

Advancing the social pillar of sustainability: Insights from the natural resources sector



Dr. William Nikolakis
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Biography

- ▶ Australian/Canadian.
- ▶ PhD, LLB and BBus.
- ▶ Advisor to Aboriginal collectives, governments and corporations on policy and business issues.
- ▶ Research Fellow at the University of British Columbia.
- ▶ Qualified legal professional in Canada and Australia.
- ▶ Executive Director, Gathering Voices Foundation.



A geographical guide to Canadian stereotypes

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**O CANADA,
OUR HOME AND
CLICHÉ LAND**

A geographical guide
to Canadian stereotypes

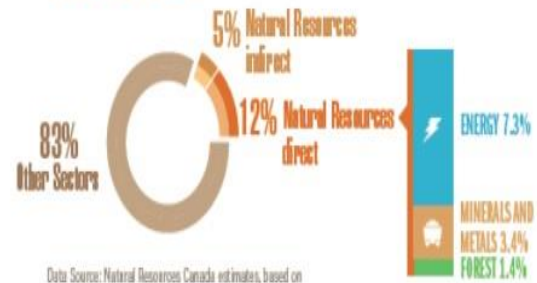
MACLEAN'S

Some things to know about Canada

- ▶ Over 90% of the land-base is “owned” by the Crown (Provinces and Federal Government).
 - ▶ Tenures system for natural resources.
- ▶ Crude petroleum is Canada’s largest export product, with estimated reserves of 175 billion barrels, second to Saudi Arabia 250 Billion (Alberta).
- ▶ Natural resources sector a crucial regional economic driver.

GROSS DOMESTIC PRODUCT

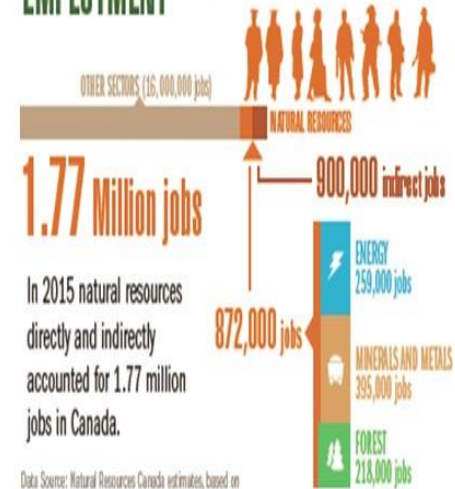
17% of GDP Canada's natural resource sectors accounted for 17% of nominal GDP in 2015.



Data Source: Natural Resources Canada estimates, based on Statistics Canada data (Natural Resources Satellite Account)



EMPLOYMENT



Data Source: Natural Resources Canada estimates, based on Statistics Canada data (Natural Resources Satellite Account)

REVENUES TO GOVERNMENT

\$27 Billion/year

Amount governments have derived annually on average from the natural resources sectors (2010-2014).



Data Source: Natural Resources Canada estimates based on Statistics Canada data, Canadian Association of Petroleum Producers, Mining Association of Canada, Canadian Council of Forest Ministers

EXPORTS

\$231 Billion

Canada's natural resource exports were valued at \$231 B in 2015. Main export destinations: **USA**, the **United Kingdom** and **China**.



Data Source: Natural Resources Canada estimates, based on Statistics Canada data (Natural Resources Satellite Account)

MAJOR PROJECTS



Data Source: Natural Resources Canada, provincial and territorial governments, specialized databases, various company websites

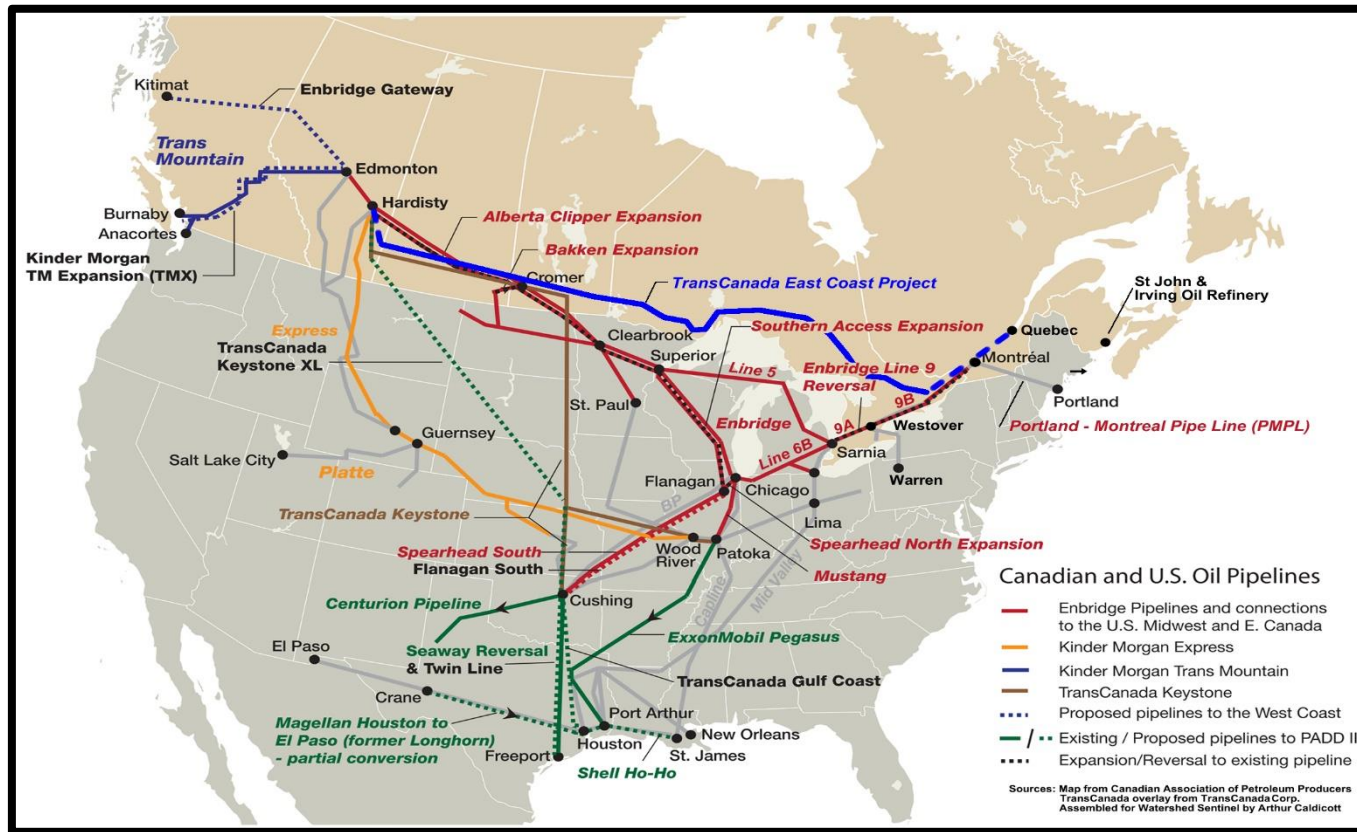
CANADIAN ASSETS ABROAD

In 2014, the total value of publicly traded Canadian extractive company assets was \$578 B.

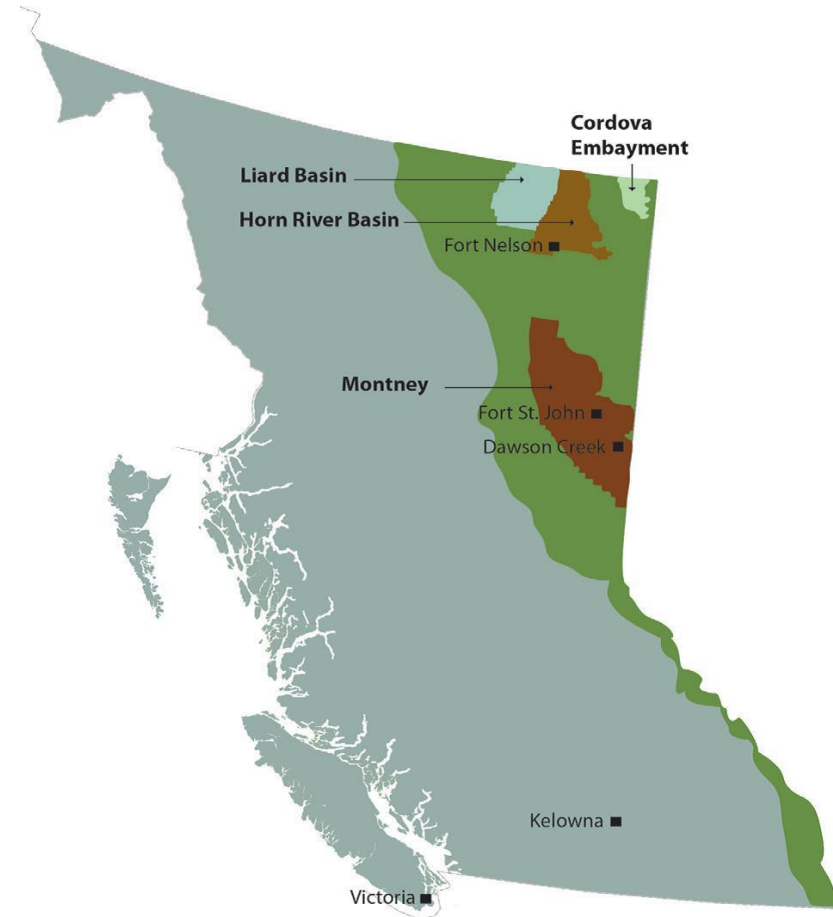
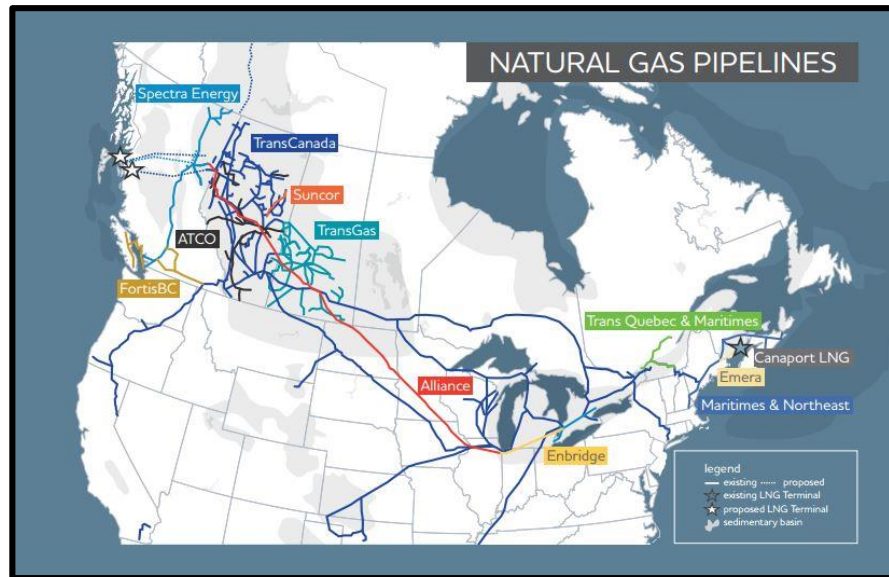


Data Source: Natural Resources Canada based on company filings.

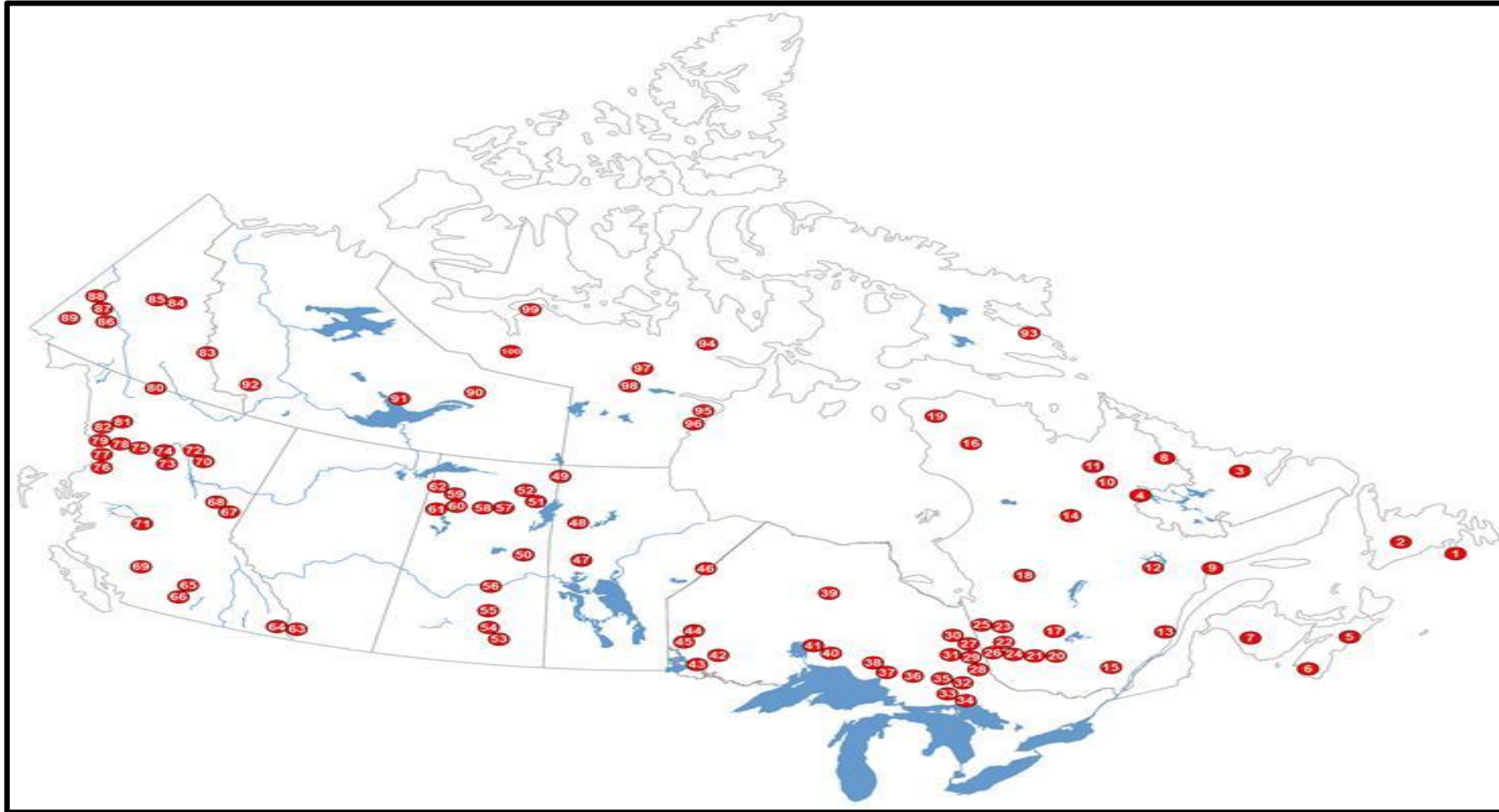
Proposed Oil Pipelines



Liquefied Natural Gas Strategy: British Columbia



Top Exploration Projects: Mining



The cumulative impacts from these activities are significant.

Managing for sustainability will be challenging.

What is the Role of a Business?

- ▶ Gone beyond Freidman's thesis: that a firm's only role is to maximize profits for shareholders.
 - ▶ Or have we? (Standing Rock in the US; Pacific Northwest LNG)
- ▶ Directors do have a fiduciary duty to shareholders.
- ▶ Stakeholder theory and corporate social responsibility (CSR) have re-configured this fiduciary duty (materiality argument). But how far?

Social Pillar of Sustainability

- ▶ The three pillars of sustainability are: economic, environmental and social.
- ▶ Social is complex and attracts least attention. It includes broad indicators such as jobs, income, health, education and wellbeing.
 - ▶ Some of these are difficult to measure, dynamic and messy: how do you measure happiness?
- ▶ There is a tendency to focus on jobs and income (market values, or those that can be quantified through a price), while non-market values like cultural and spiritual values tend to be ignored in natural resource decision making.

Stakeholder Theory

- ▶ Stakeholder theory: “Stakeholders are identified through the actual or potential harms and benefits that they experience or anticipate experiencing as a result of the firm's actions or inactions” (Donaldson and Preston, 1995: p. 85).
- ▶ Through engagement and consultation, firms could understand impacts and voluntarily internalize some (or all) of their externalities.
- ▶ But, these processes are typically voluntary, leading to uneven outcomes.

Stakeholders +

- ▶ Who are Indigenous Peoples? In Canada, these are First Nations, Inuit and Metis peoples.
- ▶ These collectives had sovereignty prior to contact.
- ▶ Inherent right to self-governance in Canada, through the pre-existence of these collectives to Crown sovereignty (evinced in the Royal Proclamation, 1763, issued by King George III).

Colonial Paradigm

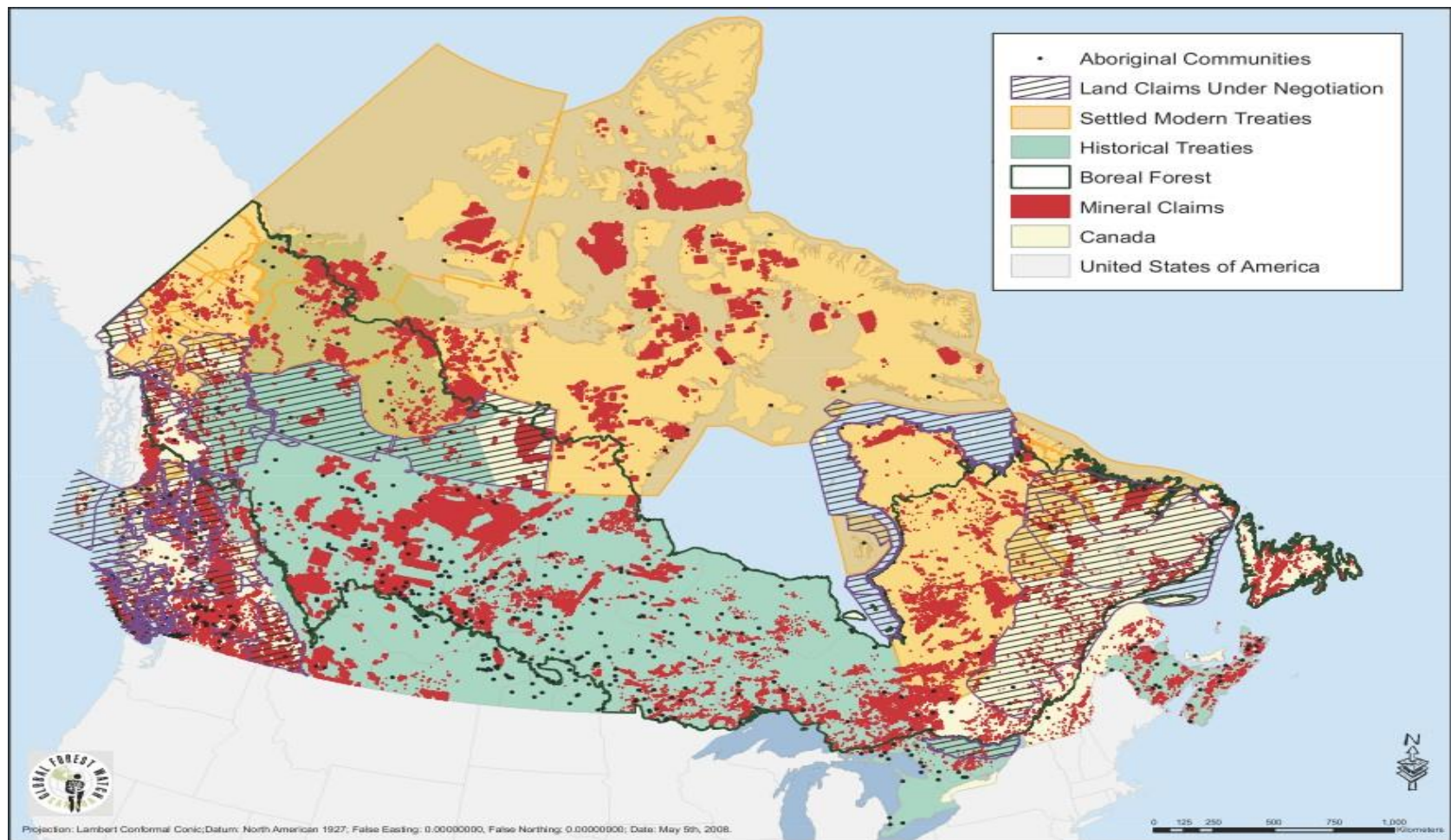
- ▶ Crown claimed sovereignty, transferring ownership of natural resources to the Crown.
- ▶ Extinguished Indigenous sovereignty through treaties and terra nullius doctrine (they became subjects of the Crown).
- ▶ Disease and dispossession also reduced these Indigenous societies.
- ▶ Much of Canada is covered by historic treaties, and there were around 70 recognised treaties concluded from the 18th Century to 1921 (Eyford, 2015).
- ▶ Aboriginal peoples became wards of the State, living on reserve and subject to poverty.

State and Indigenous Peoples: Modern Era

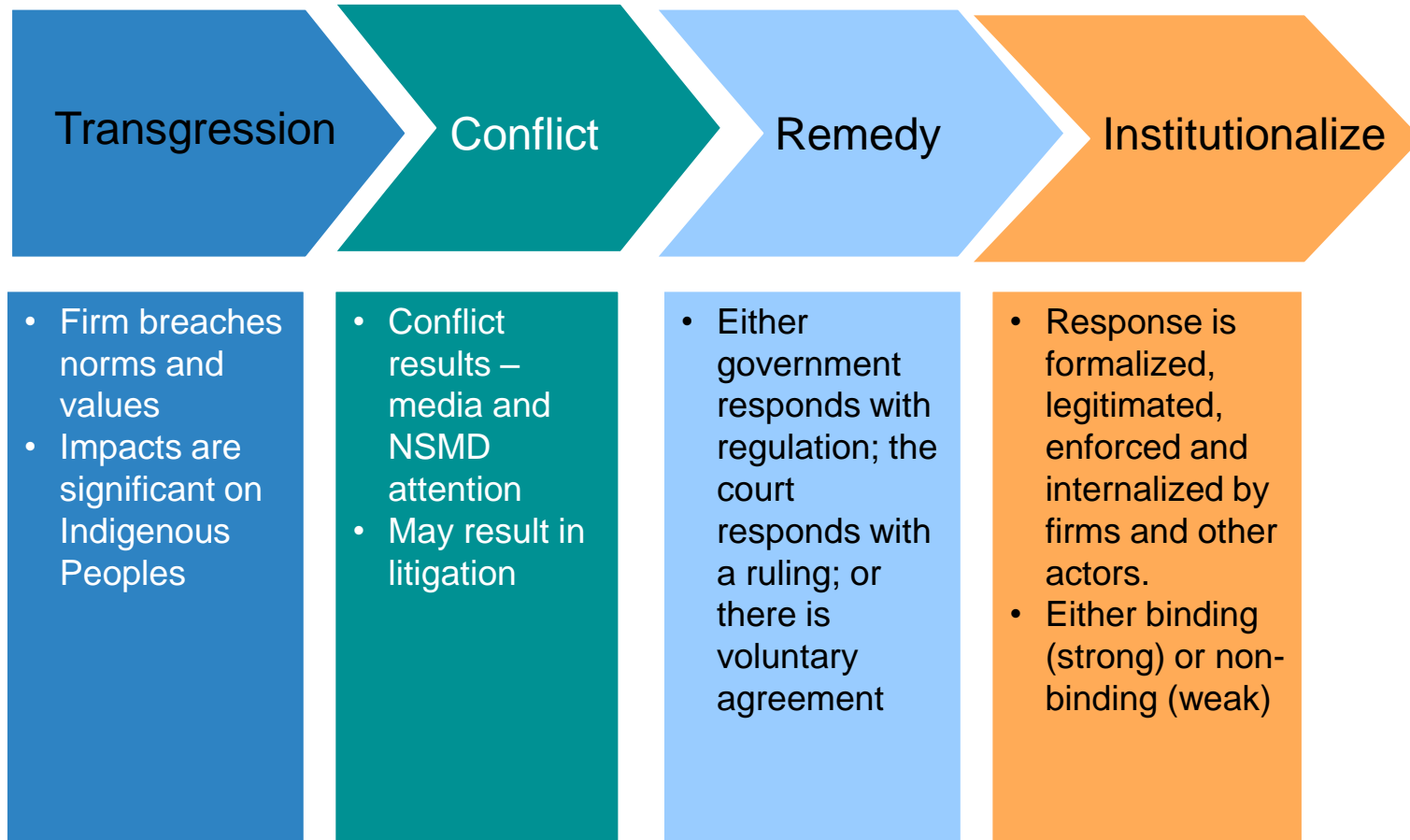
- ▶ In the *Calder* decision 1973, the Supreme Court of Canada recognised Aboriginal title had survived the Crown's assertion of sovereignty.
- ▶ This kick-started the modern treaty process, where 27 comprehensive land claims and four self-government agreements have been concluded.
 - ▶ Some 600,000 sq. kms of land has been transferred to Aboriginal owners, over \$3.2 billion in capital transfers, and the delegation of self-governance responsibilities.
- ▶ The *Constitution Act* 1982: recognised and protected Aboriginal and treaty rights.
- ▶ Still hundreds of treaties and land claims remain unresolved.

Indigenous Peoples Today

- ▶ Definition of Indigenous Peoples vary, but typically it includes those people who identify as Indigenous and are accepted as Indigenous by their community.
 - ▶ There were 1.84 million Indigenous Peoples in Canada in 2011, and 901,053 'Status Indians'.
 - ▶ 47.4% of those with 'Status' live off-reserve, 52.6% live on-reserve.
- ▶ There are around 617 Aboriginal Collectives across Canada, with 198 in British Columbia (where most of the land claims are unresolved).



Firm/State Transgression and Institutional Response



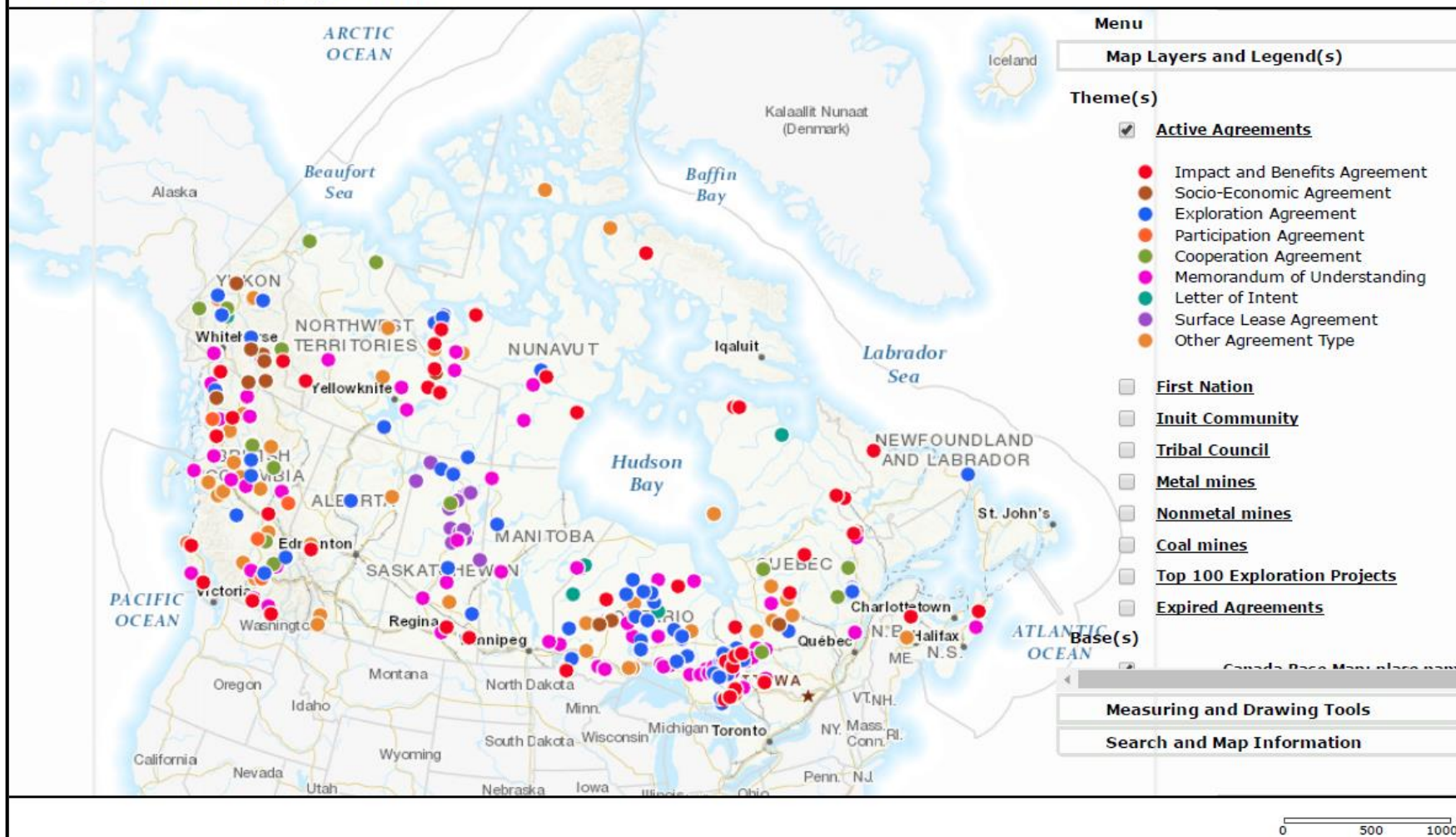
New Paradigm

- ▶ Social norms and values changing - regulatory failure.
- ▶ Transgressions followed with action by international law, non-state market driven (NSMD) governance mechanisms, and the courts: the Triadic Forces of Legitimation.
- ▶ Reflects network governance: private and public actors influence firm behaviour, not just the government.

Relationship Phases between Indigenous Peoples and the Natural Resources Sector



Indigenous Mining Agreements



Innovative Partnerships

- ▶ Demand for more active participation in projects, not simply payments, but guaranteed employment, contracting opportunities and equity positions.
- ▶ More community development opportunities that are entry level for community members, tied to stewardship values:
 - ▶ See WALFA project with ConocoPhillips
 - ▶ Builds Social Licence? Preliminary evidence suggests can enhance wellbeing and livelihood outcomes, which may help rebuild communities and level the playing field.
- ▶ Need to support water and food security in addition to livelihoods and wellbeing.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

- ▶ The UN has been advancing Indigenous self-determination since its creation (UN Charter, 1945, see preamble).
- ▶ The most recent statement is the UNDRIP, which provides 6 references to FPIC.
- ▶ Two key references:
 - ▶ Article 19, “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*”; and
 - ▶ Article 32 (2) “*States shall ... obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*”

What is FPIC?

- ▶ Free: no coercion or pressure.
- ▶ Prior: consult with Indigenous Peoples at the planning stage.
- ▶ Informed: build true understanding of the project and its impacts.
- ▶ Consent: permission. Respect the decision whether it is positive or negative.
- ▶ Jurisprudence offers that FPIC is only a requirement on major impact projects.
 - ▶ As a general rule, the UN Special Rapporteur on Indigenous Peoples recommends FPIC for any extractive activities in Indigenous territories, whether tenure is formally recognised or not.

A Veto Power?

- ▶ But, FPIC is viewed as an Indigenous **veto power** over development, hence the UNDRIP was slow in being ratified by countries with Indigenous minorities, like Australia, Canada, New Zealand and the US.
- ▶ But Justin Trudeau, Canada's Prime Minister, has publicly stated he would implement the UNDRIP in its entirety.
- ▶ Some companies are also voluntarily adopting FPIC.

Corporate Leaders Advancing FPIC

Energy (context based)	Mining	Forestry
Shell	BHP Billiton (Greenfield)	Resolute (FSC)
ExxonMobil	Teck (Greenfield)	Tembec (FSC)
Total	Rio Tinto (Free, Prior and Informed Support)	Asia Pulp and Paper (commitment)
Repsol		
Talisman (commitment)		

Reporting

- ▶ GRI Framework (firm level).
- ▶ The Extractive Industries Transparency Initiative (national level).
- ▶ Incentives to downplay grievances.

Tsilhqot'in Nation v. British Columbia, 2014

- ▶ Landmark decision by the Supreme Court of Canada in June 2014.
- ▶ First declaration of Aboriginal title by the courts in Canada: a constitutionally protected right to *exclusive* occupation and *use* of land for those groups that can prove title.
- ▶ Importantly: before approving any project that is likely to infringe on title-lands, the Crown must first seek the consent of title-holders (whether title is confirmed or pending).
 - ▶ Not absolute, the Crown can justify an infringement if rejected.

Consent: A New Paradigm?

- ▶ Consent has been legitimated as a practice in Canada: though no guidance on this framework.
 - ▶ In countries where Indigenous majorities, FPIC is codified as 'hard law' (i.e. Bolivia and Ecuador).
- ▶ FPIC sets expectations among Indigenous Peoples, and endorses their jurisdiction.
- ▶ FPIC is being voluntarily adopted by firms, in Canada and in overseas jurisdictions where these firms have operations.
- ▶ But the integrity of these processes threatens to undermine the goodwill generated through FPIC.

Outcomes from FPIC

- ▶ *Empirical evidence shows that ‘how’ natural resource decisions are made is more important than ‘what’ is decided for stakeholder acceptance.*
 - ▶ In this context, face-to-face communication is the most powerful factor in producing cooperation among parties (in both one-shot and repeated games) (Sally, 1995).
- ▶ Structured face-to-face communication allows stakeholders to share their interests, which can produce mutual understandings, and social and political learnings. These processes can break down suspicion and mistrust.
- ▶ A socially optimal outcome can only be achieved when stakeholders cooperate in forming a mutually agreeable decision (Ostrom, 1998).
 - ▶ The alternative is conflict, leading to project delays, litigation and uncertainty - imposing costs on society and firms.