to water, to clean air, to equilibrium, to restoration, and to pollution-free living. The binding principles of that law are:

1) **Harmony:** Human activities, within the framework of plurality and diversity, should achieve a dynamic balance with the cycles and processes inherent in Mother Earth;

2) **Collective Good:** The interests of society, within the framework of the rights of Mother Earth, prevail in all human activities and any acquired right;

3) **Guarantee of Regeneration:** The state, at its various levels, and society, in harmony with the common interest, must ensure the necessary conditions in order that the diverse living systems of Mother Earth may absorb damage, adapt to shocks, and regenerate without significantly altering their structural and functional characteristics, recognizing that living systems are limited in their ability to regenerate, and that humans are limited in their ability to undo their actions;

4) **Respect and defend the rights of Mother Earth:** The state and any individual or collective person must respect, protect and guarantee the rights of Mother Earth for the well-being of current and future generations;

5) **No Commercialism:** Neither living systems nor processes that sustain them may be commercialized, nor serve anyone’s private property:

6) **Multiculturalism:** The exercise of the rights of Mother Earth require the recognition, recovery, respect, protection, and dialogue of the diversity of feelings, values, knowledge, skills, practices, transcendence, science, technology and standards of all the culture of the world who seek to live in harmony with nature.982

If true reconciliation is followed, along with an understanding that as human beings on Mother Earth, we all have responsibilities, transformative change to pass legislation that recognizes the rights and protections of Mother Earth would ensure wholistic health of all human beings. This

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is an example of transformative change in legislative regimes. Transformative change also requires decolonizing and reconciliation of the courts.

III.3. Decolonizing and Reconciliation in the Courts

The issues of decolonizing and reconciliation in the courts are two very different processes. In order for reconciliation to occur, the Eurocentric Canadian legal system and all of its actors (i.e. judges, lawyers, etc.) must understand the colonial roots of their system. What this means, then, is that the process of decolonization not only needs to occur within the broader Canadian society, it also needs to occur within its institutions, including the courts. If bringing Indigenous legal traditions into the Canadian court systems, the difficulty is that decision-makers do not have the same “worldview” or pedagogy (unless they may be Indigenous decision-makers that understand Indigenous legal orders) when Elders are presenting their nations’ evidence about their laws and knowledge. David Milward provided some solutions that include:

- educating judges on the potential value and accuracy of oral history evidence, enhancing oral history evidence through flexible use of the doctrines of inference and judicial notice, and using court-appointed experts to assure greater objectivity.983

Reconciliation in Canada is addressed differently within the Canadian political system and its legal system.984 Kim Stanton notes the two differences:

The SCC has used the term reconciliation in decisions seeking to balance assertions of Indigenous sovereignty with assertions of sovereignty by the Canadian state. However, Canada has now seen itself reflected in the proceedings of the [Truth and Reconciliation Commission]. Truth commissions are understood internationally to be mechanisms that assist states with addressing periods of extreme societal rupture. These transitional justice mechanisms enable states to create accurate historical records of such periods and make recommendations to prevent their recurrence. In transitional justice parlance,

reconciliation refers to ‘societal healing.’ This understanding of reconciliation is quite different from that which has entered Canadian legal discourse.\textsuperscript{985} The issue to be discussed here is about reconciliation within the Canadian legal system. I will discuss decolonization first.

\textbf{III.3.a. Decolonizing the Courts}

The first step to decolonizing the courts is for the Supreme Court to stop imposing its “colonial precepts and terminology that precludes genuine reconciliation.”\textsuperscript{986} Legal scholars like the late Patricia Monture, Bruce Ryder and Sákéj Henderson brought this to our attention many years ago. They had many suggestions for the courts to decolonize at that time. For example, Bruce Ryder noted that consent should be required by First Nations peoples before any laws were passed that affected them.\textsuperscript{987} This was recognized in the \textit{United Nations Declaration on the Rights of Indigenous Peoples} (UNDRIP) as “free, prior and informed consent.”\textsuperscript{988} This should be the test the SCC implements because as part of any healthy relationship, consent is required. If the courts were to decolonize, the next step would be to implement the UNDRIP. This could be done through litigation claims and include Articles of UNDRIP that are relevant to section 35 Aboriginal and treaty rights claims. I would also suggest that judges can direct legal counsel to amend claims to include relevant Articles of UNDRIP.

Joyce King adamantly stated that Haudenosaunee Peoples are responsible to rights,\textsuperscript{989} which is a concept that is not understood when litigating rights. Patricia Monture-Angus discussed this as well when she wrote about Canadian law. She said:

\textsuperscript{985} Ibid at 22.
\textsuperscript{986} Ibid.
\textsuperscript{987} Ryder, \textit{supra} note 849 at 320.
\textsuperscript{989} J. King, \textit{supra} note 364.
I was so empty when I came to those understandings about Canadian law. And I had to think some more. And I had to think some more about what was the matter with the law and why Canadian law is not working for Aboriginal peoples. It is simple why it is not working. It is because we have taken the responsibility out of it. Even more importantly, read some court judgments and hear them talk about impartiality and objectivity. It is not about your head. Where the answer lives in your heart. Law is not about how you feel. And where is the fairness? What is fairness? Fairness requires feeling. When you see something and it is unfair you get angry. It is in your heart, the standard of fairness. If fairness is in your heart and the law is not about feeling, then how are we going to get to fairness? How are we going to get to justice? Ask yourself who wrote down the law. It was men who wrote down that law. They took women out of it. Our responsibility as the women of this land is to see that they put the heart back in the law so that it starts to work for all of us. Then our relationship can start to be about fairness - about justice. And that is the legacy that I pray we leave for our children, no matter what colour they are.990

Putting the heart in law is a step in the right direction. I would suggest that this concept has never been addressed within the legal system.991 The Eurocentric legal system needs to transform into processes of emotional justice. This would be a highly difficult process to understand for those who are not able to actually understand what this means. This is where the teachings of Indigenous laws can assist because it is wholistic as noted in this study.

Haudenosaunee legal traditions integrate all aspects of wholistic health, including emotional, physical, spiritual, mental and environmental well-being. Haudenosaunee law is about love, kindness and compassion – inherent principles of emotional well-being as described by the Haudenosaunee women in this study.

990 Monture-Angus, Thunder in My Soul, supra note 291 at 131.
991 There are legal scholars who are researching in this area. See Annalise Acorn, Compulsory Compassion: A Critique of Restorative Justice (Vancouver: UBC Press, 2004). Professor Marilyn Poitras has also developed a law school course called Law and Happiness; however, this course assists law students to deal with stress in law school not specifically how the legal system should change to address this issue. See Hannah DeJong, “Law and Happiness Part 1: Finding Balance in Law School”, online: https://winklerinstitute.ca/law-and-happiness-part-1-finding-balance-in-law-school/.
Sákéj Henderson recognized decolonization as a shift towards “postcolonial legal consciousness.”\(^\text{992}\) Brenda Gunn utilized Henderson’s process as a methodology to recognize Indigenous legal traditions as a means to protect Indigenous lands, territories and resources.\(^\text{993}\) Gunn summarized Henderson’s three processes to a postcolonial legal consciousness as decolonizing judicial precedents, renewing autochthonic ecological orders and recognizing diversity.\(^\text{994}\) I am moving beyond the decolonization of judicial precedents to the decolonization of the colonial legal system and all of its actors directly. Decolonization includes a process of educating, just as Jim Ransom explained above.\(^\text{995}\)

A significant shift for the courts to decolonize is to repeal the Doctrine of Discovery and Terra Nullius. As asserted by John Borrows, the Court lied when it wrote in *Tsilhqot’in* that “the doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada.”\(^\text{996}\) Borrows further noted that:

The same paragraph that purportedly denied *terra nullius* contained the following statement: ‘At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province.’ If that land was owned by Indigenous peoples prior to the assertion of European sovereignty, one wonders how the Crown acquired title in the same land by merely asserting sovereignty, without a version of *terra nullius* being deployed. The Crown’s claim to underlying title on this basis ‘does not make sense.’ Some kind of legal vacuum must be imagined in order to create the Crown’s radical title. The emptiness at the heart of the Court’s decision is disturbing.\(^\text{997}\)

Lying does not build trust. The Court has to be prepared to address the systemic violence that it has endured upon Indigenous peoples. It must commit to decolonize and truly establish reconciliation.

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\(^\text{993}\) Gunn, *supra* note 291.
\(^\text{994}\) *Ibid* at 35.
\(^\text{995}\) Ransom, *supra* note 362.
\(^\text{996}\) Borrows, *supra* note 342 at 702, citing *Tsilhqot’in, supra* note 102.
\(^\text{997}\) Borrows, *ibid* at 703.
III.3.b. Reconciliation in the Courts

I thought that it might be important to understand what the word “reconciliation” actually means. *Black’s Law Dictionary* defines reconciliation as “the renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of injuries on one or both sides.”\(^{998}\) In order to further understand this definition of reconciliation, I found that the terms amicable and enmity must be broken down. Amicable is defined in the *Black’s Law Dictionary* as “friendly; mutually forbearing; agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.”\(^{999}\) The definition of enmity was not found in the *Black’s Law Dictionary* but found in *Webster’s New World Dictionary and Thesaurus* as follows: “the bitter attitude or feelings of an enemy or enemies.” The synonyms of enmity include “animosity, malice, rancor, [and] hatred.”\(^{1000}\)

Based on the violent relationship that the courts have had with Indigenous peoples, reconciliation or renewal of amicable relations has to occur. This was a principle of the original treaty relationship respecting the nation-to-nation relationship. This needs to transcend into the courts in a practical way, not in an obiter remark, where it is just something said with no required actions to follow. The word “reconcile” has been used in ‘obiter’ in the courts since the interpretation of section 35 Aboriginal and treaty rights began. For example, Chief Justice Lamer in *Van der Peet* recognized that the courts must take into account the “perspective of aboriginal people claiming the right”; however:

> that perspective must be framed in terms cognizable to the Canadian legal and constitutional structure … one of the fundamental purposes of s. 35(1) is the reconciliation of the pre-existence of distinctive aboriginal societies with the assertion of

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999 Ibid.
Crown sovereignty. Courts adjudicating aboriginal rights claims must, therefore, be sensitive to the aboriginal perspective, but they must also be aware that aboriginal rights exist within the general legal system of Canada.\textsuperscript{1001}

I will reiterate that the SCC utilizes the term “reconcile” to mean reconciliation to Crown sovereignty. This is not reconciliation.

In \textit{Haida Nation}, the Court cited both \textit{Delgamuukw} and \textit{Van der Peet} in stating:

‘Nothing less is required if we are to achieve the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.’\textsuperscript{1002} Chief Justice McLachlin found that “the duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy ... it is a process flowing from the rights guaranteed by s.35(1) ...”\textsuperscript{1003}

If the Court really wants to address the reconciliation of “Aboriginal societies” with the rest of Canadian society, it has to be innovative and decolonize its approach to the relationship between Indigenous peoples and Canadian society. The courts must disengage their analysis from the colonial and racist “Doctrine of Discovery” and distinguish \textit{Van der Peet}’s principle that the balancing act is determined as to whether an Aboriginal right may interfere with Canadian sovereignty. Beginning its analysis with the Doctrine of Discovery was the Court’s first mistake. If it truly wants to reconcile the relationship, it must begin with another approach, one that is decolonized and begins from the positive \textit{Kuswentah} relationship. This then is the basis of the reconciliation, i.e. nation-to-nation.

\textsuperscript{1001} \textit{Van der Peet, supra} note 102 at para 49.
\textsuperscript{1002} \textit{Haida Nation, supra} note 102 at 523, citing \textit{Delgamuukw, supra} note 102 and \textit{Van der Peet, supra} note 102.
\textsuperscript{1003} \textit{Haida Nation, ibid} at para 32.
The courts can direct the Crown to present evidence that is truly based on that form of reconciliation. For example, here are some direct questions that could be asked:

1) Has the Crown followed the principles of *Kuswentah* and truly recognized the sovereignty or self-determination of Indigenous peoples?

2) Has the Crown recognized Indigenous legal traditions that ensure the sovereignty and self-determination of Indigenous peoples?

3) Has the Crown recognized that Indigenous legal traditions protect the well-being and wholistic healthiness of Indigenous peoples?

4) What has the Crown done to ensure a healthy nation-to-nation relationship with Indigenous peoples?

In order to decolonize the legal system, the system itself must be free from oppression. This is what Patricia Monture-Angus was dreaming about.1004

**IV. *Kuswentah*: Returning to Healthy Relationships/Re-polishing the Silver Covenant Chain**

True reconciliation means returning back to the original principles of a healthy relationship established in the *Kuswentah* Treaty: peace, trust, friendship. As noted by Minnawaanagogiizhigook:

Indigenous legal orders are directed, first and foremost, towards supporting the efforts of Indigenous peoples to maintain good relations: relations within communities, relations between communities, and relations with the other beings of creation. Indigenous laws work to structure the roles and responsibilities of Indigenous peoples in terms of these relations.1005

1004 Monture-Angus, Standing, *supra* note 322 at 29.
This means that we truly have to return to peaceful, respectful, trusting and friendly relations. Louise McDonald confirmed this when she stated that the relationship was not one of dominance but of co-existence and that no one would be dictating or controlling each other.\textsuperscript{1006} It means that everyone has to recognize what their own responsibilities are to enable this relationship to occur. What does re-polishing the Silver Covenant Chain really mean, metaphorically? The intention of using a Silver Covenant Chain rather than iron was because iron rusts and can decay away; with silver, it can be re-polished and shined up which metaphorically means that the relationship can be healed and revitalized.

Jim Ransom commented on his own role and responsibilities to his people and his community which are tied to the principles described in \textit{Kuswentah}:

I try to follow the three principles in the Two Row. The \textit{skenneh, ka’nikonhri:yo, kahsatstenhsera}; peace, using a good mind and integrity. Making sure my words and actions match. When you do those three things consistently, it shows that you’re trustworthy. The trustworthy is what builds trust into relationships with others. This is where our focus has been. If we’re going to change non-native people’s minds and then, we got to educate them about ourselves. Do it in a way that they are not threatened and it adds value to them. And then, build a relationship around common interest.\textsuperscript{1007}

The words and actions that Jim Ransom is referring to also include the emotional concept of trust. How do you trust someone? How do you know someone is trustworthy? It is the words and actions that allow anyone to trust or to know someone is trustworthy. These concepts are built into the wholistic healthiness of Haudenosaunee laws. The participants in this study identified the strengths of their laws and recognized that in order to be healthy, one has to practice those laws. It is time for the Euro-Canadian legal system to recognize this as well.

\textsuperscript{1006} \textit{McDonald, supra} note 362.  
\textsuperscript{1007} \textit{Ransom, supra} note 362.
[RCAP] concluded the treaty relationship between Treaty nations and Canadian government and Canadian peoples are ‘mired in ignorance, mistrust and prejudice. Indeed, this has been the case for generations.’ The dishonoured treaties are part of the negative ghosts of Canadian history.

*Kuswentah* is one of those treaty relationships that Canada has dishonoured too many times and the impacts upon Haudenosaunee communities, and specifically the community of Akwesasne focused on in this study, are the results of Canada’s disrespectful actions by continuing to support industrial and resource development without regard to Haudenosaunee Peoples and Akwesasronon, in general, but also without regard to the treaty relationship. I agree with Patricia Monture-Angus when she stated:

> Canadian law just does not fully work for resolving Aboriginal claims [because] Canadian courts owe their origin to British notions of when a nation is sovereign. It is from Canadian sovereignty that Canadian courts owe their existence. Courts, therefore, cannot question the very source of their own existence without fully jeopardizing their own being. Courts cannot be forced to look at issues about the legitimacy (or, more appropriately, the lack thereof) of Canadian sovereignty as against the claims of Aboriginal sovereignties.

The Knowledge Holders in this study support this view as well. I will add to this, however, that the courts could question the source of their own existence by decolonizing themselves, which I reflected on in Chapter 6.

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1008 My Mohawk Sister/Friend, Patricia Monture-Angus, used this term a lot as the title of her closing remarks. I am using her words because it is very significant to the closing of this dissertation. Monture-Angus, *supra* note 322 at 28; Monture-Angus, *Journeying Forward, supra* note 56 at 158.


1010 Monture-Angus, *supra* note 322 at 28-29.
The strength and resilience of Akwesasronon shines through in this study. The many Haudenosaunee Elders and Knowledge Holders in the past maintained the laws, beliefs and customs to ensure that the people are healthy today. They continued to maintain connection to lands and territories and their relationship with the natural world. This knowledge transferred throughout the generations, so that today, the many Haudenosaunee Knowledge Holders, including those Knowledge Holders in this study, continue to educate the community and continue to heal from the impacts of industrial and resource development in the community. It is the strengths and gifts of all of the participants in this study that continue to educate every generation. This is a powerful message from the community members who participated in this study. As noted in the beginning of this dissertation, I am planning to follow up with the Knowledge Holders and Photovoice participants in this study to complete the final two goals of the Photovoice methodology. Upon their approval, I would like to share the findings, the Knowledge Holders’ teachings as well as the powerful photographs and stories of the Photovoice Participants in this dissertation with the community of Akwesasne.

After sharing the results of this dissertation with the community, I would like to discuss with them the potential of bringing a litigation claim on their behalf. I would be willing to work with them on the argument that Akwesasronon have a Kuswentah treaty right to self-determination based on Haudenosaunee laws that protects their wholistic health. This may take a few years to discuss; hopefully enough time for the judges to catch up to Indigenous legal traditions.

Knowledge Holder Henry Lickers made reference to the role of “intellectual warriors,”¹⁰¹¹ which meant that Indigenous scholars who have been “sacrificed” to work within

¹⁰¹¹ Lickers, supra note 115.
Eurocentric institutions are doing so to educate the rest of the world about who Haudenosaunee people are as a people and to continue to do the work to build healthy relationships. Patricia Monture-Angus also talked about being a warrior, which for her meant:

An image of responsibility and commitment. Warriors live to protect…to give honour to the people. Being a warrior means living your life for more than yourself…Warrior…is not a man’s word. It is not a fighting word. It is not a war word…Warrior is a ‘knowing your place in your community’, ‘caring to speak your truth’, ‘being able to share your gift’, ‘bring proud of who you are’ word…Warriors also have vision. They dream for their people’s future.  

I found this to be true in this study as well as in the work that I am currently doing as an educator. As a professor of law at the University of Windsor, I am able to teach Indigenous legal traditions and Haudenosaunee legal traditions, specifically, to law students who will someday be future lawyers, judges, parliamentarians or work within their own and/or Indigenous communities. Most recently, I was asked to present about Kuswentah at the National Judicial Institute; however, I had personal issues to deal with so I could not attend. This work needs to continue so I am hopeful that the judges at the National Judicial Institute will continue on with updating their judicial education. I feel that the work on Indigenous legal traditions and educating present-day lawyers and judges needs to be done. This was already addressed by the Truth and Reconciliation Commission in their Calls to Action Numbers 27 and 28.

The work that needs to be done in the future should reflect on what has been done in the past. The impacts of industrial and resource development on the wholistic health of Akwesasronon have been burdensome; however, because of the resiliency and strength of the

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1012 Monture-Angus, supra note 322 at 21.
people, their traditions, culture, language, and ceremonies they will be able to maintain a healthy relationship with the land, waters and all of creation.

Because of the enforcement of colonial law and its legal system, Haudenosaunee laws were pushed aside and not able to flourish or develop into their own institutions/processes/legal systems to deal with conflict. The practice of Haudenosaunee laws continued within particular individuals, families and nations and within the homes and Longhouses of Haudenosaunee Peoples. However, the principles of Haudenosaunee laws to resolve conflict in today’s society are still required. There is already movement to develop those institutions (e.g. First Nations Justice Systems, Akwesasne Mohawk Court and Akwesasne Community Justice Program) based on Haudenosaunee legal principles of “Sken:nen (peace), Kasastensera (strength) and Kanikonri:io (a good mind), respect, fairness and natural justice.”1014 The Akwesasne Mohawk Court enforces “32 laws that cover civil matters including tobacco regulations, sanitation, elections, property and wildlife conservation;” however, the Akwesasne Court does not address criminal matters.1015 I would like to see an entire movement towards a Haudenosaunee legal system based entirely on the principles of Haudenosaunee laws. This would therefore mean continued work on the development of infrastructures and institutions based on Haudenosaunee Laws and principles. I truly believe that this can be done because Akwesasronon already abide by principles of self-determination as highlighted in this study. This is my dream for future work for all Haudenosaunee Peoples and any other Peoples wanting to decolonize, to protect wholistic health and to revitalize self-determination.

1014 Mohawk Council of Akwesasne, Akwesasne Justice Department. Online: www.akwesasne.ca/justice
BIBLIOGRAPHY

LEGISLATION

Legislation: Canada

Canada National Parks Act, SC 2000, c 32.
Canadian Environmental Assessment Act, RSC 1992 c 37.
Canadian Environmental Protection Act, SC 1999, c 33.
Customs Act, RSC 1985, c 1 (Supp).
Environmental Protection Act, RSO 1990, c E 19.
International Rapids Power Development Act, RSC 1952, c 157.
Species at Risk Act, SC 2002, c 29.
The Indian Act, SC 1876, c 18.

Legislation: United States

Superfund Amendments and Reauthorization Act, 42 USC 9601.

JURISPRUDENCE

Beckman v Little Salmon/Carmacks First Nation, [2010] 3 SCR 103.
Clyde River (Hamlet) v Petroleum Geo-Services Inc, [2017]1 SCR 1069.
Grassy Narrows First Nation v Ontario (Natural Resources) [2014] 2 SCR 448.


Logan v Styres (1959), 20 DLR (2d) 416 (Ont SC).

Mikisew Cree First Nation v Canada (Minister of Canadian Heritage), [2005] 3 SCR 388.


Ontario (AG) v Bear Island Foundation [1985] 1 CNLR 1 (Ont Sup Ct).


R v Horseman, [1990] 1 SCR 901.

R v Kapp, [2008] 2 SCR 483.


R v Marshall; R v Bernard [2005] 2 SCR 220.

R v Morris, [2006] 2 SCR 915.


R v Sappier; R v Gray, [2006] 2 SCR 686.


R v Taylor and Williams, [1982] 3 CNLR 114.


R v White and Bob, (1965), 52 DLR (2d) 481.


Simon v The Queen, [1985] 2 SCR 387.


Tsilhqot’in Nation v British Columbia [2014] 2 SCR 256.

SECONDARY SOURCES: MONOGRAPHS


Anderson, Marcia et al, First Nations, Metis and Inuit Health Indicators (University of Victoria: Canada Centre for Aboriginal Health Research, 2006).


Graymont, Barbara. *The Iroquois in the American Revolution* (Syracuse: Syracuse University
Greenwood, Margo et al, eds, Determinants of Indigenous Peoples Health in Canada: Beyond Social (Toronto, ON: Canadian Scholars’ Press Inc, 2015).


Hoover, Elizabeth. The river is in us Fighting Toxics in a Mohawk Community (Minneapolis, MN: University of Minnesota Press, 2017).


Limited, 2012)


National Aboriginal Health Organization. *Ownership, control, access and possession (OCAP) or self-determination applied to research: A critical analysis of contemporary First Nations research and some options for First Nations communities* (Ottawa: First Nations Centre, 2005).


Opekikew, Delia. The First Nations: Indian Government in the Community of Man (Regina: Federation of Saskatchewan Indians, 1982).


Parlee, BL. Dealing with Ecological Variability and Change: Perspectives from the Denesoline and Gwich’in of Northern Canada, (Winnipeg, MB: Natural Resources Institute, University of Manitoba, 2006).

Porter (Sakokwenionkwas), Tom. And Grandma Said...Iroquois Teachings as passed down through the oral tradition (Bloomington, IN: Xlibris Corporation, 2008).


Selikoff, Irving J; E Cuyler Hammond & Stephen M Lewis. Environmental Contaminants and the Health of the People of the St. Regis Reserve Volumes I, II, & III (Mount Sinai School of Medicine of the City University of New York, Environmental Sciences Laboratory, nd).

Shattuck, George C. The Oneida Land Claims: A Legal History (Syracuse, N.Y.: Syracuse University Press, 1988).


SECONDARY MATERIALS: ARTICLES


———. “First Nations, Metis, Inuit Health Care,” Discussion Paper Series No. 2 in


Denham, Melinda et al, “Relationship of lead, mercury, mirex,
dichlorodiphenyldichloroethylene, hexachlorobenzene, and polychlorinated biphenyls to
Dickson-Gilmore, EJ. “Communities, contraband and conflict: considering restorative responses
to repairing the harms implicit in smuggling in the Akwesasne Mohawk Nation” (Ottawa:
Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services
Directorate, Royal Canadian Mounted Police, 2002).
Fitzgerald, Edward F. et al, “The association between local fish consumption and DDE, mirex,
and HCB concentrations in the breast milk of Mohawk women at Akwesasne” (2001) 11
J Expo Anal Environ Epidemiol 381.
Fitzgerald, Edward F. et al, “Environmental and occupational exposures and serum PCB
concentrations and patterns among Mohawk men at Akwesasne” (2017) 17:3 J Expo
Anal Environ Epidemiol 269.
Fitzgerald, Edward F. et al, “Fish Consumption and other environmental exposures with serum
PCB concentrations among Mohawk women at Akwesasne (2004) 94 Environ Res 160-
70.
Friedland, Hadley. “Reflective Frameworks: Methods for Accessing, Understanding and
33:1 Windsor YB Access Just 85.
Friedland, Hadley & Val Napoleon. “Gathering The Threads: Developing a Methodology for
Researching and Building Indigenous Legal Traditions” (2015-2016) 1:1 Lakehead LJ.
& Juris 83.


———. Sky Woman’s Great Granddaughters: A Narrative Inquiry into Kanienkehaka Women’s Identity (PhD Thesis, Concordia University, Montreal, Quebec, 2009) [Unpublished].


Lyons, Oren “American Indians in the Past” in Oren Lyons and John C. Mohawk (eds) Exiled in the Land of the Free. Democracy, Indian Nations and The U.S. Constitution (Santa Fe,


--- ---. “Envisaging Constitutional Space for Aboriginal Governments” (1993) 19 Queen’s LJ 95 at 100.


--- ---. “’a ‘lha’tham: The Re-Transformation of s. 35 Through a Coast Salish Legal
Methodology” (2017) 37:2 NJCL 145.


Muller, Kathryn V. “Holding Hands with Wampum: Haudenosaunee Council Fires from the Great Law of Peace to Contemporary Relationships with the Canadian State” (PhD dissertation, Queen’s University, 2008).


——. “Home/Land” (1991) 10 Can J Fam L 17


Tyson, Frederick L et al, “Cancer, the environment, and environmental justice” (1998) 83:S8 Cancer 1784.


OTHER MATERIALS


Antone, Robert. “Yukwalihowanahu’ Yukwano’sau’ Tsiniyu:kwalihohi:’ As People of the Longhouse, We Honor Our Way of Life Tekal’hsal’ Tsiniyu:kwalihohi:’ Praise Our Way of Life”, (PhD disseration, University at Buffalo, State University of New York, 2013).


“Chapter 9. Research Involving the First Nations, Inuit and Métis Peoples of Canada”,


Mohawk Council of Akwesasne, Akwesasne Justice Department. www.akwesasne.ca/justice


Ongwehonwe:ka: Wholistic Way of Life. Ongwehonwe:ka: Native Languages for Communication. NYS Syllabus, NYS Education Department at x, xiii cited in The
Akwesasne Task Force on the Environment Research Advisory Committee, *Superfund Clean-up At Akwesasne: A Case Study in Environmental Justice*,

https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnxhdGZlb25saW5lfGd4OmJmOTc4MzgzMTg2ZWFlMQ&pli=1.

Onondaga Nation, Haudenosaunee. “Greetings And Thanks to the Natural World, A Daily Thanksgiving.”

O’Reilly, James; Martha Montour; Chantal Chatelain; Peter Hutchins & Diane Soroka, Anjali Choksi “Reply Factum of Appellant” filed in *Adams v Her Majesty the Queen and The Attorney General for Canada* 19 October 1995.


Valiante, Giuseppe.“Akwesasne creates first court in Canada for and by Indigenous people”, The Canadian Press (2 October, 2016) online: CBC.ca

https://www.google.ca/amp/s/www.cbc.ca/amp/1.3787969

MOHAWK COUNCIL OF AKWESASNE

February 25, 2013

Jennifer Koshan
Associate Professor, Faculty of Law
University of Calgary
2509 University Drive NW
Calgary, AB

Shekon Jennifer Koshan,

I hope this letter finds you and your family in good health and spirits.

We are proud and honoured to be able to inform you that Beverly Jacobs, PhD. candidate has fulfilled the requirements of the Mohawk Community of Akwesasne Research Protocol and has been given permission to commence her work in Akwesasne. She will be working with the Mohawk Council of Akwesasne Tewennawakon Environment Program to accomplish her work. Henry Lickers and the Environment Staff will be friends of her work and act as a gateway into the community. She has many friends and acquaintances in Akwesasne that will help and assist her as well.

Beverly’s methodologies are well understood and we believe they are complementary to the Mohawk culture. We will begin to solicit interview subjects and organize schedules and times for Beverly. Beverly understands that a copy of her finished thesis and raw data from her investigations will remain in the community and will be archived in the MCA archive.

We hope that our continued support of Beverly Jacobs will result in a successful PhD and that her research will generate information that the Community of Akwesasne will find useful and valuable.

We hope to hear from you and Bev soon concerning the research work. On behalf of the Akwesasne friends of the work,

Sincerely,

[Signatures]

Elizabeth M. Nanticoke
Environment Program Support Officer

[Signature]

Henry Lickers
Environmental Science Officer
APPENDIX B

INFORMED CONSENT FOR ELDERS/KNOWLEDGE HOLDERS

The purpose of this study is to determine the impacts of industrial and resource development on the wholistic health (which includes mental, physical, emotional, spiritual and environmental well-being) of the Kanienkehake peoples of Akwesasne and to examine a rights-based approach to protect their wholistic health. This work will help to identify the connections between the healthiness of the land and the healthiness of the people and to highlight the use of Haudenosaunee legal traditions and Eurocentric law to protect wholistic health.

At the end of the study the researcher will give a full report to your community to discuss the results. If you would like to participate in this interview, it will take about two hours of your time to answer questions about the impacts of industrial and resource development on your wholistic health, and the use of Eurocentric law to enforce indigenous rights. All information will be confidential and never publicly attached to your name. Should the participant want to be identified, the participant will provide that option at the end of this consent form.

This study will be done by Beverley Jacobs who is completing an Interdisciplinary PhD in law, Indigenous Research Methodologies, and Aboriginal health. The research will be used to complete her dissertation, in cooperation with the Mohawk Nation of Akwesasne through the Téhótiennieakon Environment Program. A research assistant hired by the Mohawk Nation of Akwesasne may assist Beverley to coordinate meetings with participants, to record and to transcribe all research information. Beverley’s funding to complete her PhD is provided through the Grand River Post Secondary Education Office at Ohsweken, Ontario. An ethics application was submitted to and reviewed by the University of Calgary’s Ethics Review Board (CFREG).

At any time you can refuse to answer any or all of the questions and ask the researcher to leave. The researcher will answer any questions you may have about this study. Her contact information is shown below.

All data will be stored in a locked file at the Mohawk Council of Akwesasne Environmental Program office and can only be accessed by the Manager, Jim Ransom and Director, Henry Lickers. All data will be held there for potential future use in the community.

The researcher will initial this form, which will acknowledge that she read the consent form to the respondent in the language that the respondent, to the best of her knowledge, understands and that a written copy of the consent was left with the respondent.

THIS SIGNED INFORMED CONSENT WILL BE ATTACHED TO THE QUESTIONS THAT WILL BE ASKED OF THE RESPONDENT.
The participant does not (circle one) wish to be identified by name.

The participant hereby consents to all of the above by signing below.

Date: August 12, 2014

Signature of Respondent

Contact Information of Researcher:
Beverley Jacobs
3374 Third Line, R.R. #1 Ohsweken, ON N0A 1M0
Phone #: 778-877-7402
Email: bkjacobs@ucalgary.ca

University of Calgary Ethics Resource Officer:
Kate Beamer
Email: kmbeamer@ucalgary.ca
APPENDIX C

Name of Researcher, Faculty, Department, Telephone & Email:
Beverley Jacobs
Interdisciplinary Graduate Program, University of Calgary
778-877-7402
bjJacobs@ucalgary.ca

Supervisor:
Jennifer Koshan, Faculty of Law
koshan@ucalgary.ca

Title of Project:
Impacts of Industrial Development on Akwesasne Mohawk Peoples’ Wholistic Health: A Human Responsibility and Rights Solution

Sponsor:
Six Nations Grand River Post Secondary Education Office, Ohsweken, ON N0A 1M0

This consent form, a copy of which has been given to you, is only part of the process of informed consent. If you want more details about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

The University of Calgary Conjoint Faculties Research Ethics Board has approved this research study.

Purpose of the Study:
The purpose of this study is to determine the impacts of industrial and resource development on the wholistic health (which includes mental, physical, emotional, spiritual and environmental well-being) of the Kaniienkehake peoples of Akwesasne and to examine a rights-based approach to protect their wholistic health. This work will help to identify the connections between the healthiness of the land and the healthiness of the people and to highlight the use of Haudenosaunee legal traditions and Eurocentric law to protect wholistic health.

This study will be done by Beverley Jacobs who is completing an Interdisciplinary PhD in Law, Indigenous Research Methodologies, and Aboriginal Health. The research will be used to complete her dissertation, in cooperation with the Mohawk Nation of Akwesasne through the Tehotienawakan Environment Program. A research assistant hired by the Mohawk Nation of Akwesasne may assist Beverley to coordinate meetings with participants, to record and to transcribe all research information. Beverley’s funding to complete her PhD is provided through the Grand River Post Secondary Education Office at Ohsweken, Ontario.
What Will I Be Asked To Do?

The researcher and community have identified twenty (20) participants to participate in a community-based research action method called Photovoice. You have been chosen as a participant should you wish to participate in this research study. The researcher will provide training to each participant about the purposes of the research and all aspects of the Photovoice methodology. The three main goals of Photovoice are: 1) to record and reflect personal and community strengths and concerns; 2) to promote critical dialogue and knowledge about personal and community issues through group discussions of photographs and 3) to reach policymakers. The process will involve taking pictures, developing the pictures, choosing one or more pictures and verbally describing the photographs to the researcher. The researcher will be audio-recording the verbal presentation. One of the aspects to consider is whether the participant takes pictures of minors. Should the participant take a picture of any minors, the participant will be required to obtain written consent of the minor’s parents.

The participation in this study is completely voluntary and a participant can choose withdraw from the study at any time during the research. If the participant chooses to withdraw from this study, he or she must advise the researcher immediately. If any photographs were taken, they will be immediately given back to the participant. If the participant voluntarily participates in the Photovoice process, it will take one day of training, two weeks to take photographs and another day to describe the photographs and to debrief with the researcher. The participant may choose to remain anonymous in this study or may choose to be identified. The training of the Photovoice methodology will assist in determining anonymity or identification.

Should you choose to remain anonymous, the researcher will ensure complete anonymity of the participant in her dissertation. She will not refer to the participant by name and she will ensure that the photographs do not identify the participant. For those who choose to be identified, they will be identified in the dissertation by their first name.

At the end of the study the researcher will provide opportunities to those who wish to be identified to discuss the potential of presenting participant photographs and descriptions of them to the community and to discuss the results of the Photovoice study. The camera and any original photographs will become the property of the participant. The participant consents to the use of copies of the photographs and descriptions in the researcher’s dissertation and in any future presentations and publications that the researcher may have in the future.

What Type of Personal Information Will Be Collected?

Should you agree to participate, you will be asked to provide your gender, age, clan and nation.

There are several options for you to consider if you decide to take part in this research. You can choose all, some or none of them. Please put a check mark on the corresponding line(s) that grants me your permission to the following:

I grant permission to be audio taped:  
Yes: ___ No: ___

I grant permission to be videotaped:  
Yes: ___ No: ___
I grant permission to have my name used: Yes: ___ No: ___
I wish to remain anonymous: Yes: ___ No: ___
I wish to remain anonymous, but you may refer to me by a pseudonym: Yes: ___ No: ___
The pseudonym I choose for myself is: ____________________________
You may quote me and use my name: Yes: ___ No: ___

Are there Risks or Benefits if I Participate?

Participants involved in the Photovoice aspect of this study may become more aware of the impacts of industrial development than they had realized. They may become emotionally stressed, mentally fatigued or may experience awareness of cultural losses. Photovoice methodology can also empower participants in an effort to create positive change. Arrangements will be made to have a process of debriefing and to discuss any emotional distresses. If necessary, participants will be referred to a counsellor, therapist, traditional medicine person or Elder to debrief about the potential impacts of the study.

What Happens to the Information I Provide?

Participation is completely voluntary and confidential. You are free to discontinue participation at any time during the study. All data will be stored in a locked file at the Mohawk Council of Akwesasne Environmental Program office and can only be accessed by the Manager, Jim Ransom and Director, Henry Lickers. All data will be held there for potential future use in the community. The data will be stored for three years on a computer disk, at which time, it will be permanently erased.

Your signature on this form indicates that you 1) understand to your satisfaction the information provided to you about your participation in this research project, and 2) agree to participate as a research subject.

In no way does this waive your legal rights nor release the investigators, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from this research project at any time. You should feel free to ask for clarification or new information throughout your participation.

Participant’s Name: (please print) ________________________________
Participant’s Signature ___________________________________________________________________
Date:

Researcher’s Name: (please print) _________________________________________
Researcher’s Signature: __________________________________________________________________
Date:
Questions/Concerns

If you have any further questions or want clarification regarding this research and/or our participation, please contact:

Ms. Beverley Jacobs  
Interdisciplinary Graduate Program  
778-877-7402;

Professor Jennifer Koshan, Faculty of Law,  
403-220-7329;

If you have any concerns about the way you’ve been treated as a participant, please contact the Senior Ethics Resource Officer, Research Services Office, University of Calgary at (403) 220-3782; email rburrows@ucalgary.ca koshan@ucalgary.ca

A copy of this consent form has been given to you to keep for your records and reference. The investigator has kept a copy of the consent form.

bkjacobs@ucalgary.ca
APPENDIX D
LIST OF COMMUNITY PARTICIPANTS

KNOWLEDGE HOLDERS:

Della Adams (Knowledge Holder)
- Director of the Traditional Medicine Program

Maxine Cole (Knowledge Holder)
- Community Member
- Scientist

Katsi Cook (Knowledge Holder)
- Mohawk midwife
- Scientist
- Environmental justice activist

Joyce King (Knowledge Holder)
- Director, Akwesasne Justice Department

Louise McDonald, (Knowledge Holder)
- Mohawk Bear Clan Mother

Emmy Mitchell (Knowledge Holder)
- Former Director of the Traditional Medicine Program
- Traditional Healer
- Language Teacher

Richard Mitchell (Knowledge Holder)
- Faithkeeper

Dr. Henry Lickers (Knowledge Holder)
- presented to the Royal Commission on Aboriginal Peoples during its study
- Environmental Science Officer at Tehotiiennawakon, Environmental Program

Elizabeth Nanticoke (Knowledge Holder)
- community member
- Singer with Bear Fox Singers
Jim Ransom (Knowledge Holder)
- Director of the Tehotiiennawakon, Environmental Program
- Chief - United South and Eastern Tribes, Inc.
- National Indian Gaming Association
- Director - Westelcom Inc
- Chief - Saint Regis Mohawk Tribe
- A. A. S degree - civil technology, Canton Agricultural and Technical College
- Bachelor of Science degree - civil engineering, Clarkson
- Associate's degree - civil technology, Technical College

PHOTOVOICE PARTICIPANTS

Waylon Cook (Photovoice Participant)
- Male Youth community member
- Photo Figures: 12, 16

Katsiatso:ni, (Photovoice Participant)
- Adult Female community member
- Film Maker
- Photo Figures: 38, 39

Charlotte King (Photovoice Participant)
- Adult female community member
- Artist
- Photo figures: 8

Kevin King (Photovoice Participant)
- Adult male community member
- Photo Figures: 22, 24, 25, 26

Curtis Lazore (Photovoice Participant)
- Adult male community member
- Photo Figures: 9, 10, 11, 37

Cynthia Lazore (Photovoice Participant)
- Adult female community member
- Photo Figures: 7, 28, 32, 33
Owen Mitchell (Photovoice Participant)
- Male youth community member
- Photo Figures: 30

PV 1 (anonymous) (Photovoice Participant)
- Adult Male community member
- Photo figures: 4, 26, 34, 35, 36

PV 2 (Photovoice Participant)
- A 27 year-old female community member
- Photo figures: 5, 13, 14, 15, 17, 18, 19, 27, 29, 31, 40, 41, 42, 43, 44, 45

Konwanahktotha Sargent (Photovoice Participant)
- Adult female
- Principal, Akwesasne Freedom School
- Photo Figure: 6,

Wahesohn (Photovoice Participant)
- Female Youth community member
- Photo Figure: 20
APPENDIX E

LONDON DOCUMENTS: 1.

APPENDIX E

Col. Nicks to the Governor and Council of Boston.

To the Governr and Council of Boston,

Gentlemen,

I have herewith sent you a copy of a Commission from the 1st Commissioners of Prizes wherein I am empowered as one of the Sub-Commissioners for New England whilst His Ma's shall be in hostility with the Dutch. In prosecution of the trust reposed in me as Sub-Commissioner I am oblig'd to give you an advertisement hereof, and that you will please to give strict order in all your parts from time to time that seizure be made of all and every Dutch ship vessels or goods belonging to the States of the United Provinces of the Netherlands their subjects or inhabitants within any of their dominions, as also if any prizes shall be brought into any of your ports by any persons commissioned thereunto by his R. H. the Duke of Yorke, that you will please to cause the same to be preserved entire without indescently, with all their papers, bills of lading or other writings, until such a legal prosecution can be made as is directed by His Ma's authority to the 1st Commissioners, and given at large in their 1st instructions to me and Capt. Phillip Carteret, as Sub-Commissioners in N. England; wherein your assistance and concurrence is requisite for His Ma's service, as also that some able and fitting persons be chosen in your Colony to sit as a Court of Admiralty when occasion presents. Be pleased also to remit unto me Yo' proceedings herein, according to the resolutions you shall take; and if in this or any other quality I can render myself serviceable to yourselves you may command me as

[About July,] 1664.

Yo'll humble Servant

R. Niolls.

Articles between Col. Carterwright and the New York Indians.

Articles made and agreed upon the 24th day of September 1664 in Fort Albany between Oyselando, Shumarage, Soochamquht, Sachamackes of ye Maguys: Anawood Conkeherat Tewasseramy, Aschamondah, Sachamackes of the Synick's, on the one part; and Colonell George Carterwright, in the behalf of Colonell Niolls Governour under his Royall Highness the Duke of Yorke of all his territories in America, on the other part, as followeth, viz:

1. Inprimis. It is agreed that the Indian Princes above named and their subjects, shall have all such warres and commodities from the English for the future, as heretofore they had from the Dutch.

2. That if any English Dutch or Indian (under the protection of the English) do any wrong injury or violence to any of ye said Princes or their subjects in any sort whatsoever, if they complain to the Governr at Newyork, or to the Officer in Cheife at Albany, if the person so offending can be discovered, that person shall receive contumacie punishment and all due satisfaction shall be given; and the like shall be done for all other English Plantations.

3. That if any Indian belonging to any of the Sachius aforesaid do any wrong injury or damage to the English, Dutch, or Indians under the protection of the English, if complaint be
NEW-YORK COLONIAL MANUSCRIPTS.

made to y^s Sachims and the person be discovered who did the injury, then the person so offending shall be punished and all just satisfaction shall be given to any of His Majesty's subjects in any Colony or other English Plantations in America.

4. The Indians at Wapping and Esapchomy and all below the Manhatans, as also all those that have submitted themselves under the protection of His Majesty are included in these Articles of Agreement and Peace;

In confirmation whereof the partyes above mentioned have hereunto sett their hands the day and yeare above written

GEORGE CARTWRIGHT

In the presence of

T. Willett
John Manning
Thos. Bredon
Dan. Broadhead

[Signature]

Smith John
his mark

[Signature]

Stephen an Indian
his mark

These Articles following were likewise proposed by the same Indian Princes & consented to by Colenell Cartwright in behalf of Colenell Nicolls the 25th day of September 1660.

1. That the English do not assist the three Nations of the Ondiakes, Minneckooks and Pammankookes, who murdered one of the Princes of the Maques, when he brought ransomes & presents to them upon a treaty of peace.

2. That the English do make peace for the Indian Princes, with the Nations down the River.

3. That they may have free trade, as formerly.

4. That they may be lodged in houses, as formerly.

5. That if they be beaten by the three Nations above mentioned, they may receive accommodation from y^s English.