

EXPLORING LEGAL AND POLICY CHALLENGES OF INDIGENOUS PROTECTED AND
CONSERVED AREAS (IPCAs) IMPLEMENTATION IN CANADA

By

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Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the
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Abstract

In response to a call for a global paradigm shift in conservation and to meet its national and international biodiversity goals, the Indigenous Circle of Experts (ICE), authorized by the Government of Canada, articulated the concept of Indigenous Protected and Conserved Areas (IPCAs). IPCAs present a promising new approach for Indigenous peoples and Canadian governments to move in the direction of reconciliation (Innes et al., 2021; ICE, 2018). Many Indigenous communities perceive the term IPCAs as a colonial instrument that reinforces Crown jurisdiction due to its adoption by the Crown (federal, provincial and territorial) governments. Today, IPCAs are often established under Indigenous law, but there remains no recognition in Crown law, leaving them vulnerable (Lloyd-Smith, 2017). Having no legal mechanism for IPCAs establishment has made it easier for provincial governments to resist their implementation (McIntosh, 2022). This research seeks to understand how Convention on Biological Diversity (CBD) and the United Nation Declaration on the Right of Indigenous Peoples (UNDRIP) change the landscape of IPCAs in Canada. The study also explores Indigenous perspective on the implementation of UNDRIP and its contribution to enhancing Indigenous leadership in conservation endeavors. Ultimately, this thesis investigates the policy and legal hurdles within Canadian IPCAs to facilitate the evolution of IPCA legislation and establish the most desirable management arrangements of IPCAs that reflect Indigenous perspectives. Employing a qualitative research methodology and supported by the Two-Eyed Seeing approach, interviews and focus group were carried out, involving participants in discussions regarding the research objectives. Results provide significant insights into the concerns raised by Indigenous participants concerning the implementation of UNDRIP in Canada, encompassing issues related to capacity, understanding, and a perceived lack of political commitment. The findings also highlight the legal and political challenges faced by Indigenous peoples in implementing IPCA approach in their territories, including a lack of recognition for Indigenous sovereignty, the presence of oppressive colonial policies and legislation governing conservation, and a lack of respect for Indigenous legal frameworks. To address these issues, it is suggested to prioritize the establishment of trustworthy relationships, the exchange of knowledge, and the acknowledgment of Indigenous sovereignty and jurisdiction.

List of Abbreviation Used

IPCA- Indigenous Protected and Conserved Area

CBD- Convention on Biological Diversity

GBF- Global Biodiversity Framework

UNDRIP- United Nation Declaration on the Right of Indigenous Peoples

CRP- Conservation through Reconciliation Partnership

DSF- David Suzuki Foundation

TRC- Truth and Reconciliation Commission

ICE – Indigenous Circle of Experts

IUCN – International Union for the Conservation of Nature

OECMs – Other Effective Conservation Measures

PA – Protected Area

DRIPA- Declaration on the Rights of Indigenous Peoples Act

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Chapter 1: Introduction

1.1 Study purpose and objectives

The consequences of and challenges presented to the earth's socio-ecological systems by climate change and biodiversity loss have highlighted the need to establish Protected Areas (PA) within Canada to preserve ecological integrity and enforce sustainable resource usage (Brechin et al., 2010). However, the establishment and management of PAs across Canada are rooted in colonialism, which frequently leads to the alienation of Indigenous Peoples from their ancestral lands and the denial of their inherent and treaty rights (Goyes & South, 2019). In addition, the Crown (federal, provincial and territorial) legislation and authority have been used coercively to drive Indigenous Peoples off their lands and undermine their traditional governance and stewardship roles (Sandlos, 2007; Innes et al., 2021).

The government of Canada in response to a call for a global paradigm shift in conservation, established the Indigenous Circle of Experts (ICE) articulating the concept of Indigenous Protected and Conserved Areas (IPCAs) as an opportunity for the Crown and Indigenous governments to collaborate in ethical spaces to develop and manage IPCAs based on Indigenous and Crown legal and knowledge systems (ICE, 2018). The Indigenous Circle of Experts comprised Indigenous experts from across Canada and members from federal, provincial and territorial jurisdictions who collectively work to make progress on promoting the perspectives of Indigenous Peoples across Canada regarding land and water conservation and protection (ICE, 2018).

While the establishment and management of Protected Areas across Canada are deeply rooted in colonialism, which frequently leads to the alienation of Indigenous Peoples from their

ancestral lands and the denial of their inherent and treaty rights (Goyes& South, 2019), the premise of IPCA have changed the relationship from one of collaborating or participating under prior structures to one of mutual recognition and a shared commitment to governance. Although IPCAs already exist and are recognized under Indigenous laws, they have yet to be recognized under colonial state-based legal systems in Canada or the provinces (Mousavi, 2022). IPCAs represent a conservation approach led by Indigenous communities, distinct from conventional park and PA models. However, they frequently encounter insufficient acknowledgment from existing legal and policy frameworks, resulting in challenges for their implementation (Mullen, 2022). In Canada, tensions surrounding IPCAs create opportunities for legal innovation. While future federal legislation might authorize IPCAs, Indigenous nations currently need to devise inventive approaches within existing legal frameworks to leverage Crown protection, given the absence of such legislation in most jurisdictions (Mullen, 2022).

This collaborative study involved various entities, such as the David Suzuki Foundation, the Domestic Law and Policy stream, one of the seven streams of the Conservation through Reconciliation Partnership (CRP), Grand Council Treaty 3, Ecojustice, World Wildlife Fund Canada, and Ontario Nature, establishing the 'Reconciling Jurisdiction' working group. This initiative is designed to tackle legal obstacles related to IPCAs, comprehend Indigenous viewpoints on jurisdiction, and offer recommendations for legal adjustments to improve the clarity and co-management of lands and waters. Conducted within the initiative's framework, this Master's thesis aimed to address the legal and policy challenges hindering IPCA implementation across Canada. Three main objectives guided this research project:

1: Conduct a comprehensive policy review to assess how the global policies introduced by CBD and UNDRIP have influenced the progressive landscape of Indigenous Protected and Conserved Areas within Canada;

2: Investigate Indigenous perspectives on the implementation of UNDRIP within Canada and its contribution to enhancing Indigenous leadership in conservation endeavors; and,

3: Explore the legal and policy challenges to the development of IPCAs in Canada that are reflective of Indigenous rights and self-determination.

Furthermore, no national legislation is in place to acknowledge voluntary conservation efforts by Indigenous Peoples or to safeguard areas that hold cultural, spiritual, and ecological significance to Indigenous communities (ICE, 2018; Mullen, 2021). This Master's thesis aims to investigate the legal and policy challenges encountered by Indigenous nations across Canada when seeking to assert their rights over their traditional territories through IPCA establishment. It is worth noting that specific Indigenous communities perceive the term IPCAs as a colonial instrument that reinforces Crown jurisdiction. This skepticism arises because the narrative surrounding IPCAs is created by the Crown government, leading many Indigenous peoples to view it as another tool of colonization, dressed in modern guise, aimed at asserting Crown authority over Indigenous lands. In addition, the concept of conservation frequently originates from western ideologies, potentially leading to biases among participants in this research. Using the Two-eyed seeing approach, I endeavored to explore the potentials and challenges of IPCA implementation in a neutral and unbiased manner. This thesis is dedicated to exploring what

necessary changes required to happen to transform IPCAs to genuinely support Indigenous leadership in conservation, rather than serving as another instrument for further colonization.

1.2 Thesis structure

The arrangement of this thesis consists of six chapters. In this initial chapter, I provide an overview and explain objectives for the research. The second chapter of the thesis details the evolutionary landscape of Protected Areas in Canada and examines how international frameworks support the integration of Indigenous-led conservation approaches within these areas. In addition, I discussed the role of the study's partners in conducting this research. The third chapter of this thesis delineates the theoretical framework that directs the research, along with the conceptual approaches employed. This chapter also provided a comprehensive account of the data collection methods, including a critical document review, focus group discussions, and semi-structured interviews. Chapters 4 and 5 present and discuss the results and have been structured like journal articles (to be submitted to peer-reviewed journals following the defense of the thesis). As a result, each of these chapters adhered to the formatting requirements of targeted journals, alignment with the respective journal's guidelines.

Chapter 4 of this project is a comprehensive policy review through existing literature to understand how CBD and UNDRIP influence the landscape of IPCAs in Canada. Additionally, this chapter offered a synthesis of Indigenous participants viewpoints concerning initiatives aimed at fostering Indigenous leadership in conservation endeavours, mainly focusing on implementing UNDRIP principles.

Chapter 5 presents participant insights regarding the legal and political challenges their communities have encountered to implement IPCAs. Furthermore, the study provides recommendation regarding potential approach for addressing the legal and policy challenges associated with implementing IPCAs. The ultimate objective of these recommendations is to pave the way for the successful implementation and sustainability of IPCAs within Indigenous territories.

Chapter 6 provides an overview of the thesis and endeavors to put the outcomes of the two primary chapters, central to this research, into context. It highlights the main discoveries and suggestions while connecting these findings with relevant existing literature. Additionally, the chapter explores the boundary object and dissemination of the project, touching upon future avenues for further exploration.

1.3 Study Focus

This research project primarily focuses on Canada and its IPCAs. Hence, the definition of IPCA that is employed in this thesis is aligned with the definition provided by the ICE, which states that "Lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems" (ICE, 2018, p,5). The essential components of this definition involve the "primary role of Indigenous governments" and the incorporation of "Indigenous laws," which are directly relevant to the purposes of this project. The primary role of Indigenous governments in IPCAs means that Indigenous governments bear the responsibility of establishing conservation guidelines for these areas. Therefore, they must be granted complete autonomy to design their IPCAs to accommodate their unique and diverse requirements (ICE, 2018). Indigenous governments play

a central role in defining the goals, management strategies, and governance frameworks for IPCAs, asserting their right to self-determination. Various partnerships, including Crown governments, environmental NGOs, philanthropic organizations, or others, may collaborate to assist in this self-determination process (ICE, 2018). IPCAs fundamentally represent conservation initiatives led by Indigenous communities, reflecting the specific aims and requirements of their respective nations or governments and arising through open and transparent negotiations. Nevertheless, there are numerous criticisms regarding IPCA narratives in Canada, as some Indigenous communities argued that IPCAs have been adopted by the Crown to assert and strengthen its jurisdiction, potentially limiting the opportunities for Indigenous governments and knowledge to play a leading and primary role in IPCAs. The later chapter of this thesis will address the existing criticisms and the benefits of establishing IPCAs.

The phrase "Indigenous Laws" in the description of an IPCA is also crucial to this project, as it underscores the significance of integrating Indigenous legal traditions in establishing IPCAs (Innes, 2021). Despite Indigenous legal traditions having a deep-rooted history as one of the earliest legal practices in North America, the prevalence of western legal theory has limited the scope of legal frameworks for PAs (Blaise & CELA, 2022). Due to not acknowledging the legitimacy of Indigenous laws, Indigenous communities who have established IPCAs based on their legal traditions are often not acknowledged by the more dominant Crown-legal structure (Blaise & CELA, 2022). This aspect will be significant when examining the legal obstacles to establishing IPCAs in Canada through this thesis.

Chapter 2-Background

Comprehending the legal challenges and possibilities related to IPCAs in Canada necessitates understanding the historical context of Protected Areas development and their legal framework in the country, as well as their effects on the Indigenous communities residing in these territories. The global conservation community progressively acknowledges conservation policy's and practice's detrimental effects on Indigenous Peoples worldwide. It is now widely recognized that conservation efforts must actively incorporate Indigenous governance, knowledge, and worldviews (Moola & Roth, 2019). Governments across the globe, sometimes in collaboration with conservation organizations, have forcefully displaced or relocated Indigenous Peoples from their ancestral lands to establish Parks and protected areas¹. These efforts have also imposed restrictions on the utilization of Indigenous territories, including instances in Canada (Sandlos, 2008; Stevens, 2014). Consequently, these actions have adversely impacted both biodiversity and the communities that rely directly on their territories for their material and cultural sustenance (West et al., 2006). Various changes in global governance landscapes have shaped strategies for managing PAs. However, two significant events stand out as particularly relevant to enhancing leadership and recognition of the rights, responsibilities, and impacts of PAs on Indigenous peoples in Canada. These events include the adoption of the UNDRIP and the

¹ In the final years of the nineteenth century the Ontario government embarked on a policy of wildlife conservation. In 1892 Ontario's Legislature passed An Act to amend the Act for the Protection of Game and Fur-bearing animals. This new Act heralded the beginning of decades of stringent enforcement against First Nations in Ontario regardless of any treaty hunting rights they possessed. In the 1920s, Ontario's Department of Game prepared to embark on a new policy: the creation of game preserves. These game preserves set aside thousands of square kilometers of land within which all hunting and trapping was banned to facilitate the propagation of desired animal species (i.e., game animals or fur-bearing animals). Created in 1925, the Chapleau Game Preserve was one such preserve. What this preserve also did, however, was engulf the New Brunswick House (NBH) Reserve of Treaty Nine, the traditional territories of its band members, and also part of the traditional harvesting territories of the Michipicoten Ojibwa of Robinson-Superior Treaty (Calverley, 2009, p.83).

principles outlined in the CBD, both of which create an environment conducive to the advancement of Indigenous-led conservation approaches, such as IPCAs, within Canada. In this chapter, I delved into these frameworks and their impacts on the evolution of IPCAs in Canada, challenging the mainstream narrative surrounding PAs.

2.1 Protected Areas narrative in Canada

In Canada, similar to other regions globally, the primary approach of state governments for conserving biodiversity in territories claimed by Crown governments and Indigenous Nations has been to establish terrestrial and marine Protected Areas (Townsend, 2022). However, a majority of these PAs were established without the involvement of Indigenous governments and without acknowledging Indigenous jurisdiction and legal systems. Crown legislation and authority have been used coercively to drive Indigenous peoples off their lands and undermine their traditional governance and stewardship roles (Sandlos, 2007; Innes et al., 2021). Indigenous peoples in Canada have been relocated, disempowered, and suffered significant losses due to establishing Protected Areas in the past (Agrawal & Redford, 2009; Brugnach & Ingram, 2012; ICE, 2018; IUCN, 2003). The development of PAs throughout Canadian history has been substantially linked to the eviction and displacement of Indigenous peoples from their ancestral lands, uprooting the very fabric of these communities whose identities, histories, and cultures are embedded in their landscapes (Moola & Roth, 2019; Papadopoulos, 2021).

Since last centuries, PAs were most frequently created through state- and provincial-led programs and initiatives, as well as some privately funded trusts or reserves, without taking into account the effects that the establishment of these PAs had on Indigenous peoples, whose rights and sacred relationships with the land were frequently ignored (Agrawal & Redford, 2009;

Berkes, 2010). The philosophy rooted in modernist ideologies, which shape the mainstream (Eurocentric) conservation practices in Turtle Island/Canada, reinforces the belief in human superiority over other species and the necessity for human domination over nature (Loo, 2001). Initially, PAs were established as spaces for the elite settlers in Canada to participate in tourism and recreational activities like sport hunting, which helped finance the construction of railways across the country (Kalamadeen & Gillson, 2007; Dearden,1991). These areas were initially viewed as separate from the wild nature (Goyes & South, 2019). By designating these "Protected Areas", the colonial government employed them as a tool to displace and relocate Indigenous communities onto reservations, creating more economic opportunities for tourism along the railway system. The landscapes of these areas were carefully managed for aesthetic appeal to attract the privileged settlers (Goyes & South, 2019). This initial motivation to "protect" areas for tourism and economic benefits enabled colonial governments to rename, reinterpret, and reclassify Indigenous territories, effectively erasing their histories and displacing communities that had long inhabited these lands and waters (Dearden,1991). It also aimed to attract settlers seeking a vacation in "nature" with narratives aligned with European ideals (Papadopoulos, 2021). Additionally, these PAs, which expanded in the 1890s, often served as tools of colonial control by denying Indigenous peoples access to their ancestral lands and forcibly relocating them (Sandlos, 2008).

As time passed, the growth of tourism destinations and the rise of hunting practices among the privileged settlers resulted in the degradation of areas once considered vast wilderness. It was based on the notion that humans are distinct from the natural world and that nature must be safeguarded from the negative impacts of modern society. This ideology

stemmed from the belief that preserving these natural spaces was essential to counteract the detrimental effects of human activities on the environment (Corson et al., 2014; Dahlberg et al., 2010). This degradation put certain species, particularly those targeted for hunting, at risk (Kalamadeen & Gillson, 2007). Consequently, a conservation ideology developed around protected areas, focusing on preserving the diminishing wilderness threatened by development in the newly formed settler states of North America (Sandlos, 2008; Papadopoulos, 2021). During this period, Canada's PAs followed two distinct narratives. One narrative centred around preserving landscapes affected by the tourism and resource extraction industries. The aim was to safeguard these areas from further degradation. The other narrative aimed to regulate the use of these areas to optimize their usefulness for human purposes, adopting a conservation-focused perspective of "resource management" (Callicott & Mumford, 1997).

The ideology of preservation-oriented protection in PAs revolved around preserving landscapes and wilderness. As a result, the Crown governments have implemented measures such as bans, criminalization, and regulations that restrict Indigenous hunting and other cultural and subsistence practices in Canadian protected areas, ostensibly under the guise of ensuring ecosystem protection (Townsend, 2022). The second narrative centred around the concept of "wise use." This conservation perspective emphasized the management of resources and recognized the need to regulate human activities in protected areas to ensure long-term enjoyment. It criticized the idea of completely excluding resource use by people as wasteful (Kalamadeen & Gillson, 2007). However, this viewpoint often led to privileged access to these areas, such as hunting and resource extraction licenses, while restricting Indigenous peoples from

practicing their customary use of the land and water and accessing their territories (Goyes & South, 2019; Papadopoulos, 2021).

Both preservation-oriented and wise-use protection ideologies played a role in promoting the separation of society from the environment, often disregarding the deep connection Indigenous peoples have had with the land. These ideologies furthered the colonial agenda by advancing the reserve system and enforcing the residential school system, thereby imposing their worldview on Indigenous communities (Goyes & South, 2019; Kalamadeen & Gillson, 2007). However, extensive global research has demonstrated that PAs do not consistently accomplish the intended objectives of biodiversity preservation or enhancement (Armitage, 2002; Brockington, 2004; Townsend, 2022). In addition, the emphasis of the conservation community on area-based conservation has led to a proliferation of parks that lack tangible evidence of conservation impact, raising concerns about the meaningful inclusion of Indigenous Peoples in the future of PAs (Zurba et al., 2019 p. 3).

To date, co-management of the Crown PAs in Canada (e.g., federal, provincial, and territorial parks) has been the primary avenue for Indigenous Nations to participate in state-led conservation efforts within their territories (Townsend, 2022). Well-executed co-management arrangements allow for respectful engagement of diverse worldviews, knowledge systems, and cultural practices. However, the level of Indigenous involvement varies, and the integration of Indigenous knowledge with conservation science often faces challenges (Nadasdy, 2005; Stevenson, 2006; Watson, 2013). Moreover, specific co-management models can perpetuate unequal power dynamics between the state and Indigenous communities, undermining the goal of equitable participation (Nadasdy, 2005; Sandlos, 2014; Youdelis, 2021) and making these

arrangements "just a step along the way to truly decolonized relationships between peoples" (Latta, 2018, p. 14). Therefore, this highlights the need for novel approaches to foster better relationship-building with Indigenous communities. IPCAs have the potential to address and overcome the challenges associated with previous protection ideologies. IPCA's premise is meant to prioritize Indigenous legal traditions, knowledge systems, and governance practices. These initiatives aim to promote a more inclusive and holistic approach to protecting and managing natural areas by centering Indigenous perspectives and approaches to conservation.

Furthermore, it is essential to note that the establishment and management of PAs are regulated by specific legislation in each province and territory. These legal frameworks encompass various PAs, such as provincial and territorial parks, conservation areas, ecological reserves, natural heritage sites, and wilderness areas. The precise definition and scope of PAs are determined by the legislation that gives rise to their establishment (Wilson et al., 2012).

2.2 Indigenous Empowerment in Global Environmental Governance

Over the past years, there has been a growing global demand to acknowledge and rectify the injustices caused to Indigenous peoples worldwide as a result of exclusionary and top-down conservation practices, primarily influenced by western perspectives. This call for action seeks to address the historical marginalization and negative impacts experienced by Indigenous communities due to the establishment of Protected Areas and promote more inclusive and culturally sensitive approaches to conservation (Davies et al., 2013; Dudley et al., 2018; Shultis & Heffner, 2016; Stevens, 2014; Kothari, Brown & Camill, 2013). In addition, some considerable worldwide agreements and commitments affirm Indigenous peoples' rights to their ancestral lands (e.g., the UNDRIP, the International Union for the Conservation of Nature [IUCN] Durban

Accord² and the CBD). These agreements, and commitments underscore the imperative of recognizing and taking concrete actions within nations to acknowledge Indigenous Peoples' inherent rights and responsibilities towards their lands. They also emphasize the necessity of initiating the process of decolonizing land and resource management. This entails embracing more inclusive conservation approaches that incorporate and respect diverse knowledge systems, thereby promoting a more equitable and respectful relationship with the land (Brugnach & Ingram, 2012; Kothari et al., 2013; Shultis & Heffner, 2016; Rathwell et al., 2015). Among the multitude of global endeavours focused on Indigenous-led conservation approaches, these particular initiatives, the UNDRIP and the establishment of the CBD's Aichi Biodiversity Targets stand out for their profound influence on reforming Canada's approach to conservation.

2.2.1 Convention on Biological Diversity (CBD): Indigenous Empowerment in Conservation

Approach

Including Indigenous people's rights and titles in the governance of Protected and Conserved areas in state-centred conservation initiatives was a response to the global call to address and eventually slow the flow of international biodiversity loss. One of the significant initiatives at the global level that has impacted the conservation of Protected Areas in Canada is the development of the Aichi Biodiversity Targets. These targets were created by the countries participating in the Convention on Biological Diversity (CBD) in 2010 (Mullen, 2022). The participants in the CBD created a "Strategic Plan for Biodiversity" (2011–2020), which mandated

² The IUCN stands as the foremost conservation organization globally, committed to enhancing understanding and fostering equitable methods for land conservation and resource management. IUCN adopted the Durban Accord, which established the groundwork for a new conservation paradigm that highlights the need to move away from traditional western approaches to managing protected areas in support of governance structures that are inclusive of many actors, including Indigenous Peoples (Zurba et al., 2019).

the countries expand the number of PAs to combat biodiversity loss by 2020 (Aichi Target 11); they also committed to respecting the rights, participatory role, and the priorities of Indigenous peoples through conservation activities (Target 18; Target 14, CBD,2010). As part of its national action plan to meet its international commitment to the Strategic Plan for Biodiversity, Canada has adopted a national goal, 'The 2020 Biodiversity Goals and Targets for Canada' (Environment and Climate Change Canada,2018). Canada Target 1 was one of the 2020 Canadian biodiversity goals, which states that: "By 2020, at least 17% of terrestrial areas and inland water, and 10% of coastal and marine areas, are conserved through networks of protected areas and other effective area-based conservation measures". The same year, the Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium was established to advance Indigenous rights in PA management through Indigenous-led conservation efforts (Zurba et al., 2019). The Pathway to Canada Target 1 has transitioned into the Pathway to Canada Target 1 Challenge as a component of Canada's efforts to achieve Target 1 (Canada Target 1 challenge,2021).

2.2.2 The United Nations Declaration on the Rights of Indigenous Peoples

United Nation Declaration on the Right of Indigenous Peoples (UNDRIP) was adopted in September 2007 and this monumental document not only effectively supported the recognition of the inherent rights that Indigenous peoples have to their traditional territories, but it also has mandated nations around the world to put policies, programs, and protocols in place to facilitate the implementation of the UNDRIP principles (UN, Resolution 61/295,2007). Article 3 embraces "the right to self-determination", with the principal objective of this principle being to create a balance between the rights of Indigenous peoples and the interests of state governments. Article 19 includes "Free, Prior and Informed Consent", which strengthens Indigenous peoples' rights to

participate actively in managing affairs affecting their daily lives (UN General Assembly,2007; Schroeder &González P,2019).

The ultimate achievement of UNDRIP has been balancing the power of nation-states by acknowledging the rights of Indigenous peoples. This has contributed to fostering a more profound comprehension of Indigenous governance and addressing the persistent global Indigenous demand to recognize their rights to their ancestral lands (David-Chavez & Gavin, 2018; SOWIP,2008). In addition, the UNDRIP successfully conceptualized participation in international conservation forums centering on recognizing Indigenous peoples' rights (Colchester,2004). Overall, UNDRIP for PAs in Canada implies that the Canadian government has positioned itself in a spotlight to reform Protected Areas management in a manner that allows Indigenous leadership to participate in the administration and management of their traditional lands (ICE, 2018; Zurba et al.,2019). These agreements and commitments highlight the importance of acknowledging Indigenous peoples' inherent rights and responsibilities to the land and beginning to decolonize land and resource management through more inclusive conservation approaches that integrate and respect various types of knowledge (Brugnach & Ingram, 2012; Kothari et al., 2013; Shultis & Heffner, 2016; Rathwell et al., 2015). Chapter 4 of the study extensively investigated how the narrative concerning IPCAs in Canada is significantly influenced by the UNDRIP and CBD.

2.3 IPCAs: Pioneering Indigenous-led Conservation and Reconciliation in Canada

Canada has outlined the premise of IPCAs to harmonize its national and international conservation obligations, aiming to respond to the requirement for a fundamental change in conservation practices. IPCA's articulation facilitated the active participation of Indigenous

communities in conservation efforts and assisted Canada in promoting the reconciliation process. In addition to international guiding principles like UNDRIP and CBD commitments that facilitated IPCA development in Canada, domestic guiding principles further aid in implementing the IPCA approach within the country. The Indigenous Circle of Experts (ICE), Pathway to Canada Target 1, and the TRC played pivotal roles in driving forward a progressive evolution in conservation within Canada. Their principles and efforts in facilitating the development of IPCAs resulted in a more inclusive conservation approach, actively engaging Indigenous peoples in the process and promoting reconciliation.

The Pathway to Target 1, which was Canada's version of UNCBD's Aichi Target 11, has developed into the Pathway to Canada Target 1 Challenge as an integral component of Canada's effort to reach Target 1 under the Canada Nature Fund³ (Canada Target 1 challenge, 2021). Canada's Target 1 could be achieved through an effective collaboration amongst different parties (communities, government partners, Indigenous peoples, and others). To this end, the government authorized the ICE to compile a comprehensive report on how the country can move toward reconciliation by implementing conservation practices (Parks Canada, 2018a; Zurba et al., 2019). The ICE comprised Indigenous experts from across Canada and members from federal, provincial and territorial jurisdictions who collectively work to make progress on promoting the perspectives of Indigenous Peoples across Canada regarding land and water conservation and protection (ICE,2018). In March 2018, ICE symbolically presented its significant report to the federal government, titled "We Rise Together: Achieving Pathway to Canada Target 1 through

³ In 2018, the Canadian government launched the Canada Nature Fund with the goal of supporting the conservation of Canada's biodiversity through the creation of protected and conserved areas, along with implementing initiatives to assist in the recovery of endangered species.

the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation" which Zurba et al. (2019) refer to as a "monumental shift in Canada's guiding frameworks for protected areas" (p. 2). The ICE put forth a total of 28 recommendations, outlining strategies for Canada to fulfil its international and domestic conservation commitments by 2020 (former versions of the CBD targets that were not fully achieved in terrestrial conservation). ICE's primary and overarching recommendation was for the Crown governments to support Indigenous Nations in establishing IPCAs. The ICE has selected the term "IPCA" to encompass a range of initiatives aimed at land protection within the Canadian context. This term encompasses various initiatives, such as Tribal Parks, Indigenous Cultural Landscapes, Indigenous Protected Areas, and Indigenous Conserved Areas (ICE,2018). ICE defined IPCAs as: "Lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems. Culture and language are the heart and soul of an IPCA" (ICE, 2018, p,5).

From a broader perspective, the ICE (2018) defines a fundamental attribute of IPCAs as "an opportunity for true reconciliation to take place between Indigenous and settler societies, and between broader Canadian society and the land and waters, including relationships in pre-existing parks and protected areas (p. 6). For reconciliation to occur through IPCAs' articulation, adhering to the guiding principles established by the Truth and Reconciliation Commission (TRC) is essential. As part of the commitment to upholding UNDRIP principles and facilitating reconciliation, in 2008, the government authorized the establishment of the TRC to address the enduring consequences of the residential school system on Indigenous Peoples in Turtle Island/Canada. The Commission produced a set of 94 Calls to Action, emphasizing the importance

of establishing robust nation-to-nation relationships that fully acknowledge the implications of treaties and the rights of Indigenous nations throughout Canada (TRC, 2015; Zurba et al., 2019). The Canadian government acknowledged and embraced the TRC's report and its 94 Calls to Action. Of particular significance is that the government endorsed the TRC's proposal to adopt UNDRIP as Canada's framework for reconciliation. This entails ensuring that Canada's political and legal systems, educational and religious institutions, corporate sector, and civil society operate in alignment with the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (TRC, 2015; Townsend, 2022).

One of the implications of TRC's initiative is the increased recognition of Indigenous knowledge, perspectives, and rights in establishing and managing protected areas. The TRC's recommendations emphasized the importance of meaningful engagement and partnership with Indigenous communities, ensuring their involvement in decision-making processes related to land and resource management (Townsend, 2022). This recognition has led to a shift in policies and practices, with efforts to incorporate Indigenous traditional knowledge and stewardship practices into the design and management of Protected Areas (Mansuy et al., 2023). The TRC's recommendations have also contributed to the broader recognition of Indigenous rights and the implementation of the UNDRIP (Townsend, 2022). This includes recognizing and respecting Indigenous land tenure systems, traditional land use practices, and Indigenous communities' free, prior and informed consent in decisions affecting their lands and resources. Overall, the TRC's work has played a crucial role in promoting Indigenous involvement in PAs by highlighting the importance of reconciliation, recognizing Indigenous rights, and fostering collaborative approaches to conservation and land management (Artelle et al., 2019; Zurba et al., 2019).

The international commitments such as UNDRIP and CBD, coupled with domestic recommendations from initiatives like ICE and TRC, collectively contribute to the evolution of the IPCA concept as an Indigenous-led approach in Canada. These combined efforts span international and domestic arenas, fostering the development of IPCAs as Indigenous-led initiatives within the country. IPCAs have emerged as a central component in worldwide endeavours to protect biodiversity, and a wealth of research highlights the significance of Indigenous leadership and governance in tackling climate change and biodiversity decline (Townsend,2022). The conventional approach to conservation is often based on a perspective that emphasizes a division between humans and nature, leading to the idea that conservation primarily occurs in distant, untouched areas rather than where human communities reside (Cronon, 1996). Conversely, IPCAs operate under the guidance of Indigenous laws, which are usually rooted in the concept of 'Natural Law'⁴ referring to belief systems where humans hold responsibilities to maintain balanced and reciprocal relationships with other species, playing a crucial role in the well-being and functionality of healthy ecosystems (Borrows, 2010; McGregor, 2018). Moreover, a growing acknowledgement that Indigenous Natural Laws, which emphasize respect and accountability towards the land, have proven more successful in protecting the well-being of ecosystems and species compared to the conventional conservation approach implemented by the Canadian government (Blaise & CELA, 2022; Koostachin, 2022; IPBES,2019).

The literature review of IPCAs indicated many benefits resulting from their establishment. They include strengthening Indigenous governance, collaborations, and shared decision-making,

⁴ Indigenous Peoples perceive their legal traditions as interconnected with natural laws, often referred to as Natural or First Law. These laws stem from ancestral narratives and hold sacred significance as they are believed to originate from the Creator and the Land (Redvers et al., 2020).

improving landscape connectivity, preserving cultural heritage, providing refuge for endangered species, and providing employment for Indigenous Peoples (Tran, Ban et al., 2020). The size, scope, and purposes of IPCAs vary, and they frequently have socioeconomic, cultural, political, and ecological motivations (Tran, Ban et al.,2020). These aspirations could be the revival of lost languages, creating economies based on conservation, protecting valuable species, places, and connections, reconciliation and healing, and improving food security (Mullen,2022). The IPCA designation would help the Crown and Indigenous jurisdictions integrate, providing a promising new path for conservation efforts. For IPCAs to be successful as a conservation tool and a way of helping Canada meet its biodiversity targets, we must bring both legal systems together in recognition of treaty and Indigenous jurisdiction over lands and waters. This clarity on legal jurisdiction will allow Indigenous nations to establish IPCAs more securely and develop governance models for fulsome conservation economies (Innes et al.,2021).

2.4 The Project Partners: Reconciling Jurisdiction Working Group

This Master's research has been driven by the opportunities that emerged through and in response to identifying the challenges of IPCA implementation in Canada. This thesis was influenced by the collaborative efforts of the Reconciling Jurisdiction Working Group, which consisted of organizations such as the David Suzuki Foundation (DSF), Conservation through Reconciliation Partnership (CRP), Grand Council Treaty 3, Ontario Nature, Ecojustice, and WWF Canada. Their joint project, titled "Reconciling Jurisdiction: Establishing Jurisdictional Clarity for IPCAs," played a significant role in informing the research presented in this thesis. The project also sits in the Domestic Law and Policy Stream (originally called the Policy stream). It contributes to the CRP's second research objective (RO 2): Document existing and proposed Indigenous

conservation mechanisms across Canada and support their establishment in ways consistent with Treaty and Aboriginal Rights. Previous work on this RO has identified the need to clarify the legal and jurisdictional context for IPCAs across Canada. The overall objective of "Reconciling Jurisdiction: Establishing Jurisdictional Clarity for IPCAs" was to provide a framework for the transformation of protected area legislation and other mechanisms aimed at creating IPCAs within a framework that is consistent with Indigenous law. A framework for legal (and other) reform will be developed with consultation of Indigenous and non-Indigenous experts in law and Indigenous-led conservation, including guiding principles and draft provisions that can be implemented. This Master's thesis contributed to this project since it was designed to address IPCAs' regulatory and policy barriers within Canada. As such, an opportunity was created for this research's author to apply her skills as a researcher to produce a master's thesis in partnership with the Reconciling Jurisdiction Working Group that will help to inform a greater jurisdictional clarity and co-governance of lands and waters.

Chapter 3: Methods of Inquiry

3.1 Theoretical framework

This chapter describes the theoretical foundations that provided direction for the research methodologies used in this project, and which shaped the approach to analysis and influenced the interpretation of findings. This project is underpinned by three key theories: governance theory (Kooiman,2003), institutional change theory (Crawford & Ostrom,1995; Ostrom, 1990), and the political ecologies of conservation (Forsyth,2003; Nadasdy,2011)

3.1.1 Governance

Graham et al. (2003) define governance as the ". . . interactions among structures, processes, and traditions that determine direction, how power is exercised, and how the views of citizens or stakeholders are incorporated into decision-making" (Borrini-Feyerabed et al.,2013, p. 10). According to this description, the governance system comprises institutions, procedures, structures, and how these elements interact. Institutions decide who is permitted to participate in various decision-making processes, including defining the issue, defining the best solutions, assigning management costs (who pays), and deciding which parties participating in the process have the authority to make decisions (Ban et al.,2009). Whereas the term "governance structure" refers to the structural organization of the bodies involved in the decision-making process, the term "process" describes the interactions between the governance structure and those who affect the governing system (Warrior,2020). In the context of this research, "IPCA governance" refers to the process by which decisions are made and the individuals who have that authority. IPCA governance includes the processes and institutions involved in establishing and managing an IPCA. This involves understanding how stakeholders and rightsholders are involved in

decision-making and how knowledge (science, local, and Indigenous knowledge) is used to inform decisions (Warrior,2020). This study employed Kooiman's and Jentoft's (2009) governance theory, which outlines that every society is governed through a mixture of these three approaches: Hierarchical governance, self-governance, and co-governance (2009). Hierarchical governance involves state-citizen, market, and civil society interactions, focusing on steering and control, evolving from commanding to regulatory state roles (Kooiman & Jentoft,2009; Brinkerhoff,2007). Self-governance in contemporary society entails individuals independently managing themselves, separate from government influence, and is not a product of government actions like deregulation. It is vital that the lack of self-governance makes societal governance unachievable (Kooiman & Jentoft,2009). "Co-governance" entails societal parties uniting with shared goals, preserving their identity and autonomy. This concept appears in various forms like public-private partnerships, networks, and co-management, fostering collaborative governance across sectors (Kooiman & Jentoft,2009). Incorporating these governance approaches into the study of IPCAs allows for a comprehensive analysis of how decision-making structures, power dynamics, and stakeholder involvement influence the establishment, management, and sustainability of IPCAs. Understanding the interplay between hierarchy, self, and co-governance within IPCAs in Canada can help anticipate challenges, assess the effectiveness of governance models, and inform future trajectories for their development and conservation efforts.

3.1.2 Theory of Institutional Change

I also employed the theory of institutional change as the theoretical foundation for this Master's project, drawing on the works of Veblen (1990), Bush (1987), and Crawford & Ostrom (1995). This theory was beneficial for framing this research since it discusses how culture, and

changes in culture, can affect the way institutions are designed and established. This concept was essential because the implementation of IPAs, rooted in Indigenous values, has the potential to disrupt the conventional western science-based approaches employed in PAs in Canada. In this collaborative, cross-cultural project, embedded within the Domestic Law and Policy Stream of the CRP, the objective was to conduct an analysis of the legal and policy challenges in Canada that hinder the successful implementation of IPCA. By considering the theory of institutional change, we may better understand how IPCAs can facilitate legal and policy change while also considering what risks, obstacles, and opportunities there are for relationship-building when institutional change occurs (Ostrom,1990).

3.1.3 Political Ecologies of Conservation

Political ecology focuses on the discursive and material consequences of power that affect who has access to the environment and its resources, as well as the environmental narratives that, in turn, impact behaviours and policies (Blaikie & Brookfield, 1987; Forsyth,2003). Political ecologists analyze how power plays a role in the creation and dissemination of environmental discourses as well as the material impacts these discourses have on human and ecological communities through the lens of social and environmental justice (Lave, 2010; Nadasdy,2011; Watts & Peet,2004). Moreover, political ecology encourages understanding IPCAs as socio-ecological systems, emphasizing the importance of maintaining ecological integrity and the well-being of Indigenous communities. This approach supports the creation of IPCAs that are not only ecologically viable but also socially and culturally sustainable. In other words, political ecologists are aware of the processes involved in the production of environmental knowledge as well as the

factors that influence why some environmental knowledge and forms of knowing are valued while others are marginalized (Townsend,2022).

Political ecologists have argued that protected areas served as a hegemonic conception and a strategy used by contemporary and colonial regimes to reterritorialize Indigenous territories and exercise state control (Corson et al., 2014; Adams & Hutton, 2007; Nadasdy,2003). The misconception that Indigenous knowledge systems are less capable of preserving conservation values than western conservation science is a significant bias supporting the traditional protected area paradigm or fortress-style conservation (Townsend, 2022). Modernity created binary oppositions between, for example, humans and nature, modernity and primitivism, and civilized and savage. These dichotomies are challenged by IPCAs and Indigenous-led conservation, which elevate Indigenous knowledge systems that frequently advance relational forms of conservation and account for cultural and economic practices (Corson et al., 2014; Hutton et al., 2005).

Within the field of political ecology, this research will align with post-structural epistemology, which rejects major misconceptions underpinning the conventional protected area model (such as wilderness, fortress conservation and superiority of western knowledge rather than Indigenous values) promoted with modernity and positivist western science (Townsend,2022). This Master's research also integrated political and ecological work focusing on power and politics in conservation governance with the theories of Indigenous and decolonial scholars who study Settler-Indigenous relations and reconciliation.

3.2 Conceptual Approach

Aligned with the theoretical frameworks guiding the broader philosophical and methodological dimensions of the research, supplementary research methodologies drawn from the literature were incorporated. These include: 1) a Boundary work approach, 2) Two-Eyed Seeing approach and 3) Ethical Space. These approaches directed the project's implementation, setting the groundwork for my commitment to maintaining reflexivity and adaptability throughout the research journey. Implementing these approaches enabled me to ensure that the goals and concerns of my research collaborators and the Indigenous community participants were prioritized and maintained as the primary focus of the project.

3.2.1 Boundary work Approach

I undertook boundary work which involved addressing divergent viewpoints and worldviews by employing a boundary object, whether conceptual or tangible. The purpose of this boundary object was to improve collaboration among research partners and establish a platform for facilitating open and effective communication channels (Castleden, Mulrennan, & Godlewska,2012; Zurba & Berkes,2014; Zurba et al.,2018). Boundary work is defined as a research methodology that facilitates collaboration, flexibility in roles and relationships, and the mobilization of knowledge related to a specific issue or subject that involves various perspectives and participants. This is achieved through the development of a boundary object that can be comprehended across multiple social contexts and communities, allowing for effective engagement among diverse actors (Dar,2018; Zurba et al.,2018). In this case, IPCAs serve as a boundary object for facilitating discussions and research mobilization within this thesis. Utilizing boundary-oriented research methods can establish arenas for communication that bridge the

gaps between Indigenous and non-Indigenous viewpoints, transcending ideological and epistemological differences (Zurba et al.,2018).

In this research, an illustration of a boundary object could be the concept of IPCAs, serving as a platform through which my partners and I can emphasize the prospective impact of IPCAs on amending the colonial legal framework govern conservation discourse in Canada. The matter of establishing a legal structure that promotes the involvement of Indigenous leadership in conservation efforts, particularly within PAs, is a contentious subject in Canada. Divergent perspectives exist on this matter due to varying worldviews. IPCAs, serving as a boundary object within this research, create a space that facilitates the engagement of diverse perspectives and roles in addressing this issue. Incorporating this methodology into this research project aimed to guarantee that the research process aligned with the objectives of my partners (DSF and CRP), simultaneously fostering community connections and generating research results applicable to my thesis.

3.2.2 Two-Eyed Seeing Approach

"Two-Eyed Seeing", known as "Etuaptmumk" in Mi'kmaw, constitutes an Indigenous framework that underscores the value of acknowledging diverse knowledge systems (such as "Indigenous knowledge and ways of knowing" and "mainstream knowledge and ways of knowing") "for the benefit of all" (Figure 2-2; Bartlett et al., 2012 in Reid et al., 2021, p. 245). Mi'kmaq Elder Dr. Albert Marshall has shared and elaborated on the Mi'kmaq concept of Etuaptmumk, which has gained traction more recently in the context of conservation and resource management (CRP, n.d.; Kutz & Tomaselli, 2019; Reid et al., 2021). Two-Eyed Seeing represents a research methodology aimed at enhancing the comprehensive scope and profound

insight into the subject of investigation while concurrently recognizing the validity of diverse knowledge systems. This approach avoids privileging Indigenous or western knowledge systems or perspectives (Kutz & Tomaselli, 2019). The merging of Indigenous and western knowledge can become challenging unless intentional actions are implemented to create open lines of communication and recognize the power dynamic at play (Mantyka-Pringle et al., 2017). In this context, it was essential to incorporate sophisticated methods of community-based research, such as the Two-Eyed Seeing approach, in order to prevent researchers from perpetuating conventional divisions and power structures related to knowledge during the entirety of the research endeavour (Mantyka-Pringle et al., 2017; Kutz & Tomaselli, 2019). The Two-Eyed Seeing approach encouraged me to contemplate the strengths and limitations of the knowledge systems I interact with. In addition, given my background, my access to Indigenous knowledge was limited, lacking cultural context and direct personal experience. Two-Eyed Seeing prompted me to enhance my capacity to view things from an alternative standpoint. This entailed establishing research relationships with multiple Indigenous Nations and actively seeking Indigenous viewpoints. This included engaging with Indigenous leaders, activists, and non-university-affiliated organizations to gather insights on conservation matters and knowledge systems within research.

3.2.3 Ethical Space

The Ethical Space framework, formulated by Elder Dr. Reg Crowshoe of the Piikani Blackfoot community and Professor Willie Ermine from Sturgeon Lake First Nation, builds upon Roger Poole's 1972 research (Crowshoe & Ermine, 2014; CRP, 2020; Ermine, 2007). Described as a "ceremony between worldviews," it represents cooperation where diverse knowledge,

legalities, and governance systems are embraced as authentic and credible (Crowshoe & Ermine, 2014). Ethical space gained prominence within the conservation domain when it was embraced as the collaborative framework for Pathway to Canada Target 1⁵(Pathway to Canada Target 1, n.d.). Ethical space can be characterized as a concept and strategy for research that urges researchers involved in community-based participatory research (CBPR) to enter a jointly constructed conceptual realm with their Indigenous collaborators, leading to a distinct approach to research. This conceptual space, formed by this approach, positions researchers and communities as peers of equal standing, thus sharing mutual responsibility in the project's design, implementation, and dissemination of outcomes (Ermine, 2007; Jull et al., 2018).

Understanding of Ethical Space and Two-Eyed Seeing shaped my thoughts and approaches within research collaborations. With Ethical Space as a guide, I aligned myself and the research process to recognize the diversity and legitimacy of worldviews and legal, knowledge, and governance systems (and to highlight the consequences of overlooking these aspects). This approach resonated with Kovach's stance (2009, p. 43) that "from a decolonizing perspective, the use of conceptual frameworks to reveal privileged epistemologies can work towards instigating change or, at the least, mitigate methodological inconsistencies that tend to arise when integrating Indigenous and western methods." The study employed this dual approach to explore the convergence of Indigenous and Eurocentric knowledge, governance, and legal systems within the context of the IPCA legal frameworks while also questioning privileged (such as settler colonial) epistemologies and practices. To illustrate, the study delved into the

⁵ The evolution of the Pathway to Canada Target 1 has led to the establishment of the Pathway to Canada Target 1 Challenge, serving as a crucial element in Canada's endeavors to achieve Target 1 as part of the Canada Nature Fund (Canada Target 1 Challenge, 2021).

fundamental ontological viewpoints that form the basis of Eurocentric methodologies and dominant narratives surrounding legal approaches for IPCAs and PAs, along with the implementation strategies of the UNDRIP in the following chapters.

3.3 Methods

I utilized qualitative methodologies conceived and implemented collaboratively, with the guidance of my collaborators, DSF, CRP, and Reconciling Law Working Group, collectively called "the project partners." These individuals, alongside myself, constituted the essential members of the project, forming what I term "the project team." Collecting data and the subsequent analysis were carried out concurrently with continuous discussions and feedback loops involving the project partners. Furthermore, the research for this thesis underwent a thorough review and received approval from the Dalhousie Research Ethics Board (File # 2023-6568) (Appendix B). This study employed a combination of critical document analysis, semi-structured interviews, and focus groups to gather comprehensive data.

Being non-Indigenous, I needed to acknowledge that collaborating with DSF and CRP necessitated the adoption of Indigenous research methodology principles (Smith, 1999; Wilson, 2008). Incorporating concepts such as "Two-Eyed Seeing" and "Ethical Space" which facilitated the convergence of traditional western research methodologies and Indigenous approaches, was of paramount importance. This ensured that the implementation and execution of research methods resonated harmoniously with the values and protocols of the Indigenous community collaborators.

3.3.1 Critical Document Analysis

The initial approach utilized for this project involved conducting a thorough critical document analysis. Examining the series of occurrences that paved the way for establishing IPCAs in Canada played a pivotal role in enhancing comprehension regarding the evolution and formation of IPCAs. In the initial phase of the review procedure, I initiated an independent literature review by leveraging the research database Nova Net at Dalhousie University. With the guidance provided by research's supervisor, I systematically amassed and structured an annotated bibliography that was pertinent to the project's scope. Subsequently, I formulated a search framework to provide a navigational structure for the review process. A sequence of meetings was conducted to facilitate a collaborative exchange of ideas and discussions centred on formulating the search framework. The outcomes of these discussions significantly influenced the methodology adopted for the subsequent data collection and analysis phases. While IPCA is a relatively recent concept within the Canadian framework (ICE, 2018), academic literature is scarce and focused on the limited number of IPCAs in Canada (Tran et al., 2019). Key search terms included "Indigenous Protected Areas", "Indigenous Conserved Areas", "Indigenous Protected and Conserved Areas", "Indigenous Communities and Conserved Areas", "Challenges of IPCAs development", "human rights", "rightsholder", "international human rights law", "international Indigenous law", "international biodiversity law", "human rights and environment" and "rights of nature". I also employed Boolean search strings such as: (Indig* OR First Nation* OR Aborig*) AND (Land OR Natural Resource OR Protected* OR Conserv*) AND ("Legislation" OR "law" OR "regulation" OR "rules") AND ("Barriers" OR "limitation" OR "obstacles") AND ("Meaningful" OR "effective" OR "useful") AND ("Participation" OR "collaboration" OR "Stakeholder" OR

“partnership”) AND (“Co-management” OR “share management” OR “equitable management”). Key sources included the Indigenous Circle of Experts' (ICE's) 2018 report, TRC calls to Action and documents related to the UNDRIP and the CBD, acknowledged as pivotal frameworks in this context. Furthermore, the research extensively examined crucial government websites, policies, and laws, that specifically focused on the IPCAs development across Canada. Analyzing these initiatives provides insights into the IPCA's legal landscape, their governance structures, and their impact on the development of IPCAs.

This review adds to the existing knowledge of IPCAs in Canada and has the potential to assist projects' partners in shaping their strategic plans and objectives. This review can offer valuable guidance by considering the lessons gleaned from the development of other IPCAs or Indigenous-led protected areas. The governance theory framework and political ecology concepts played pivotal roles as guiding principles throughout this review process. This comprehensive document review was a fundamental cornerstone and initial step for shaping this Master's thesis.

3.3.2 Focus group

The Phase Two data collection methods included a focus group with land guardians, Elders, knowledge holders, Indigenous youth or employees of land departments who participated in the RAD Network gathering. In April 2023, the RAD Network organized an "Envisioning the Indigenous-led Conservation Economy" event as part of the Restore, Assert and Defend (RAD) Network. The RAD Network has arisen due to the CRP initiatives. Our project team established the Jurisdiction focus group, which I participated in. I was allowed to present the project concept and initial findings within this stream. This presentation gathered additional

insights and perspectives from the attendees. The focus group included Indigenous and non-Indigenous individuals, such as land guardians, Elders, knowledge holders, Indigenous youth, and employees of land departments, who participated in the RAD gathering. Nine participants were involved in a two-hour focus group discussion to share their perspectives on the legal and policy challenges hindering the development of IPCAs. This data collection method influenced all project objectives, with a particular emphasis on objectives two and three, which centered on understanding the legal framework surrounding IPCAs, identifying existing gaps, scrutinizing criticisms about the foundation of IPCAs and exploring legal and policy challenges faced by Indigenous communities when attempting to establish their IPCAs.

3.3.3 Semi-Structured Interviews

The project employed a third approach, which involved conducting semi-structured interviews with key informants. These interviews were designed to address all three project objectives. Semi-structured interviews involve a systematic data collection process, where a researcher engages participants in open-ended discussions using an interview guide encompassing various subjects (Bernard, 2006; Guest et al., 2013; Creswell & Creswell, 2018). In the context of this project, semi-structured interviews played a role in (1) gathering data to identify significant events and transformations over time associated with the development of IPCAs, 2) enhancing the analysis of how international IPCA frameworks are presently affecting Canadian IPCAs, which was instrumental in identifying and analyzing legal obstacles and prospects connected to the development of IPCAs across the country and 3) providing valuable perspectives from Indigenous community members that contributed to understanding their aspirations for decolonizing legal frameworks related to IPCAs within their ancestral land.

Eleven semi-structured interviews were carried out, through Zoom, with Indigenous individuals actively engaged in conservation efforts across Canada. All participants were Indigenous peoples, representing different communities and provinces. The project partners identified potential interviewees using their current networks. The team recruited participants by contacting the guardians' network, the CRP and the CRP's IPCA co-learning circle partners, and Indigenous government land departments currently working with the David Suzuki Foundation. Participants were requested to share their knowledge, experiences, and viewpoints regarding legal and policy challenges encountered in their leadership roles in conservation efforts. Participants also provided their consent to participate and contribute quotes, which are later integrated into the analysis section of this thesis. It is crucial to highlight that these viewpoints did not embody any specific Indigenous community or governmental entity. Instead, they reflected the personal perspectives of the participants as individuals. Hence, they cannot be extrapolated to represent broader organizational stances or the comprehensive views of the community or project partner organizations. The interview sessions were concluded within a timeframe of approximately 45 minutes to 1 hour. The interview guide had been appended to the document (Appendix A). All participants consented to have the interviews audio-recorded, a measure intended to enhance the efficiency of transcription processes. The participant composition was limited to 7 individuals from Ontario, 2 from British Columbia, 1 from Nova Scotia, and 1 from Alberta (Table 3-1)

3.4 Analytical Methods

The study recognized the diversity among Indigenous communities in Canada, with distinct perspectives and legal traditions. The research findings conveyed viewpoints from

participants engaged in interviews, and it explicitly acknowledged that these results might not fully capture the perspectives of all Indigenous communities. Importantly, it is emphasized that perspectives on IPCAs and their associated challenges varied among Indigenous communities. Furthermore, the study underscored that the results presented were not exaggerated or generalized, acknowledging the nuanced and diverse range of perspectives within Indigenous communities. Furthermore, there is no particular Indigenous community that is involved or being targeted in the interviews or focus group discussion – the project is focused on engaging Indigenous and non-Indigenous scholars, community members, knowledge holders, elders, practitioners, experts, thought leaders and activists who wanted to contribute to this conversation(s). The main participants (Indigenous Peoples working for lands departments or as guardians) all helped create new knowledge about how the Crown perceives Indigenous participation and jurisdiction in PAs. Participants also contributed to a better comprehension of the challenges encountered by Indigenous peoples in the implementation of their IPCAs. These challenges stem from existing limitations in provincial and federal policies and regulations, along with the absence of supportive laws for IPCAs.

Despite the limited participation, the study utilized in-depth interviews with Indigenous community members engaged in conservation efforts, along with a thorough review of existing literature. These methods uncovered persistent legal and political barriers that Indigenous peoples encounter when attempting to participate in conservation initiatives. These challenges stem primarily from Canada's centralized legal system, which similarly complicates Indigenous communities' efforts to assert authority over conservation matters. Furthermore, the implementation of IPCAs represents a new approach in Canada, yet there is a scarcity of

Indigenous individuals with comprehensive knowledge of navigating the legal and policy challenges associated with IPCA development. Acknowledging that a more diverse participant pool could provide additional insights, the intersectional analysis techniques were employed, taking into account factors such as gender, age, and socioeconomic status, to ensure that the findings were inclusive and reflective of the diverse realities within Indigenous communities. Throughout the analysis, emphasis was placed on community engagement and consultation, seeking feedback and validation from Indigenous stakeholders to ensure the accuracy and cultural appropriateness of the interpretations.

3.4.1 Coding

To analyze this project, it was essential to perform qualitative coding on various materials, including the literature review, focus group notes, and the transcription and coding of interview data. Systematically, I applied coding to the literature documents incorporated in my analysis. Initially, I employed overarching deductive codes that were subsequently deconstructed inductively to unveil more intricate themes. This process aimed to recognize significant patterns concerning challenges and opportunities as they surfaced within the literature. Additionally, I identified noteworthy transformative changes, arranging them based on their scope – local, provincial, federal, and global (Elo & Kyngäs, 2008; Guest et al., 2013).

I jotted down handwritten notes during the RAD Network gathering in New Brunswick to gather focus group data. Subsequently, I transcribed these notes into digital format and transferred them into the NVivo qualitative data analysis software. I also incorporated the notes the RAD report team provided, which primarily encompassed a description of the meeting's content. This approach enabled me to cultivate comprehensive data, as my focus group notes

were subsequently directed toward establishing connections between the discussions and the theoretical framework and objectives of the project.

I transcribed the interview data word-for-word to ensure I did not oversimplify or introduce any personal biases in interpreting the collected data. To achieve this verbatim transcription, I obtained consent to record the interviews. The data collected during fieldwork was subjected to coding using a hybrid method within NVivo 12, which incorporates a combination of deductive and inductive coding approaches. This coding procedure aimed to identify themes that emerged organically from the data (Bernard, 2006; Guest et al., 2013).

I utilized broad deductive codes initially, which were subsequently broken down inductively into more refined themes, in order to identify key legal and policy challenges emerging from the literature, study objectives and theoretical frameworks. On the contrary, inductive coding involves codes that arise directly from the data, preceding the subsequent interpretation process (Boyatzis, 1998). This combination of deductive and inductive coding ensured a comprehensive thematic analysis of the gathered research data. Moreover, special consideration was given to preserving the context of the participants' responses throughout the data analysis process (Horsfall et al., 2001).

3.4.2 Data Verification

To fulfil the objectives of this study, which was to examine the legal and policy challenges of establishing IPCAs in Canada, the data collected was validated through member-checking. Member-checking occurred during the semi-structured interviews, involving seeking clarification from participants when needed and ensuring a comprehensive understanding of the underlying

meaning behind their responses (Creswell & Creswell, 2018). Additionally, member-checking took place once the interviews were finalized and after I had selected the quotes intended for inclusion in my thesis. Before incorporating the quotes and their corresponding contextual elements into my thesis, I shared them with the participants. This was done to provide them the chance to review my interpretation of their words and confirm their agreement with including the quotes in my thesis. Member-checking is vital for obtaining informed consent and is crucial for integrating into research conducted in a community-based approach (Ellis & Earley, 2006).

3.5 Limitation

The central hurdle I confronted while working on this thesis stemmed from the innovative nature of IPCA's as a new conservation approach. Consequently, there was a scarcity of comprehensive existing literature that specifically delved into this unique subject matter. This scarcity of relevant sources presented a significant obstacle to conducting an in-depth analysis and comprehensive exploration of the topic. The author incorporated data from scholarly articles and grey literature and websites, videos, webinars, and voice recordings to overcome limited resources.

As I began this research with Indigenous Peoples in Canada, I faced a significant cultural gap. This difference brought about many challenges in understanding the core concepts of my research. Working in Indigenous studies required strict adherence to specific research rules to maintain ethical relationships with the communities I worked with. However, my distinct cultural background made these rules seem complex and unfamiliar, adding a layer of difficulty. This cultural difference has been challenging and required me to adapt my approach to ensure that I respected and understood the participants' experiences in a way that aligned with their cultural

expectations. Therefore, disregarding culture would ultimately align with a postcolonial tendency in academic circles to dismiss or modify the cultures and experiences of individuals from the Global South to fit narratives favoured by scholars from the Global North (Connell 2014). Linda Tuhiwai Smith's (1999) influential work, "Decolonizing Methodologies," illustrates the extent of this inclination, highlighting how research has often served as a tool of cultural and colonial oppression against marginalized groups. It historically silenced, dismissed, and altered their experiences to favour researchers from nations with colonial histories (Au, 2019). Therefore, it is crucial to proactively bridge language and cultural barriers and comprehend the impact of cross-cultural differences on participants' speech and actions. (Au, 2019). In the context of this study, I had the privilege of engaging in discussions with Indigenous individuals who welcomed me as an ally. They graciously emphasized a vital aspect of their culture founded on relationship, sharing, and mutual respect. I acknowledge that I have much more to learn about the diverse cultures of Indigenous communities.

One final limitation lied in the complex and evolving nature of Indigenous rights and relationships with the government in Canada. The legislative landscape for IPCAs involves a combination of federal, provincial, and Indigenous jurisdiction, leading to potential inconsistencies and overlaps in legal frameworks. Additionally, the negotiation of land rights, co-management agreements, and the recognition of Indigenous traditional knowledge can vary between different Indigenous groups and regions, making it challenging to develop a standardized approach to IPCA implementation that respects diverse cultural contexts. This complexity hindered the identification of clear patterns, trends, and best practices within Canadian IPCA legislation (CPAWS Northern Alberta, n.d.).

3.6 Research Positionality

As the researcher for this study, I acknowledge that I am not part of any Indigenous communities in Canada and lack any cultural or historical connections with them aside from our shared humanity. While I lack a background rooted in western knowledge and my heritage differs from the communities involved in this study, their worldviews share characteristics similar to the mindset I grew up with. I am descended from ancient Iranian peoples, whose cultural heritage spans 2500 years. I was born and raised in Tehran, Iran's capital city, at the heart of the country. In Iran, various ethnic groups with distinct cultures exist, many relying on the environment for survival. However, environmental policies are often implemented without considering their rights, knowledge, and governance systems. Consequently, the environment in Iran is grappling with issues such as forest fires and depleted rivers, which threaten its ecological balance. I witnessed the occurrence of environmental disasters resulting from the lack of attentive ears to Indigenous peoples' concerns. Disregarding Indigenous rights represents a violation of fundamental human rights and has the potential to result in significant humanitarian catastrophe. During my graduate research, I explored the limited inclusion of Indigenous perspectives in creating environmental policies and legislation. Furthermore, drawing from my personal experiences with discrimination, I have long been concerned with human rights. This concern led me to delve into the intersection of discriminatory environmental policies and their potential threats to conservation and Indigenous rights for my first Master's research in International Law.

In 2021, I moved to Canada, and I intended to pursue my engagement with environmental challenges embedded within socio-political contexts. The impetus for my thesis stemmed from

Indigenous communities' willingness to share their conservation knowledge, with the hope that this research could catalyze initiating change. Throughout my three years of pursuing my Master's degree, I intended to listen and learn from those who work tirelessly and advocate for their collective rights. I endeavoured not to impose my ideas onto any research process but to act as an ally. This perspective guided my approach as I sought to support and amplify the voices of communities rather than imposing my viewpoints.

I also acknowledge that my positionality has the potential to influence the research processes in this study, including data collection, analysis, and interpretations. My lived experiences and belief systems shape my worldview, and engaging in this project has facilitated reflection and learning from my experiences as an outsider in the field.

Chapter 4: From International Conservation Initiatives to National Implementation: Exploring how the global policies introduced by CBD and UNDRIP have influenced the progressive landscape of Indigenous Protected and Conserved Areas within Canada

Target Journals: Environmental Policy and Governance (Wiley) / International Indigenous Policy Journal

Abstract

The most recent conservation strategy by the Canadian federal government aspires to reach milestones of protected area targets of 25% of land and water by 2025, progressing further to encompass 30% by 2030. Simultaneously, the government is dedicated to advancing reconciliation endeavours, actively implementing the Truth and Reconciliation Commission's Calls to Action, and honouring the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous Protected and Conserved Areas (IPCAs) are designated zones intended to enable Canada not solely to achieve its biodiversity objectives but also to facilitate reconciliation per the guiding principles delineated in the UNDRIP, serving as a framework for reconciliation. Drawing on theory of governance and theory of institutional change, this research qualitatively analyzed the evolution of IPCAs in light of the Convention on Biological Diversity (CBD) and the UNDRIP, challenging settler colonial conservation ideologies. The study also analyzed 11 Indigenous perspectives on the implementation of UNDRIP and its contribution to enhancing Indigenous leadership in conservation endeavors. The finding emphasized that the integration of UNDRIP and CBD principles has driven the development of the IPCA landscape in Canada, fostering reconciliation and guiding new policies and practices toward greater inclusivity, environmental sustainability, and alignment with international obligations. The result also provided significant insights into the concerns raised by participants concerning the implementation of UNDRIP in Canada, encompassing issues related to capacity, insufficient understanding, and a perceived absence of political dedication toward implementing UNDRIP to enhance Indigenous-led conservation approaches.

4.1 Introduction

In recent decades, Indigenous peoples have taken some steps to open avenues for asserting their rights and having them recognized by the parties involved in environmental governance (Papadopoulos, 2021). There are considerable worldwide agreements and commitments that affirm Indigenous peoples' rights to their ancestral lands (e.g., the United Nations Declaration on the Rights of Indigenous Peoples, the International Union for the Conservation of Nature [IUCN] Durban Accord and the Convention on Biological Biodiversity). Concurrent with the recognition of the participatory role of Indigenous peoples in global environmental governance, three key events strengthen the emphasis on the conservation of protected areas in partnership and collaboration with Indigenous peoples.

The inclusion of Indigenous people's rights and titles in the governance of protected and conserved areas in state-centered conservation initiatives was a response to the global call to address and eventually slow the flow of international biodiversity loss. In so doing, the International Union for Conservation of Nature (IUCN) adopted the Durban Accord, which established the groundwork for a new conservation paradigm that highlights the need to move away from traditional western approaches to managing protected areas in support of governance structures that are inclusive of many actors, including Indigenous Peoples (Tran et al., 2020; IUCN, 2003). Similarly, in 2010, the participants in the Convention of Biological Diversity (CBD) created a "Strategic Plan for Biodiversity" (2011–2020), which mandated the countries expand the number of protected areas to combat biodiversity loss by 2020 (Aichi Target 11), they also committed to respecting the rights, participatory role, and the priorities of Indigenous peoples through conservation activities (Target 18, Target 14, CBD, 2010). Another significant event was

the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. This monumental document supported the recognition of the inherent rights that Indigenous peoples have to their traditional territories and has mandated nations around the world to put policies, programs, and protocols in place to facilitate the implementation of the UNDRIP principles (UN, Resolution 61/295, 2007). Among various global events and declarations that have influenced the global conservation approaches, the CBD and the UNDRIP have significantly transformed how Canada integrates Indigenous perspectives into conservation efforts. This study was guided by two primary objectives: 1) Conduct a comprehensive policy review to assess how the global policies introduced by CBD and UNDRIP have influenced the progressive landscape of Indigenous-led conservation approach within Canada and, 2) Explore Indigenous perspectives on the implementation of UNDRIP within Canada and its contribution to enhancing Indigenous-led conservation.

4.2 Background

Events occurring in the last twenty years have led to significant changes in the realm of conservation, PA, biodiversity preservation, and the rights of Indigenous peoples, both at the individual and collective levels. The CBD has been pivotal in the rise of Indigenous Protected and Conserved Areas (IPCAs) in Canada. In 2010, the Aichi Biodiversity Targets were introduced by CBD, leading Canada to develop "The 2020 Biodiversity Goals and Targets for Canada," which includes Target 1: conserving 17% of terrestrial and inland water areas and 10% of marine areas by 2020 (Environment and Climate Change Canada, 2016). The Pathway to Canada Target 1 has

evolved into the Pathway to Canada Target 1 Challenge as a component of Canada's endeavors to reach Target 1 under the Canada Nature Fund⁶ (Canada Target 1 challenge, 2021).

The CBD agreement, serving as a monumental shift, leads to a transformative change in Canada's conservation approach, emphasizing the leadership of Indigenous communities and providing essential frameworks for managing PAs. The Indigenous Circle of Experts (ICE), established by the federal government, were responsible for investigating how Canada Target 1 and Canada's international commitment to the CBD could be equitably achieved. This encompassed the exploration of Indigenous-led conservation initiatives, which the ICE later termed "Indigenous Protected and Conserved Areas (IPCAs)" (Pathway to Canada Target 1, 2018). In March 2018, ICE symbolically presented its significant report to the federal government, titled "We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation"⁷ which Zurba et al (2019) refer to as a "monumental shift in Canada's guiding frameworks for protected areas" (p. 2). IPCAs are articulated in the ICE report as: "...lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance, and knowledge systems. Culture and language are at the heart and soul of an IPCA" (ICE, 2018, p. 5). Canada frames its efforts to support Indigenous-led conservation and advance

⁶ In 2018, the federal government introduced the Canada Nature Fund with the aim of supporting the preservation of Canada's biodiversity by establishing protected and conserved areas, as well as implementing projects to aid in the recovery of endangered species (The Pathway Journey, 2021).

⁷ Reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country (TRC,2015, P.6).

reconciliation with Indigenous Peoples through initiatives such as IPCAs and Indigenous Guardians⁸.

In addition, to pursuing advancements towards Target 1, the Government of Canada is also actively engaging in reconciliation efforts by implementing the recommendations outlined in the Truth and Reconciliation Commission of Canada's (TRC) Calls to Action and adhering to the UNDRIP principles (Zurba et al., 2019). In 2008, the government authorized the establishment of the TRC to address the enduring consequences of the residential school system on Indigenous Peoples in Turtle Island/Canada (TRC, 2015). The Canadian government acknowledged and embraced the TRC's report and its 94 Calls to Action. Of particular significance is that the government endorsed the TRC's proposal to adopt UNDRIP as Canada's framework for reconciliation (Townsend, 2022). Its role in acknowledging historical truths and promoting a path toward reconciliation is fundamental in healing societal wounds and building a more unified future (TRC, 2015). In a broader perspective, the ICE (2018, p. 6) defines a fundamental attribute of IPCAs as "an opportunity for true reconciliation to take place between Indigenous and settler societies, and between broader Canadian society and the land and waters, including relationships in pre-existing parks and protected areas." In its final report, ICE supported the concepts of IPCAs and reconciliation, offering explicit suggestions primarily aimed at Crown (federal, provincial and territorial) governments to foster Indigenous leadership and create favourable conditions for the effectiveness of IPCAs. The Strategic Plan for Biodiversity 2011–2020 laid the foundation for the Post-2020 Global Biodiversity Framework (GBF), which aims to transform society's relationship

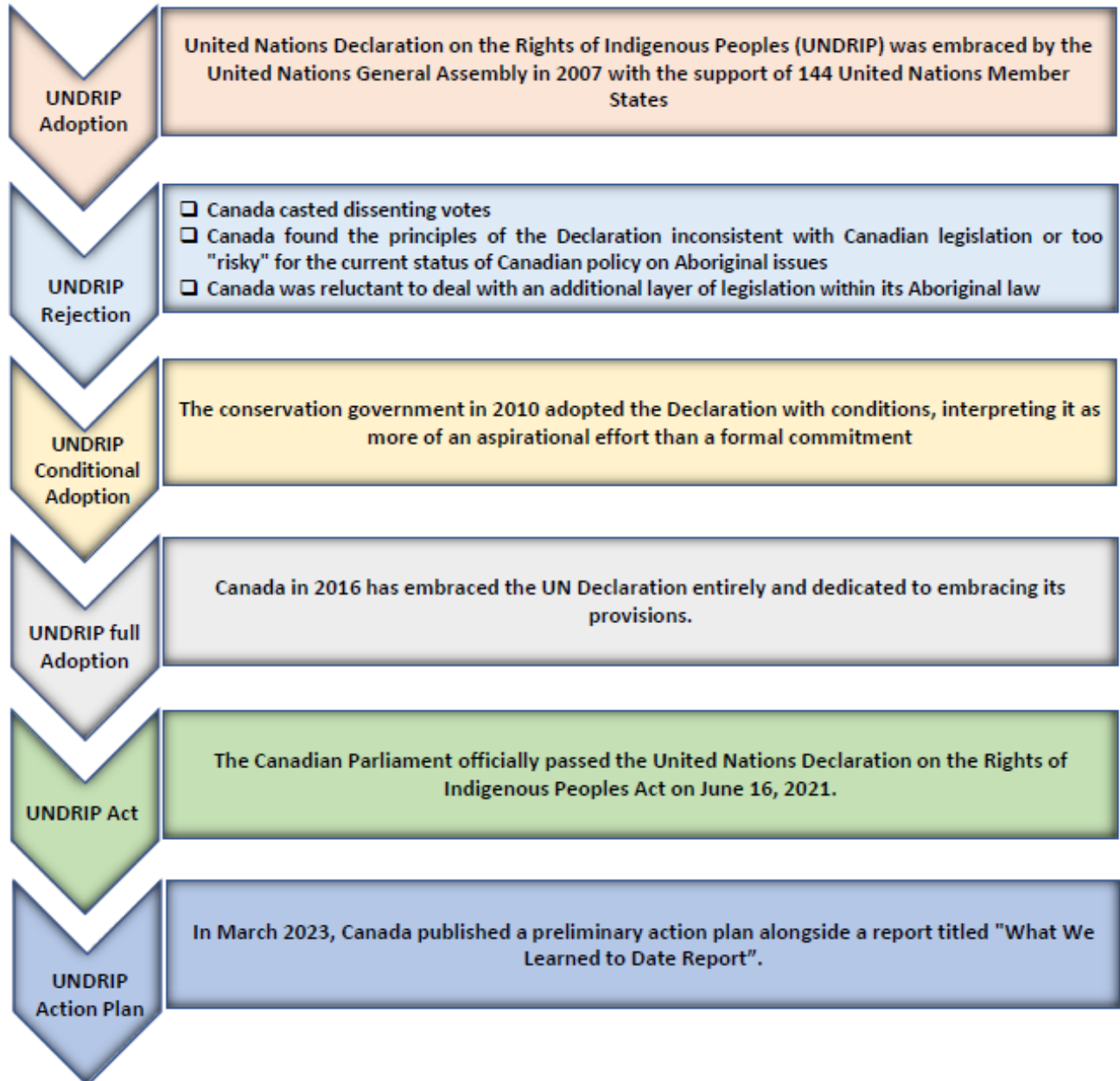
⁸ Indigenous Guardians are individuals responsible for monitoring and protecting the lands and waters within their territories, serving as the "eyes and ears on the ground" to fulfill their stewardship duties (Indigenous Leadership Initiative, n. d).

with biodiversity and achieve harmony with nature by 2050. Global leaders agreed on the Kunming-Montréal Global Biodiversity Framework (KMGBF) to protect and restore nature. Canada has committed to ambitious conservation targets, aiming to protect 25% of its land and oceans by 2025, and 30% by 2030.

4.2.1 From Rejection to Implementation: The United Nations Declaration on the Rights of Indigenous Peoples

Another crucial international catalyst that has influenced Canada's conservation landscape to incorporate Indigenous perspectives and foster IPCA development is the UNDRIP. UNDRIP was embraced in 2007 with the support of 144 United Nations Member States, while four countries (Canada, Australia, New Zealand, and the United States) casted dissenting votes (United Nations, n.d.). Canada initially rejected UNDRIP adoption, and its rationales for voting against the adoption of the text were that Canada found the principles of the Declaration inconsistent with Canadian legislation or too "risky" for the current status of Canadian policy on Aboriginal issues (Ochman, 2008). Finally, in 2010, the conservative government in parliament adopted the Declaration with conditions, interpreting it as more of an aspirational effort than a formal commitment (Townsend, 2022). After many years of First Nations' efforts, the Canadian Parliament officially passed the UNDRIP Act on June 16, 2021. This legislation, which aims to implement the UNDRIP in Canada, will pave the way for reconciliation. Also, it could provide groundwork for modifying the frameworks governing PAs to provide space for establishing IPCAs in a way that respects and reflects Indigenous law (Townsend, 2022). Figure 1 illustrates the progression of UNDRIP endorsement within Canada.

Figure 1: Evolutionary progress of UNDRIP implementation in Canada.



The TRC emphasized the significance of the UNDRIP as a fundamental framework guiding the reconciliation journey. IPCAs are acknowledged as environments where the guiding principles of UNDRIP can be actively put into practice, thereby fostering reconciliation. Recognized as a foundational document, UNDRIP outlines the fundamental rights of Indigenous peoples, encompassing their self-determination, cultural preservation, land rights, and the right to participate in decisions affecting their communities (Townsend, 2022). In Canada, UNDRIP has become a cornerstone in reconciliation efforts, serving as a guidepost for policymakers, governments, and Indigenous communities to rectify historical injustices and foster harmonious relationships (Townsend, 2022).

4.3 Methods

This research was developed in partnership with the David Suzuki Foundation, the Domestic Law and Policy stream of the Conservation through Reconciliation Partnership (CRP), Grand Council Treaty 3, Eco Justice, World Wildlife Fund Canada and Ontario Nature, who collectively make up the 'Reconciling Jurisdiction' working group. The Reconciling Jurisdiction was designed to address IPCAs' legal barriers, understand Indigenous perspectives on Indigenous jurisdiction and work towards guidance for legal reform resulting in greater jurisdictional clarity and co-governance of lands and waters. The project also sits in the Domestic Law and Policy Stream of the CRP and contributes to the second research objective (RO 2) of the CRP, which involves documenting existing and proposed Indigenous conservation mechanisms across Canada and support their establishment in ways consistent with Treaty and Aboriginal Rights. This study was conducted as a component of the CRP and Reconciling Jurisdiction initiative, with the goal of exploring the legal and policy obstacles associated with implementing IPCAs.

The research method was shaped by the Two-Eyed Seeing approach, recognizing various knowledge systems, including "Indigenous knowledge and ways of knowing" and "mainstream knowledge and ways of knowing," with the intention of benefiting everyone involved (Bartlett et al., 2012; Reid et al., 2021, p. 245). Facilitating the pathway towards Indigenous-led conservation requires weaving Indigenous knowledge and western knowledge together. However, this integration can be challenging without establishing open communication pathways and acknowledging existing power imbalance (Papadopoulos, 2021). As such, to prevent the perpetuation of conventional divides and hierarchies of knowledge and power, it is necessary to incorporate nuanced approach like Two-Eyed Seeing approach throughout the research process (Papadopoulos, 2021). The research was conducted within the framework of the CRP, which provided a platform for collaboration and engagement with Indigenous communities and stakeholders. Given to my background, I have limited access to Indigenous knowledge systems, lacking cultural context and lived experience. Two-Eyed Seeing prompted me to develop my ability to perceive from an alternative perspective and see with the other eye. This involved designing this research to investigate and integrate the lived experiences of Indigenous individuals affected by government conservation policies and practices.

4.3.1 Theoretical frameworks

Kooiman's governance theory conceptualizes governance within contemporary societies as an intricate interplay involving various actors operating across multiple levels, all situated within hierarchical structures in relation to one another (2003). Through the application of Kooiman and Jentoft's (2009) framework of three governance approaches, which posits that societies are governed through a blend of hierarchical governance, self-governance, and co-

governance, I explored how IPCAs could disrupt the conventional hierarchical governance structure of PAs, opening opportunities for consequential legal and political transformations that promote Indigenous-led conservation efforts. In addition, amplifying Indigenous criticisms regarding the Crown's approach to UNDRIP implementation, this study challenged the traditional notion in Canada that environmental governance is predominantly led by the Crown, with Indigenous governance often confined to advisory roles. In this context, Kooiman and Jentoft's (2009) framework of three governance approaches was also a fitting framework that did well to guide the research.

In addition, the theory of institutional change, as outlined by Crawford and Ostrom (1995), proved valuable in framing and conducting analysis for this project, because it explains how changes in culture can affect the way institutions are formed and structured. The theory of institutional change provided an effective framework for analyzing the changes required in the Crown's approach to enable Indigenous-led conservation initiatives, and how legal and policy adjustments can be facilitated through IPCAs implementation. This theory was also useful for interpreting the continuous endeavors of the Canadian government in policy and legislation reform aimed at fostering better relationships with Indigenous communities in conservation, with the goal of instigating institutional change.

4.3.2 Critical Document Analysis

This study was conducted systematically, primarily focusing on a comprehensive literature review and subsequent analysis. The search for relevant information and data sources encompassed scholarly articles, books, reports, and official documents related to Indigenous-led conservation, international frameworks, and policy analysis. Key sources, included the ICE's

report (2018), TRC calls to Action and documents related to the UNDRIP and CBD, acknowledged as pivotal frameworks in this context. I conducted the policy and literature review to analyze the significant impact of international frameworks, such as the CBD and the UNDRIP, on the development of Indigenous-led conservation approaches within Canada. Additionally, I analyzed relevant government websites, planning documents, policies, and legislation, specifically those emphasizing the participation of Indigenous Nations in conservation efforts to underscore the evolving landscape of IPCA across Canada. To make my search more specific, I focused my investigation on academic and grey literature. These filters emphasized that for articles to qualify for inclusion in the dataset, they were required to: 1) looking at the Canadian context as well as global conservation spaces (e.g., IUCN, CBD and UNDRIP), 2) published between January 2000 to December 2023 and 3) considering Canadian IPCAs legal initiatives. These criteria were employed to establish reasonable limits on the amount of literature chosen for review.

4.3.3 Semi-Structured Interviews

We recruited participants by reaching out to the guardians' network, partners of the CRP and the CRPs IPCA co-learning circle as well as Indigenous government land departments worked with DSF. Eleven interviews were conducted to understand the legal challenges of IPCA implementation in Canada (Table 1). As part of that, participants offered insights into how implementing UNDRIP in Canada could empower Indigenous communities, enabling their active participation and contributions to various conservation initiatives. All participants consented to have the interviews audio-recorded, a measure intended to enhance the efficiency of transcription processes (Appendix C). The research focused on interviews with individuals considered knowledge holders, thought leaders, practitioners, Elders, and Indigenous land

guardians, actively involved at the forefront of conservation work. These voices, not typically given the opportunity to be heard, provided valuable insights, offering concrete examples essential for this research. The individuals interviewed not only demonstrated a strong interest in sharing their insights but also possessed significant expertise in the legal and policy challenges of IPCAs and UNDRIP implementation field.

This research was not designed to generalize its findings to all Indigenous communities. However, the limited engagement did not hinder such generalization since the implementation of UNDRIP within Canada's centralized legal framework presents common challenges and concerns for diverse Indigenous communities. Indigenous legal traditions are known for their adaptable nature, with each community adhering to unique principles. However, Canada's legal system operates as a centralized machinery, which can create analogous challenges for Indigenous communities in asserting their jurisdiction over conservation matters. In addition, I employed intersectional analysis techniques, considering factors such as gender, age, and socioeconomic status, to ensure that my findings were inclusive and representative of the diverse realities within Indigenous communities. Furthermore, I prioritized community engagement and consultation throughout the analysis, seeking feedback and validation from Indigenous stakeholders to ensure that my interpretations were accurate and culturally appropriate.

Table 1: List of Interview Participant Demographics

Participants Genders	Participants Communities
Woman	Anishinaabe /Newfoundlander from Georgina Island (Ontario)
	Tsilhqot'in Deni of Xen First Nations (British Columbia)
	Couchiching First Nations (Ontario)
Man	Unama'ki First Nations (Nova Scotia)
	TLA-O-QUI-AHT First Nations (British Columbia)
	Kitchenuhmaykoosib Inninuwug (KI)(Ontario)
	Algonquins of Pikwakanagan First Nation (Ontario)
	Swan River First Nation of Treaty 8 (Alberta)
	Curve Lake First Nation (Ontario)
	Anishinaabe from Bkejwanong (Walpole Island First Nation) (Ontario)
	Algonquin from Shabot Obaadjiwan First Nation (Ontario)

4.3.4 Analysis

Each interview was audio recorded and transcribed, and then interview transcripts were integrated into QSR NVivo 12 for thematic coding. The coding approach, combining inductive and deductive methods, was shaped by the study's methodology, ensuring the incorporation of community perspectives alongside findings from the literature review. I applied broad deductive codes, subsequently broken down inductively into specific themes, to identify the influence of international frameworks on Indigenous-led conservation, and explore Indigenous perspectives on UNDRIP implications for such efforts, deriving from literature, study objectives, and theoretical frameworks. Inductive coding, conversely, involved codes that arise directly from the data itself preceding the interpretation process of that data (Boyatzis, 1998). Utilizing the coding process, various themes emerged from the literature review and transcripts and were categorized into sub-themes aligned with the research objective. This combined deductive-

inductive coding approach guaranteed a comprehensive thematic analysis of the gathered data. The participants were allowed to include, modify, or redact content in their transcripts for any reason. This rigorous procedure guaranteed that all data integrated into the study underwent a comprehensive validity check and was openly shared with the participants.

4.4 Results and Discussion

The results were structured around distinct thematic clusters derived from both the literature review and the insights gathered from interviews. These thematic clusters served as the foundation for understanding the application of global initiatives such as the CBD and UNDRIP on the development of IPCAs within Canada, thus aligning with my analytical approach that integrated scholarly research and Indigenous perspectives.

4.4.1 The Emergence of a Decolonial Conservation Paradigm

The literature review revealed that the United Nations' biodiversity goals and the principles within the UNDRIP have revolutionized the conservation approach by prioritizing the integration of Indigenous perspectives. They have prompted a paradigm shift by emphasizing the importance of preserving biodiversity while respecting Indigenous communities' rights and traditional knowledge. These targets and commitments also fostered a decolonial approach to conservation, especially welcoming Indigenous advocacy in countries with colonial legacies like Canada (Mansuy et al., 2023). The shift towards inclusivity and collaboration fosters a more harmonious relationship between conservation efforts and Indigenous communities, contributing to the concept of IPCAs (Corrigan & Hay-Edie, 2013; Stevens, 2014). IPCAs present Canada's conservation landscape with valuable insights into sustainable approaches that stand in contrast to the conventional colonial-capitalist paradigm of resource exploitation and

environmental management (ICE,2018). Implementing CBD targets and UNDRIP frameworks in Canada also has spurred reconciliation efforts, notably within conservation endeavours involving Indigenous communities.

Guided by the frameworks outlined in UNDRIP, the landscape of IPCAs presents a potential for these efforts to facilitate reconciliation through the establishment of genuine relationships between nation-to-nation, government-to-government, and Crown-to-Inuit, as well as between Indigenous and non-Indigenous communities (ICE, 2018). Traditional conservation practices in Canada, rooted in colonial epistemologies, have marginalized Indigenous governance, knowledge, and legal systems while also appropriating land for conservation purposes (Townsend,2022). The concept of achieving conservation primarily through uninhabited areas, known as fortress conservation, originating from the idea of "nature-people dichotomies" (Büscher & Fletcher, 2020, p. 5) and colonial narratives surrounding wilderness, has influenced mainstream (i.e., Eurocentric) conservation approaches in Canada (Townsend, 2022). IPCAs challenge colonial conservation epistemologies by viewing humans as integral parts of healthy ecosystems (ICE,2018), thus presenting a potential pathway towards a decolonial conservation approach.

The literature further underscored that the predominant governance arrangement in mainstream parks and PAs in Canada is characterized by a hierarchical governance structure (Townsend, 2022). The majority of PAs were established without the involvement of Indigenous governments and failed to acknowledge Indigenous jurisdiction and legal authority, although this has gradually shifted over the last two decades. With an emphasis on addressing Indigenous and local needs, IPCAs offer an improved opportunity to restore Indigenous governance frameworks,

revitalize Indigenous knowledge systems, strengthen community empowerment, and assert Indigenous rights (ICE,2018). Therefore, IPCAs have the capacity to disrupt the hierarchical governance structure of PAs and integrate Indigenous governance within their frameworks. This potential outcome depends on addressing the existing gaps in their implementation; failure to do so could lead to their exploitation for perpetuating colonial agendas.

Furthermore, according to Clint Carroll (2014), IPCAs facilitate the advancement of decolonial objectives and establish space for preserving Indigenous land-based traditions. Carroll (2014) also elucidates that IPCAs, functioning as a manifestation of Indigenous territoriality, symbolize the reclamation of space in response to settler colonial territorial expansion. This reclamation facilitates the conservation of land-based practices and beliefs deeply ingrained in various Indigenous worldviews. Moreover, as determined by the Nations declaring them, IPCAs can serve as avenues for revitalizing culture, language, and Indigenous law, promoting healing, enhancing food security, restoring degraded ecosystems, safeguarding cultural keystone species, and protecting lands and waters for future generations (Tran et al., 2020). These principles embedded within IPCAs can challenge the colonial conservation approach, including wilderness ideology and preservationist, recreational, and capitalist goals that are often prioritized in mainstream parks and PAs. This highlights IPCAs' significant capacity to advance a decolonial approach to conservation (Townsend,2022). Employing a Two-Eyed Seeing approach, I acknowledged that IPCA designations and their objectives face criticism from diverse Indigenous perspectives, especially given their establishment by the Crown government. To adequately address their deficiencies in the future, it is essential not to overlook the potential advantages that their implementation may provide and refrain from simply disregarding or criticizing them.

4.4.2 Facilitate Policy and Legal Advancement to Support IPCA Implementation

Through the literature review conducted, it was emphasized that the UNDRIP and the CBD frameworks have facilitated the legal and policy adjustments to support the implementation of IPCA initiatives in Canada. For instance, Canada's new conservation policies and targets have embraced ambitious targets aiming to preserve 25 per cent of the country's lands and oceans by 2025, followed by a more ambitious goal of 30 per cent by 2030. Canada, as part of its commitment to the Kunming-Montreal Global Biodiversity Framework (KMGBF), must develop an updated National Biodiversity Strategy and Action Plans (NBSAP) by the end of 2024. Canada's 2030 Biodiversity Strategy will be harmonized with revised NBSAP, focusing on domestic priorities to address biodiversity loss and fulfill KMGBF objectives until 2030. It will comprehensively address nature conservation, sustainable utilization, and access to genetic resources, guided by KMGBF targets (Toward a 2030 Biodiversity Strategy for Canada, 2023). This revised strategy will include Indigenous viewpoints and leadership, which will foster reconciliation (Toward a 2030 Biodiversity Strategy for Canada, 2023). Integrating Indigenous viewpoints into the recently adopted Canadian conservation strategy can significantly aid the development and recognition of IPCAs, contributing to respecting Indigenous knowledge and enhancing IPCA development within Canada's conservation framework (Government of Canada, 2030).

ICE (2018) recommends “that federal, provincial, territorial and Indigenous governments work together on an ongoing basis to review—and, where necessary, amend—protected area legislation, policies and tools to support IPCAs” (p.60). If Crown governments are committed to IPCAs and fostering reconciliation, it is imperative they address the legal and political challenges

originating from within Crown legal and policy frameworks and settler colonial communities. Achieving these objective demands that Crown governments and settler society actively cultivate respect for and deference to Indigenous law (Townsend, 2022). This acknowledgment should be evident in legislative and policy initiatives and political decision-making processes. Learning about Indigenous legal systems and terminating the effects of historical legacies such as the doctrine of Discovery, Terra Nullius⁹ and the Indian Act¹⁰ on conservation policies are integral components of this vital endeavor.

Canada's 2030 Biodiversity Strategy, which prioritizes the incorporation of Indigenous perspectives into conservation efforts of PAs to address biodiversity loss, initiates a movement aimed at denouncing colonial conservation policies (Toward a 2030 Biodiversity Strategy for Canada, 2023). The persistent focus within the new Biodiversity Strategy on Indigenous-led conservation might catalyze the creation of new IPCAs or the expansion of existing ones, prioritizing areas with ecological significance and cultural importance to Indigenous communities. Moreover, this emphasis underscores the imperative for respectful collaboration, potentially transforming IPCA development by centering on Indigenous sovereignty, knowledge, and co-management models that empower Indigenous communities in protecting biodiversity (Toward a 2030 Biodiversity Strategy for Canada, 2023). It aligns with the country's commitment to reconciliation with Indigenous peoples and supports a holistic approach to conservation that

⁹ Imperial Spain and Britain employed the concept of terra nullius alongside the 15th century Doctrine of Discovery to legitimize their colonization and settlement endeavors in the Americas by asserting that the lands were uninhabited and not being utilized productively (Borrows, 2015, p. 726). The TRC (2015) has urged Canada to repudiate this colonial legal decree.

¹⁰ Indian Act was enacted in 1876, with the aim of consolidating several preceding colonial laws, designed to exert control over and assimilate Indigenous peoples into Euro-Canadian culture (Oxford Dictionary; The Doctrine of Discovery n.d.).

incorporates diverse perspectives and knowledge systems. Given this context, Canada's new conservation policy could possibly contribute to supporting Indigenous-led conservation initiatives in Canada.

Furthermore, these commitments catalyze legal advancements that support initiatives related to IPCAs. The government of Canada officially endorsed UNDRIP in 2016 without the qualifications imposed by the previous government, which had considered the declaration aspirational and non-binding. Although this endorsement did not alter the legal status of UNDRIP in Canada, it demonstrates a political commitment to begin its implementation and indicates that Canada might be moving towards reconciliation with Indigenous peoples (Borrows, 2019). If implemented sincerely with the goal of achieving Indigenous self-determination, UNDRIP can address historical power imbalances that have resulted in unlawful land appropriations and resource exploitation (White & West Coast Environmental Law, 2022).

Parks and PAs governed by legislation such as Canada's National Parks Act, represent a manifestation of Canadian law. State-led conservation initiatives have historically served colonial interests, often resulting in the displacement of Indigenous populations from their lands (Townsend, 2022). IPCAs are guided by Indigenous knowledge and legal traditions, emphasizing the elevation of Indigenous rights and responsibilities (ICE, 2018). Yet, legal pluralism is a fact in Canada; there is currently no recognition of Indigenous law in Canada, with most IPCAs established under Indigenous law (Townsend, 2022). Moreover, the scholarly literature highlighted that the primary challenge for implementing IPCAs is the absence of specific legislation across Canada. These tensions create opportunities for legal and policy changes in Canada (Townsend, 2022).

Section 35 of Canada's Constitution Act, 1982 states that "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed". This principle is also explicitly outlined in Article 3 of the UNDRIP, which affirms the right of Indigenous Peoples to self-determination regarding their political status and to freely pursue their economic, social, and cultural development (United Nations, 2007). These principles could provide momentum for innovations to address the legal challenges associated with implementing IPCAs (Townsend, 2022), empowering Indigenous communities to lead and participate in establishing and managing IPCAs in their traditional territories by acknowledging Indigenous rights to lands, territories, and self-determination. Furthermore, outlined in the UNDRIP Act action plan, the Government of Canada mandates to "Continue to support Indigenous leadership in conservation through initiatives such as Indigenous Guardians, Indigenous Partnerships Initiative and Indigenous-Led Area Based Conservation that will provide capacity support until 2026" (The UNDRIP Act Action Plan, 2023., p.36). The Declaration on the Rights of Indigenous Peoples Act (DRIPA)¹¹ in BC further indicated that implementing UNDRIP and aligning provincial laws with its principles can significantly influence the formation and progress of IPCAs, particularly in empowering Indigenous communities to spearhead conservation initiatives within their lands. This alignment is also pivotal as it provides legal and regulatory support, recognizing Indigenous governance and rights over their territories (Kacer et al., 2023). The UNDRIP principles and its related initiatives, as components of the government's efforts to align its laws with UNDRIP, could provide important support to Indigenous-led conservation endeavors. Some may seek to

¹¹ The Legislative Assembly of British Columbia unanimously passed the Declaration on the Rights of Indigenous Peoples Act, 2019 (referred to as the Declaration Act or DRIPA) on November 28, 2019, with the aim of incorporating UNDRIP into legal framework.

diminish the influence of UNDRIP by highlighting its non-binding nature as a declaration (Borrows, 2019). However, it is important to note that while a declaration does not impose directly enforceable legal obligations on a state, "soft law" should not be disregarded as devoid of legal significance (Barelli, 2009; Borrows, 2019).

4.4.3 Indigenous Visions for UNDRIP Implementation in Canada

Implementing the UNDRIP principles could fundamentally change how Indigenous communities participate in sustainable resource development, ensuring their equal partnership in resource management (UNDRIP Act, 2021). In this research, I also delved into the perspectives of 11 Indigenous individuals on implementing UNDRIP within Canada and its contribution to advancing Indigenous-led conservation. This research investigated how power dynamics within the Crown influence the implementation of UNDRIP and Indigenous participation in its processes. Additionally, it explored the impact of UNDRIP implementation on Indigenous-led conservation narratives in Canada, critiquing the hierarchical governance model adopted by the Crown in conservation efforts. Many individuals asserted that the government has yet to recognize Indigenous jurisdiction and governance in conservation endeavours entirely. However, they viewed the recommendations of the TRC and the frameworks of the UNDRIP as promising avenues toward achieving this recognition. The participants in this study expressed concerns about the effectiveness of UNDRIP implementation in supporting Indigenous leadership in conservation:

"I don't see other governments fully recognizing that [Indigenous] jurisdiction but, there with the TRC and then Calls to Action, and then UNDRIP and other things, all have impacts on that" (Clint Jacob)

4.4.3.1 Capacity Building

Participants highlighted a significant capacity issue faced by First Nations concerning their involvement in processes related to implementing UNDRIP. It underscored a lack of adequate support, particularly in terms of capacity building, hindering their effective participation in this process. Participants elaborated on capacity issues, which included a lack of financial support for Indigenous communities, insufficient tools for raising public awareness about Indigenous rights in conservation, and limited training opportunities for Indigenous communities to contribute to conservation efforts. In addition, the shortage of human resources presents a substantial barrier, inhibiting their capacity to fulfill their roles effectively in advancing UNDRIP principles in conservation endeavors.

“There’s lack of support for First Nations to actually be involved in that process [UNDRIP implementation], just we all need capacities, if they’re chief or they’re some of their councilor, and they don’t even have staff” (Clint Jacob)

ICE (2018) called upon diverse stakeholders, encompassing government entities, environmental NGOs, and industry, to aid in enhancing the capacity of Indigenous governments, communities, and affiliated organizations for the successful establishment and management of IPCAs, alongside broader engagement in conservation endeavours. This capacity-building includes providing financial support and establishing avenues for adjustments in legal and policy frameworks to facilitate the development of IPCAs (ICE, 2018). Implementing the UNDRIP principles can serve as mechanisms to facilitate capacity building and support the development of IPCAs. In conventional approaches to capacity-building, Indigenous programs primarily depend on funding from Crown governments, often resulting in limited capacity development within Indigenous communities (ICE, 2018). Effective conservation outcomes depend on integrating

Indigenous knowledge and perspectives into initiatives like IPCA development, as Indigenous communities possess invaluable insights into land stewardship and sustainable resource management (Townsend, 2022). Limited participation of Indigenous communities in the UNDRIP implementation process, lack of resources allocated for capacity building within Indigenous communities and Indigenous Guardians hinder effective support for IPCA development, as it lacks crucial Indigenous perspectives and representation, being central to Indigenous-led conservation.

4.4.3.1.1 Lack of understanding

Numerous participants highlighted that Indigenous communities lack sufficient awareness and understanding regarding their own history, rights, and experiences of trauma. This lack of awareness results in the perpetuation of trauma as individuals may not comprehend the origins of their challenges, leading to feelings of blame and shame. Moreover, this lack of understanding leads to Indigenous communities being disconnected from their roles in environmental stewardship and traditional responsibilities. This disconnection is exacerbated by government policies such as UNDRIP and the TRC's Calls to Action, as there was insufficient education and awareness regarding these matters beforehand.

"I can say pretty confidently that 75% of our people have no idea about any of this stuff [UNDRIP, and the TRC Calls to Actions], including our own histories, because there was no education and awareness of this stuff beforehand" (KERRY-ANN CHARLES)

The lack of understanding and knowledge about UNDRIP also prevents Indigenous communities from harnessing its advantages to enhance their land stewardship practices. Consequently, this provides an opportunity for colonial frameworks to be incorporated into the implementation process of UNDRIP.

The colonial theme is going to be governing what's being brought forward with the United Nations Declaration on the rights of Indigenous peoples, because I don't think that there is a clear enough understanding from our community members, let alone our community leadership (KERRY-ANN CHARLES)

The principles of UNDRIP endorse the Indigenous-led conservation approach, emphasizing the importance of recognizing the inherent rights of Indigenous Peoples, which encompass their cultures, spiritual practices, histories, and worldviews. UNDRIP argues that such recognition will promote environmentally sustainable and equitable development. UNDRIP further asserts that preserving culture is crucial for advancing self-determination and reconciliation (United Nations, 2007). In essence, IPCAs serve as practical embodiments of the principles advocated by UNDRIP, promoting an approach to conservation that integrates cultural preservation, recognizes Indigenous rights, and emphasizes the intrinsic link between environmental sustainability and the preservation of cultural heritage (ICE,2018).

Yet, a lack of understanding among Indigenous communities about these principles may impede the effectiveness of UNDRIP and its initiatives in supporting Indigenous-led conservation efforts. Indigenous communities' lack of awareness and understanding regarding initiatives aimed at supporting their leadership in conservation, such as UNDRIP, has allowed colonial frameworks to become integrated into their implementation, ultimately undermining their effectiveness in empowering Indigenous engagement in conservation initiatives. This dynamic persists because Indigenous communities often lack adequate understanding of their rights and perspectives (Innes et al., 2021), thereby allowing the Crown to manipulate initiatives, exemplified by UNDRIP, to advance their colonial objectives. This exploitation, in turn,

perpetuates existing power imbalances and hampers endeavours towards Indigenous-led conservation (Youdelis et al.,2021).

4.4.3.2 Assimilation concern

Criticism has emerged regarding Canada's approach to implementing UNDRIP in conservation realm, which is perceived as an attempt to assimilate Indigenous communities into the Canadian legal system, a concept vehemently rejected by Indigenous perspective. Some individuals raised the concern that endeavors like the Canadian Declaration on the Rights of Indigenous Peoples and the UNDRIP Act are articulated with the intention to assimilate Indigenous communities and their traditional laws within the framework of the Canadian legal system. In addition, they raised concerns that UNDRIP is being manipulated to serve colonial agendas. Their skepticism arises from the absence of adequate space for Indigenous representation in discussions regarding the implementation process of UNDRIP.

I know that someone was going around saying that KI [Kitchenuhmaykoosib Inninuwug] has accepted CANDRIP, it is the declaration kind of [Canadian] version of the UNDRIP. We don't believe in having to be absorbed into Canadian law, and we believe that to be acknowledged through CANDRIP (John Cutfeet)

“The UNDRIP, when I look at it from the Indigenous perspective, that is law that is ingrained in the colonial perspective”

(KERRY-ANN CHARLES)

The establishment of IPCAs can be an important expression of Indigenous values, laws, and knowledge systems ICE (2018). However, the failure of broader legal frameworks to formally recognize Indigenous legal systems poses a significant challenge to advancing IPCAs (Kacer et al., 2023). Indigenous communities have historically faced assimilationist policies aimed at erasing their cultural identities and legal traditions (Innes et al., 2021), and there is a legitimate concern

that current initiatives may perpetuate this legacy under the guise of recognition and rights. The absence of adequate Indigenous representation in discussions regarding the implementation of UNDRIP further compounds these concerns. Without such engagement there is a risk that UNDRIP could be manipulated to serve colonial agendas rather than genuinely empowering Indigenous peoples, thus hindering the development of IPCAs and perpetuating historical injustices.

4.4.3.3 Political Reluctance

The criticisms within this study, raised by participants, highlighted a perceived absence of political dedication to facilitate Indigenous involvement in UNDRIP implementation, evidenced by the absence of supporting initiatives for Indigenous partnership. Furthermore, numerous participants criticized that many political and legal innovations and modern-day treaties are established without considering UNDRIP mandates, indicating a lack of willingness to adhere to its principles. Participants emphasized that, it is imperative for the government to prioritize building the necessary capacity to tackle this issue.

“UNDRIP, that isn't hard to follow and hard to fulfill if people want to, but the Government doesn't want to” (Chris Craig)

Section 35 of the Constitution Act 1982 states that Indigenous Peoples possess the right and duty to exercise their traditional governance (Jackson et al., 2020) which is likewise explicitly affirmed in Article 3 of the UNDRIP (mentioned earlier) (United Nations, 2007). These territorial rights, supported by UNDRIP, are a composition of the right to jurisdiction, the right to resources, and the right to control boundaries (United Nations, 2007). Implementing UNDRIP principles would facilitate incorporating Indigenous knowledge and practices into managing IPCAs, leading

to more effective conservation outcomes. However, the enduring impact of colonial policies on conservation, coupled with limited UNDRIP implementation by select governments (Kacer et al., 2023), highlights a lack of political willingness to implement UNDRIP and engage Indigenous communities in this endeavour. Indigenous rights and sovereignty may not be adequately protected without formal recognition and incorporation of UNDRIP into national and sub-national legal frameworks. This lack of legal recognition, stemming from a lack of political commitment, undermines Indigenous communities' ability to assert control over their lands and resources, hindering the establishment of IPCAs.

4.5 Conclusion

A growing variety of national and global frameworks, tools, and guidelines, including UNDRIP and its related initiatives, United Nations biodiversity goals, the TRC's Calls to Action, ICE recommendations, and similar initiatives, are shifting the conventional conservation approach in Canada—usually led by colonial authorities and governments—toward Indigenous-led conservation as a decolonizing strategy. IPCAs are conceptualized as an alternative to conventional conservation approach and as mechanisms contributing to reconciliation processes. IPCAs disrupt the traditional assumptions prevalent in Turtle Island/Canada regarding environmental governance, which typically positions Crown-led initiatives as the primary authority and perceives Indigenous governance as predominantly advisory. Although various parks and protected areas in the country exhibit some level of shared management between Crown and Indigenous governments, these arrangements often do not fully meet Indigenous aspirations. IPCAs are introducing novel collaborative governance models that surpass the limitations observed in many existing co-management structures (Townsend, 2022). However,

the successful implementation of IPCAs hinges on their ability to disrupt prevailing hierarchical governance structures and fully incorporate Indigenous rights and knowledge systems. The literature review also highlighted that the integration of the UNDRIP and CBD frameworks has significantly influenced Canada's legal and policy landscape to support Indigenous-led conservation. Canada's ambitious conservation goals and commitment to updating its National Biodiversity Strategy and UNDRIP implementation initiatives reflect a robust alignment with international biodiversity frameworks and the incorporation of Indigenous perspectives. These measures are pivotal in empowering Indigenous communities to lead conservation efforts through legal and policy avenue. In addition, this study has underscored the perspectives of Indigenous individuals on UNDRIP's potential to advance Indigenous-led conservation efforts, revealing significant barriers such as capacity limitations, lack of understanding, concerns about assimilation, and political reluctance. Despite these challenges, UNDRIP offers a framework that promotes Indigenous rights, self-determination, and cultural preservation within conservation initiatives like IPCAs. Moving forward, addressing these barriers through enhanced capacity building, increased awareness, and genuine political commitment is essential to fostering equitable partnerships and empowering Indigenous communities in their stewardship of natural resources. Achieving this vision requires robust efforts to integrate Indigenous knowledge and governance into policy frameworks, ensuring that UNDRIP's principles translate into meaningful actions that uphold Indigenous rights and promote sustainable conservation outcomes.

Initiatives aimed at supporting IPCAs implementation can be advantageous for Indigenous communities when there is ample capacity and preparedness from within the Indigenous communities. Without this necessary capacity, colonial governments may intervene and

influence their direction, potentially steering them in ways that may not align with Indigenous aspirations and goals. If Crown governments are genuinely committed to implement IPCAs and advance reconciliation, it is essential that they address the legal obstacles arising from within Crown law and settler colonial society. To achieve these objectives, a fundamental shift and transformation at the ontological level are necessary. This entails Crown governments and settler society fostering a culture of respect for and deference to Indigenous laws, with this mindset being translated into legislative and policy frameworks as well as political decision-making processes. To meet UNDRIP and CBD commitments, various legal and policy innovations are in place to facilitate Indigenous communities in establishing IPCAs. However, a prevailing concern is that these initiatives harbour an underlying intention of assimilation, potentially reinforcing the authority of the Crown's jurisdiction.

Chapter 5: Legal and Policy Challenges Impeding Implementation of Indigenous Protected and Conserved Areas Across Canada

Target Journals: (Environmental policy and Governance) Wiley / International Indigenous Policy Journal

Abstract

Within the current Canadian legal framework, IPCAs lack official recognition by Crown law. Without legal protection, numerous IPCAs expose to the risk of unwelcome activities and potential development. Working within the confines of the Canadian legal structure reinforce the western and Eurocentric ideologies that inform mainstream development and conservation agendas. Such ideologies often view nature as separate and independent from human beings. This perspective contrasts with Indigenous laws and knowledge systems, where the idea of sustained human existence within the natural environment is regarded as beneficial and indispensable, recognizing humans as an inseparable component of nature. Within western knowledge frameworks, there exists a potential for the principles inherent in Indigenous knowledge systems, laws, and governance structures to be marginalized or disregarded. This imperative underscore the requirement for innovative legal frameworks that harmonize with Indigenous perspectives and goals, facilitating the establishment and sustenance of IPCAs in accordance with Indigenous values and aspirations. The overarching objectives of this research is to investigating the legal and policy barriers to the development of IPCAs in Canada that are reflective of Indigenous rights and self-determination. Due to the historical imposition of colonial governance and the decline of Indigenous laws and treaties, understanding the Indigenous perspective on the legal and policy challenges that hinder their leadership in conservation efforts and the establishment of IPCAs becomes crucial. Applying a qualitative research methodology, 11 semi-structured interviews were conducted; engaging participants in discussions related to the research objectives. The findings emphasized the legal and political obstacles faced by Indigenous communities when implementing the IPCA approach in their territories, including the lack of recognition of Indigenous sovereignty, the continuation of oppressive colonial conservation laws, and the disregard for Indigenous legal systems. To address these challenges, it was recommended to prioritize building mutual relationships, exchanging knowledge, and acknowledging Indigenous sovereignty and jurisdiction.

5.1 Introduction

In the past, the establishment of parks and Protected Areas (PA) by Canadian governments did not prioritize the health and well-being of nature itself; instead, nature served as a backdrop for recreational purposes (Youdelis et al., 2020). During this early period of park creation, Indigenous Peoples were viewed as obstacles to the enjoyment of nature, leading to their forced relocation or confinement within imposed jurisdictions. Consequently, these actions undermined Indigenous practices and economies vital to maintaining healthy biological diversity (ICE, 2018). Recently, the management approach in Canadian parks and PAs has shifted towards prioritizing the conservation of biological diversity (ICE,2018). This shift in focus has been accompanied by a growing recognition that Indigenous peoples possess valuable insights and contributions in conserving, protecting, and promoting biodiversity. The efforts of the Indigenous Circle of Experts (ICE) mark a significant milestone in this evolving narrative (ICE,2018). The ICE comprised Indigenous experts from across Canada and members from federal, provincial and territorial jurisdictions who collectively work to make progress on promoting the perspectives of Indigenous Peoples across Canada regarding land and water conservation and protection. In addition, ICE was mandated to provide a comprehensive report on how the country can move toward reconciliation¹² (ICE,208). The ICE report suggests that it is now imperative to acknowledge Indigenous knowledge systems, legal traditions, and cultural practices as equally legitimate and binding compared to other frameworks. In pursuit of this objective, they have

¹² Reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country (TRC,2015, P.6).

strived to elucidate a crucial element of this rightful acknowledgement: Indigenous Protected and Conserved Areas (IPCAs) (ICE, 2018).

IPCAs refer to “lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems” (ICE, 2018, p.5). Indigenous governments have the capability and historical precedent to establish IPCAs based on their laws, jurisdiction, and governance, independent of formal acknowledgment by Crown (federal, provincial and territorial) law (ICE, 2018). However, within the current Canadian legal framework, IPCAs lack official recognition by Crown law and legal protection. This exposes numerous IPCAs to the risk of unwelcome activities and potential development (Youdelis et al.,2021; Kacer et al., 2023). This imperative underscores the crucial role of innovative legal frameworks that harmonize with Indigenous perspectives and goals, facilitating the establishment and sustenance of IPCAs in accordance with Indigenous values and aspirations. This study explored the legal and policy barriers to developing IPCAs in Canada that have the potential to reflect Indigenous rights and self-determination. In addition, the research aimed to provide insights into potential approaches for addressing the legal and policy challenges of implementing IPCAs.

5.2 Background: Current legal landscape for IPCAs in Canada

Today, IPCAs are often established under Indigenous law, but there remains no recognition in Crown law, leaving them vulnerable (Lloyd-Smith, 2017). Having no legal mechanism for their establishment has made it easier for provincial governments to resist it (McIntosh, 2022). Regardless of whether colonial governments recognize the Indigenous

territory as protected or not, it is essential to remain cognizant that Indigenous peoples determinedly protect their lands and waterways (Mousavi, 2022).

While IPCAs represent a conservation approach led by Indigenous communities, distinct from the conventional conservation model of parks and PAs, they are frequently overlooked by current legal systems and regulations and pose difficulties for them (Mullen, 2022). The main obstacle remains the lack of recognition for Indigenous jurisdiction in all provincial land and resource-use laws, including protected area legislation. These laws consistently place ultimate decision-making power in the hands of the provincial Crown, granting it sole authority except in limited cases involving First Nations with modern treaty agreements or other Crown-recognized arrangements (White & West Coast Environmental Law, 2022). Additionally, provincial legislations fail to acknowledge IPCAs or encourage provincial action when First Nations wish to establish them. They also do not recognize the authority of Indigenous peoples to govern their territories under their own laws and jurisdiction. Instead, the existing regulatory and legislative frameworks permit the province to either reject or ignore requests from First Nations for Crown recognition and support for establishing IPCAs or Indigenous Guardian¹³ programs (White & West Coast Environmental Law, 2022). Consequently, such Crown-based authority within laws concerning parks and PAs creates obstacles in establishing IPCAs (Youdelis et al.,2021). The absence of legal support for IPCA designation creates opportunities for resource exploitation and

¹³ Indigenous Guardians are individuals tasked with overseeing and safeguarding the lands and waters within their territories, acting as the "eyes and ears on the ground" to fulfill their stewardship responsibilities (Indigenous Leadership Initiative,n.d).

biodiversity depletion and prolongs reconciliation efforts with Indigenous peoples, causing significant delays in addressing these issues (Mousavi,2022).

New federal legislations authorizing IPCAs may be passed in the future. However, for now, Indigenous Nations in most jurisdictions must find innovative methods to use the current legal instruments and procedures to take advantage of Crown protection ¹⁴(Mullen, 2022). As a result, to ensure the success of IPCAs as a conservation tool and to assist Canada in achieving its biodiversity objectives, it is essential to harmonize both legal systems, acknowledging the significance of treaties and Indigenous jurisdiction over lands and waters. This clarity on legal jurisdiction will allow Indigenous nations to establish IPCAs more securely and develop governance models for fulsome conservation economies (Innes et al., 2021). The Canadian government is providing support for IPCAs through specific initiatives. However, Canada's extractives development model (Youdelis et al.,2021), the presence of jurisdictional inconsistencies and colonial themes governing the legal frameworks for PAs (Willow, 2012) are impeding the establishment and long-term sustainability of numerous IPCAs. In addition, since Indigenous legal traditions have yet to be harmonized and reconciled with Canadian law, the

¹⁴ Edézhíe was designated as a Dehcho Protected Area under Dehcho law in July 2018, becoming the first IPCA that year. Edézhíe is designated as a National Wildlife Area (NWA), which is protected and managed in accordance with the Wildlife Area Regulations under the Canada Wildlife Act. The Edézhíe NWA will be co-managed by the Dehcho First Nations and the Government of Canada in a collaborative effort (Edézhíe National Wildlife Area and Dehcho Protected Area, 2022). The protection of Edézhíe is not merely an abstract concept shaped by politics or policy; it represents concrete, practical efforts. Dehcho First Nations has taken concrete steps by employing its Dehcho K'ehodi Guardians to establish on-the-ground protection (Dehcho First Nations, n.d.).

process of establishing IPCAs has typically relied on the Crown's authority regarding lands and PAs (Blaise, 2020).

Given the novelty of IPCAs, it is crucial to examine the gap in federal-level legislation, which could serve as a catalyst for provinces to align their own laws and policies with this innovative conservation approach. To date, Quebec is the sole region that has integrated IPCAs into legislation through the concept of Aboriginal-led Protected Areas (APAs). Nonetheless, no instances of APAs have been established yet (Kacer et al., 2023). Except for Quebec and Manitoba, no Canadian legislation explicitly supports the designation, recognition, and protection of IPCAs. Furthermore, the effectiveness of the legislation in Quebec and Manitoba from Indigenous perspectives remains uncertain (Townsend, 2022).

5.3 Methods

This collaborative study involved multiple organizations, including the David Suzuki Foundation, the Conservation through Reconciliation Partnership (CRP), Grand Council Treaty 3, Ecojustice, World Wildlife Fund Canada, and Ontario Nature, establishing 'Reconciling Jurisdiction' working group. The research focused on addressing legal barriers surrounding IPCAs, understanding Indigenous perspectives on jurisdiction, and providing guidance for legal reform to enhance clarity and co-governance of lands and waters. This research was conducted within the framework of this initiative, aiming to address the legal and policy challenges of IPCA implementation. The study's methodology was influenced by Two-Eyed Seeing approach, acknowledging diverse knowledge systems (such as "Indigenous knowledge and ways of knowing" and "mainstream knowledge and ways of knowing") "for the benefit of all" (Bartlett et al., 2012; Reid et al., 2021, p. 245). Enabling Indigenous-led conservation necessitates weaving

Indigenous and western knowledge systems. However, achieving this amalgamation poses difficulties without establishing transparent communication channels and acknowledging prevailing power differentials (Papadopoulos, 2021). Thus, to avoid perpetuating traditional disparities in knowledge and authority, it is imperative to adopt a nuanced approach such as Two-Eyed Seeing throughout the research endeavour (Papadopoulos, 2021). Considering my background, my access to Indigenous knowledge systems was restricted, and I lacked cultural context and lived experience. The concept of Two-Eyed Seeing catalyzed my efforts to enhance my capacity to perceive from an alternative viewpoint. This involved developing this research to explore and integrate the lived experiences of Indigenous individuals impacted by the government conservation policies and legislation, which have constrained their leadership in conservation efforts.

5.3.1 Theoretical Frameworks

Drawing on Governance theory, it helped in identifying how different stakeholders, including Indigenous communities, are engaged in the policy and legal aspects of IPCAs. Governance theory was instrumental in analyzing the structures and processes that contribute to policy and legal hurdles within IPCAs. The broader project delved into examining the legal framework surrounding IPCAs, emphasizing the necessity for increased inclusivity and active engagement of local communities in formulating and adopting policies and legislation concerning their territories.

Moreover, within the field of political ecology, this research aligned with post-structural epistemology, which rejects major misconceptions underpinning the conventional PAs' approach (such as wilderness, fortress conservation and superiority of western knowledge rather than

Indigenous values). Instead, it advocates for concepts like IPCA, representing a space fostering inclusivity and active engagement of local communities in shaping policies and legislation concerning their territories, thereby acknowledging and incorporating their perspectives and knowledge systems. The primary methods applied in the study were focus group and semi-structured interviews. These methods included asking broad questions aligned with the study's objectives while allowing participants to provide flexible and diverse opinions on each question.

5.3.2 Focus Group

To conduct this research, the research team and I facilitated a focus group with land guardians, Elders, knowledge holders, Indigenous youth, or employees of land departments who attended the Restore, Assert and Defend (RAD) gathering¹⁵. Nine participants (Indigenous and non-Indigenous) were involved in this two-hour focus group to discuss their perspectives on the legal and policy barriers that impede the development of IPCAs. They also highlighted criticisms regarding IPCA designations and offered insights into potential strategies for addressing the legal and policy challenges of implementing IPCAs.

5.3.3 Semi-Structured Interviews

Eleven semi-structured interviews were conducted online via Zoom, each lasting between 60 to 120 minutes, and were audio recorded. Prior to the interviews, a comprehensive informed consent process was conducted, offering participants choices regarding anonymity (Appendix C). Dalhousie University's Research Ethics Board (REB) granted ethical approval for the study,

¹⁵ In April 2023, the RAD Network hosted "Envisioning the Indigenous-led Conservation Economy event. The RAD Network has arisen due to the CRP initiatives. The CRP is a Canada-wide research group committed to advancing the IPCA process in Canada through research initiatives conducted in collaboration with communities (<https://conservation-reconciliation.ca/>).

encompassing both the data collection phase and the stage of knowledge mobilization (Appended REB file #: 2023-6568). The study partners recruited participants by contacting the guardians' network, the CRP and the CRP's IPCA co-learning circle partners, and Indigenous government land departments currently working with the David Suzuki Foundation. The participants came from 11 diverse Indigenous communities across Canada (Table 2).

To conduct this study, it was imperative to gather perspectives from Indigenous land guardians, knowledge holders, Elders, and other individuals actively engaged with their lands and waters regularly. They were individuals engaged in frontline conservation who could provide concert instances of the legal and policy challenges faced by Indigenous leadership in conservation efforts. This research aimed to create a space for voices that often do not have the opportunity to be heard. The participants identified legal and policy challenges that constrained Indigenous leadership in conservation endeavours. Furthermore, the respondents offered their perspectives on addressing the existing gaps within the legal and policy frameworks that govern conservation to improve Indigenous leadership in conservation efforts.

Table 2: List of Interview Participant Demographics

Province	Organization	Interviews
Ontario	Cambium Indigenous Professional Services (CIPS)	1
	No Organization (Independent Consultant)	1
	South Nation Conservation	1
	4 Directions Conservation Consulting Services	1
	Treaty 3 Women's Council	1
	Walpole Island Heritage Centre	1
	Plenty Canada	1
Nova Scotia	Unama'ki Institute of Natural Resources	1
British Columbia	lisaak Olam Foundation	2
Alberta	Lesser Slave Lake Indian Regional Council	1
Total		11

5.3.4 Analysis

Each audio recording and notes from the focus group were transcribed and imported into QSR NVivo 12 for thematic coding. In NVivo 12, the data gathered from interviews and focus group were coded, incorporating deductive and inductive codes. I employed broad deductive codes, which were later broken down inductively into more refined themes, to discern key legal and policy challenges emerging from the study objectives and theoretical frameworks. Conversely, inductive coding involved the creation of codes derived directly from the data itself, preceding the interpretation process (Boyatzis, 1998). The coding process identified numerous themes from the transcripts and categorized into sub-themes aligning with each research objective. Common and recurring themes were consolidated to present the findings. These

findings were analyzed within the broader context of each transcript, and quotes were frequently employed to comment on each theme.

I acknowledged the diversity among Indigenous communities in Canada, with distinct perspectives and legal traditions. Despite the limited engagement, the results of this study revealed remarkably identical overarching legal and political challenges that Indigenous peoples face when striving to contribute to conservation efforts. In addition, the implementation of IPCAs represents a novel approach in Canada, and there is a limited number of Indigenous individuals with comprehensive knowledge and experiences in navigating the federal and provincial legal and policy challenges linked to IPCA development. By conducting interviews and focus groups with individuals directly affected by these challenges, the research ensured that the insights gathered were relevant and grounded in lived experiences. While acknowledging that a more diverse participant pool could provide additional insights, this research opened new avenues to the inclusion of additional layers of legal and policy challenges of IPCAs that may emerge from a more diverse range of perspectives in the future. By encompassing a breadth of Indigenous nations and communities rather than concentrating on any single one, the research serves as a valuable resource for all Indigenous groups striving to establish IPCAs on their land according to their traditional laws. A comprehensive member-checking process was carried out to ensure an accurate representation of participant responses. The member-checking process involved transparently sharing all research data with participants and conducting a thorough validation assessment to ensure the accuracy and alignment of interpretations with participants' original responses. Participants were actively engaged in reviewing the research outcomes to validate whether their perspectives were accurately represented in the final analysis.

5.4 Ethical consideration

A critical ethical consideration in Indigenous research emphasizes that this academic research should not be manipulated to advance researchers' academic positions (Tri-Council Policy Statement, 2022). Most participants acknowledged a legitimate concern that the information generously shared with researchers by Indigenous communities should not be misused or exploited just for capitalist, personal and professional objectives. They further emphasized that collaborative research with Indigenous communities should lead to improvements in the well-being of these communities, with a focus on prioritizing Indigenous needs above the individual gains and career advancement of researchers. Moreover, equity should be a guiding principle in providing opportunities for Indigenous and non-Indigenous researchers. In this research, I made a conscious effort to avoid adopting a superiority mindset when collaborating with Indigenous communities. My goal was to ensure that the research serves Indigenous communities across Canada, particularly those working towards IPCAs, with the aim of bringing about positive change rather than solely serving my academic objectives.

5.5 Results and Discussion

In order to investigate the legal and policy challenges related to the implementation of IPCAs across Canada and to understand potential solutions for addressing these gaps, I synthesized the viewpoints of 21 participants who participated in interviews and a focus group. The analysis revealed two primary themes accompanied by several sub-themes. More prominent themes included reflection on the significant influence of colonialism on conservation policies and the existence of colonial legacies within Canada's legal framework. To address the study objectives, I discussed the significant challenges and shortcomings within Canada's current

conservation policy and legislative frameworks, which were identified through the data collection process. Within this context, the most notable ones are outlined and elaborated upon as follows:

5.5.1 The Overarching Shadow of Colonialism

The prevailing acknowledgement among most participants was that the enduring influence of colonial legacies remains impactful in shaping the interactions and collaborations between Indigenous communities and the government of Canada, particularly concerning conservation practices and policies. The conservation initiatives and policies often stem from historical policies that prioritize colonial interests and values, often marginalizing or overlooking Indigenous perspectives, traditional knowledge, and stewardship practices. Consequently, this leads to developing conservation approaches that might not align with the comprehensive understanding of the environment and ecosystems perceived by Indigenous communities.

“...the Federal government will work through colonial structure rather than our original hereditary and or traditional government structures...” (KERRY-ANN CHARLES)

If you look at all these different land trust groups out there who push IPCAs or other effective means of conservation OECMs, they are very much in the game of locking the land... that's not Anishinaabe or Mississaugas value, that's a settler Colonial Christianity desire (Gary Pritchard)

Furthermore, many participants focused on the continued impact of oppressive historical policies and initiatives, notably the Doctrine of Discovery, Comprehensive land claims, and also the structure of the Chief and Council¹⁶, which continue to dictate the colonial boundaries within

¹⁶ The implementation of an elected Council and Chiefs was established under the Indian Act of 1876 to provide a more recognizable framework for Indigenous communities to engage with the Canadian government and serve as representatives of their nations. This policy aimed to eliminate the traditional concept of hereditary chiefs unfamiliar within westernized democracy (Hereditary Chiefs Vs. Elected Chiefs, 2021).

the conservation mainstream. The intentional implementation of such policies demonstrates a recurring historical approach where colonial powers systematically employed legal and political frameworks to curtail Indigenous sovereignty and assume their jurisdiction over their traditional territories, thereby legitimizing the governance by the colonial authorities.

we have to differentiate between the Chief and Council authority, because the Chief and Council authority extends only to the reserve boundary within the reserve, but the government has been using Chief and Council to authorize projects outside of the reserve boundaries, they continue to say we have Chief and Council authorization to push this project through.... where, the traditional people are being criminalized (John Cutfee)

"...the Doctrine of Discovery, along with a doctrine called Terre Nullius gave the church and the explorers the legal and moral justification for a colonial disposition, they came to Canada and took our lands and our resources, so that included all First Nations throughout Canada..." (Elder Priscilla Simard)

The Doctrine of Discovery has been pervasive in Canadian conservation efforts for many decades. This Doctrine has disregarded the sovereignty of Indigenous nations, legitimizing the right of Christians to dominate and seize the lands belonging to Indigenous Peoples (Shah, n.d.). The aforementioned colonial policies and initiatives often reflect certain premises and ideologies within conservation that are deeply entrenched in the western concept of wilderness ideology (viewed nature as something separate from humans and sought to preserve untouched landscapes), preservationist approaches (focused on preservation without acknowledging Indigenous knowledge and practices), recreational tendencies (prioritization of recreational activities over Indigenous land use or cultural significance), and capitalist objectives (focused on economic gains, disregarding Indigenous values of environmental stewardship (Townsend,2022)).

These perspectives have historically guided the establishment and management of mainstream parks and PAs in Canada (Youdelis et al.,2021).

IPCA's in contrast have the potential to challenge colonial approaches by recognizing Indigenous presence, integrating traditional practices, prioritizing cultural revitalization, and promoting a more balanced and inclusive conservation form that respect ecological and cultural values (ICE,2018). The ongoing influence of these colonial ideologies and historical policies pose significant obstacles to acknowledging and successfully implementing IPCA's within the broader conservation framework (Innes et al., 2021). Should IPCA's be implemented, there is a concern that they might be manipulated to serve colonial interests instead of genuinely revitalizing and respecting Indigenous traditional structures, aspirations and governance. Consequently, the prevailing colonial legacy within the political structure and conservation context poses significant challenges to implementing IPCA's that prioritize Indigenous governance, culture, and traditional laws (Townsend,2022).

According to the ICE report (2018), Indigenous knowledge, culture, legal traditions, and governance constitute the essence of IPCA's and are integral components within these designations (Townsend,2022). Furthermore, IPCA's offer a space for collaborative efforts between the Crown and Indigenous communities, embracing a "Two-Eyed Seeing" approach that enhances reconciliation (ICE, 2018). Amidst the myriad factors related to IPCA's, interview participants converged on a consensus: initiating an Indigenous-led conservation approach necessitates an initial phase of reconciliation across all facets of the Indigenous/Crown relationship. Their rationale for pursuing preliminary reconciliation lies in the colonial legacy and oppressive Crown approach, which demonstrated that the bulk of initiatives directed at

Indigenous communities have been launched with the intent to assimilate and colonize their communities. They emphasized the need to revise the colonial approach to implementing IPCAs to alleviate these apprehensions.

5.5.1.1 Suppression of Indigenous Sovereignty

Several participants highlighted the historical reluctance or refusal by the Crown government to fully acknowledge and honour Indigenous sovereignty. This lack of acknowledgement was recognized as a significant hurdle for Indigenous leadership in conservation efforts. They further underscored that this reluctance may arise from differing viewpoints on governance, land entitlements, and conflicting interpretations of what sovereignty entails. The government's failure to acknowledge Indigenous sovereignty might also be rooted in past strategies of assimilation, colonization, and a lack of acknowledgement of the inherent rights of Indigenous peoples.

"... overarching theme in all laws that we interact with in BC and Alberta, that it's like there's only one sovereign group that there's the provinces and they have their authority delegated by Canada Resource Transfer act [no recognition for Indigenous sovereignty] ..." (Dustin Twin)

"...when we set up a like, IPCAs, it's based on the premise that there's an overarching Crown sovereignty over these lands... we never gave up our rights to the homelands ..." (John Cutfeet)

Many participants mentioned that the failure to acknowledge Indigenous sovereignty might stem from disregarding the truth behind the treaty-making process, where Indigenous Nations were recognized as sovereign entities in each treaty. Numerous participants also pointed out that the historical disregard and absence of acknowledgement towards Indigenous

sovereignty have been utilized as an approach to appropriate Indigenous lands. From the standpoint of the Crown government, recognizing Indigenous sovereignty is a potential threat to their governance and authority over certain territories.

We come from, a sovereign point of view, we have our treaty agreement with another nation in the Right of Great Britain here and below that is the successor state of Canada and below that is the province of Ontario. Here we have the creation of a successor state, trying to dictate upward to someone with nationhood status...that's why we're having so many problems, we have someone who has less authority trying to dictate upward (John Cutfeet)

We explain those things to non-Indigenous governments, having sovereignty is not a threat to your sovereignty. We've always existed as multiple sovereigns, and so for western governments, it's a 0-sum game.... it's not a disruption, it's not incompatible with our legal traditions that BC exists. We can coexist with several sovereign groups... (Dustin Twin)

As stated by ICE (2018), the declaration and establishment of an IPCA by an Indigenous government is regarded as an assertion of their sovereignty. This action signifies the Indigenous community's exercise of power, authority, and control over their land and resources. Such initiatives underscore the Indigenous community's proactive efforts to exercise self-determination and assert control in environmental management and conservation practices, affirming their distinct governance over these territories (ICE, 2018). Hence, one prerequisite for effectively implementing IPCAs lies in acknowledging and honouring Indigenous sovereignty. Indigenous nations may choose either self-governance of IPCAs or partnerships with governmental or other entities, employing various forms of cooperation such as shared decision-making or joint management (ICE,2018). Accordingly, respecting Indigenous sovereignty remains crucial in implementing IPCAs regardless of their management approach. Therefore, without genuine recognition of Indigenous sovereignty, the concern persists that IPCAs might

inadvertently perpetuate colonial dynamics rather than foster a truly decolonized approach to conservation that respects and empowers Indigenous leadership.

5.5.1.2 Lack of acknowledgment for Indigenous Jurisdiction

Another considerable impediment to implementing IPCAs arises from the inadequate respect and acknowledgement of Indigenous inherent jurisdiction, as discerned from the participants' discussion. Multiple participants also noted that the government consistently and purposefully disregards and dismisses Indigenous jurisdiction to serve its interests and exploit natural resources—this deliberate denial of Indigenous jurisdiction results in the exploitation of resources by the government for its benefit.

“...we never surrendered parts of our traditional territory... So, we see that we still have title, we still have jurisdictions over these lands, even though that we shared the others under treaties that there's obligation.... no, it's not even being recognized [Indigenous jurisdiction] ...” (Clint Jacob)

While there is acknowledgment of Indigenous inherent jurisdiction, their conceptualization of it significantly diverges from the western perspective. One crucial aspect highlighted by some participants was that they do not claim jurisdiction over the land; instead, they emphasize having a deep relationship with the land, thereby assuming a profound responsibility for land. Furthermore, they pointed out that the IPCAs have been co-opted and appropriated by the Crown as a strategy to assume and reinforce its jurisdiction over Indigenous territories. There is a need to alter the narrative surrounding IPCAs to achieve complete recognition and respect for Indigenous jurisdiction (Jurisdiction Focus Group, RAD network meeting).

“...when we talk about the jurisdiction that means, you have that responsibility, that's the difference in terms of the language that we use...” (John Cutfeet)

Innes et al. (2021) presented a comprehensive framework outlining the spectrum of jurisdictional approaches for implementing IPCAs. This framework encompasses the potential establishment of IPCAs through various jurisdictional models: Crown Jurisdiction (Co-managed Protected Area), Indigenous Jurisdiction, and Joint Jurisdiction. For the successful implementation of IPCAs and the promotion of reconciliation, it is essential to acknowledge and respect the jurisdictional authority held by federal, provincial/territorial, and Indigenous governments (Innes et al., 2021). The absence of acknowledgement and respect for Indigenous jurisdiction, compounded by divergent interpretations of jurisdiction between First Nations and western perspectives, emerges as a notable challenge in establishing IPCAs. Drawing from the dark history of PAs in Canada, when the government initiated Indigenous-led initiatives, they have often been manipulated to serve colonial objectives (Townsend,2022). This approach raises concerns about the premise of IPCAs, which are designed to assume Crown jurisdiction. The acknowledgment of Indigenous jurisdiction could mark a significant milestone that has the potential to lay the groundwork for facilitating collaboration and reconciliation efforts among diverse groups through IPCAs establishment (ICE,2018).

5.5.2 Colonial Threads in Canada's Legal Fabric

Some participants claimed that legal mechanisms shaped by colonial mindsets often fail to recognize or adequately incorporate Indigenous perspectives, rights, and traditional knowledge within conservation legislations. This exclusionary approach marginalizes Indigenous voices and limits their participation in shaping conservation strategies. They highlighted that the

Indian Act¹⁷ has had enduring effects on Indigenous communities, often exerting control over various aspects of their lives and attempting to fragment Indigenous communities as a means to displace them from their lands. The persistence of these colonial legacies was highlighted by participants as a significant obstacle hindering IPCAs' progression.

They created the reserves and the reserves are a goal of assimilation...they give us a lot, called the Indian Act and its goal was to assimilate and control First Nation people underneath that legislation so, when it comes to the environment.... it was a very, very discriminatory piece of legislation... (Elder Priscilla Simard)

"... we have been forced to live under the Indian Act, put on to the small Indian reserves and the Indian Act is a very oppressive tool.... They segregated Indigenous people onto Indian reserves.... we still are oppressed under this Indian Act system..." (Terry Dorward)

Indigenous communities have deep cultural, spiritual, and historical ties to their ancestral lands, which have sustained their ways of life for millennia. However, the foundation of Canadian law often prioritizes colonial values and perspectives, which historically marginalized and oppressed Indigenous communities (Innes et al., 2021). Initiatives such as the Indian Act, Terra Nullius legal doctrine¹⁸ and other laws were created during colonial times with the intent of assimilating Indigenous peoples into Euro-Canadian society (Innes et al., 2021). These principles contrast the IPCA approach, where Indigenous governments are primarily responsible for preserving ecosystems through Indigenous laws, governance, and knowledge systems (ICE,2018). Rooted in colonial ideologies, the current legal frameworks in Canada advocates for industrial

¹⁷ The Indian Act, established in 1876, aimed to amalgamate various earlier colonial legislations, strategically formulated to exert authority over and assimilate Indigenous communities into Euro-Canadian society.

¹⁸ The legal principle of Terra Nullius, which refers to land considered legally unoccupied or uninhabited, enabled the Crown to allocate land to its colonial interests. This included granting approximately 70-80% of Canada's landmass to the Hudson Bay Company (Oxford Dictionary; The Doctrine of Discovery n.d.).

activities while upholding the pristine wilderness premise, leading to fortress-style conservation (Townsend,2022). These colonial principles embedded within conservation legal frameworks pose obstacles to IPCAs' implementation since IPCA initiatives' emphasis on human presence, traditional knowledge, and Indigenous governance, differing from the conventional western-based conservation approach, which often prioritizes a separation between humans and nature (ICE,2018). As long as the colonial framework continues to cast a significant shadow over the legal system, perpetuating discriminatory laws against Indigenous peoples, there will be insufficient avenue for the development of IPCAs.

The foundational colonial mindset embedded within Canada's legal and policy framework for conservation needs to shift towards acknowledging and respecting Indigenous rights and governance. Participants underscored the necessity of eliminating policies, legislation, and practices that perpetuated colonial concepts and approach in conservation efforts. The approach of terminating the oversight or control imposed by these policies and legislations in conservation is regarded as the pivotal initial move toward implementing IPCAs and driving the efforts for reconciliation (TRC, 2015).

5.5.2.1 Colonialism's Suppression of Indigenous Natural Law

Participants discussed that the Indigenous Natural law¹⁹ principles involve understanding the interconnectedness of all living beings and ecosystems, which is fundamental to their traditional law. For many Indigenous communities, the land is not merely a commodity but a living entity with which they share a deep spiritual and cultural connection. Moreover, in

¹⁹ Indigenous Peoples view their own legal traditions as intertwined with the natural laws, also known as Natural or First Law, originating from ancestral stories and considered sacred as they emanate from the Creator and the Land.

alignment with Natural law, Indigenous communities perceive themselves as having inherent responsibilities towards the land and Mother Earth, including caring for and preserving the environment for future generations. In addition, participants highlighted that western-based legal frameworks often view land as a commodity or resource, focusing on its exploitation or use for economic development. This approach prioritizes ownership, resource extraction, and profit generation, which can lead to the exploitation and degradation of natural environments. The clash arises when colonial governance, often rooted in western legal frameworks, imposes its principles on Indigenous lands and disregards or undermines the values and laws upheld by Indigenous communities.

“If we were living by natural law on this planet, there would be no climate change, there'd be no biodiversity loss.... Natural law has 3 fundamental tenets, that's take only what you need... thinking about the needs of others and you always keep the dish clean ...” (Elder Larry McDermott)

“...Even the Canadian government's view on parks, they see it as a beautiful, pretty picture that nobody's to touch it, but we, as Indigenous people, are actually a part of that picture, we are part of the environment...” (Terry Dorward)

Participants emphasized that Indigenous communities have practiced and upheld their traditional laws, rooted in deep cultural and ecological knowledge, for millennia. These laws are embedded in their approach to governance, stewardship of the land, and maintaining harmony with nature. However, the principles encapsulated within these traditional laws have often been disregarded, overlooked, or inadequately recognized within the colonial legal framework of Canada, leading to violations of Indigenous rights and Natural law.

“...there isn't a recognition that there are multiple legal orders, and so that's like built into all Canadian law and provincial law and stuff ...” (Dustin Twin)

“...the existed legislation and policies, they are violated the treaties, commitments, and agreements, and they disregarded the natural law...” (Elder Larry McDermott)

Legal frameworks governing conventional conservation practices of Canadian PAs and parks have embodied the western-based perspectives and approaches (Townsend, 2022). This clashes with the desired conservation approach within IPCAs, where human presence is perceived as an integral and interconnected part of nature (ICE, 2018). Despite IPCAs being established in alignment with Indigenous traditional laws across Canada, the broader legal framework in many jurisdictions do not formally recognize or acknowledge Indigenous legal systems (Kacer et al., 2023). The imposition of colonial legal structures, aimed to assimilate Indigenous peoples into the Canadian legal system, frequently leading to the neglect or suppression of Indigenous legal systems and values on their territories (Innes et al., 2021). Moreover, the pervasive influence of the Canadian legal framework frequently poses obstacles to acknowledging legal pluralism, impeding the coexistence of Indigenous legal systems alongside the Canadian legal framework (Townsend, 2022). The absence of such recognition undermines the legitimacy and authority of IPCAs governed by Indigenous laws within the larger legal framework (Innes et al., 2021), exposing them to vulnerabilities and uncertainties (Townsend, 2022). Consequently, IPCAs might face challenges in receiving adequate protection, making them susceptible to Crown’s encroachment, resource extraction, or land-use changes that contradict Indigenous conservation objectives.

However, participants asserted that Indigenous title and rights underscore their inherent nature, distinct from being granted by the Crown government or other entities; they have existed

since immemorial, bestowed by the Creators²⁰. They also acknowledged that the requirement of Crown recognition does not bind the establishment of IPCA; rather, Indigenous communities have the inherent right over their traditional territories. When designating an area as an IPCA, they do not actively seek acknowledgement or recognition from the Crown.

I like IPCAs, I'm not against IPCAs, but I'm just saying if a First Nation can manage it themselves and designate it themselves and have companies adhere to those designations, that's the best-case scenario, and it doesn't matter if the province recognizes or not (Dustin Twin)

The lack of understanding regarding Indigenous knowledge within conservation has led to developing policies and legislation that reinforce the superiority of western knowledge over Indigenous knowledge. IPCAs have the potential to elevate Indigenous knowledge, governance, and legal systems to an equal level of significance alongside dominant Eurocentric practices, processes, and knowledge systems (ICE, 2018). Participants further recognized that sharing knowledge allows settlers and Indigenous communities to collaborate more effectively in developing conservation legislations that integrate Indigenous traditional knowledge with modern scientific approaches, enhancing the effectiveness and sustainability of conservation efforts within IPCAs. Moreover, knowledge exchange fosters an environment where western legal frameworks and Indigenous traditional law can coexist and complement each other, acknowledging the value and validity of both legal systems in understanding and managing the environment. When information sharing is facilitated, the ambiguity within the relationship between the Crown and Indigenous communities diminishes, enabling Indigenous perspectives

²⁰ Numerous Indigenous communities adhere to the concept of a Creator, Great Spirit, or Great Mystery—an entity believed to have brought forth the universe and all its elements.

to be more prominently incorporated into policies and legislation. Knowledge exchange plays a pivotal role in facilitating the creation of an ethical space for collaboration and paving the way for the successful implementation of IPCAs while advancing the reconciliation process.

5.5.2.2 Non-binding Regulation in Conservation

Beyond the significance of establishing regulations that support Indigenous leadership in conservation, a consistent approach and commitment to implementing the existing legislation were widely recognized as crucial by involved participants. The absence of political determination and lack of legal binding feature within regulation, designed to support conservation efforts, has resulted in a delay in the enactment of legislation that would bolster the implementation of IPCAs, leaving them inadequately supported within Canada's legal structure. The non-binding characteristic is intertwined with legal initiatives supporting Indigenous-led conservation. These legislations lack legally enforceable mechanisms, enabling governments to disregard or alter them without facing legal repercussions. Moreover, the absence of enforcement grants governments the discretion to interpret and implement regulations according to their preferences. Consequently, governments might prioritize their preferences or policies over honouring Indigenous contributions to conservation efforts. This flexibility inherently leads to the dismantling or weakening regulations supporting Indigenous-led conservation initiatives. Additionally, this flexibility can potentially threaten the progress toward conservation goals, opening the door to disruptions caused by changing political agendas.

“... when we start looking at policies and treaties, they pick and choose what they want ...” (Chris Craig)

“...one of the issues is that they're not always applied consistently, and in over time all these laws are whittled in the hacked away, and then torn apart and amended by different governments...” (Clint Jacob)

The ICE (2018) mandates the federal government to acknowledge Indigenous legal traditions as equally valid and enforceable as other legal frameworks and emphasizes that implementing IPCAs can facilitate this process. Although, the theoretical designation of an IPCA and the legally defined status of an IPCA are significantly different, which inevitably causes much uncertainty on the topic (Mullen, 2022). The legal uncertainty and lack of formal recognition for IPCAs frequently puts Indigenous parties and groups working towards IPCAs in a series of double-edged sword situations, leading them to question whether implementing IPCAs is the best action for the community (Mullen, 2022).

Several Indigenous groups are taking proactive steps and not relying on formal recognition from the government to establish their IPCAs. They consider Section 35(1) of the Canadian Constitution Act 1982²¹ and Article 3²² of the UNDRIP as ample foundation for IPCA establishment. The presence of these territorial rights eliminates the need for government approval to declare or formally recognize their IPCA (Mullen, 2022). This presents one style of a common double-edged sword. Adhering to government rules in this process may be perceived as colonial entanglement, and external IPCA recognition might entail surrendering elements of the Indigenous Nation's self-determination or sovereignty to another government (Tran et al.,

²¹ States that “The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed”.

²² Acknowledges that Indigenous Peoples have the right to freely determine their political status and freely pursue their economic, social, and cultural development (United Nations, 2007).

2019). However, due to the non-binding nature of the principles outlined in the UNDRIP, and the colonial framework bounding Section 35 of the Constitution Act, these instruments incapable of providing IPCAs with legally enforceable protection (Indigenous-Led Conservation, 2024). From an Indigenous legal perspective, state recognition and binding regulation may not be required. However, if governments disregard IPCAs, the Indigenous territory may become subject to Crown-approved development and extraction (Mousavi, 2022).

5.5.3 Other themes

Apart from the prominent themes mentioned above, multiple participants raised several additional topics for discussion. The lack of mutual understanding among Indigenous peoples, settlers, and even within Indigenous communities themselves, creates a vulnerable situation where colonial policies and regulations can be dictated, often superseding or disregarding Indigenous-based frameworks and governance. In addition, participants discussed that a noticeable lack of resources allocated for capacity building within Indigenous communities, often results in a lack of voices from Indigenous communities in critical roles within conservation organizations or initiatives. In these scenarios, Indigenous-led initiatives like IPCAs are frequently manipulated by governmental or crown authorities to conform to their priorities and agendas.

5.6 Conclusion

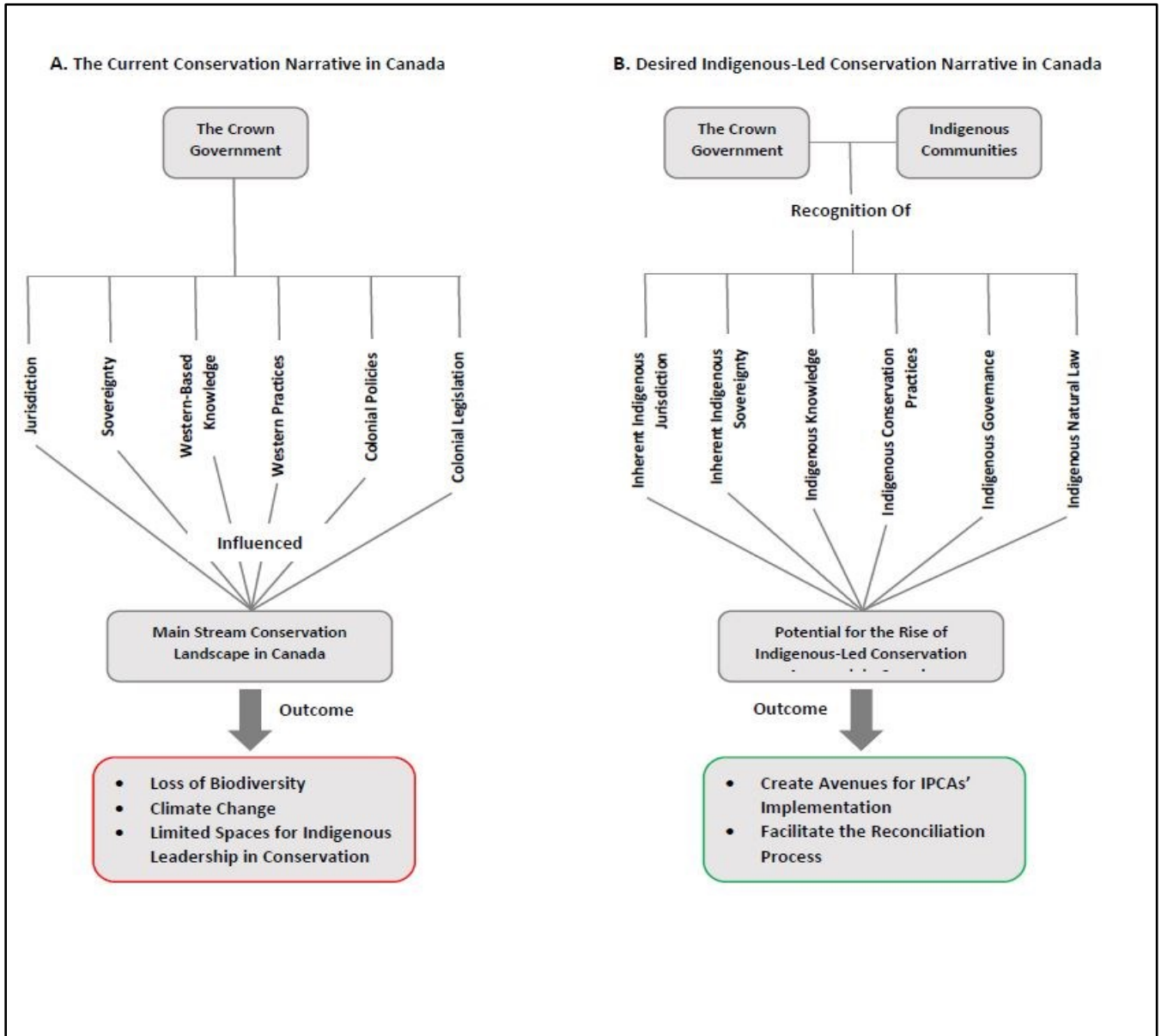
In Canada, legal pluralism is an established fact; however, the imposition of the colonial legal system does not provide any avenue for its recognition. Section 35 of the Constitution Act explicitly recognizes Indigenous rights and self-governance. As a result, it is imperative to prompt the federal government to develop strategies and allocate resources to express this

acknowledgment effectively. IPCAs have the potential to offer an innovative expression of Section 35 of the Constitution Act 1982. Furthermore, the Indigenous-led nature of IPCA holds the promise of revitalizing Indigenous traditional law and expressing its foundational principles. However, the colonial legal framework constrains both Section 35 of the Constitution Act and IPCA in their capacity to facilitate the expression of Indigenous law.

The participants of the study highlighted the current conservation landscape in Canada and offered recommendations for shifting the narrative to support Indigenous-led conservation and reconciliation (Figure 2). They acknowledged the complexities involved but emphasized that integrating Indigenous governance into the current conservation framework could lead to more sustainable approaches. They underscored that the predominant conservation approach in Canada is rooted in a colonial mindset, with most Indigenous-led conservation initiatives initiated by governmental authorities. The prevailing conservation paradigm, anchored in Crown sovereignty, jurisdiction, western knowledge and perspectives, policy, and law, has profoundly shaped Canada's management of parks and PAs. Yet, this approach is increasingly recognized for its limitations, notably contributing to biodiversity loss and exacerbating climate change. Its hierarchical view often marginalizes Indigenous perspectives and prioritizes short-term economic gains over long-term sustainability. In this structure, colonial legal frameworks prioritize economic interests over environmental conservation, perpetuating unsustainable practices. As a result, there is a pressing need for legal reform to integrate Indigenous legal principles, promote sustainable resource management, and ensure effective climate mitigation strategies within a broader legal framework that prioritizes ecological integrity and social justice. While the concept of IPCAs represents a progressive approach to conservation by recognizing Indigenous rights and

incorporating traditional knowledge, challenges and discrepancies in their actual implementation deviate from the idealized premise. IPCAs embrace a more inclusive, community-driven approach to conservation that centers on Indigenous governance, knowledge, and values. The need for preliminary reconciliation between Indigenous communities and the Crown government is critical, and this is considered a foundational step toward fostering meaningful collaboration, building relationships based on trust, and establishing the necessary infrastructure for successfully implementing IPCAs (Figure 2).

Figure 2: The figure illustrated the study's participants' viewpoints on the current conservation landscape in Canada, as well as the envisioned conservation structure that could support an Indigenous-led approach while fostering reconciliation.



Within the existing colonial structure in Canada, there are inherent risks and potential threats that IPCAs might inadvertently serve the interests of the colonial agenda or perpetuate forms of colonization. Several Indigenous groups and advocates have highlighted these risks, emphasizing that without addressing oppressive policies and legislation that disregard Indigenous laws, sovereignty, knowledge, and perspectives, the implementation of IPCAs could become another tool for colonization. The impact of colonialism highlighted a significant power imbalance in the implementation of Indigenous-led conservation approaches, including IPCAs, wherein the Crown government tends to assert dominance and impose terms on Indigenous communities. As a result, Indigenous-led conservation efforts, including IPCAs, might be seen as further instruments of colonialism, perpetuating the ongoing colonization of Indigenous peoples as long as this power imbalance remains unaddressed. To advance Indigenous-led conservation efforts in Canada, it is imperative to move beyond the confines of Section 35 and initiate a transformative shift in perspectives. This involves establishing nation-to-nation relationships rooted in trust.

The federal government should prioritize building capacity by consistently integrating Indigenous perspectives into the decision-making process, reallocating resources toward reconciliation efforts, and engaging in ongoing communication with Indigenous peoples. A critical aspect lies in cultivating collaboration between Indigenous and western legal systems to mitigate the blurred lines between their objectives. This clarity could provide concrete support and protection for Indigenous-led conservation endeavours.

Chapter 6 Conclusion

6.1 Summary of Result

This research focused on exploring the obstacles and constraints within Canada's legal and policy framework that impede the establishment of Indigenous Protected and Conserved Areas (IPCAs) and hinder the active participation of Indigenous communities in establishing IPCAs. In addition, the study's objectives emphasized the significant impact of international frameworks such as the CBD (Convention on Biological Diversity) and UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) on shaping the narrative of IPCA development in Canada. It further shed light on the Indigenous perspective regarding the implementation of UNDRIP in conservation and its consequences on Indigenous communities. Indigenous peoples in Canada can independently declare their ancestral land an IPCA, as Indigenous-led initiatives, and they do not require formal recognition, support, or funding from the Crown or other entities (Townsend, 2022). It is crucial to emphasize that many Indigenous communities perceive the term IPCAs as a colonial instrument reinforcing Crown jurisdiction. This study suggested that addressing specific barriers has the potential to change that perception, paving the way for a more Indigenous-led approach in the realm of PAs.

Focus group and semi-structured interviews were designed with an open-ended approach, allowing participants to guide conversations in directions they perceive as significant and valuable within the specific context of this research undertaking. The participants were requested to share their knowledge, experiences, and viewpoints regarding legal and policy challenges encountered within their traditional lands. In this section, I carefully considered the substantial discoveries and profound insights that have emerged from the research conducted in

this study. This involved a thoughtful examination of the key findings, shedding light on their significance and relevance to the overall research.

6.1.1 Evolving IPCA Landscape: CBD and UNDRIP Principles at Play

The literature review suggested that the principles and commitments articulated in the CBD and UNDRIP have brought about a profound change in Canada's approaches to conservation, particularly in conserving biodiversity and acknowledging Indigenous rights in land management. These commitments contributed to a transformation in Canada's conservation strategies through the introduction of IPCAs, promoting a more inclusive and comprehensive approach that honors the rights of Indigenous communities (ICE, 2018). IPCAs disrupt the traditional assumptions prevalent in Turtle Island/Canada regarding environmental governance, which typically positions Crown-led initiatives as the primary authority and perceives Indigenous governance as predominantly advisory. Although various parks and protected areas in the country exhibit some level of shared management between Crown and Indigenous governments, these arrangements often do not fully meet Indigenous aspirations. IPCAs are introducing novel collaborative governance models that surpass the limitations observed in many existing co-management structures (Townsend, 2022).

IPCA contribute significantly to a decolonial conservation approach by centering Indigenous governance, knowledge, and law within conservation initiatives. By recognizing Indigenous peoples as the original stewards of the land and empowering them to lead conservation efforts, IPCAs challenge colonial conservation paradigms that historically marginalized Indigenous communities. IPCAs prioritize Indigenous perspectives and traditional ecological knowledge, enriching conservation strategies with insights into sustainable resource

management and ecosystem dynamics. Moreover, IPCAs acknowledge the inherent rights of Indigenous peoples to their lands and resources, promoting Indigenous sovereignty and self-determination. By engaging Indigenous communities as active partners in conservation decision-making and management, IPCAs have the potential to foster meaningful participation, collaboration, and capacity-building, thereby empowering Indigenous peoples to reclaim their roles as custodians of the environment. Overall, IPCAs embody a transformative shift towards decolonial conservation by challenging colonial legacies, promoting social justice, and fostering inclusive, equitable approaches to conservation that respect Indigenous rights, knowledge, and presence within ecosystems.

6.1.2 Empowering Indigenous-Led Conservation: Legal and Policy Innovations in Canada

The legal and policy advancements facilitated by frameworks such as the UNDRIP and the CBD are instrumental in supporting the implementation of IPCAs in Canada. The incorporation of Indigenous viewpoints and leadership into national conservation strategies, as evidenced by Canada's ambitious conservation targets and the harmonization of its biodiversity strategy with the Kunming-Montreal Global Biodiversity Framework (KMGBF), reflects a commitment to respecting Indigenous knowledge and enhancing IPCA development within the country's conservation framework. Additionally, legislative measures such as the UNDRIP Act and DRIPA provide a legal foundation for recognizing Indigenous rights and empowering Indigenous communities to lead conservation efforts. These initiatives, coupled with ongoing efforts to address historical injustices and promote reconciliation, have the potential to significantly enhance Indigenous-led conservation initiatives and foster collaboration and empowerment within Indigenous communities to preserve both natural and cultural heritage. Through these

collective actions, Canada stands poised to advance a more inclusive, equitable, and sustainable approach to conservation that honors Indigenous sovereignty, knowledge, and co-management models, ultimately contributing to the protection of biodiversity and the promotion of reconciliation with Indigenous peoples.

6.1.3 Indigenous conception of the implementation efforts of UNDRIP and their contribution to supporting Indigenous-led conservation

This study explored the viewpoints of Indigenous individuals actively engaged in frontline conservation initiatives, offering valuable insights into their perspectives on the integration of UNDRIP within the context of conservation practices. The study also delved into the effectiveness of these initiatives in recognizing the inherent rights of Indigenous peoples in their ancestral lands. Certain participants acknowledged UNDRIP as a positive influence for enhancing Indigenous leadership within the conservation context. Nevertheless, notwithstanding the potential advantages, critiques were voiced concerning the approach employed by governments in implementing UNDRIP principles. The criticisms they expressed toward the government's approach in implementing UNDRIP underscored the challenges and complexities associated with translating these principles into practical action. Issues such as inadequate consultation with Indigenous peoples, capacity problems, insufficient understanding, assimilation concerns, and challenges related to the lack of political will to enforce UNDRIP principles can hinder the successful integration of UNDRIP principles into conservation practices. These challenges subsequently hinder the practical application of UNDRIP principles in supporting Indigenous-led conservation initiatives, particularly IPCAs. While initiatives like the UNDRIP are designed to

support Indigenous communities, the challenges discussed earlier can indeed hinder these communities from realizing intended benefits.

Participants presented the following recommendation to overcome the obstacles hindering the successful implementation of UNDRIP principles in supporting conservation initiatives led by Indigenous communities. They recognized the importance of building relationships and capacity within Indigenous communities, raising awareness about the implications of UNDRIP, integrating Indigenous perspectives into the UNDRIP implementation approach, and making these considerations binding to compel governments to implement UNDRIP based on established principles rather than their preferences.

6.1.4 Challenges and conflicts within the legal and policy framework of Canada impeding Indigenous communities from progressing in their efforts to implement IPCAs

The study synthesized data collected through interview and focus group process to explicitly identify the legal and policy challenges that impose constraints on Indigenous communities in their attempts to implement IPCAs. Participants discussed the significant influence of colonization on environmental policies and conservation strategies in Canada which has perpetuated western conservation practices, including the concept of pristine wilderness and the fortress-style approach, applied to protected areas and parks. This study recognized that the continued existence of colonial doctrines like the Doctrine of Discovery, Terra Nullius, and the presence of the Indian Act and reserve system impedes the initiation of legal innovations to facilitate IPCA implementation. The principles embedded in these doctrines and policies which are in conflict with the underlying principles of the IPCA approach, persist in exerting enduring influences on mainstream conservation in Canada. In addition, the absence of recognition for

Indigenous Natural Law, a lack of commitment to enforce legislation supporting Indigenous leadership in conservation, and the exclusion of Indigenous perspectives in legal innovation have resulted in the absence of any formal legislation recognizing IPCA. Furthermore, the impact of colonialism extends to the dynamics of the government and Indigenous relationship, leading to Indigenous communities becoming dependent on the Crown government and frequently compromising their sovereignty and jurisdictional authority in the implementation of IPCAs.

The legacy of colonization (mentioned earlier) presents challenges to the implementation of IPCAs as these initiatives diverge from the conventional conservation approach in protected areas by recognizing Indigenous presence as an integral component of the ecosystem, incorporating traditional practices, prioritizing cultural revitalization, and advocating for a more balanced and inclusive form of conservation that respects both ecological and cultural values.

6.1.5 Respect, acknowledgement, Inclusion: Lessons learned from Indigenous Teachings to navigate IPCA barriers

Numerous participants recognized the need to shift from the prevailing colonial mindset that guides conservation policies and legislation to adopting an inclusive approach. The preliminary step involves renouncing colonial policies and legislation and their influences on the conservation approach, as these continue to have enduring effects on the evolution of Indigenous-led conservation. Additionally, participants emphasized the need for extensive recognition of Indigenous rights, governance, sovereignty, and jurisdiction to enable Indigenous communities to pursue their efforts to establish IPCAs. With acknowledgement and recognition, the implementation of IPCAs could be improved. It can be deduced that a preliminary reconciliation is essential to facilitate the implementation of IPCA, shifting the predominant

conservation approach in protected areas towards Indigenous leadership. Should a preliminary reconciliation process occur, involves honouring and respecting Indigenous governance and values, there is the potential to dispel the widespread perception among many Indigenous peoples that IPCAs merely represent another manifestation of colonization. Furthermore, implementing the management approach outlined by ICE (Indigenous-led, joint-management, or co-management strategies) in IPCAs becomes challenging when there is a lack of respect for Indigenous structures and processes. Thereby, this preliminary reconciliation is a prerequisite for IPCA establishment. Acknowledging and honoring Indigenous governance and their inherent rights to their lands will lead to incorporating Indigenous perspectives into innovative legal and political developments, consequently providing formal recognition for the implementation of IPCA initiatives. In addition, participants underscored that the transmission of knowledge contributes to shaping a transparent understanding, eliminating blurred lines between Indigenous and western perspectives, thus facilitating the establishment of trust, collaboration and relationship. The idea is that, with reduced conflict and effective collaboration, Indigenous-led conservation approaches can be developed and implemented more successfully. This, in turn, positively impacts biodiversity conservation, ecosystem health, and the sustainable use of natural resources. This collaboration and relationship are fundamental aspects of reconciliation and contribute to rectifying historical injustices Indigenous communities face.

6.2 Limitation of the Study

Recognizing the diversity among First Nations communities across Canada, it is crucial to emphasize that this work does not represent the views of all communities. Each community possesses its own distinct and valuable perspectives regarding the objectives outlined in this

work. This thesis brings together the viewpoints of participants from a limited number of Indigenous communities and certain Canadian provinces, rather than including all of them. Numerous diverse opinions are not represented, as the study only involves a small number of participants sharing their experiences about Indigenous-led conservation, IPCAs, and the legal and policy challenges associated with such initiatives. The study is constrained by the author's analysis and interpretations, which might have led to the inadvertent oversight of themes in the transcripts during the coding process.

6.3 Future Research

Further research, either led by Indigenous Nations or conducted collaboratively with them, is warranted in exploring the challenges associated with the Indigenous-led conservation approach, specifically on IPCAs. Conducting additional studies examining the legal and policy challenges Indigenous peoples confront in establishing and protecting IPCAs within specific geographical, jurisdictional, and political contexts would contribute to a more nuanced understanding of IPCA's challenges. A fully inclusive and representative comprehensive study on IPCAs would entail several key components. Firstly, it would require meaningful engagement with diverse Indigenous Nations and communities from the outset, ensuring their active participation in shaping research goals, methodologies, and outcomes. Geographically, the study should encompass a wide range of ecological and cultural contexts to capture the diversity of IPCA initiatives. It should also consider the varying legal and governance frameworks that govern IPCAs across different regions, including the complexities of treaty rights, land claims, and self-governance agreements. Such research is essential, given that IPCAs are being mobilized in diverse ways across different contexts. When the study concentrates on a particular region in

Canada with a specific community, it has the potential to offer a clear representation of the specific challenges that the studied community is grappling with in implementing IPCA, advancing IPCA and the reconciliation process.

Given that IPCAs support the transition of existing parks and protected areas to Indigenous-led governance or strong co-governance models, it would be valuable to investigate successful instances where Indigenous nations have declared their IPCAs. Such research would provide insights into the governance frameworks, processes, and legal approaches that Indigenous Nations are employing to advance their IPCAs and assess the effectiveness of these strategies.

6.4 Knowledge Mobilization

A significant facet of critical research methodologies that emphasizes reciprocity and transformative change revolves around knowledge mobilization. Knowledge mobilization aims to effectively translate novel insights or research grounded in evidence into practical applications, such as enacting policy reforms or enhancing operational practices. Knowledge mobilization encompasses the development of pertinent and customized materials to facilitate the assimilation of newfound knowledge by targeted audiences (Townsend,2022). Through the application of community-engaged research and my collaborative efforts with the CRP and DSF, I have executed an integrated approach to knowledge mobilization. This approach enables collaborators to actively influence the research, identify pertinent inquiries, and determine outputs relevant to their specific contexts throughout the study. I have been granted the chance to evaluate essential messages and methods with specific target audiences through the CRP, utilizing the appropriate collaboration platform known as the Reconciling Law working group. My

participation within the CRP's Reconciling Law working group has made a notable contribution to a project endeavouring to provide recommendations for the Crown in all its manifestations on how to best enable Indigenous stewardship and conversation through the reconciliation of Crown and Indigenous sovereignties. As a culmination of this project, potential knowledge mobilization endeavours that I could pursue include publishing specific chapters from this thesis on platforms such as the IPCA Knowledge Basket websites or the CRP's blog. Upcoming endeavours for knowledge mobilization that I am contemplating involve organizing a focused learning session for staff and leaders of the NS provincial ministry, where I will present the findings from the legislation study.

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Appendix A: Interview Guide

Introduction

1. Tell me about yourself and your role in the community. To which community do you belong? Please describe any particular roles or jobs that you hold in that community.
2. What does a treaty relationship, understood broadly, mean to you? What treaties or treaty relationships come to mind? What treaty relationships do you interact with most?
3. How does your understanding of treaty relationships relate to reciprocity, or reciprocal relationships?
 - a. Do you have any laws, teachings, or stories that you would like to share that may help describe?
4. What does Indigenous jurisdiction over (traditional) lands and waters mean to you and/or your community?

Objective 2: Critiques around UNDRIP

5. How do you perceive the implementation process of UNDRIP principles in Canada? Do you believe these principles contribute to recognizing and supporting Indigenous leadership and jurisdiction in conservation?

Objective 3: legal and policy challenges of IPCA implementation

6. What are the Federal, Provincial or Territorial laws and policies in the environmental field that you are regularly negotiating and/or affect you while working? What about treaties?
7. What do you find most challenging about these laws, policies and/or treaties? How, if at all, are they helpful?
8. In the field of environmental stewardship/care, what do you see as the main barriers to reconciling your own legal orders/teachings with those of the state? What about the main points of compatibility?
9. In what ways is your nation exercising jurisdiction? Is your nation exercising jurisdiction through environmental stewardship?
10. Can you describe how you experience Indigenous jurisdiction versus state jurisdiction as a community member? Can you describe barriers/difficulties your Nation has faced when exercising your jurisdictions?
11. Can you think of areas/instances where your Nation's jurisdiction is being upheld by the state/province?
 - If so, what conditions led to this occurring?
 - If not, what would need to happen for this to occur? What would it look like?

Objective 3: Lessons and recommendation

12. How do you want the state to recognize your Nation's jurisdiction, ideally?
13. Do you and/or your community have hope that Indigenous jurisdiction over lands and waters harmoniously co-exist and/or collaborate with state jurisdiction?
 - If so, can you think of any examples where it is occurring?
 - If not, can you think of any examples of where it is not working harmoniously, and describe what would need to change to enable co-existing jurisdiction? What would it look like?
14. Is there anything else you want to tell me that I haven't asked you about yet?

Appendix B: REB Letter of Approval

Social Sciences & Humanities Research Ethics Board Letter of Approval

April 13, 2023

Melika Habibi
Science\School for Resource and Environmental Studies

Dear Melika,

REB #: 2023-6568

Project Title: Exploring the legal and policy challenges of Indigenous Protected and conserved areas implementation in Canada and developing a framework for legal reform in IPCAs

Effective Date: April 13, 2023

Expiry Date: April 13, 2025

The Social Sciences & Humanities Research Ethics Board has reviewed your application for research involving humans and found the proposed research to be in accordance with the Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans. This approval will be in effect for 12 months as indicated above. This approval is subject to the conditions listed below which constitute your on-going responsibilities with respect to the ethical conduct of this research.

Sincerely,

FUNDED:

Mitacs Accelerate: PG #895-2019-1019

Post REB Approval: On-going Responsibilities of Researchers

After receiving ethical approval for the conduct of research involving humans, there are several ongoing responsibilities that researchers must meet to remain in compliance with University and Tri-Council policies.

1. Additional Research Ethics approval

Prior to conducting any research, researchers must ensure that all required research ethics approvals are secured (in addition to Dalhousie approval). This includes, but is not limited to, securing appropriate research ethics approvals from: other institutions with whom the PI is affiliated; the institutions of research team members; the institution at which participants may be recruited or from which data may be collected; organizations or groups (e.g. school boards, Indigenous communities, correctional services, long-term care facilities, service agencies and community groups) and from any other responsible review body or bodies at the research site.

2. Reporting adverse events

Any significant adverse events experienced by research participants must be reported in writing to Research Ethics within 24 hours of their occurrence. Examples of what might be considered “significant” include: a negative physical reaction by a participant (e.g. fainting, nausea, unexpected pain, allergic reaction), an emotional breakdown of a participant during an interview, report by a participant of some sort of negative repercussion from their participation (e.g. reaction of spouse or employer) or complaint by a participant with respect to their participation, report of neglect or abuse of a child or adult in need of protection, or a privacy breach. The above list is indicative but not all-inclusive. The written report must include details of the situation and actions taken (or proposed) by the researcher in response to the incident.

3. Seeking approval for changes to research

Prior to implementing any changes to your research plan, whether to the risk assessment, methods, analysis, study instruments or recruitment/consent material, researchers must submit them to the Research Ethics Board for review and approval. This is done by completing the amendment request process (described on the website) and submitting an updated ethics submission that includes and explains the proposed changes. Please note that reviews are not conducted in August.

4. Continuing ethical review - annual reports

Research involving humans is subject to continuing REB review and oversight. REB approvals are valid for up to 12 months at a time (per the Tri-Council Policy Statement (TCPS) article 6.14). Prior to the REB approval expiry date, researchers may apply to extend REB approval by completing an Annual Report (available on the website). The report should be submitted 3 weeks in advance of the REB approval expiry date to allow time for REB review and to prevent a lapse of ethics approval for the research. Researchers should note that no research involving humans may be conducted in the absence of a valid ethical approval and that allowing REB approval to lapse is a violation of the University Scholarly Misconduct Policy, inconsistent with the TCPS and may result in the suspension of research and research funding, as required by the funding agency.

5. Final review - final reports

When the researcher is confident that all research-related interventions or interactions with participants have been completed (for prospective research) and/or that all data acquisition is complete, there will be no further access to participant records or collection of biological materials (for secondary use of information research), a Final Report (available on the website) must be submitted to Research Ethics. After review and acknowledgement of the Final Report, the Research Ethics file will be closed.

6. Retaining records in a secure manner

Researchers must ensure that records and data associated with their research are managed consistent with their approved research plans both during and after the project. Research information must be confidentially and securely retained and/or disposed of in such a manner as to comply with confidentiality provisions specified in the protocol and consent forms. This may involve destruction of the records, or continued arrangements for secure storage.

It is the researcher's responsibility to keep a copy of the REB approval letters. This can be important to demonstrate that research was undertaken with Board approval. Please note that the University will securely store your REB project file for 5 years after the REB approval end date at which point the file records may be permanently destroyed.

7. Current contact information and university affiliation

The lead researchers must inform the Research Ethics office of any changes to contact information for the PI (and supervisor, if appropriate), especially the electronic mail address, for

the duration of the REB approval. The PI must inform Research Ethics if there is a termination or interruption of their affiliation with Dalhousie University.

8. Legal Counsel

The Principal Investigator agrees to comply with all legislative and regulatory requirements that apply to the project. The Principal Investigator agrees to notify the University Legal Counsel office in the event that they receive a notice of non-compliance, complaint or other proceeding relating to such requirements.

9. Supervision of students

Faculty must ensure that students conducting research under their supervision are aware of their responsibilities as described above and have adequate support to conduct their research in a safe and ethical manner.

Appendix C: Interview Consent Form

Project title “Reconciling Indigenous Laws and Protected Areas Legislation”

Lead researcher: Melika Habibi, Dalhousie University (Melika.habibi@dal.ca)

Supervised by: Dr. Melanie Zurba, Dalhousie University (Melanie.Zurba@dal.ca)

Other researchers

Dr. Robin Roth, University of Guelph, Geography, Environment and Geomatics

Rachel Plotkin, David Suzuki Foundation, Boreal Projects Manager

Victoria Watson, Ecojustice, Law Reform Specialist

Joshua Ginsberg, Barrister & Solicitor, Ecojustice

Beatrice Frank, Senior Manager Resilient Habitats, WWF Canada

Melika Habibi, Master of Environmental Studies, Dalhousie University

Lucas King, Grand Treaty Council #3

Jay Ritchlin, David Suzuki Foundation

Anne Bell, Ontario Nature

Funding provided by: Mitacs Accelerate

Introduction

We are inviting you to take part in a research study being conducted by Melika Habibi, who is a Master of Environmental Studies student at Dalhousie University and in partnership with the David Suzuki Foundation and the Conservation through Reconciliation Partnership. If you are interested to engage in this research, the information in this form will explain what the study is investigating and what you will be asked to accomplish. To decide if you want to take part in this study, please carefully read this form. The decision to participate is entirely voluntary, and choosing not to participate has no bearing on your work or connection with the CRP and DSF.

If you have any questions, please do not hesitate to e-mail the Lead Researcher Melika Habibi (Melika.habibi@dal.ca) or Dr. Melanie Zurba – (Melanie.Zurba@dal.ca). It would be our pleasure to clarify any questions or concerns you may have.

Purpose and Outline of the Research Study

The creation and development of Indigenous and Community Conserved Areas (ICCAs) is a solution put forward by the international community and adopted by many countries to counteract biodiversity loss (Stevens 2014). In Canada, the Indigenous Circle of Experts (ICE) articulated the concept of Indigenous Protected and Conserved Areas (IPCAs) as an opportunity for the Crown and Indigenous governments to collaborate in ethical areas to develop and manage IPCAs based on Indigenous and Crown legal and knowledge systems. IPCAs represent the possibility of a fundamentally changed relationship between Crown and Indigenous governments, from one of collaborating or participating under prior structures to one of mutual recognition and a shared commitment to governance. Until recently, Crown legislation and authority were used coercively to drive Indigenous peoples off their lands and undermine their traditional governance and stewardship roles (Sandlos, 2007). Indigenous Protected and Conserved Areas, in contrast, make it clear that they are dedicated to preserving the natural and cultural values that are significant to Indigenous Peoples (ICE, 2018). Since time immemorial, Indigenous nations have governed their territory using their unique legal traditions long before the arrival of European settlers and their legal systems (Borrows, 2007). Indigenous nations preexisted Canada and were distinct peoples that used their laws, occupied their lands, and still exist today as nations. However, for the past 150 years, the Crown government and Canadian courts have mostly ignored or disregarded Indigenous law. Indigenous laws were purposefully disregarded and suppressed by Crown governments in an effort to replace them with colonial law (Innes et al., 2021, TRC, 2012). Today, IPCAs are often established under Indigenous law but there remains no recognition in crown law, leaving them vulnerable (Lloyd-Smith, 2017). Having no legal mechanism for their establishment has made it easier for Provincial governments to resist their establishment (McIntosh, 2022). Canada is improving its relationships with Indigenous Peoples at the federal, provincial, and territorial scales, particularly in protected areas and supporting the application of Indigenous knowledge; however, there is still more work to be done. Indigenous Peoples have been unable to contribute to the governance of protected areas due to a lack of legal support for this by Canada. There are no explicit provisions in Canadian legislation that acknowledge Indigenous Peoples' or local communities' sovereignty over terrestrial, riparian, or marine protected or conserved areas (Wilson et al., 2012). This Master's Thesis will address issues, questions, challenges, and opportunities related to reconciliation between Indigenous and Crown constitutional and legal orders as mandated by Canada's Truth and Reconciliation Commission. The output will provide a template for all Canadian jurisdictions.

The project has the potential to significantly advance legal reform, conservation and reconciliation. Advancing appropriate legal protection for IPCAs is necessary for Indigenous nations to be able to advance their conservation economies and holistic management of IPCAs.

Who Can Take Part in the Research Study

Since you have been identified as a person who is involved in or interested in Indigenous leadership and engagement in Protected Areas governance, you are being invited to participate in this study. The research team is confident that your knowledge, skills, and experiences will significantly advance our project.

What You Will Be Asked to Do

This study just asks for your voluntary involvement. The decision to participate or not is completely voluntary. Your involvement in this initiative will have neither positive or negative effects on your career or organizational activities.

Procedures

1) We are asking you to share your experiences and perspectives on what Indigenous jurisdiction over (traditional) lands and waters means and the regulatory and policy challenges of IPCAs (Indigenous Protected and Conserved Areas) implementation that you have witnessed and experienced.

2) You will be asked to take part in 45 minutes to 1-hour interview with either the Research Intern or the other research team members virtually or in-person. It is likely that you will be asked to have your interview recorded. We will be able to keep your data/participation anonymous if you indicate this in your participation form. The choice to leave the project will be available to you.

Duration

This research will be conducted between **February 15th to April 28th, 2023 to October 30th, 2024**. During this time, you will be asked to attend 45 minutes to 1-hour long interview at a time that is appropriate for you.

Possible Benefits, Risks and Discomforts

Benefits:

As a participant in this project, you will help create new knowledge about how the Crown perceives Indigenous participation and jurisdiction in protected areas, which can facilitate the government in developing strategies and frameworks that seek to address these aspirations through additional research and collaborations. The work will be relatively high profile and your involvement will result in laying the groundwork for the modification of the legislation governing protected areas with the intention of providing space for the establishment of Indigenous Protected and Conserved Areas (IPCAs) in a way that respects and reflects Indigenous law.

Risks:

There is a low risk for participating in the interview of this project.

Compensation / Reimbursement

We will provide you with an honorarium as a demonstration of our gratitude for your participation in this research project and as a way of saying thanks for your time.

How your information will be protected:

We will maintain the confidentiality of the data you provide us. The only people who will be aware of the identities of the participants being interviewed are the Research Intern and the research supervisor. When you submit this form, we will consider the level of anonymity you would like us to use and take the necessary precautions to ensure that the information you give us and any personally identifiable information you do not want to be shared with the rest of the research team outside of the scope of this project is protected. To maintain the amount of anonymity you are comfortable with, we will de-identify the data you submit, exclude recognizable quotes, use pseudonyms, and code your information. All collected data, written and typed notes will be kept by the research team in password-protected laptops (not on the cloud) that will be kept in a secure area. All recorded interviews will be stored on the password-protected computers owned by the Research Intern and who conducted interview, which will also include a backup copy on an external hard drive. The research team and Intern will ensure that any identifiable information is filed separately from the data and is appropriately coded to protect the anonymity of participants who prefer to remain anonymous and maintain the specified level of anonymity. In order to make sure the research team is informed of how to properly address identifiability at the beginning of the data collection/analysis process, the level

of anonymity that each interviewee wishes will be determined before any interviews and before the meeting session starts. All participants will receive plain-language reports containing the findings of this project's study that will be produced in the English language. Furthermore, the resulting report and related materials will be made available in the IPCA (Indigenous Protected and Conserved Areas) Knowledge Basket for Indigenous nations and allies to access.

Data Retention

Only the researchers involved in this study will have access to the password-protected study documents. Data for this study will be kept for a minimum of five years. Based on the consent forms you submit when deciding to participate in the study, the information will continue to have an identifiable status. You have the option to withdraw your consent to participate and ask the research team to remove your data until **August 2024**. Once papers and articles have been submitted to publishers, it is not feasible to remove your data. The information is not intended to be employed for anything beyond this study.

Sharing Results

After completing this study, participants will be given access to the findings in various ways. The findings will be presented in a plain-language report that will be emailed to participants (if you provide your email in the form below), included in a journal article for peer review, and shared online on the Conservation through Reconciliation Partnership (CRP) and IPCA Knowledge Basket websites for Indigenous nations and allies to access.

If You Decide to Stop Participating

Throughout the recruitment and involvement processes, you will get notifications about your right to withdraw your participation and/or personal information. You will be made aware at the beginning of the interview that you have the ability to withdraw at any moment. Should you withdraw, you will still be provided with an honorarium. You will also be made aware that you can control the degree of anonymity of your participation should you consent to have your information included in the research. The research team will guarantee that even anonymized data may be retracted by giving transcripts numbers that they can use as a reference in case you want your information removed from the data set. You have time until **August 2024** to determine if you want us to remove your data when the interview is completed. Suppose you have opted to have your data de-identified or anonymized. In that case, we won't be able to remove it from the database after that time since it will already have been anonymized and combined with other data, making it impossible to differentiate it from the rest.

How to Obtain Results

All participants will receive plain-language reports containing the findings of this project's study that will be produced in English. The research partners will provide direction on creating these reports and recommendations on the best formats and procedures for disseminating the findings. In addition, the outcome of this research project will be shared and posted on the CRP (Conservation through Reconciliation Partnership) website for public access. The resulting report and related materials will be available in the IPCA Knowledge Basket for Indigenous nations and allies. Furthermore, as this research is intended to fulfill the objectives of the CRP and DSF (David Suzuki Foundation), they will receive access to the project's final deliverables for usage in their communities as they progress with the development of IPCAs (Indigenous Protected and Conserved Areas) legal reform in Canada. It is my intention to disseminate the critical analysis of IPCA legal reform, as well as my policy and document review results, in a way that my partners consider appropriate and practical for their purposes. The Crown governments may be interested in the findings of this research since IPCAs are in their infancy in Canada, and this project will provide formal guidance to the Crown governments on legal reform in support of IPCA (Indigenous Protected and Conserved Areas) establishment. With participants' permissions and co-authorship arrangements, there will also be an opportunity to seek academic peer-reviewed journal publications through this project. Conferences will also be another place where the outcomes of this project may be shared. As such, sharing the outcomes of this research with the provincial government of Nova Scotia may be beneficial as they proceed with advancing their goals for IPCA (Indigenous Protected and Conserved Areas) development to highlight their objectives, expectations, and areas of concern.

Questions

We would be happy to talk with you about any questions or concerns you may have about your participation in this research study. Please do not hesitate to contact Dr. Melanie Zurba (Melanie.Zurba@dal.ca) or Research lead Melika Habibi (Melika.habibi@dal.ca) at any time with questions, comments, or concerns about the research study. If you have any ethical concerns about your participation in this research, you may also contact Research Ethics, Dalhousie University at (902) 494-3423, or email: ethics@dal.ca .

PART II: CERTIFICATE OF CONSENT

Project Title: Reconciling Indigenous Laws and Protected Areas Legislation

Lead Researcher: Melika Habibi, Dalhousie University (Melika.habibi@dal.ca)

I (the participant) have been invited to participate in research about how Canada can provide a framework for the transformation of protected area legislation aimed at creating Indigenous Protected and Conserved Areas (IPCAs) within a framework that is consistent with Indigenous law.

I have read the explanation about this study. I have been given the opportunity to discuss it and my questions have been answered to my satisfaction. I understand that I have been asked to take part in an interview that will conduct in a way (virtually or in-person) that is acceptable to me, and that interview will be recorded. I understand direct quotes of things I say may be used without identifying me]. I agree to take part in this study. My participation is voluntary and I understand that I am free to withdraw from the study at any time, until August, 2024.

Options (you can still participate in the research if you select no):

- | | | |
|--|------------------------------|-----------------------------|
| I agree that my interview may be audio-recorded | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I agree that direct quotes from my interview can be used in the MES | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I wish to remain anonymous | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I wish to be identified personally | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I do not want to review the context of the quote | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I wish to review the context of the quote prior to consent | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Any resulting publication or report | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I do not wish to be identified | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I wish to be identified personally | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I agree to have the researchers' contact me after the interview for clarification. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| I would like to receive a summary of the study results. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Please provide an e-mail address below if you answered yes to either of the last two options.

Email address: _____

Name Signature Date

Appendix D – letter of Support



FONDATION
DAVID SUZUKI
Un monde. Une nature.

davidsuzuki.org

February 13, 2023

Dear Dalhousie University REB Committee,

I am writing to confirm the David Suzuki Foundation's assistance in recruiting participants for Melika Habibi's project titled "Exploring the legal and policy challenges of Indigenous Protected and conserved areas implementation in Canada and developing a framework for legal reform in IPCAs." The project is part of a larger initiative led by a group of Indigenous and non-Indigenous legal and conservation experts and is connected to the Domestic Law and Policy Stream of the Conservation through Reconciliation Partnership. As a founding member of that group, I am committed to using the David Suzuki Foundation's professional networks to help recruit voluntary interview participants for the project.

Please don't hesitate if you have any questions.

Sincerely,

Rachel Plotkin
Boreal Project Manager



VANCOUVER (HEAD OFFICE)
219 – 2211 West 4th Avenue
Vancouver, BC V6K 4S2
604 732 4228

TORONTO
102 – 179 John Street
Toronto, ON M5T 1X4
416 348 9885

MONTRÉAL
540 – 50, rue Ste-Catherine Ouest
Montréal QC H2X 3V4
514 871 4932

Appendix D – letter of Support



COLLEGE of SOCIAL AND APPLIED HUMAN SCIENCES

DEPARTMENT OF GEOGRAPHY, ENVIRONMENT
AND GEOMATICS

February 12, 2023

Dear Dalhousie University REB Committee

I am writing a letter to confirm my participation in recruiting participants for Melika Habibi's project titled "Exploring the legal and policy challenges of Indigenous Protected and conserved areas implementation in Canada and developing a framework for legal reform in IPCAs." Her project is part of a larger initiative by the Conservation through Reconciliation Partnership, for which I serve as PI. One of our co-investigators is Dr. Melanie Zurba, Melika's MES supervisor. I will approach our IPCA co-learning circle and our wider network in an effort to find volunteers as interview participants and will use the transcript approved to do so.

Please do not hesitate to contact me if you have any further questions or concerns about CRPs involvement.

Sincerely,

Dr. Robin Roth
Professor, Geography, Environment and Geomatics
PI, Conservation through Reconciliation
University of Guelph
robin.roth@uoguelph.ca

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