

# The Green Energy Act: Definition, Consultation, and a Case Study

by

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## **AUTHOR'S DECLARATION**

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

## **Abstract**

The Green Energy Act (2009) has had weathered various forms of criticism during its decade-long existence from 2009 to 2019. One of the vital points of concern is housed within the Act in the form of the ambiguity of the term Green Energy. Despite concerns being raised in legislation regarding this fact, it was left ambiguous while rallying under the umbrella of the term that boasts positivity and progressive approaches. Consequently, this false championing allowed it to go undetected due to its benign connotations. This allowed the Bill to be expedited through the already problematic consultation process that had many challenges associated with it such as its timeframe, location and accessibility. The entirety of the Bill and its consultation process raises question of whether the government adequately performed their fiduciary duty and their duty to consult with Indigenous people of Ontario, Canada. The case study of the Kabinakagami River Waterpower Project serves as a case study of the aftermath of the Green Energy Act (2009) and the Indigenous attitudes towards projects initiated under the Act. If nothing else the accounts and testimonies found within shall stand as a testament to the hubris of calling an energy project green without properly assessing and considering the impacts. This research stands as a cautionary tale against the dangers of green-labeling.

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## **Dedication**

I would like to thank my friends, family and loved ones who have supported me through this process.

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# Chapter 1

## Introduction

### 1.1 Foreword

*Green energy* is a topic that has gained a notable amount of traction within the past decade due to its ideologies and applications. Many of its practical applications fall under modes of energy production that have been used as a means to promote certain types of *renewable energy* that are interpreted to be beneficial to the environment. This championing of the environment led the international community to adopt these ideas and notions of *green energy* in an era where the ominous threat of climate change loomed overhead.

This shift occurred in the 1970s in the wake of the oil crisis (Toke, 1998); the United Nations Conference on the Human Environment (United Nations, 1972); and other movements such as GreenPeace (GreenPeace, n.d.). The term gained traction over the two decades that followed as an emerging topic in environmental policy. (Lund, 1999) This movement culminated during the 2000s when various countries began to shift their policies towards *green energy*.

The adoption of *green energy* mainly took the form of policies that were used to bolster the energy economy after the financial crisis of 2008 (Mundaca et al., 2016). However, due to the novel nature of the term, there have been questions of how it should be defined. It was not a simple matter of saying that it encompasses forms of energy production that are beneficial to the environment; there were many political and financial contexts at work that sought to mold it into something favorable for their respective spheres.

One of the most effective ways for adapting a term to a respective context is to target its foundations; by changing how a certain term is defined within a specific rhetoric, it becomes difficult to refute its use solely on ground of meaning. To contest this manner of alteration and interpretation, comparative analysis must be conducted with similar terms that are contextually relevant. Thus, it is without exaggeration to say that the problem of semantics arises due to issues involving its definition, interpretation, application and the logical inferences that follow.

One may not think much of terms or definitions due to the meticulous nature that is typically associated with such discussions. However, the steps that involve the defining of terms is of the utmost importance due its potential to shape outcomes, perspectives and the environment; we must not make light of these topics. This is especially true for fields that have the potential to impact a wide area or population. To demonstrate the importance of such wording within the field of environment, this thesis will use Bill 150, The Green Energy and Green Economy Act of Ontario, Canada as a case study of why it is important to be mindful of the terms used.

## **1.2 Objectives**

The goal of this research is to provide a point of synthesis that includes aspects from policy analysis (see chapter 2), anthropological analysis (see chapter 3), and ecological research (see chapter 4) at a theoretical level. These intersections will be used to answer and grant insight into the issues that occur at the foundation of policies such as the Green Energy Act by using studies of its impacts as guides to enhance our hindsight. The specific draw and literature that this research seeks to fill is an interdisciplinary approach to the environmental problems incurred by policies. The guiding question of this research is: Green for whom?

### **1.2.1 Green Energy Act**

The first chapter focuses on establishing a firm understanding of the definition of green energy within the Green Energy Act. In order to answer the question of “Green for whom?” there must be an understanding of what it means to be green. The policy serves as a foundation for further discussions and analysis on the topic as well as providing insight into its origins by providing a single perspective. The conclusions in this chapter will also set the stage for comparative analysis in both chapters three and four, which address the same question from different perspectives. Lastly, the goal of this chapter is to be as transparent as possible in the conclusions that formed, so that the foundation they provide can be seen with objectivity.

### **1.2.2 Duty to Consult**

The second chapter focuses on the creation process of the policy with the goal of identifying possible reasons for the conclusions presented in chapter two. While this chapter aims to supplement chapter two, it also seeks to address the other perspectives of green energy present within parliament that were not necessarily communicated in the final piece of legislation regarding the act. The information that is communicated will also serve to help provide context for chapter four and build the final arguments in chapter five. Independent of the main argument, this chapter also seeks to establish some of the flaws of the process that are responsible for the conclusions in chapter two, which can be applicable to a broad range of policies that are not environment-specific.

### **1.2.3 The Kabinakagami River Hydroelectric Project**

The final major section of this research deals with the Kabinakagami River Hydroelectric Project as a case study that demonstrates the validity of the concerns raised within the second and third chapters. This specific project was chosen due to its temporal proximity to the initial creation of the Green Energy Act. This specific case study was chosen because it also possesses an indigenous component that builds off the arguments in chapter three. It also serves as a final point of address on the topic of differing perspectives of green energy concerning the central question of “Green for whom?” This case study also serves as an important demonstration of real effects of the legislation

that cannot be captured solely from inferences; this chapter aims to bring a real account to the forefront of this issue to demonstrate the importance of this topic and its shortcomings.

### **1.3 Methods**

Preliminary research was conducted in the form of a critical review of relevant literature guided by the University of Waterloo's curriculum for the Social and Ecological Sustainability Program; the guiding terms used for this were sustainability, cultural sustainability and their related concepts within the curriculum. This was followed by an informal scoping review to gain a better understanding of the topics present within this research project (Arksey & O'Malley, 2005). The terms that were used to guide this preliminary review are: green energy, Green Energy Act, fiduciary duty, Indigenous Peoples, First Nations, and duty to consult. These terms were reviewed in the context of Ontario, Canada with a specific focus on government policies, laws and media.

At this point the scoping of the research project had already been decided to be the Province of Ontario due to its geographical relevance and ease of access for the purpose of research. Given the intent to focus on relevant policies that involve critical understanding of the terms present, the Green Energy Act was the primary choice due to term of *green energy* and its status as a relatively new, contemporary term. From these bases, understanding of Indigenous components was derived as a necessary factor for understanding and relevant research. Thus, these terms became the guiding concept for this research. (Figure 1.1)

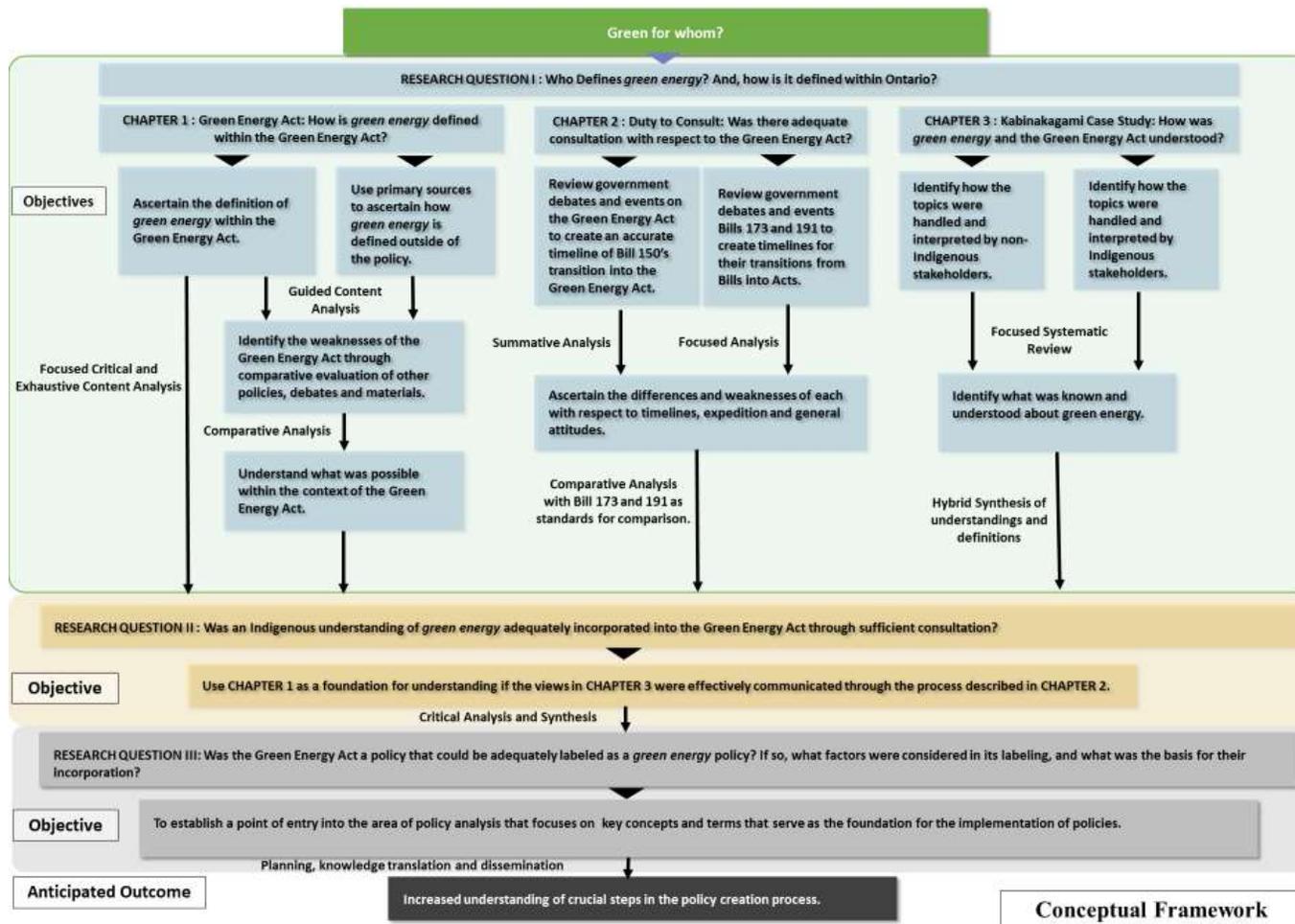


Figure 1.1. Conceptual Framework

### **1.3.1 Green Energy Act**

The first chapter on the Green Energy Act utilized a hybrid approach to the literature review (Creswell, 2014). Generally, the style was conducted as a normal critical review; however, an explicit set of criteria was used for evaluating the body of literature. This effort was made with the intent of documentation for the purposes of promoting transparency and replicability. Similarly, primary sources were the main sources gathered in the collection process because these documents would be conducive to the chapter's goal of providing objective facts on the policy and its usage of the term *green energy*. By dealing in primary sources with little room for speculation or assumption, the soundness of the conclusions could not be questioned given the logical arguments and soundness of the premises. These conclusions would need to be viewed as facts, given the context and materials; this chapter builds the foundation for the rest of the research.

### **1.3.2 Duty to Consult**

The second chapter aimed to establish the context of the Green Energy Act's creation, as Bill 150. The background for this question and goal was already established within the previous chapter; consequently, there was no need to make an effort to restate the findings. This allowed for the use of a guided, summative review (Hsieh & Shannon, 2005). The summative review identified all mentions of *green energy* within the scope of the documents assessed; subsequently, the mentions underwent content analysis for the purpose of understanding the context of *green energy*, how it was used and who it was used by. This section was straightforward insofar as it was a simple matter of reviewing documents and providing analysis for the purpose of understanding the broad questions of this research.

### **1.3.3 Kabinakagami River Hydroelectric Project**

The final chapter focuses on the Kabinakagami Hydroelectric Project as case study given the rationale that it is relevant due to its temporal context and its Indigenous component. The goal of this chapter is to analyze and present the Indigenous perspective of the policy and the central concept; the use of a hybrid approach to knowledge is necessary for the goal of allowing proper representation and incorporation of Indigenous knowledge into the body of literature without reproach (Marshall & Bartlett, 2010). This approach to the epistemological question allows for a more complete understanding while taking other important factors into consideration, such as the group being represented and their status with respect to other stakeholders. Forthwith, this section used a systematic review (Grant & Booth, 2009) due to the narrow and well-defined scope of this topic that was defined both within this chapter and the previous chapters. The approach is intended to be exhaustive and deals with literature at both the primary and secondary level to supplement the absence of interviews conducted directly under this research.

## **1.4 Literature Review**

### **1.4.1 Preliminary Reading on Sustainability and Cultural Sustainability**

The scope of the literature review for this research is vast due to its roots within the University of Waterloo's Social and Ecological Sustainability Program. The readings from the required courses from the year of 2017-2018 were used as tools to influence scoping and to assist in informed research (Gibson, 2017; Armitage, 2018; Fedy, 2018). While the courses contained a number of required readings, not all were specifically applicable to the research area of green energy policy; however, a number of the texts did provide a strong foundation in social and ecological sustainability, with a focus on general sustainability theory that is applicable to both fields.

Specific consideration was given to the readings featured in Professor Gibson's course concerning topics of sustainability and resilience (Walker & Salt, 2012). While these texts were not directly applied to the research that was conducted, they granted a great deal of insight, direction and awareness of the significance of the research that has been conducted. Mention must also be given to Professor Gibson's work and coverage on core theory behind sustainability that groups sustainability into categories that are applied at a practical level.

In the coverage provided by Professor Gibson and Hassan's book on sustainability, they draw attention to the practical applications of sustainability theory and makes mention of one of the pillars recognized by the Canadian government in the form of the cultural pillar (Gibson & Hassan, 2005). While the original citation for this document has become grey literature, it is succeeded by subsequent versions that are more readily available and affirm the Canadian government's sustainability goals (CIDA, 1997). These goals include culture as an important aspect deserving of the same recognition as ecological sustainability (CIDA, 2001). This inclusion in both the course material and its consistent attention at a political level guided my research to include a strong cultural perspective of the topic of Green Energy policy – that is evident by my focus and inclusion of Indigenous opinions and views within the policy analysis. It should also be recognized that the Indigenous perspectives are utilized in the evaluation process more than typical policy analyses because of this specific focus.

The literature led by the Canadian government and Professor Gibson is supplemented by the body of literature that is comparatively smaller to other areas of sustainability. While it is smaller, it is no less recognized; to the contrary, it is a topic that is recognized by UNESCO in their 1993 address of the topic (UNESCO, 1993) and their published report in 1995 (UNESCO, 1995). Since its initial recognition on the global scale, a number of scholars have attempted to address questions of cultural sustainability and how it factors into the already-active socio-ecological sustainability programs. The background in Professor Gibson's course regarding indicators with the Meadows text (Meadows, 1998) gives suitable priming for digesting sustainability literature, such as, the text

authored by Axelsson et al. that seeks to define a set of criteria and indicators for effective interaction with cultural aspects in a sustainability context (Axelsson et al., 2013; Ostrom, 2009). There are a handful of parallels that can be drawn between Axelsson et al.'s "Social sustainability" and "Cultural sustainability" sections on indicators (Axelsson et al., 2013, p. 219) and Meadows's latter indicators of "social capital" and "well-being" (Meadows, 1998, p. x).

In a similar vein, scholars such as Banerjee et al. use Dempsey et al.'s assertion of cultural traditions as a foundation to build upon an argument for the association of places and cultures (Banerjee et al., 2017; Dempsey et al., 2011). A paper, authored by Palvis and Terkenli, identifies and makes an argument for the importance of culture with respect to landscape and stewardship topics (Palvis & Terkenli, 2017). On the whole, this is more generally reflected by the already-present global initiative of World Heritage Sites that seek to "ensure the protection of their [countries'] natural and cultural heritage" (UNESCO, 2020). These approaches to cultural sustainability with respect to geographical territories provided a substantial amount of guidance that is present within chapters two and three of this thesis that deal with Indigenous communities and their perspectives regarding their land. The excerpts from the Hansard transcriptions that were chosen were also greatly influenced by the ideas presented within these papers.

While the concept of cultural sustainability is not explicitly present within the body of this thesis, it is undoubtedly a strong influence that was derivative of the sustainability texts featured in the University of Waterloo's Social and Ecological Sustainability Program's curriculum. Thus, it would be accurate to say that the bulk of this research is heavily influenced by the ideas presented within the course led by Professor Gibson.

#### **1.4.2 Review of Methods**

Similarly, the course provided by Dr. Fedy, at the University of Waterloo, granted a great deal of insight and preliminary planning for my research with respect to how information should be obtained (Fedy, 2018a). Verily, the lectures that focused on the types of qualitative analysis (Fedy, 2018b) were useful for reinforcing the foundations of my research methods; however, they were not the same methods that would be used within the bulk of the research present within this thesis. Instead, the methods formed from the curriculum aided in the analysis and evaluation of the methods utilized throughout this research; the hybrid approaches to many of the research questions is evidence of the presence of individual methods. The best example of this influence is found within the chapter two use of transparency in line with a style of systematic review.

Another point of influence that is more explicit in its reference to the initial foundations would be the use of semi-structured, key informant interviews that is used as a means to identify alternatives for the purposes of evaluating the methods used (Wilson, 2014; Moon et. Al, 2016). These methods were a product of the curriculum (Fedy, 2018c); they spurred-on critical analysis of approaches to research through exposure and peer participation. Additionally, I also acknowledge

that the interdisciplinary approach of the program (Fedy, 2018d) also influenced my choice of the systematic and summative reviews (Hsieh & Shannon, 2005).

These courses and readings served as preliminary steps towards the research that would be conducted within this thesis. While not all of the readings may be directly involved in my research, or explicitly used, I still acknowledge them as having guided some of the foundations of this research. These foundations were also supplemented by the re-reading of content from previous academic pursuits, such as that of Edward Said's *Orientalism* (Said, 1994). In a similar bid to other sources that are not explicitly used within the respective chapters, Said's work has heavily influenced my academic pursuits, especially when they concern other groups or communities. Again, while the ideas presented within the body of this research may not reflect the presence of these works as part of the broad literature review, these sources influenced the research in various ways.

### **1.4.3 Core Topics and Scoping**

Following the completion of the initial courses that served as a means of guiding the preliminary stages of research, the second phase of the literature review began with the concept of green energy. At this point, the core research area was already decided to be Ontario's Green Energy Act. In order to strengthen my pool of knowledge before commencing official research on the topic, I conducted general searches using "green energy" as a search term and related terms and combinations that were relevant to Ontario's Green Energy Act. Similarly, to the core methods of this research, results were screened for relevance by title, abstract and body in that order. The majority of these texts served as background context for my research (Eyraud et al., 2011; Summerhill Group & Pollution Probe, 2004; Public Health Policy University of Toronto, 2009); however, there were a few texts that communicated strong opinions that presented a possibility of bias. In an effort to temper possible biases, these texts were archived for reading at a latter point to grant further context into the situation after I had formulated my own opinion based on my own research (McRobert et al., 2016; Hawkins, 2009; Markvoort, 2010).

### **1.4.4 Literature Review of the Green Energy Act**

In line with the objectives and methods, the second chapter of the thesis serves as an exhaustive literature review and analysis of the focal point of the research to build a strong foundation. To this end, schedule A of the Green Energy and Green Economy Act, the Green Energy Act, was read in its entirety (Green Energy Act, 2009). This reading includes all documents and periphery materials that are directly linked to the policy: all versions of the document and the 20 individual acts that were affected by the omnibus bill that was the Green Energy Act (Building Code Act, 1992; Clean Water Act, 2006; Conservation Authorities Act, 1990; Conservation Land Act, 1990; Co-operative Corporations Act, 1990; Electricity Act, 1998; Energy Conservation Leadership Act, 2006; Energy Efficiency Act, 1990; Environmental Bill of Rights, 1993; Environmental Protection Act, 1990; Greenbelt Act, 2005; Ministry of Energy Act, 2011; Ministry of Natural Resources Act, 1990;

Niagara Escarpment Planning and Development Act, 1990; Ontario Energy Board Act, 1998; Ontario Water Resources Act, 1990; Places to Grow Act, 2005; Planning Act, 1990; Provincial Parks and Conversation Reserves Act, 2006; Public Lands Act, 1990; Ontario Energy Board, 2005). Additionally, the Hansard transcriptions of the debates on the act during its time as Bill 150 were read in their entirety (Legislative Assembly of Ontario, 2007-2010).

Through the synthesis of results and previous background reading, topics such as fiduciary duty (Aikin & Fausti, 2010-2011; Fibuch & Way, 2012) and the duty to consult (Gardner et al., 2015) were researched as relevant topics due to the involvement of an Indigenous component, which was indicated in the debates on Bill 150. Readings on the subject include government-based websites at both the provincial and federal level that deal with the stated topics and Indigenous peoples. Furthermore, legal cases that have set precedents (Supreme Court of Canada, 1984) on the aforementioned topics were examined with attention being given to their summaries and conclusions. For exhaustive coverage, these topics were also analyzed from a theoretical standpoint that addresses questions of ethics and morals.

Lastly, adhering to the outline for the research in chapter three, the International Energy Agency's database (International Energy Agency, 2020) was searched for the most relevant energy policies that could be used as indicators for the purpose of measuring and evaluating the Green Energy Act. Energy policies of Germany, Sweden and Japan were considered and read; however, the United Kingdom's Green Energy Policy (United Kingdom Legislation, 2009) was selected due to its temporal proximity and content relevance with respect to Ontario's Green Energy Act. To supplement the United Kingdom's energy policy, the United States of America's modern green energy definition and relevant sites (United States Environmental Protection Agency, undated) were read and analyzed to give a more contemporary perspective for evaluation. Due to the concise nature of the research question and objectives, these energy policies were read with a primary focus falling upon their definitions of green energy. Further details and the results and comparisons can be found within chapter three.

#### **1.4.5 Literature Review of the Duty to Consult**

Given the objectives and the research questions of this chapter and their focus on the consultation process of the Green Energy Act, the focus of these readings fell upon the Hansard verbatim transcripts of the debates concerning the Green Energy Act (Legislative Assembly of Ontario, 2007-2010). Each transcript was read in its entirety and searched using a summative approach for the purposes of identifying uses of green energy within the document as well as the consultation procedure that should have had some weight on the matter. These searches and findings were supplemented and guided by both the preliminary readings and the reviews conducted in chapter two.

With respect to the preliminary reading, the scope of this chapter was also expanded to include Bills 173 and 191 instead of just Bill 150, the Green Energy Act. Each bill was read in its entirety and analyzed for relevant material. Similar to the reading of Bill 150's material, Bills 173 and 191, and their Hansard transcriptions (Far North Act, 2010; Mining Amendment Act, 2009; Legislative Assembly of Ontario, 2007-2010), were also read in their entirety to obtain relevant information via the summative approach taken to Bill 150. Records of readings and the proceedings of each bill were also read and gathered for the purposes of comparative analysis with Bill 150.

To supplement the Indigenous perspectives present within the two supplementary bills' Hansard transcriptions, a critical review was conducted in regards to the effects of hydropower (Armstrong, 2000; Long, 2016; Macfarlane & Kitay, 2016). This literature would further support the research conducted in the third chapter and can be found in greater detail. However, this aspect of the research is not explored deeply, because it is not the focal point of the research and strong cases have already been made for the effects of hydropower projects both within the province and generally. Further results can be found within the second chapter of this thesis.

#### **1.4.6 Literature Review of the Kabinakagami River Waterpower Project**

The final portion of this thesis deals with the case study of the Kabinakagami River Waterpower Project. Other hydropower projects were considered for analysis; however, after careful consideration and suggestions from other scholars (Gardner et al. 2015), the Kabinakagami case was chosen as a case study due to its importance as a case that represents the uncommon circumstance of having an indigenous proponent. It is also a case that provides contextual relevance that allows for critical analysis of the application and analysis of the arguments provided in chapters two and three.

The breadth of the literature was already explored and well-documented; it was a matter of following up on the reading identified by previous research and evaluating each source. Upon request, the original researchers also provided documents that would be considered grey literature in the form of personal correspondences and similar pieces (Chief Knapaysweet, 2013; WorldVu, 2011). This is what could be considered the *magnum opus* of the thesis that utilizes conclusions and literature from previous chapters to synthesize with the information on the case study of the Kabinakagami. This final step includes re-readings of relevant debates, effects and policies to produce the conclusion found within chapter four.

### **1.5 Moving Forward**

*Green energy* is not a term that can be simplified in a reductionist sense, nor should it be due to the potential it has to control the surrounding rhetoric. People must be wary of the term, of its connotations, its perspectives and biases that are certain to guide discussions involving it. Through these chapters it should become wholly clear that *green energy* is a term that must not be taken or used lightly. Before any discussion begins on the topic, it is always prudent to ask questions

of: what is it; why do we define it this way; and green for whom? The Green Energy Act serves as a cautionary tale to future power projects that may coopt the term *green energy*, but it also serves as a warning to any sort of policy that would dare to make light of the use of certain terms within a rhetoric.

## **Chapter 2**

# **Fiduciary Responsibility and the Green Energy Act, 2009 (Ontario, Canada)**

### **2.1 Introduction**

The Green Energy Act (GEA) is an energy policy produced by the Legislative Assembly of Ontario, Canada; the GEA deals with the moderation and proliferation of *green energy* within Ontario. The content of this research focuses on how *green energy* is defined within the GEA and why it is defined in such a way. By answering these questions, we can gain insight into its application as a policy by identifying the underlying foundations that are responsible for its impacts on the natural and social environment. Analysis of this topic deals with primary sources that include the policy documents, debates and official materials published by the Ontario Government with respect to the Green Energy Act. After ascertaining the state of the definition used in official capacity by the province for the purposes of policy application, the focus will shift towards the significance of the definition and possible implications of the conclusions drawn from the analysis. Due to the scope of this research, a more analytical and descriptive tone is adopted. This section and its conclusions are a tool for latter chapters.

### **2.2 Objective**

The goal of this chapter is to provide a descriptive approach to the topic of *green energy* within the GEA. This style of writing is used to give sole focus and emphasis to the core topic of *green energy* for the purpose of effectively communicating the background for the rest of the thesis. Due to the fact that this research occurs at what can be considered the base level or foundations and premises, it should be considered with the utmost care because we are dealing with the foundations of the document; this is not a surface-level analysis or a study that addresses the effects that have already transpired. This is an analysis of the root of the problem; because we are dealing with the root, we must be mindful of the implications due to the complexity of the system we are analyzing. Consequently, I shall refrain from providing specific prescriptive arguments; to do so would be both brazen and brash. While I can claim that I have studied the topic extensively, I cannot – and should not – make any specific, prescriptive arguments using only my judgement. However, I will make more conservative ventures and give general direction on what problems need to be addressed to enhance the efficiency and sustainability of future policies in *green energy*.

### **2.3 Background**

In 2009, the Minister of Energy and Infrastructure, George Smitherman, established the Green Energy Act (GEA) under the Liberal Government of Ontario, Canada (Legislative Assembly of Ontario,

undated). The GEA was the latest iteration of Ontario's energy legislations; it was created with the intent of providing revisions and superseding its predecessors: the Renewable Energy Standard Offer Program (RESOP) of 2006; the Energy Conservation Leadership Act of 2006; the Energy Efficiency Act; etc. (Green Energy Act, 2009). To make the changes necessary for it to be considered an effective successor, the GEA formed a Steering Committee (Green Energy Act Alliance, 2008) from the representatives of: Ontario Sustainable Energy Association; Community Power Fund (CP Fund); the Pembina Institute; Environmental Defence; The Suzuki Foundation; Ivey Foundation; the Ontario Federation of Agriculture; and the First Nations Energy Alliance. While the listed parties were noted to have participated in the Steering Committee of the GEA, the extent of their involvement with the GEA and its formation is not clearly defined. This is especially true for the First Nations Energy Alliance, which is a group composed of twenty Indigenous communities; the only explicit piece of information is that their legal consultant was Cherie Brant (Independent Electricity System Operator, undated). The circumstances are similar to the other groups mentioned insofar as the details are sparse.

However, over the decade since its implementation, there were increasing concerns about the GEA. There are numerous reports documenting the economic effects as well as the ecological impacts of the projects covered by the act (Winfield & Dolter, 2014); these studies validate the premise that the GEA produced projects that were not considered *green* upon their evaluation. With the groundwork laid, we can turn our attention to the focal point of this paper: *green energy* and how it is defined within the GEA; and whether the Government of Ontario met its fiduciary responsibility to the people of Ontario.

## 2.4 Methods

This chapter used a scoping review (Arksey & O'Malley, 2005) as a means to understand the broad body of literature covered by the topic of *green energy* within the GEA. There are many scholars that have addressed the topic of *green energy* within the context of the GEA with respect to the projects established under this document and their effects on the surrounding environment. The goal of this research is not to address the effects; the goal is to identify why these effects have come to pass from a perspective of policy. For this purpose, the preliminary scoping review was conducted to ascertain a research topic that would be conducive to the arguments presented by other scholars. While a scoping review was utilized in the preliminary steps of this research, it was not the primary method.

The scoping review provided a guided approach to the critical review that is the cornerstone of this research by identifying the relevance of the documents obtained with respect to *green energy* in the context of the GEA. The speculation, opinions and secondary sources of information is too large of a bulk to address within the confines of this research; so, I decided that the focus would be specifically placed on primary resources for the purpose of this section. Through the analysis of

primary sources of information, we are able to build a solid framework for latter chapters by excluding as many implicit inferences as possible that are more delicate as premises in comparison to those derived from primary sources.

Critical reviews do not typically use a formal quality appraisal standard with their research; however, the review for this research adds a set of criteria for the inclusion and exclusion of sources that is based around the topic of *green energy*. (Grant & Booth, 2009) Using the GEA as a foundation, the only policy documents that were considered for this study are those that affect or have been affected by the GEA directly. This is the only inclusion criteria for this section; exclusion criteria would fall to all else. The specific unit of analysis in this research is policy documents, with the metric being a definition of *green energy*. To this end, this type of critical review would be classified as a hybrid due to its use of criteria. (Figure 1.1)

The resources used in this research are: policy documents, transcripts and promotional or media-related materials that are gather from official websites of the Ontario government. Official, in this context, is used to identify materials published by the source being addressed in the respective document; this means that documents found on the Government of Ontario's website is considered to be official, and first-hand, while summaries found on a news site will not be considered an official document of the Government of Ontario. This distinction is meant to establish that the materials used as specifically primary materials. However, in some instances, materials are unavailable due to changes in management, websites, or other reasons; internet archives are used to supplement such cases where applicable to ensure that information is contextually relevant and accurate.

Synthesis will be performed in an effort to ascertain the definition of *green energy* within the GEA using the materials gained from the search. Importance will be placed on the GEA as a primary document and the document in question; similarly, its predecessors and associated documents will be used as supplements to the GEA for the purposes of finding a definition that is mentioned in an official capacity within a policy document that is applicable within the respective context of policy. Other materials that come from websites and debates will be treated as documents that attest to the intent and verifiable content that was to be communicated through the GEA; they will not affect the conclusion regarding the definition within policy because none of these sources hold ground in a context that specifically deals with implementation of policy.

Lastly, I will give a short comparative analysis with respect to other standards for *green energy* in both the United States of America and the United Kingdom. These comparisons are meant as supplementary materials to the overall arguments in this chapter to further emphasize the conclusions of this chapter in the larger context of "Green for whom?" The United States of America presents a similar spatial context due to its proximity to Canada, and Ontario. The instance of the United Kingdom is used as a temporal context to demonstrate the conclusions that could be reached during that the time surrounding the creation of Ontario's GEA. These examples and comparisons

are by no means exhaustive or seek to establish another argument for improvement. The last piece aspect for evaluation is the concept of *fiduciary duty*; this specific concept was chosen as a means to facilitate insight and further research due to its duality as both a legal and ethical concept, especially when dealing with Indigenous Peoples of Canada (see chapters three and four). The resources that are used have the goal of providing insight and sparking further analysis on the topic; however, they will not be explored within this paper due to the determined scope of this research.

## **2.5 Results**

### **2.5.1 Policy**

The GEA does not define *green energy* in any capacity in the definitions sections of the document: Part 1 – Interpretation and General Application – Chapter 1 – Definitions and interpretation – Subsection 1, and Part 3 – Energy Data – Chapter 15 Section 1 – Definitions (Green Energy Act, 2009). Instead, definitions for *Renewable Energy* and its derivatives are found in the aforementioned sections. The remainder of the document is devoid of any semblance of a definition for *green energy*. Concerning its predecessors, many of the original documents have limited accessibility; any documents that were available were reviewed. For those whose official copies were not available, they were accessed using internet archives. The following documents did not have any mention of a definition of *green energy*: Building Code Act (1992); Clean Water Act (2006); Conservation Authorities Act (1990); Conservation Land Act (1990); Co-operative Corporations Act (1990); Electricity Act (1998); Energy Conservation Leadership Act (2006); Energy Efficiency Act (1990); Environmental Bill of Rights (1993); Environmental Protection Act (1990); Greenbelt Act (2005); Ministry of Energy Act (2011); Ministry of Natural Resources Act (1990); Niagara Escarpment Planning and Development Act (1990); Ontario Energy Board Act (1998); Ontario Water Resources Act (1990); Places to Grow Act (2005); Planning Act (1990); Provincial Parks and Conservation Reserves Act (2006); Public Lands Act (1990); and Renewable Energy Standard Offer Program (Ontario Energy Board, 2005). In an effort to be explicit, the aforementioned legal documents bear some level of relation to the GEA; they are targets for investigation due to this connection. (Bill 150, 2009) Conclusively, a definition for the term *green energy* is absent from all official parliamentary documents.

### **2.5.2 Media**

There are mentions of a definition of *green energy* found on the websites associated with the act; however, similar to many of the older documents, there is no longer an official, accessible version of these sites. There are archived versions that are evidence for the existence of a definition; however, it is separate from the act's official documents. In the recovered portion of the GEA's official site, they do not define *green energy* in their "Green Energy Dictionary" (Green Energy Act

Alliance, 2008). However, it is described in another section of their site specifically dedicated to the topic of *green energy*; within this section, it is described as:

“Green energy is an environmentally friendly, sustainable source of electricity. It has several key components. The first is renewable energy... The second is conservation – the conscious reduction of electricity consumption... A third aspect of green energy is its ability to effectively generate electricity on a much smaller scale than traditional ‘big power’ stations that use coal and nuclear fuels... This form of green energy is called Community Power.” (Green Energy Act Alliance, 2008)

Out of the pool of primary documents and official websites, this is the most explicit definition of *green energy*.

### **2.5.3 Hansard Transcriptions**

The last point of analysis deals with the transcriptions of the parliamentary debates held within the Legislative Assembly of Ontario. The most explicit comment with respect to *green energy* is made by the Liberal Party in regards to the purpose of the bill; it was stated: “our duty and obligation is to do something about [climate change]... in order to help the environment and create green energy to serve our needs for industrial and domestic use.” (Ramal, 2009, p. 5074). There are other mentions of *green energy*; however, most of them share the same level of information as what is found on the GEA’s official website in terms of what modes of energy production are included under the title *green energy* (Moridi, 2009, p. 5338). Within the debates there were also mentions, from Liberal Party members, that identified *green energy* and *clean energy* as two separate types of energy (McGuinty, 2009, p. 5118). In other statements, made by the Liberal Party, there are those that assert that *green energy* and *renewable energy* are interchangeable terms, if not synonymous (Colle, 2009, p. 5336). With the information gleaned from the investigation of the Legislative Assembly of Ontario we can conclude the results portion of the definition section of this document.

The next question that needs to be addressed is: Why was *green energy* defined in such a way? The parliamentary transcriptions also indicate that there were similar questions asked by both the Progressive Conservative Party (O’Toole, 2009, p. 6779) and the New Democratic Party (Miller, 2009, p. 5070). Among the statements given, there were two critical observations that were made with respect to the reason why the GEA lacked an adequate definition. The first observation introduced the possibility that the GEA is only using the term *green energy* to garner acceptance with the public due to its usage of the term *green energy* (Wilson, 2009, p. 6766); even for those who are not as savvy with the intricacies of the term in the area of energy production, the choice of

words has amicable connotations that imply positivity (O’Toole, 2009, p. 5172). Consequently, regardless of the level of knowledge of the public, it is a term that demands attention and support.

The second concern that is mentioned is one that follows from the first due to the favorable dispositions people have with the term *green energy* for reasons that were outlined previously. The term *green energy* carries weight due to its relationship with movements towards a sustainable future in the face of the global topic of climate change. Due to this weight and favorable light, many members of the Progressive Conservative Party identified the difficulty to be had with showing criticism for the bill being passed (O’Toole, 2009, p. 6779). While criticism was much more difficult than simply denouncing the bill; a great deal of it was still present within the parliamentary discussions. There is one, specific, comment that is of importance to this discussion: “It comes down to a very minute description of how you would define green energy. I would say that hydro-electric—that’s water dams—would be green energy, with the exception that often, to create a dam, you have to flood property. In many cases, it’s property that has been affecting First Nations for hundreds of years. It’s a huge issue in Quebec [Canada]. They have hydroelectric power, and for most of it they flooded land that was in dispute in the courts.” (O’Toole, 2009, p. 5172-5173) This comment indicates that concerns regarding the definition were explicitly brought to the attention of the Liberal Party before the bill was made into the GEA; these concerns outline previous relevant instances within the Province of Quebec. This statement not only addresses these concerns, but also identifies a likely contributor to these ill-effects; it is stated that the pivotal point in this discussion is how the Liberal Party would define the term *green energy*. Despite this warning, *green energy* went undefined within the GEA and many of the official documents. The only instance where it was defined in any capacity was on the GEA website; this is how the state of the definition would remain until its repeal in January 2019.

## 2.6 Discussion

Summarily, the definition of *green energy* within the GEA is lacking; while it is defined within the GEA’s official site, it is not present in any official documentation used by Ontario’s Legislature. However, for the sake of argument, we will consider the definition presented on the, now-defunct, website to be a valid definition put forth by the GEA for supplementary purposes. To evaluate this, it can be compared to the United States of America’s definition of *green energy*, or *green power*; it is defined as “Green power is a subset of renewable energy and represents those renewable energy resources and technologies that provide the highest environmental benefit.” (United States Environmental Protection Agency, undated) This definition presents a coherent account of the reasoning for the difference in naming conventions with *renewable energy* and their relationship; there is no equivalence between the terms. If there was equivalence, it likely would have been stated within the GEA; even outside the act, the website only has a vague definition that is further defined by three components that do little to emphasize the purpose of green energy – “the highest environmental benefit” (United States Environmental Protection Agency, undated). With this, it is

shown that the definition is absent from the GEA, and the source that does state the definition is worded to include only a fraction of the purpose in comparison to others who have defined it.

Given the warnings of the other parties within Ontario's Parliament, it can also be inferred that the ambiguity of the definition was intentional, for one reason or another. However, to call what is presented within the GEA ambiguous is still inaccurate due to its complete absence within the policy. Arguably, having a definition that is well-defined but not necessarily ideal would have been better if only for the sake of improved efficacy and uniform application. An example of what the policy could have strived towards would be the United Kingdom's definition which was also created at approximately the same year as Ontario's, 2009 (United Kingdom Legislation, 2009). Summarily, the fact of the matter is that suggestions and critiques were ignored by the governing Liberal Party of Ontario; and there was no action take to address this issue that was made apparent through its decade-long run. The fact that these suggestions were ignored is evident of a greater concern that involves the Government of Ontario's fiduciary duty to its Peoples.

Fiduciary duty exists as both a concept in ethics and as a legal concept that is especially applicable to Indigenous Peoples under 35 of the Constitution Act of 1982; in short, "one party has an obligation to act for the benefit of another" in instances where the former party is entrusted with power over the latter to make decisions in their best interest (Supreme Court of Canada, 1984). Typically, this takes the form of the "duty to consult" (Government of Canada, 2019); however, in the instance of the GEA, it was previously mentioned that there was an Indigenous group that was represented in the Steering Committee. It is still unknown what role the committee played in the GEA, if at all; nor is it known about how exhaustive and inclusivity of the group. For the sake of argument, they will be granted the benefit of the doubt. While this may hold true, it is still recognized that there were many shortcomings with the GEA that involved numerous complaints from various groups of people. Even if the GEA forcefully passed the legal requisites for *Fiduciary Duty*, it is evident that they did not perform their ethical, yet informal, duty to remaining stakeholders in this dialogue. As with research involving people, it is the duty of the initiating party to ensure that information is communicated clearly in a way that is understandable to the other parties. It cannot be conclusively said whether this was the root of the problem or not; regardless of that fact, it stands as another pivotal point for improvement.

## **2.7 Conclusion**

Consequently, determining the points of improvement is a simple matter given the nature of the problem – an explicit definition is needed. The act failed to incorporate meaningful critique during its stages as a bill (as it will be illustrated further in chapter three) – the act did not provide a sufficient definition of the central term of *green energy*. There was a failure in executing the fiduciary duty. Given these shortcomings, it is suggested relevant terms must be clearly defined in bills; and relevant parties should be involved in the discussion in meaningful ways to prevent

instances of a haphazard consultation process (see chapter three). All of these suggestions should occur at the earliest point possible for the bill and should be ongoing to encourage sustainability and the dynamic evolution of policies.

## **Chapter 3**

### **The Footfalls of Green Labelling: A Case Study of the Green Energy Act (2009) and the “Consultative Process, or Lack Thereof in Ontario, Canada.**

#### **3.1 Introduction**

*Green energy* is a topic that has become internationally relevant in just over a decade (see chapter one) due to its proliferation and its idealistic championing of methods that are interpreted as conducive to the surrounding environmental discourse and push for responsible energy production methods. The rhetoric presented by *green energy* proponents underlines the low environmental impact of modes of production such as hydroelectric power and other forms of renewable energy. (Foucault, 1970) However, the research conducted by my peers and predecessors have laid a strong foundation for the critique of such rhetoric by citing the ecological impacts that many have come to see, especially in Indigenous communities that are typically in close proximity with these projects.

This chapter is transitive insofar as it will tie together the objectives, conclusions and rhetoric that takes place in both chapters two and four. Following from the foundations of the second chapter, this section will build on the conclusions by delving into the specific circumstances and process that led to those results. More broadly, and relevant for the overall arguments of this thesis, this chapter will also begin interacting with the Indigenous perspectives that should have been key factors in the definition of the term green energy. The discussions occurring within this chapter will also set up a smooth transition to the case study of chapter four that deals with the case study of the Kabinakagami River Waterpower Project initiated under the Green Energy Act. Lastly, the more tangible objective of this chapter is to reveal the missteps of the consultation process.

This section will explore Bill 150's maneuvering of threats around protective policies such as the *duty to consult*. To grant a broader perspective, its neighboring Bills, 173 and 191, will be used as markers for measurement due to their proximity to Bill 150 with respect to context. Through this analysis and comparison, the footfalls and missteps will become apparent, and we can then identify the specific points that require additional caution. Through the identification of these points, we can draw inferences and provide cautionary suggestions for future policies on the topics of both *green energy* and Indigenous peoples, at both a local and international scale.

## 3.2 Background

### 3.2.1 Economic Context

In 2008, the world experienced its largest financial crisis since the Great Depression of 1929<sup>1</sup> (Barrell & Davis, 2008). In 2009, the Province of Ontario, Canada, became a *have-not* province, qualifying for a federal-equalization payment from the Government of Canada (Roy-Cesar, 2013). Ontario was no longer the economic giant that drove Canadian prosperity. Equalization payments are issued by the Canadian-federal government to *poorer, or have-not* provinces with the intent to “ensure that Canadians residing in provinces have access to a reasonably similar level of provincial government services at reasonably similar levels of taxation, regardless of which province they call home.” (Roy-Cesar, 2013; p. 1). In this economic climate, the Government of Ontario introduced Bill 150 – The Green Energy and Green Economy Act, 2009 (Green Energy Act, Table 3.1),<sup>2</sup> Bill 173 – The Mining Amendment Act, 2009 (Table 3.2), and Bill 191 – The Far North Act, 2009<sup>3</sup> (Table 3.2). The Government of Ontario turned to *green energy* (McRobert, Tennent-Ridell, & Walker, 2016), mining, and Ontario’s *Far North* (Gardner et al., 2012) with the promise for economic salvation in the dire financial straits.

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<sup>1</sup> As of July 13, 2020, news sources have covered the effects of the COVID-19 pandemic and given a look into the Canada’s financial situation by way of Bill Morneau, the Minister of Finance (Zimonjic, 2020; Press, 2020). The Fraser Institute also released a report on the Canadian government’s spending for 2020 until this point (Hill et. al, 2020) that details the country’s financial situation. These realities liken the current situation to the financial situation of 2009 and World War II (Evans, 2020; Tasker, 2020). These perspectives serve as possible indicators for the continued relevance of this research in the current context.

<sup>2</sup> Bill 150 and The Green Energy and Green Economy Act (Green Energy Act) are not equivalent. Bill 150 is used to indicate the document prior to it coming into effect, while the Green Energy Act is used to signify that it has already been passed.

<sup>3</sup> This would become the Far North Act, 2010, since deliberations went into 2010.

**Table 3.1 The chronology of legislative activities associated with the Green Energy Act (2009) <sup>A</sup> (formerly Bill 150) along with the location of said activities.**

<b>Activity</b>	<b>Location</b>	<b>Date</b>
First Reading	Ontario Legislative Assembly Toronto, Ontario, Canada	23 February 2009
Second Reading Debate	Ontario Legislative Assembly Toronto, Ontario, Canada	24 February to 11 March, 2009
Referral to Standing Committee <sup>B</sup>	Ontario Legislative Assembly Toronto, Ontario, Canada	11 March, 2009
Standing Committee Hearings	Toronto, Ontario	6 April 2009
Standing Committee Hearings	Toronto, Ontario	8 April 2009
Standing Committee Hearings	Sault Ste Marie, Ontario	14 April 2009
Standing Committee Hearings	London, Ontario	15 April 2009
Standing Committee Hearings	Ottawa, Ontario	16 April 2009
Standing Committee Hearings	Toronto, Ontario	20 April 2009
Standing Committee Hearings	Toronto, Ontario	22 April 2009
Standing Committee Consideration of a Bill	Toronto, Ontario	27 April 2009
Standing Committee Consideration of a Bill	Toronto, Ontario	29 April 2009
Ordered for Third Reading	Ontario Legislative Assembly Toronto, Ontario, Canada	30 April 2009
Third Reading Debate	Ontario Legislative Assembly	5-13 May 2009

	Toronto, Ontario, Canada	
Royal Assent	Ontario Legislative Assembly Toronto, Ontario, Canada	14 May 2009

<sup>A</sup> <https://www.ola.org/en/legislative-business/bills/parliament-39/session-1/bill-150/status>  
<https://www.ola.org/en/legislative-business/bills/parliament-39/session-1/bill-150/debates>

<sup>B</sup> The Standing Committee on General Government exists “for the duration of a Parliament” (<https://www.ola.org/en/legislative-business/committees>). A person or organization can present at public hearings of the Standing Committee on General Government – as a committee “witness”, after registering with the Clerk of the Committee, and submitting written material – but only “if you are chosen to present” (<https://www.ola.org/en/get-involved/participate-committees>).

**Table 3.2 The chronology of legislative activities associated with the Mining Amendment Act (2009) (formerly Bill 173) and the Far North Act (2010) (formerly Bill 191).**

Activity	Bill 173 (Mining Amendment Act, 2009 <sup>c</sup> )  Location  Date	Bill 191 (Far North Act, 2010 <sup>p</sup> )  Location  Date
<b>2009</b>		
First Reading	Ontario Legislative Assembly  Toronto, Ontario, Canada  30 April 2009	
Second Reading Debate	Ontario Legislative Assembly  Toronto, Ontario, Canada  4-27 May 2009	
Referral to Standing Committee <sup>E</sup>	Ontario Legislative Assembly  Toronto, Ontario, Canada  27 May 2009	
First Reading		Ontario Legislative Assembly  Toronto, Ontario, Canada  2 June 2009
Referral to Standing Committee		Ontario Legislative Assembly  Toronto, Ontario, Canada  3 June 2009
Standing Committee Hearings (Bill 173 and 191)	Toronto, Ontario, Canada  6 August 2009	Toronto, Ontario, Canada  6 August 2009
Standing Committee Hearings (Bill 173 and 191)	Sioux Lookout, Ontario, Canada  10 August 2009	Sioux Lookout, Ontario, Canada  10 August 2009

Standing Committee Hearings (Bill 173 and 191)	Thunder Bay, Ontario, Canada 11 August 2009	Thunder Bay, Ontario, Canada 11 August 2009
Standing Committee Hearings (Bill 173 and 191)	Chapleau, Ontario, Canada 12 August 2009	Chapleau, Ontario, Canada 12 August 2009
Standing Committee Hearings (Bill 173 and 191)	Timmins, Ontario, Canada 13 August 2009	Timmins, Ontario, Canada 13 August 2009
Standing Committee Consideration of a Bill	Toronto, Ontario, Canada 14 September to 5 October 2009	
Time allocation	Ontario Legislative Assembly Toronto, Ontario, Canada 6 October 2009	
Standing Committee Consideration of a Bill	Toronto, Ontario, Canada 7 October 2009	
Ordered for Third Reading	Ontario Legislative Assembly Toronto, Ontario, Canada 8 October 2009	
Standing Committee Consideration of a Bill		Toronto, Ontario, Canada 19-21 October 2009
Third Reading Debate	Ontario Legislative Assembly Toronto, Ontario, Canada 21 October 2009	
Ordered for Second Reading		Ontario Legislative Assembly Toronto, Ontario, Canada 22 October 2009
Royal Assent	Ontario Legislative Assembly Toronto, Ontario, Canada	

	28 October 2009	
<b>2010</b>		
Second Reading Debate		Ontario Legislative Assembly Toronto, Ontario, Canada 18 May to 3 June 2010
Referral to Standing Committee		Ontario Legislative Assembly Toronto, Ontario, Canada 3 June 2010
Standing Committee Hearings		CANCELLED Slate Falls First Nation, Far North Ontario Week of 14 June 2010
Standing Committee Hearings		CANCELLED Webequie First Nation, Far North Ontario Week of 14 June 2010
Standing Committee Hearings		CANCELLED Sandy Lake First Nation, Far North Ontario Week of 14 June 2010
Standing Committee Hearings		CANCELLED Attawapiskat First Nation, Far North Ontario Week of 14 June 2010
Standing Committee Hearings		CANCELLED Moosonee, Far North Ontario (Moose Cree First Nation is located on Moose Factory Island directly across from Moosonee)

		Week of 14 June 2010
Standing Committee Consideration of a Bill		Toronto, Ontario, Canada  13-15 September 2010
Ordered for Third Reading		Ontario Legislative Assembly  Toronto, Ontario, Canada  16 September 2010
Third Reading Debate		Ontario Legislative Assembly  Toronto, Ontario, Canada  22-23 September 2010
Royal Assent		Ontario Legislative Assembly  Toronto, Ontario, Canada  25 October 2010

<sup>C</sup> <https://www.ola.org/en/legislative-business/bills/parliament-39/session-1/bill-173/status>

<https://www.ola.org/en/legislative-business/bills/parliament-39/session-1/bill-173/debates>

<sup>D</sup> <https://www.ola.org/en/legislative-business/bills/parliament-39/session-2/bill-191/status>

<https://www.ola.org/en/legislative-business/bills/parliament-39/session-2/bill-191/debates>

<sup>E</sup> The Standing Committee on General Government exists “for the duration of a Parliament” (<https://www.ola.org/en/legislative-business/committees>). A person or organization can present at public hearings of the Standing Committee on General Government – as a committee “witness”, after registering with the Clerk of the Committee, and submitting written material – but only “if you are chosen to present” (<https://www.ola.org/en/get-involved/participate-committees>).

### 3.2.2 Policy and Politics

George Smitherman was a Member of Provincial Parliament for the Liberal Party<sup>4</sup>; at the time, he also served as the Ontario Minister of Energy and Infrastructure.<sup>5</sup> During his tenure he introduced the Green Energy Act to the Ontario legislature and stated that the Green Energy Act would:

Make this province [Ontario] North America's green energy leader...first, making it easier to bring renewable energy projects to life [by streamlining the application and approval process], and secondly, creating a culture of conservation [through regulations and incentives], one where we go about our daily lives using less energy. These two thrusts combined would support a new green economy for this province and help create sustainable green employment for Ontarians...more than 50,000 direct and indirect jobs in the next three years...[and] would offer an attractive price for renewable power, including wind, both onshore and offshore, solar, **hydro** [added emphasis], biomass, biogas and landfill gas, and would not limit the size of projects...Ontario would join the ranks of global green power leaders like Denmark, Germany and Spain. (Smitherman, 2009a, p. 4951-4952)

Dalton McGuinty, the Premier of Ontario<sup>6</sup> and Liberal Member of Provincial Parliament, also added: "Our Green Energy Act... It's fundamentally about new jobs, it's about clean, green electricity and it's about fighting climate change." (McGuinty, 2009a, p. 5027-5028). These statements consolidate the stance, presented by the Liberal Party of the Government of Ontario, on the topic of *green*

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<sup>4</sup> There are three major parties in Ontario provincial politics: the Liberal Party (LIB); the Progressive Conservative Party (PC); and the socialist National Democratic Party (NDP). A Member of Provincial Parliament (MPP) is a person who has been elected by the people residing in a circumscribed area, referred to as a constituency.

<sup>5</sup> The Premier of the Government of Ontario appoints Ministers to lead ministries, such as, the Ontario Minister of Energy and Infrastructure.

<sup>6</sup> The Leader of the Government of Ontario is called the Premier of Ontario. In the present case, the Premier of Ontario also leads a Liberal-majority government. That is, the Liberal Party had the majority of the seats in the Legislative Assembly of Ontario – a unicameral legislative chamber or house – for the 39th Parliament (28 November, 2007 – 7 September 2011), and could ram through any bill through the legislature even if opposition parties joined together. (<https://www.ola.org/en/members/parliament-39>).

*energy*; however, it should be recognized that this is only what was presented. The words that are chosen are intentional and aim to convey specific ideas.

As an aside, it should also be noted that the Minister of Energy and Infrastructure was given sweeping powers to expedite green energy projects – at the expense of removing or modifying existing checks and balances in other pieces of legislation – through the Green Energy Act (2009):

5. (1) The Lieutenant Governor in Council may, by regulation, designate renewable energy projects, renewable energy sources or renewable energy testing projects for the following purposes:

1. To assist in the removal of barriers to and to promote opportunities for the use of renewable energy sources.
2. To promote access to transmission systems and distribution systems for proponents of renewable energy projects.

**Effect of designation**

(2) A person is permitted to engage in activities with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project in such circumstances as may be prescribed, **despite any restriction imposed at law that would otherwise prevent or restrict the activity** [added emphasis], including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement.

**Same**

(3) A restriction imposed at law that would otherwise prevent or restrict an activity with respect to a designated renewable energy project, a designated renewable energy source or a designated renewable energy testing project is inoperative to the extent that it would otherwise prevent or restrict the activity. (Schedule A, Part II, Subsection 51-3)

Bill 150 was an omnibus bill<sup>7</sup> that, once enacted as the Green Energy Act (2009), affected 20 Acts.<sup>8</sup> Due to its purview and breadth, the pre-consultative process prior to Bill 150 being introduced to parliament should have been extensive. It is also clearly stated within Bill 150 that consultation with respect to the government's *fiduciary responsibility* to the Aboriginal Communities is a necessity:

(2) This Act shall be interpreted in a manner that is consistent with section 35 of the Constitution Act, 1982 and with the duty to consult aboriginal peoples. (Schedule A, Part I, Subsection 1(2))

2. This Act shall be administered in a manner that promotes community consultation. (Schedule A, Part I, Subsection 2)

These consultations should have been an ongoing process during the hearings of the Standing Committee on the General Government (the Standing Committee) for the purpose of addressing the critiques raised during these discussions. Given the context of hydroelectric development in Ontario and how it has sordidly impacted Aboriginal communities in the past, this is an important and necessary step.<sup>9</sup> Due to the scale and nature of Bill 150, there should have been some level of address of the legal duty to consult due to the potential infringement on Aboriginal and/or treaty rights<sup>10</sup> (Gardner, Kirchhoff & Tsuji, 2015). Lawrence & Macklem (2000, p. 252) aptly summarize some of the considerations and rationales for the consultation process:

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<sup>7</sup> An omnibus bill has been defined as: "A bill consisting of a number of related but separate parts that seeks to amend and/or repeal one or several existing Acts and/or to enact one or several new Acts." (<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2012-79-e.pdf>); or "A bill that seeks to amend, repeal or enact several Acts where there is not a common element connecting the various provisions or where unrelated matters are linked." (<https://www.ourcommons.ca/About/Glossary/Index-e.html#LetterO>).

<sup>8</sup> The 20 acts affected were as follows: Building Code Act, 1992; Clean Water Act, 2006; Conservation Authorities Act; Conservation Land Act; Co-operative Corporations Act; Electricity Act, 1998; Energy Conservation Leadership Act, 2006; Energy Efficiency Act; Environmental Bill of Rights, 1993; Environmental Protection Act; Greenbelt Act, 2005; Ministry of Energy Act; Ministry of Natural Resources Act; Niagara Escarpment Planning and Development Act; Ontario Energy Board Act, 1998; Ontario Water Resources Act; Places to Grow Act, 2005; Planning Act; Provincial Parks and Conservation Reserves Act, 2006; and Public Lands Act. (<https://www.ola.org/en/legislative-business/bills/parliament-39/session-1/bill-150/acts-affected>)

<sup>9</sup> Flooding, methyl mercury contamination issues, desecration of cultural sites, relocation of communities, and impacts on subsistence activities (Armstrong, 2000; Macfarlane & Kitay, 2016; Macfarlane & Watson, 2018).

<sup>10</sup> Aboriginal was defined in the repatriated Canadian Constitution Act (1982) to include First Nations, Metis, and Inuit peoples. Aboriginal and treaty rights were entrenched in the Canadian Constitution Act (1982); thus, these rights were constitutionalized, while treaty rights of the Crown were not (Macklen, 1997)

The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions....Of course, even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith and with the intention of substantially addressing the concerns of the Aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an Aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands.

### **3.2.3 Geographical and Cultural Scope**

With more than 1 million square kilometres (or ~415,000 square miles) of land in its borders, Ontario is the second largest province in Canada (Government of Ontario, 2020). The economy of Ontario is based on a mixture of sectors: natural resources (e.g. mining, forestry), energy production, agriculture, manufacturing, services (e.g, financial), and high-tech innovation (Government of Ontario, 2020).

On a population count basis, there are more Aboriginal people in Ontario than any other province in Canada (Spotton, 2006). In Ontario, 133 First Nations communities are located throughout the province (Chiefs of Ontario, 2020), and these First Nations people belong to 13 distinct groups: “the Algonquin, Mississauga, Ojibway, Cree, Odawa, Pottowatomi, Delaware, and the Haudenosaunee (Mohawk, Onondaga, Onoyota’a:ka, Cayuga, Tuscarora, and Seneca)” (Spotton, 2006; p. 7). In northern Ontario, Nishnawbe Aski Nation has a membership of 49 First Nations and has a traditional-land base of 543,898 square kilometres (or 210,000 square miles) (Grand Chief of Nishnawbe Aski Nation, Beardy, 2009; p. 831). In the Far North of Ontario (Figure 3.1), there are the Crees in the northernmost area, Oji-Crees in the middle, and south of the 50th parallel, the Ojibwas (Grand Chief of Nishnawbe Aski Nation, Beardy, 2009; p. 831).



Figure 3.1. Ontario, Canada, and the Far North of Ontario (stippled area)

### 3.3 Methods

This section will provide a descriptive analysis and comparison of the consultation process involving Aboriginal and non-Aboriginal people with respect to defining *green energy* in Ontario. The period of importance is identified as prior to the introduction of Bill 150 in the Ontario Legislative Assembly, and during the Standing Committee on the General Government hearings due to the focus on the consultative and pre-consultative processes leading to the proposal of Bill 150. There are two units of analysis in this section: the individual statements of Members of Parliament and the consultation processes associated with Bill 150 (the Green Energy Act, 2009), Bill 173 (Mining Amendment Act, 2009), and Bill 191 (Far North Act, 2010). Through these investigations, the definition of *green energy* in Bill 150 will be clearly detailed, and it will be shown how it impacted the consultative process with respect to the Green Energy Act and Aboriginal people in Ontario. Lastly, the ramifications of labelling hydroelectric-power generation *green energy* in the context of the Green Energy Act will be discussed with the purpose of providing cautionary insight into the challenges of its association with *green energy*.

A summative-content approach (Hsieh & Shannon, 2005) was utilized for Bill 150, to analyze Hansard verbatim transcripts of the Legislative Assembly of Ontario debates, and the Standing Committee public hearings. This method was used because the previous chapter had already ascertained the lack of a definition and contested meaning of *green energy* within the context of the Green Energy Act, Bill 150. Conversely, the topic being explored within this chapter is the context surrounding the definition and not the definition itself; a summative approach is effective in identifying points of interest. This method of analysis is of particular importance in this research under the premise that the goal is to identify the number of times the topic was discussed and to what extent it was discussed.

Comparatively, the summative analysis allows for a more complete understanding of the context surrounding the points of interest as opposed to a conventional content analysis that misses some of the context that would be important for this topic (Hsieh & Shannon, 2005). In a similar vein, a direct content approach was not used because it typically requires some level of guidance from a previous body of literature (Hsieh & Shannon, 2005). While the second chapter established the foundation for latter sections, one analysis can hardly be considered adequate ground for guiding a direct content analysis of this scope. It must also be recognized that the point of this research is to identify new ground and explore; the premise of this research implies that the body of literature on this topic is not substantial enough for such methods. The summative approach is concise and does exactly what is needed within the context of this section.

Using this approach, Bill 150 documents were first read in their entirety, prior to the summative-content analysis. Key words used in the analysis include, but are not limited to, *green energy* to elucidate how *green energy* was defined by the Members of Provincial Parliament, and

whether party affiliation impacted the way *green energy* was defined and viewed. The Standing Committee public hearing transcripts provided a window into how the public defined and viewed *green energy* and perceived the Green Energy Act. Keywords used to explore the consultative process for Bill 150 included: First Nations, Aboriginal, Indigenous, and Native. Primary data collected through the summative-content analysis approach were categorized into general themes, and sub-themes. Data were also analyzed through conventional content analysis (Hsieh & Shannon, 2005).

For Bill 173 and 191, Hansard verbatim transcripts of the Standing Committee public hearings and debates were read in their entirety. Selected Hansard verbatim transcripts of the Legislative Assembly of Ontario debates were read in their entirety. Themes and sub-themes generated from Bill 150's analysis were used to inform a direct-content analysis (Hsieh & Shannon, 2005) of the transcripts for Bill 173 and 191, to allow for comparisons across the bills. Transcripts were also examined through conventional content analysis.

### **3.4 Results and Discussion**

#### **3.4.1 The Green Energy Act (2009), Defining Green Energy**

In Part 1, Definitions 1(1), *green energy* is never defined in this section or anywhere else in the Green Energy Act. The National Democratic Party's Member of Provincial Parliament, Tabuns (2009a; p. 687), put forward an amendment to Bill 150 defining *green energy* as: "energy derived from a renewable energy source or from a generation facility that is a high-efficiency heat and power facility"; but his motion was defeated 7 to 1. The Conservative and Liberal Parties all voted against his *green energy* definition amendment but offered no other definition. This would result in *green energy* remaining undefined in the Green Energy Act throughout its lifetime and to its repeal in January 2019. It is possible the Liberal Government of Ontario purposely left the term *green energy* undefined, so that the Liberal Party – and the general public – could define *green energy* flexibly to meet various needs.

While *green energy* was never defined in the Green Energy Act, *renewable energy* was defined as such:

"renewable energy source" means an energy source that is renewed by natural processes and includes wind, **water** [added emphasis], biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source (Bill 150, Green Energy Act, 2009, Schedule A, Part 1(1))

In the Legislative Assembly of Ontario's deliberations, *renewable energy* was described as being equivalent and interchangeable with *green energy*:

**renewable energy, so-called green energy** [added emphasis]...

When we are talking about green energy, we are not only talking about windmills or solar power; we are talking about other forms of green energy: biomass, biogas, fuel-filled gas, geothermal and other methods of production of green energy. (Moridi LIB MPP, 2009; p. 5338)

It should also be noted that nuclear power generation was never mentioned in the Green Energy Act; however, Members of Provincial Parliament mentioned during their deliberations that nuclear power was part of the Liberal Party's *green energy* strategy:

It [nuclear power] is part of a green energy strategy [for the Green Energy Act, 2009] going forward. (Brotten LIB MPP, 2009; p. 5072)

I'm very proud of the Green Energy Act. I'm very proud that nuclear is an important component of it. We understand that you need a solid foundation to work from. I have the largest nuclear generating station in North America located in my riding (Mitchell LIB MPP, 2009; p. 6725).

The Liberal Members of Provincial Parliament's assertions were confirmed by Smitherman, when he stated:

I have mentioned before in the Legislature that 75% of all of Ontario's electricity needs last year were met by a combination of emission-free nuclear and emission-free hydroelectric power. On top of that, the renaissance of our energy sector has seen the emergence of several gas-fired plants which provide reliability in those circumstances when ratepayers demand more electricity. In the space between that foundation and those gas-fired peaker plants are tremendous opportunities to integrate a greater degree of renewable energy. That's what the Green Energy Act is all about. (Minister of Energy and Infrastructure, Smitherman, 2009b; p. 5831)

With no mention of the nuclear power agenda for the Green Energy Act, the Liberal Party was able to avoid a difficult discussion with both the public and the Ontario legislature. Due to the connotations of nuclear power during the time, it would have been difficult to defend Bill 150 on both fronts. Similarly, it was a strategic move for the party to leave *green energy* undefined in the Green Energy Act; while it allowed for immense flexibility in interpretation, its ambiguity and lax controls would only serve to cripple the Act in the long-term.

### 3.4.2 The Green Energy Act (2009), Green Energy: Green Environment

In temperate climates, such as in Canada, the colour green bears connotations associated with positive imagery. These sorts of associations range from the greening of spring after the frigid winter, vegetation and plant life. In everyday life, a green light means everything is okay, or to go. Green is a positive colour and has always been associated with a healthy environment. The connotations afforded to the colour green did not go unnoticed in the Standing Committee hearings with the public, this relationship was mentioned:

If Bill 150 is to provide the impetus for green energy and, just as importantly, a green environment—and that’s **the purpose for green energy, to ensure a green environment** [added emphasis]—the time to act is now (Tenebaum, 2009, p. 644).

In the Ontario Legislative Assembly, in deliberations over the Green Energy Act, the positive feelings associated with the colour green were discussed:

I’d say that green energy is a popular term...It alludes to the terms **“innovation” and “creativity.” The word “green” is an optimistic colour** [added emphasis]. (PC MPP, O’Toole, 2009, p. 5171-5172)

What’s good about this bill is the title. I like the title; the title is a really good one. It reads something like the Green Energy Act, which **makes me feel warm and fuzzy inside** [added emphasis] (Bisson NDP MPP, 2009a; p. 6761).

I would submit that what we have is **a feel-good act** [added emphasis] that sounds good (PC MPP, Elliot, 2009, p. 5158).

The debates in the Legislative Assembly of Ontario were critical of the title of the Green Energy Act and how it was deceptive with respect to the content of the Act; words such as, “greenwashing” (Marchese NDP MPP, 2009; p. 5030; Miller NDP MPP, 2009; p. 5070) and “green rhetoric” (Marchese NDP MPP, 2009; p. 5030) were used to call attention to these concerns. Members of Provincial Parliament asserted that:

The only thing that is green about the Green Energy Act is its title. (Shurman PC MPP, 2009; p. 5066)

It [the Green Energy Act, 2009] is not what we expect. This is **an act of camouflage...co-opting that green label** [added emphasis]. (Hillier PC MPP, 2009a; p. 5438)

Progressive Conservative Member of Provincial Parliament, Wilson (2009; p. 6766), rightfully notes that:

A Green Energy Act sounds like **it will score points** [added emphasis], sounds like **it will be popular regardless** [added emphasis] of what it says inside the bill. Other than scoring political points in the polls, they [LIB] can't tell you what their real purpose is in doing this act.

Polls indicated “overwhelming” public support for the Green Energy Act in Ontario with 87% of respondents supporting it (Smitherman, 2009c; p. 6268).

The titling of Bill 150 as the Green Energy Act was a strategic move made by the Liberal party, because it put the opposition parties and the nay-sayers on the defensive, and allowed Premier McGuinty (2009b; p. 5229) to bypass what could have been a considerable amount of discussion in the Legislative Assembly deliberations:

It's called the Green Energy Act. It is designed to put into place 50,000 new jobs and to give Ontarians access to clean and green electricity so that we can join together in the fight against climate change. What Ontarians now want to know is...Will they [opposition parties] stand in the way of those 50,000 new jobs? Will they stand in the way of clean electricity and stand in the way of our joint efforts to fight climate change?

Whenever the opposition party wanted to criticize the Green Energy Act, Members of Provincial Parliament would have to first make a disclaimer that they were not against *green energy* and/or a *green environment*, before they could level any type of criticism against Bill 150. Several examples are given below:

Let me say from the outset that those of us in the Progressive Conservative Party are not against the concept of green energy. It's sort of a motherhood statement. Who wouldn't be—so that any criticisms that we have should not be taken as criticisms of the premise of the act (Elliot PC MPP, 2009b; p. 5158).

I want to start off by making it very clear that I support green energy. Every member of this Legislature would acknowledge the importance of protecting our environment, and I agree that clean energy and green energy are an important part of that goal. However, we need to look at how we get there. (Hardeman PC MPP, 2009; p. 5359)

Here's our position, from my point of view: First of all, we support green energy. We support green energy and conservation...Here's why I'm having difficulty with supporting it overtly: I want, first of

all, thorough public hearings [i.e., consultation] around the province. (O'Toole PC MPP, 2009; p. 5174)

### **3.4.3 The Green Energy Act (2009), Green Energy Act: Consultation and the First Reading**

When Bill 150 was first introduced to the Legislative Assembly of Ontario by Minister of Energy and Infrastructure, George Smitherman – that is, at First Reading – he also introduced several of his guests in the members' gallery. These guests, among others, included the Green Energy Act Alliance, the Canadian Energy Efficiency Alliance, Chief Charles Fox, and Chief Isadore Day of the Serpent River First Nations (Minister of Energy and Infrastructure, Smitherman, 2009d). Guests in the members' gallery are allowed to observe, but not participate in parliamentary affairs unfolding (The Speaker of the House<sup>11</sup>, Peters, 2009). Thus, it is safe to assume that the guests were present only for effect; that is, to imply that pre-consultation had occurred prior to the introduction of Bill 150 in the Legislative Assembly of Ontario with important stakeholders, and First Nations.

Normally there is a consultative process prior to bills being written and presented in the Legislative Assembly for First Reading (Yakabuski PC MPP, 2009a); that is, pre-consultation. It would be assumed that important stakeholders would have input into bills that would have significant impact on their organization and their mandate; with Bill 150, this was not the case. Major stakeholders such as the Ontario Federation of Anglers and Hunters were never consulted prior to the Green Energy Act hearings (Quinney, 2009). Moreover, there is also no written record that First Nations were pre-consulted about Bill 150 – even though the Government of Ontario has a legal duty to consult with the First Nations due to the potential infringement on Aboriginal and/or treaty rights (Gardner, Kirchoff & Tsuji, 2015) – but there is an implication of pre-consultation with Chief Charles Fox, and Chief Isadore Day of the Serpent River First Nations showing up as observers for Bill 150's First Reading. Pre-consultation with stakeholders was inconsistent, there is some testimony that pre-consultation did occur with at least one stakeholder, the Municipality of Chatham-Kent, about *green energy* and wind turbines in their community (Mayor, Municipality of Chatham-Kent, Hope, 2009).

By contrast, the opposition Members of Provincial Parliament noted that Bill 150 was introduced to the Legislative Assembly without proper briefings (Shurman PC MPP, 2009) and there was a departure from parliamentary tradition of introducing a bill and then allowing the opposition several days to consult with potentially impacted stakeholders and the general public (Arnott PC MPP, 2009). The expediency with which Bill 150 was being treated caused concern in opposition Members of Provincial Parliament. For example:

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<sup>11</sup> The Speaker of the House has no political party affiliation when serving in this role.

Although I support green energy, I am concerned not only about the lack of detail in this bill, but also the details that may be buried in this bill and the haste to pass this bill by the government, without extensive consultation with stakeholders and the public. (Witmer PC MPP, 2009; p. 5330)

Bill 150 went from First Reading to Royal Assent in less than three months; while Bill 173 and Bill 191 introduced the same year as Bill 150, took approximately six months and 17 months to go from First Reading to Royal Assent, respectively (Table 3.1 and 3.2). It should also be emphasized that both Bill 173 and Bill 191 had lengthy pre-consultation processes, while Bill 150 had none, making the time to Royal Assent even more remarkably, given that there was no previous discussion of Bill 150. The fast-tracking of Bill 150 is noteworthy, especially taking into account the lack of pre-consultation with stakeholders and the departure from Legislative Assembly norms. The consultative process for the Green Energy Act would pay the price of this expediency.

George Smitherman, Minister of Energy and Environment (2009e, No 145, p 6568) reports that he “visited over 20 communities, large and small, urban and rural, in the north, south, east and west of the province of Ontario”, on his “minister’s Green Energy and Green Economy Act tour” (Levac LIB MPP, 2009; p 5690). Although his tour could be considered disseminative in nature, it is not consultation, and he did not visit any Far North communities in Ontario (Figure 3.1); which is noteworthy because the Liberal Government of Ontario would shortly be introducing the Far North Act (2009). Since there was no real pre-consultation with respect to Bill 150, the consultation for this bill would have to occur through the Standing Committee hearings.

Any citizen or organization in Ontario can present at a Standing Committee public hearing as a “witness”. However, you or your organization must do the following: first register with the Clerk of the Committee; then hand in any material you want to present; and finally be selected to present.<sup>12</sup> Presentation times at the hearings can vary from bill-to-bill. For Bill 150, presentation time was set at 10 minutes with five minutes for questions from the Standing Committee (The Chair, LIB MPP, Oraziatti, 2009). At first glance, the procedure to present before the Standing Committee has the illusion of being democratic – until you get to the part where you or your organizations needs to be chosen to present – and this decision is based on the materials that you give at the time of your registration. Thus, the government can pre-select presenters who strengthen their agenda (e.g., Canadian Wind Energy Association, Ontario Sustainable Energy Association, Green Energy Act

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<sup>12</sup> The Standing Committee on the General Government exists for the duration of the parliamentary term (<https://www.ola.org/en/legislative-business/committees>). The committee is made up of working group of MPPs (<https://www.ola.org/en/get-involved/participate-committees>). Ontario citizens and organizations can participate in Standing Committees public hearings as a witness, but even if you register with the Clerk of the Committee, you may not be chosen (<https://www.ola.org/en/get-involved/participate-committees>).

Alliance; Eyamie, 2009; Yakabuski PC MPP, 2009b), and then refuse others the opportunity to present who challenge the government's position. For example,

A constituent in my riding...has been denied the opportunity to speak before the standing committee for Bill 150...Barbara Ashbee is...today living with the side effects of having wind turbines surround her home...my constituent has been refused an opportunity to share her experiences during public hearings on Bill 150...the Green Energy Act. This act removes all over-sight from municipalities. Now this government is not even going to listen to the concerns of someone who has first-hand experience. It's important to the legislative process that people like Barbara Ashbee, who live every day with the side effects of wind turbines, be allowed to speak and share their experiences... It looks as though the government is once again leaving out the most important interest group when proposing new legislation: the people. (Jones PC MPP, 2009; p. 5998)

Another barrier to the general public presenting before the Standing Committee was the distance needed to be travelled to reach the locations of the hearings, for example, a 14-hr round trip to present in Sault Ste. Marie, Ontario; "this effectively silences many who oppose aspects of the Green Energy Act" (Eyamie, 2009; p 571). Clearly, there were many barriers to stakeholders participating in the Green Energy Act hearings.

#### **3.4.4 The Green Energy Act (2009), Green Energy Act: Consultation with First Nations**

It should also be emphasized that First Nations are much more than a stakeholder in this specific dialogue. In Ontario and Canadian law, First Nations (and other Indigenous peoples) are recognized as a party that is afforded certain privileges and considerations in accordance with the treaties upon which the country of Canada is founded (Government of Ontario, 2020; Government of Canada, 2019). Depending on the criteria, Indigenous populations can also fall under the category of a vulnerable group due to factors such as racism (Benoit et. al, 2019). One of the specifically applicable accommodations that must be taken into account in this discourse is that of the duty to consult; the importance of this consideration is compounded by the government's fiduciary duty to First Nations people. In short, this is to say that the government must act in a way that is respectful of the wishes of the First Nations; in such instances where their treaty rights would be affected, there is a strict duty to engage in consultation with the affected communities.

Grand Chief Stan Beardy of the Nishnawbe Aski Nation (2009a, p. 828-831) during a Standing Committee hearing for Bill 173 and 191 says a few words about consultation that are also relevant for Bill 150:

I hear a lot about consultation these days, and about Ontario's legal duties to consult. I want to be clear about this: Just because I have appeared here today does not mean you have consulted with the First Nations in Nishnawbe Aski Nation [NAN, 49 First Nations located in northern Ontario]. NAN, the organization I represent, **a political organization, does not have any aboriginal and treaty rights** [added emphasis]. This hearing is not consultation...each First Nations should be consulted without artificial timelines...It's the rights-holders, the people on the land, the First Nations level, the **leadership at the community level who hold those aboriginal and treaty rights** [added emphasis], and they are the ones who need to be consulted. NAN's role, basically, is to facilitate that process to ensure that they are being heard, that the people who need to talk to them do consult with them... If there's a legal requirement of the crown's responsibility to consult with them, we would expect that an attempt be made to talk to those people in their own language so that they understand what is being proposed to them. (Grand Chief S. Beardy, 2009a; p. 828-831)

It is clear that consultation must be held with community-elected leadership (i.e. Chiefs & Councils of the First Nations).

During the Green Energy Act (2009) Standing Committee hearings – no elected-First Nations' representative was present – only one designate appeared on the behalf of an elected First Nations official, B. Kopperson for Chief Donna Big Canoe of the Chippewas of Georgina Island First Nation (Kopperson, 2009). There was First Nations representation at the hearings (e.g., Director of Economic Development, Pic River Nation; LeClair, 2009), but not community-elected officials.<sup>13</sup> The First Nations organizations that were present at the hearings were there to influence economic opportunities. These opportunities were related to transmission lines (Five Nations Energy Inc.; Chilton, 2009) and allowing hydroelectric development in provincial parks “that will benefit First

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<sup>13</sup> Chief Robert Corbiere was the president of the First Nations Energy Alliance at the time of their involvement with the Green Energy and Green Economy Act, but their role and stance is not explicitly described; nor is it stated whether Corbiere's participation was done so as an elected representative of Wikwemikong Unceded Indian Reserve (Canada Forum, 2009; Cooper, 2007). This ambiguity of participation is not clarified in any documents. In every official address, a Chief states their representation and purview, if they do not, it can be assumed that they are possibly acting independently of their elected role as Chief.

Nations and not simply to supply the First Nation” (LeClair, 2009, p 463). Changes to existing policy – such as, the Ministry of Natural Resources’ waterpower site release policy limiting hydroelectric development to 25 megawatts, and the Northern Rivers Commitment, limiting hydro-electric development in northern Ontario (Brant, 2009) – were sought to better exploit hydroelectric opportunities in the Far North of Ontario.

While the Premier of Ontario, McGuinty (2009c; p. 5944) purports that the Green Energy Act (2009) “is designed to stimulate construction of new renewable sources of electricity, everywhere from remote parts of northern Ontario to farms in the south-west,” not one of the Standing Committee hearings was scheduled in the Far North (Table 3.1). Apparently, by entitling Bill 150, as the Green Energy Act (2009), the bill appeared innocuous; thus, consultation was very limited and the time to Royal Assent expedited, even though the Green Energy Act (2009) when enacted affected 20 Acts. The benign passage of the Green Energy Act (2009) is in sharp contrast to that of Bill 173 (Mining Amendment Act, 2009) and Bill 191 (Far North Act, 2010), both also introduced in 2009 (Table 3.2). The importance of titling for a bill is imperative to how it is perceived and received.

### **3.4.5 The Green Energy Act (2009), Comparing the Consultative Process: Bill 150 to Bill 173 and Bill 19**

The Liberal Government of Ontario described a lengthy pre-consultation process for Bill 173, to meet its duty to consult with Aboriginal people. In February 2007, a discussion paper was released to initiate relationship building and discussions leading to consultation about Mining Act amendments “to better address duty-to-consult obligations” (Brown LIB MPP, 2009; p. 6786). There were some successful pre-consultation efforts at the First Nations-level:

I’m the elected chief [Paul Eshkakogan] of the Sagamok Anishnawbek [mid-northern First Nation]. I also want to acknowledge the efforts of Minister Gravelle [Minister of Northern Development and Mines] and Minister Duguid [Minister of Aboriginal Affairs] for involving the First Nations in these discussions which have been going on for well over a year. I make that statement only from our community’s point of view because we’ve had opportunities to speak to government with respect to the discussions around the Mining Act. (Chief Eshkakogan of the Council of Sagamok Anishnawbek, 2009; p. 858).

However, the response at the Tribal-Council level were all critical:

When the revisions of the Mining Act came about, we again said, “We want to participate and be a part of the changes that we would like to see within the Mining Act.” We went in the tent, so to speak, with the government officials to work on the changes that we would like to see that reflect on the concerns and issues of our people.

Every time we came to a clause that we would like to see enacted as law, we were told, “We will deal with that at the policy level.” We did not enter into these discussions to influence policy. We went into these discussions to influence what the wording of the law should be (F. Beardy NAN Envoy, 2009b; p. 960).

Matawa First Nations [Tribal Council consists of nine First Nations], including chiefs, counsellors and community members, participated in several Mining Amendment Act forums. They were very clear in what kinds of changes they would like to see in the legislation. Two summary reports were sent to Ontario. Regrettably, most of those recommendations were not included in the new Mining Act amendments. This is not a question of consultation but rather, were our people listened to? Consultation is only as good as the accommodation that arises. (Chief A. Moore of Constance Lake First Nation appointed to speak on behalf of the Matawa First Nations Tribal Council, 2009; p. 963)

We have been involved right from the outset not in our terms of what we desired to be consultation. Ontario has attempted to have discussions by bringing people together in urban centres and thereby calling it consultation...We’ve told the province from day one that it is the people in our home communities who need to have the discussion and need to have input into the process. That has fallen on deaf ears. (Grand Chief S. Louttit of the Mushkegowuk Tribal Council, 2009; p. 985)

In 2007, for Bill 191, the Northern Table idea was put forward by the Government of Ontario to develop a new working relationship with the First Nations of northern Ontario (Chief J. Solomon of Kashechewan First Nation, 2009; Chief D. Babin of Wahgoshig First Nation, 2009). For two years, First Nations worked with the Government of Ontario to establish a new relationship and create a land-use planning law that would be First Nation-led (F. Beardy NAN Envoy, 2009a). Unfortunately, the two years of pre-consultation was all for naught:

We started out with land use planning being First-Nations-led. By the time we got to the legislation, that had been watered down to “significant involvement” for First Nations, as determined by the minister at her unilateral discretion. Bit by bit, over the last two years, the respect with which we began this journey has been hollowed out. The government-to-government relationship was first redefined by Ontario. It was qualified by legal denials, and finally, in the legislation [Bill 191], it was thrown on the trash heap (F. Beardy NAN Envoy, 2009a; p. 952).

The Premier did not come to us and ask for our opinion in terms of the protected areas. There was an announcement one day that there would be protected areas of 250,000 square kilometres in our territory, much to our chagrin. We were quite shocked, because we felt that with the recent developments as far as Ontario went, they had been trying to make improvements in terms of relationships—they set up a stand-alone Ministry of Aboriginal Affairs, they've gone on the record as wanting to work with us, and then making arbitrary decisions like that without talking to us was very, very shocking. (Grand Chief S. Louttit of the Mushkegowuk Tribal Council, 2009; p. 985)

It is unusual that two major bills, Bill 173 and Bill 191, were bundled together for Standing Committee hearings, especially taking into account the significant impact each bill would have on First Nations communities, and the duty to consult requirement differs for the two bills; Bill 173 requires consultation and accommodation while Bill 191 requires consultation and consent. (Chief A. Slipperjack, 2009; p. 948-949). First Nation leadership stated that, "The bills should be considered separately, not bundled together" (Grand Chief S. Beardy of NAN, 2009b; p. 828). Although the Liberal government representatives tried to placate First Nations' leadership by insisting:

it's important for everyone to know and remember that this is first reading only... Understand that this is not the only consultation that is being undertaken...I think it's important to remind people that you can view it almost as a pre-consultation...we will be asking our House leader for the bill to be referred to committee for an additional round of [standing] committee hearings in northern Ontario after second reading debate. This is the first step in a process. (Mauro LIB MPP, 2009; p. 830)

But the Liberal Members of Provincial Parliament's assertion was not entirely true as pointed out by National Democratic Party Member of Provincial Parliament, Bisson (2009b, p. 831):

let's be clear there are two bills here. There's Bill 191 and Bill 173...after second reading it is the tradition in this Legislature that they go out to [Standing] committee [for public hearings]...For those who are interested, the other part of the act, which is the Mining Act, is at second reading and this is your only kick at the can as First Nations, or anybody else who's interested, to be able to have an effect on what this final bill will look like...I believe the Mining Act is just as important to the far north as the far north planning act is to your [First Nations] people and we should have been travelling that bill to your communities as well.

When the Standing Committee hearings did occur for Bill 173 and Bill 191, they were located in Toronto – southern Ontario – and some mid-northern towns in Ontario, but no First Nations (Chief A. Slipperjack of the Whitewater Lake First Nation, 2009; Table 3.2). Even the Standing Committee hearing scheduled for Chapleau, a mid-northern town, was controversial:

As I indicated, many of us travelled for many hours to be here, expended a lot of money...To set up a hearing process that makes it extremely difficult, if not impossible, for people who will be directly impacted by the proposed legislation is not only disrespectful but goes totally against a fundamental belief of our democratic principles of this province and this country...Today is election day for Nishnawbe Aski: the day, every three years, when we select the Grand Chief and Deputy Grand Chiefs who will represent our 49 First Nations through the crown. The committee is here in Chapleau and expecting to hear from NAN First Nations on these two pieces of legislation, Bills 191 and 173...so why did you schedule this committee hearing today, of all days...it was a huge mistake on your part, and one that has set the relationship back...As it is with this committee's process, so it is with these pieces of legislation [Bill 173 and Bill 191]—a fiasco, an utter failure, an opportunity lost, a promise broken. (F. Beardy NAN Envoy, 2009a, p. 952)

An additional round of hearings were scheduled for the week of 14 June 2010, for the Far North Act (Table 3.2). These hearings were to be held in several of the Far North communities of

Ontario (Table 3.2), but were cancelled by NAN's resolution 10/36 (Levac LIB MPP, 2010; p. 99),<sup>14</sup> because the Liberal Government of Ontario arbitrarily set the day and time. First Nations were not given any latitude for accommodation of day or time of the hearings: "This was just a complete disregard for everybody...I guess there's one thing that the Liberals have learned over the last seven years, that there are more votes in southern Ontario than there are in northern Ontario, with the way they're ramming this bill [Bill 191] through this committee and through this House." (Hillier PC MPP, 2010b; p. 100)

### 3.5 Conclusions

The analysis present within the second chapter establishes that the Green Energy Act did not define *green energy* within the policy in any official capacity. Thus, its application and interpretation were left to the discretion of individuals unlike other *green energy* policies, such as those used by the United States of America and the United Kingdom. This lack of congruency presents its own problem in terms of having a cohesive standard; however, the more important issue present in the creation of Ontario's *green energy* policy is its labeling. The labelling of Bill 150 as the Green Energy Act pressured any critics to carefully choose their words, lest they be accused of being an opponent of *green energy*. This strategy effectively relegated critics to the sidelines and prevented the synthesis and refinement of a more effective policy; this allowed Bill 150 to obtain Royal Assent in record time, bypassing the Aboriginal duty-to-consult requirements in the pre-

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<sup>14</sup> Resolution #10/36: Invitation to the Standing Committee on General Government – Bill 191 (Far North Act)

"THEREFORE BE IT RESOLVED that Ontario has [made]...inadequate and last-minute efforts to seek the agreement of the five communities to host hearings the week of June 14;

FURTHER BE IT RESOLVED that Ontario must make resources available for NAN First Nations other than the five communities to appear before the Standing Committee when it visits, and for preparatory work to be done in the five communities;

FINALLY BE IT RESOLVED that the five communities, supported by all the NAN First Nations, welcome the Standing Committee to visit their communities in July or August, 2010, and invite the Standing Committee to engage with them in open, respectful and transparent dialogue on mutually acceptable dates.

UPDATE: This resolution was forwarded to the Standing Committee on General Government (the Committee) on June 8, 2010 along with letters from Slate Falls, Attawapiskat, Moose Cree, Webequie and Sandy Lake First Nation[s] requesting an amended date. No formal response was provided by the Committee and they did not hold public meetings in these First Nations during the week of June 14, 2010. Instead, correspondence was received from MNR [Ministry of Natural Resources] Minister Jeffrey requesting that written submissions on Bill 191 be provided by September 8, 2010. A written submission was provided along with petitions from a number of First Nations in NAN." (Nishnawbe Aski Nation Annual Report 2010/2011, p 83)

consultative and consultative phases of the bill (Table 3.3). This is in sharp contrast to the consultative processes for both Bill 173

**Table 3.3 The consultative process with respect to the Green Energy Act (2009) (formerly Bill 150), the Mining Amendment Act (2009) (formerly Bill 173) and the Far North Act (2010) (formerly Bill 191, the Far North Act (2009)).**

<b>Consultative<sup>F</sup> Activity</b>	<b>Bill 150 Green Energy Act (2009)</b>	<b>Bill 173 Mining Amendment Act (2009)</b>	<b>Bill 191 Far North Act (2010)</b>
Pre-consultation prior to Bill's First Reading	NO	YES	YES <sup>G</sup>
Consultation with First Nations community-elected governing representative(s) during Standing Committee Hearings	NO	YES <sup>G</sup>	YES <sup>G</sup>

<sup>F</sup> This is a checklist type of approach – yes or no response – typically used by government officials and resource development proponents to address Aboriginal duty-to-consult requirements.

<sup>G</sup> This type of checklist approach makes no distinction of whether there was meaningful consultation from an Aboriginal perspective or just contact.

and Bill 191, which involved a relatively extensive pre-consultative and consultative phases; however, the quality of this consultative process is questionable at best.

A major part of the reason for why there was a lack of consultative process was also in part due to the labelling of the Green Energy Act as *green energy*. Due to this label, it fell under-the-radar for both elected-First Nation community representatives and First Nations' Tribal Councils; this stems from the connotations and meaning behind *green energy*, justly or unjustly. With such a title, it is understandable why it must have been considered benign with respect to First Nations' interests; however, this has been proven to not be the case.

In the Green Energy Act, as pointed out by the Ontario Bar Association representing 18,000 lawyers in Ontario, "one of our constitutional points is that you [Government of Ontario] don't deal with aboriginal rights in a coherent way in this bill [Bill 150] (Saxe, 2009, p. 621). Dealing with any piece of legislation that impacts either Aboriginal or treaty rights is usually a priority for First Nations. The fact that Bill 150 was not handled in such a way is indicative of the weight granted by the labelling.

The Green Energy Act was also an omnibus bill, which is a single document that affects a number of Acts; it is either accepted or rejected in its entirety through a single vote in the legislature (Kirchhoff & Tsuji, 2014). Omnibus bills are not viewed as being conducive to democratic participation because of the complexity of the changes to be made to a variety of laws (McRobert, Tennent-Riddell & Walker, 2016). In Canada, omnibus bills have been used to streamline environmental protection by limiting the opportunities for both public and Aboriginal participation in resource development projects throughout the assessment process, at both the federal (Kirchhoff & Tsuji, 2014) and provincial levels of government. The fact that no elected-First Nations representatives were at the Standing Committee meetings for the Green Energy Act is an anomaly, while numerous elected-First Nations representatives attended the joint Bill 173 and 191 Standing Committee meetings. If Bill 150 was named differently, such as the Renewable Energy Act or the Hydroelectric Development Act, there would have been more involvement from elected-First Nations representatives.

Due to the fact that renewable energy was prominent in the Green Energy Act, hydroelectric power-generation projects would be streamlined under this act, with the removal of barriers to development. On the premise that most of the hydroelectric potential is located in northern Ontario, this should have been acknowledged as a potential concern for the First Nations and their political organizations in northern Ontario. This point was raised in the Legislative Assembly of Ontario by O'Toole (2009, p. 5171-5172) who noted: "I would say that hydro-electric—that's water dams—would be green energy, with the exception that often, to create a dam, you have to flood property... [flooding] has been affecting First Nations for hundreds of years. It's a huge issue." In addition, there would be impacts on subsistence fishing: "Hydroelectric turbines and dams can

prevent the perpetuation and use of fish if not constructed to protect those values” (Quinney, 2009, p. 397; Ontario Federation of Anglers and Hunters). Further expansion of hydroelectric power in this manner only serves to further impact the wildlife and subsistence activities, as has been reported in the Far North of Ontario.

In closing, while it should be recognized that there were numerous factors at work that contributed to the misgivings with the policy creation process associated with Bill 150, one of the most brazen components was the labeling of Bill 150 as the Green Energy Act (2009). It is this sort of rhetoric that one must be wary of; the wording seeks to obfuscate the intent and meaning of the Act through its positive connotations. These are the deceptions we must be vigilant against. These hidden agendas threaten more than just Aboriginal and treaty rights (Kirchhoff & Tsuji, 2014); they threaten meaningful contributions from a variety of other sources (see chapters two and four).

These concerns are not purely local due to the nature of the problem addressed. Worldwide, there are other countries that have followed suite in the adoption of a *green energy* strategy such as, but not limited to: The United Kingdom (Green Energy (Definition and Promotion) Act, 2009) and The United States of America (United States of America Environmental Protection Agency, 2020). Each instance presents a possible threat to Indigenous populations; as such, we should be mindful that communication and rhetoric are not factors that can be overlooked in policy discussion. Wherever one is in the world, it is of the utmost importance to stay vigilant and aware of the potential that language has to lower our guard and make us susceptible to injustices. Words have weight, and we must be mindful of the connotations they carry.

## Chapter 4

# Green Energy – Green for Whom? A Case Study of the Kabinakagami River Waterpower Project in Northern Canada.

### 4.1 Introduction

Following the worldwide financial crisis of 2008, *green energy* has garnered more interest from a policy-based perspective, leading many countries to introduce *green economy* stimulus packages (Mundaca et al., 2016). Globally, the definitions for *green energy* vary;<sup>15</sup> however, most<sup>16</sup> possess core concepts that are clearly expressed in the definition provided by Bhowmik: “clean sources of energy that have a lower environmental impact compared to conventional energy technology”<sup>17</sup> (Bhowmik et al. 2017, p. 796). Given the definition provided, hydroelectric power should be considered *green energy* for many people, because it is generally considered to be both clean<sup>18</sup> and renewable (Omer, 2008). While hydroelectric power generation is considered renewable, it is “not considered environmentally benign by all the stakeholders” (Wustenhagen, Markard, & Truffer, 2003, p. 621), even with claims of environmental superiority in comparison to other power options (Markard & Truffer, 2006). Hydroelectric power has been hailed to be the most important renewable energy source in the world, and important in helping to address climate change. However, at a local-scale, there are notable impacts on the environment (Wustenhagen, Markard, & Truffer, 2003; Bratrich et al., 2004), and Indigenous people (Kahn, Freitas, & Petrere,

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<sup>15</sup> Referring to the *International Journal of Green Energy*, *green energy* is defined as having “no, minimal, or reduced impact on environment, economy and society.” (Undated)

<sup>16</sup> Definitions of *green energy* have been provided within chapter two and two of this research; to supplement these definitions reference must also be given to the Office of Gas and Electricity Markets, a “non-ministerial government department and an independent National Regulatory Authority recognised by EU Directives” (ofgem, 2020). Their 2002 publication, “Guidelines on Green Supply Offerings” has guided the concept of *green energy* with respect to companies that are presently involved in the sector (F&S Energy, 2019). More contextually relevant definition such as those provided by Tim Weis of the Pembina Institute (2011), Eric Jeffs (2010), and UNEP (2011). The argument for specifically using Bhowmik’s definition is due to how it concisely communicates the synthesis of idea presented in the definitions listed.

<sup>17</sup> Conventional energy is used as a point of comparison with respect to green energy. Bhowmik’s statement implies that conventional energy includes non-renewables such as natural gas, coal and petroleum. This is the assumption which is operated upon.

<sup>18</sup> Hydro is typically thought to be emissions-free with respect to greenhouse gases, but it is not (Deemer et al. 2016). Kahn, Freitas, & Petrere (2014, p. 6063) report that hydroelectric “projects will generate significant greenhouse gas emissions from deforestation and decay of organic matter in the reservoirs.”

2014). The question of whether *green energy* is *green* is reliant on how it is defined, and on what scale it is being considered.

In Canada, the Government of Ontario<sup>19</sup> passed Bill 150 (the Green Energy and Economy Act 2009, or Green Energy Act, 2009) with the intention of making Ontario:

North America's green energy leader...first, making it easier to bring renewable energy projects to life [by streamlining the approval and permitting processes], and secondly, creating a culture of conservation [through regulations and incentives], one where we go about our daily lives using less energy. These two thrusts combined would support a new green economy for this province and help create sustainable green employment for Ontarians...more than 50,000 direct and indirect jobs in the next three years...[and] would offer an attractive price for renewable power, including wind, both onshore and offshore, solar, **hydro** [added emphasis], biomass, biogas and landfill gas, and would not limit the size of projects...Ontario would join the ranks of global green power leaders like Denmark, Germany and Spain (Government of Ontario, Minister of Energy and Infrastructure,<sup>20</sup> Smitherman, 2009a, p. 4951-4952).

*Green energy* was never defined in the Green Energy Act (2009; Part 1, Definitions 1(1)); while, renewable energy was defined, and included hydroelectric power (Green Energy Act, 2009, Schedule A, Part 1(1)). During deliberations for Bill 150, the Green Energy and Economy Act prior to its application, renewable energy was often equated with green energy in the Legislative Assembly of Ontario by those that proposed it (Colle, 2009). In public hearings, held by the Standing Committee for General Government for Bill 150, it was asserted that *green energy* should not compromise the environment or pose threats to health and safety; instead it should improve the environment by decreasing greenhouse gas emissions (e.g., Eyamie, 2009, p. 570; Fraser, 2009, p. 530; Schnare, 2009, p 494-495).

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<sup>19</sup> Canada uses a federated system of government, whereby there are two different levels of government: the federal government (i.e., Government of Canada); and the provincial (e.g. Ontario) and territorial governments. Areas of legislative power for the different levels of governments were specified in the Canadian *Constitution Act, 1867* and then the repatriated Canadian *Constitution Act, 1982*.

<sup>20</sup> Although the Canadian *Constitution Act, 1982*, defines "Aboriginal" as people who are First Nation, Inuit and Metis, when we refer to historical documents, we will use the historical term "Indian" for First Nations people.

In the discussions of the Legislative Assembly of Ontario on the topic of *green energy*, the protection of the environment and human health was emphasized:

Our government's [i.e., the Liberal Party's majority Government of Ontario] goal of building more green energy projects faster and in a timely way will always be balanced with an equally important objective of preserving and protecting our air, land and water, our ecosystems [which by definition in Ontario includes humans] and wildlife. (Brotten, 2009; Liberal Party, Member of Provincial Parliament; p. 5013)

certainty for the people of Ontario that their interests, their health and their safety will come first. (Smitherman, 2009; Minister of Energy and Infrastructure, Liberal Party, Member of Provincial Parliament; p. 411-412)

While *green energy* was never defined in the Green Energy Act (2009), there are certain assumptions of characteristics that are associated with the term from public and political perspectives. One of the widely supported stances is: for *green energy* to be considered *green*, it should not negatively impact the environment.

This analysis will examine the evidence that supports the assertion that hydroelectric development is *green* in northern Ontario, Canada; this will be done from both a First Nations' perspective and a non-Indigenous perspective. The Kabinakagami River Hydroelectric Project in northern Ontario will be used as the case study, due to the fact that the environmental assessment (EA) process was initiated just after the passing of the Green Energy Act (2009), and this hydroelectric project had a unique First Nations factor. It will be established what was known about the impacts of hydroelectric development projects at the time of the passing of the Ontario Green Energy Act (2009) and what is presently known, and whether the evidence supported the *green* assertion. Next, the context of the case study will be presented, followed by a description of the Kabinakagami River Hydroelectric Project, and then the method of approach. Results of the study will be presented, from the perspectives noted previously, and discussed with respect to the development of hydroelectric generating stations on Indigenous homelands. The insights that are gained from these questions and discussions will be concisely summarized to answer the larger question concerning *green energy – green for whom?*

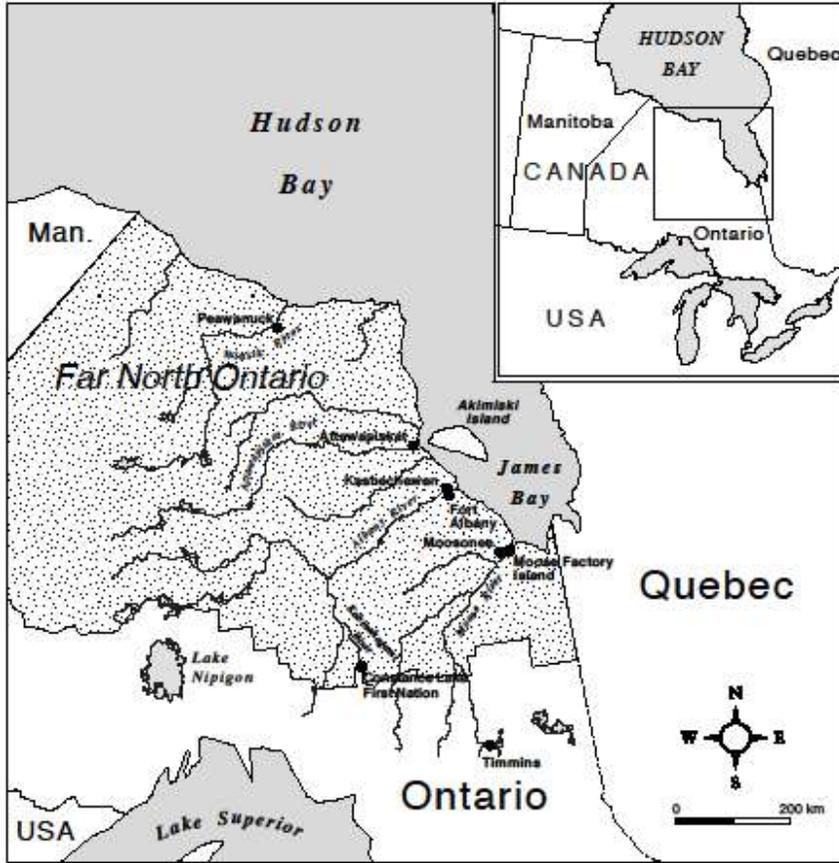
## **4.2 Background**

### **4.2.1 History of Hydroelectric Power in Ontario**

Historically, hydroelectric power generation has been one of the main drivers of economic prosperity in several Canadian provinces, such as Quebec and Ontario. In Canada, the provinces hold

jurisdiction over natural resources (Constitution Act, 1867), including waterpower generation. In 1906, the Hydro-Electric Power Commission of Ontario, known as Ontario Hydro after 1974 (Sholdice, 2019), was formed as a crown corporation; a crown corporation is a publicly-owned utility company of the Government of Ontario (Armstrong, 2000; Macfarlane & Kitay, 2016; Macfarlane & Watson, 2018). The year of 1906 was also of importance in Ontario, because the western James Bay region of northern Ontario, Canada, was ceded to the Government of Canada, with Ontario being a signatory, through the signing of Treaty No. 9 (1905) in 1905-1906. The western-southern Hudson Bay region of northern Ontario was ceded through the Treaty No. 9 Adhesions (1929).

Potential hydroelectric sites capable of generating 500 horse power were not to be included in any of the reserves for Indians,<sup>4</sup> as per the Agreement between the Government of Ontario and the Government of Canada (Treaty No. 9, 1905), which was part of Treaty No. 9. Prior to Treaty 9, the importance of the northern Ontario region for hydroelectric power generation, to enable settlement and resource development, was recognized (Armstrong, 2000; Mcfarlane & Kitay, 2016). The majority of potential waterpower sites in Ontario are located on the major river systems of northern Ontario: the Moose, Albany, Attawapiskat, Winisk and Severn Rivers (Government of Ontario, 2008). Of these five major river systems in the region, only the Attawapiskat, Winisk, and Severn River Basins are pristine; hydroelectric development has occurred in the southern portions of the Moose and Albany River Basins (Figure 4.1).



#### **Figure 4.1 Ontario, Canada, and the Far North of Ontario (detailed)**

When hydroelectric development began in the southern areas of the Moose and Albany River Basins in the early part of the 20<sup>th</sup> century, there was no consultation with the First Nations communities or any forewarning (Armstrong, 2000; Long, 2016; Macfarlane & Kitay, 2016). The consequences of hydroelectric development were severe and wide-ranging. Impacts included, but were not limited to, major flooding of cultural sites and relocation of First Nations communities due to the erection of dams (Armstrong, 2000; Long, 2016; Macfarlane & Kitay, 2016). Flooding also impacted riverine, boreal, and wetland ecosystems; this also meant that subsistence activities were affected, especially fishing due to mercury contamination (Armstrong, 2000; Long, 2016; Macfarlane & Kitay, 2016). After several First Nations' grievances over past hydroelectric developments were prioritized by the Government of Ontario (Wildman, 1993) and several addressed, Ontario Power Generation entered into partnerships with Moose Cree First Nation, Taykwa Tagamou Nation (formerly New Post First Nation), and the Lac Seul First Nation. They began their move to refurbish old hydroelectric power generating facilities and developed new hydropower plants (Ontario Waterpower Association, undated; Ontario Power Generation, 2020).

#### **4.2.2 Hydroelectric Development in the Albany River Basin: Chard River and Hat Island**

In 2008, a Treaty Forum on "Rights to Water Resources" was held in Timmins, northern Ontario, for the First Nations of the western James Bay region (Koozes, 2008). During this forum, Government of Ontario representatives discussed potential hydroelectric development projects located on the major river systems of northern Ontario: the Moose, Albany, Attawapiskat, Winisk and Severn Rivers. During the discussions, the Hat Island and the Chard River sites near the Albany River forks were identified as the sites with the greatest potential for development in the Albany River basin (Mushkegowuk Environmental Research Centre, 2009). In 2009, the Mushkegowuk Environmental Research Centre in collaboration with the Northeast Science and Information Section of Ministry of Natural Resources of the Government of Ontario, conducted a baseline habitat and fish assessment study at the Hat Island and Chard River sites (Mushkegowuk Environmental Research Centre, 2009; Mushkegowuk Environmental Research Centre, undated).

The two communities downriver of these two potential hydroelectric generating sites, Fort Albany First Nation and Kashechewan First Nation, gave full support to this habitat and fish assessment study (Mushkegowuk Environmental Research Centre, 2009). In 2009, Fort Albany First Nation in conjunction with the University of Waterloo, Waterloo, Ontario, began collecting high-resolution satellite imagery of the Hat Island and Chard River area to be used for visual and geospatial analyses (WorldVu Geospatial Solutions, 2011). There were considerable levels of investment being put into baseline studies by the Government of Ontario, Fort Albany First Nation,

and Kashechewan First Nation for the Hat Island and Chard River sites; the 17 June 2010 notification of the Kabinakagami River Waterpower Project seemed to rout the investments made until that point with little in the way of recourse (Gardner, Kirchhoff, & Tsuji, 2015; Table 4.1).

**Table 4.1 A brief chronology of important events related to the Kabinakagami River Waterpower Project (Hatch, 2012, 2013; Northland Power Inc. 2014; Gardner, Kirchhoff, & Tsuji, 2015; Ontario Rivers Alliance, 2017).**

Date	Event
2007-2008	Constance Lake First Nation Chief Arthur Moore & Council and Northland Power Inc. had discussions with respect to the development of hydroelectric power on the Kabinakagami River.
May 2009	Green Energy Act (2009) passed.
October 2009	The number of proposed hydroelectric stations was reduced from 8 to 7, after environmental concerns were raised by Constance Lake First Nation, with respect to the Roger’s Road Landing site.
November 2009	Constance Lake First Nation and Northland Power Inc. formally agree to proceed with the Kabinakagami River Waterpower Project.
November 2009	Feed-in-Tariff contract applications were submitted for the 7 hydroelectric stations, to the Ontario Power Authority for the proposed Kabinakagami hydroelectric stations, under the Green Energy Act (2009) process.
June 2010	The Ontario Ministry of Natural Resources provided a Site Information Package to Northland Power Inc. whereby the Albany River First Nations, that is, Constance Lake, Fort Albany, and Kashechewan were to be consulted.
17 June 2010	The Kabinakagami River Waterpower Project notification given to Fort Albany First Nation from Constance Lake First Nation and Northland Power Inc.
17 August 2010	Constance Lake First Nation community referendum held about the Kabinakagami River Waterpower Project. The result was 105 against and 97 votes for the project.
December 2010	Constance Lake First Nation Chief & Council asked Indian and Northern Affairs Canada (INAC) for an opinion on the referendum: “the referendum could only be classified as an expression of interest. INAC went on to say that ultimately the decision lies with the elected leadership of the First Nation, acting in the best interest of their members. The letter concluded by saying that a vote under the Indian Referendum Regulations is not a

	requirement in this case as this Project is situated off reserve.” (Hatch, 2013, p. 2-21)
February 2011	Constance Lake First Nation Chief & Council moved ahead with the hydroelectric project, based on INAC’s letter.
June 2011	A new Constance Lake First Nation Chief & Council elected replacing the old Chief and three Councillors.
November 2011	Vote of non-confidence for new Chief Roger Wesley of Constance Lake First Nation by the majority of the membership (Hydro Dam Petition with 117 members signatures) because: “Failed to honor and respect the referendum that was held August, 2011...to approve or reject Northland Power proposal;” and “Failed to recognize and respect community Elder’s wisdom, knowledge and advice towards the betterment of Constance Lake community” (Hatch, 2013, Appendix C7).
November 2011	“At recent public meetings in Constance Lake the membership voted overwhelmingly in favour of the project proceeding...Since the petition was circulated, over half the signatories have come forward and requested that their names be removed from the petition.” (Hatch, 2013, Table 2.1)
November 2011	Provincial Notice of Commencement for the Kabinakagami Waterpower River Project published in two local newspapers for the Ontario Waterpower Association (OWA) Class EA.
6 December 2011	First Public Information Centre meeting in Hearst, ON, as part of the OWA Class EA process.
14 December 2011	Federal Notice of Commencement for the Kabinakagami Waterpower River Project for the Screening EA under the Canadian Environmental Assessment Act (1996).
11 January 2012	Second Public Information Centre meeting in Hearst, ON, as part of the OWA Class EA process
9 April 2012	The Draft Kabinakagami Waterpower River Project document that meets the requirements of both the Environmental Report (OWA Class EA) and the federal Screening EA was completed.
February 2012	The Draft Kabinakagami Waterpower River Project Environmental Report (OWA Class EA) issued to Ontario Agencies for comments.

13 April to 14 May, 2012	The Draft Kabinakagami Waterpower River Project Environmental Report (OWA Class EA) available for 30-day Public Review.
11 May 2012	Chief A. Solomon of Fort Albany First Nation sends a request to Minister J. Bradley of the Ontario Ministry of Environment to bump-up the Kabinakagami Waterpower River Project's OWA Class EA to a more comprehensive Individual EA.
12 July 2012	Letter to Chief A. Solomon of Fort Albany First Nation from Minister J. Bradley of the Ontario Ministry of Environment stating that the bump-up request for the Kabinakagami Waterpower River Project's OWA Class EA, should be made during the final Environment Report's 30-day Public Review period.
July 2012	The federal Screening EA for the Kabinakagami Waterpower River Project no longer required under the newly passed Canadian Environmental Assessment Act (2012).
23 January 2012	The Final Kabinakagami Waterpower River Project Environmental Report (OWA Class EA) completed.
5 February 2013	The Final Kabinakagami Waterpower River Project Environmental Report (OWA Class EA) available for 30-day Public Review.
13 March 2013	Chief R. Knapaysweet of Fort Albany First Nation sends a request to Minister J. Bradley of the Ontario Ministry of Environment to bump-up the Kabinakagami Waterpower River Project's OWA Class EA to a more comprehensive Individual EA.
2014	"Based upon the most current review of project costs and the OPA [Ontario Power Authority confirming in January 2014 that PPA [Power Purchase Agreement] prices would not be escalated with inflation...the Kabinakagami hydro projects no longer meet Northland's policy requiring that they be 'highly certain' of being developed and constructed." As a result, \$5.2 million of previously deferred development costs related to the Kabinakagami hydro projects were written off during the first quarter of 2014. Management is exploring its options for the project." (Northland Power Inc., 2015, p. 24).
2017	Ontario Rivers Alliance made a bump-up request for the Kabinakagami Waterpower River Project and has no decision on their request (Ontario Rivers Alliance, 2017).

2019	The last step in the OWA Class EA process is the “Issue Statement of Completion.” There is no evidence that this step has been completed. A Google search was conducted on 11 December 2019 using the keywords “Kabinakagami River Hydroelectric Project Statement of Completion.” There were 20 hits, but none relevant to the Statement of Completion. There was also no evidence on the Ontario Waterpower Association’s website <sup>1</sup> or the Northland Power website, <sup>2-4</sup> that a Statement of Completion for the OWA Class EA Kabinakagami River Project was issued.
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<sup>1</sup> <https://www.owa.ca/policy-regulation/owa-class-environmental-assessment/notices/>

<sup>2</sup> <https://www.northlandpower.com/Default.aspx>

<sup>3</sup> <https://www.northlandpower.com/SearchResults.aspx?q=kabinakagami>

<sup>4</sup> <https://www.northlandpower.com/404.aspx>

### 4.2.3 Kabinakagami River Waterpower Project

The proposed Kabinakagami River Waterpower Project was a joint-venture partnership of Constance Lake First Nation and Northland Power Inc. (see Table 4.1 for a chronology of events). The project was “being encouraged by the government of Ontario under the Green Energy and Green Economy Act [Green Energy Act, 2009] and the Feed-In Tariff program” (Constance Lake First Nation & Northland Power Inc., 2011, p. 12) to “generate environmentally sustainable hydroelectric **green power** [added emphasis]” (Hatch, 2011, p. 1-2). This *green energy* project consisted of four run-of-river hydroelectric generating stations with a combined capacity of 26 megawatts and was to be located on crown land, on the Kabinakagami River – a tributary of the Albany River (Hatch, 2011).

Each hydroelectric station was designed with an earth-fill dam to be placed across the Kabinakagami River, to form a head pond, which would result in a new area of inundation (Hatch, 2011). An intake channel would divert river flow into the powerhouse intake, while a tailrace channel would direct water flow from the powerhouse back to the river downstream (Hatch, 2013). Each tailrace would require excavations “to convey the water from the powerhouse across an existing bench back to the main river course” (Hatch, 2011, p. 2-16). Due to the run-of-river design, the zone of influence for each proposed hydroelectric station was asserted to be “from the upstream end of the proposed head pond to the downstream end of the tailrace” (Hatch, 2011, p. 5-1). The area of influence was also reported to include the new access roads and a new transmission-line corridor required to connect the hydroelectric generating stations to the existing provincial-power grid (Hatch, 2011).

### 4.2.4 Environmental Assessment Process

The *environment* was never mentioned in the Canadian Constitution Act (1867); consequently, the *environment* is a shared responsibility between two levels of government: the Government of Canada and the provinces. The result is environmental assessments (EA) that exist at both the federal and provincial levels; the EAs can be harmonized or dealt with on an *ad hoc* basis. In Ontario, two types of EAs existed: the more rigorous Individual EA and the streamlined Class EA (McEachren, Whitelaw, McCarthy, & Tsuji, 2011). At the time of the Kabinakagami River Waterpower Project, there were 11 Class EAs in Ontario for projects that were routinely done and managed (McEachren, Whitelaw, McCarthy, & Tsuji, 2011). For hydroelectric projects, the Ontario Waterpower Association’s Class EA outlined the requirements, relevant approvals and permissions required (Constance Lake First Nation, & Northland Power Inc., 2012; Gardner, Kirchhoff, & Tsuji, 2015).

In Canada, the federal government, historically, regulated hydroelectric projects through the Canadian Environmental Assessment Act (1992) (Fortin, 2001); however, this changed when the new Canadian Environmental Assessment Act (2012) was enacted through two omnibus bills, C-38 and C-45 (Kirchhoff, & Tsuji, 2014). The streamlining of the federal environmental assessment process

resulted in two important changes with respect to Indigenous Canadians and hydroelectric projects: Indigenous people would have little opportunity to participate in EAs due to the streamlining of the process and funding cuts; and the number of proposed projects that would require the federal EA process would be limited (Kirchhoff et al., 2013; Kirchhoff, & Tsuji, 2014; Gardner, Kirchhoff, & Tsuji, 2015). These changes to the Canadian Environmental Assessment Act (2012) impacted the federal EA process for the Kabinakagami River Waterpower Project; the federal Environmental Screening EA required under the previous Canadian Environmental Assessment Act was no longer required due to the streamlining measures introduced (Hatch, 2013).

#### **4.2.5 Valued Ecosystem Component (VEC)**

A valued ecosystem component (VEC) was defined by the Impact Assessment Agency of Canada (2020) as:

Any part of the environment that is considered important by the proponent, public, scientists and government involved in the assessment process. Importance may be determined on the basis of cultural values or scientific concern.

There is a difference between how VECs are viewed, at the Government of Ontario level and the federal government level, because of the difference between the two levels of government with how the environment is defined. The Ontario Environmental Assessment Act (1990) explicitly mentions humans in its definition:

“environment” means,

- (a) air, land or water,
- (b) plant and animal life, including **human life** [added emphasis],
- (c) the social, economic and cultural conditions that influence the **life of humans** [emphasis added] or a community,
- (d) any building, structure, machine or other device or thing made by humans,
- (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or

- (f) any part or combination of the foregoing and the interrelationships between any two or more of them, (Part 1, Interpretation 1(1))

Meanwhile, the Canadian Environmental Assessment Act (2012) interprets the environment biophysically to mean:

the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b). (Interpretation, Section 2(1))

In the final Environmental Report (Hatch, 2013) submitted to the Government of Ontario Agencies for the Kabinakagami River Waterpower Project, to meet the obligations of the Ontario Waterpower Association's Class EA, seven Environmental Components were identified with associated VECs: Surface Geology and Soils; Surface Water Quality and Quantity; Hydrogeology, Groundwater Quality and Quantity; Air Quality and Climate; Fish and Fish Habitat; Vegetation, Wetlands and Wildlife; and Social/Socioeconomic Environment<sup>21</sup> (Hatch, 2013). However, no information was provided in the Environmental Report (Hatch, 2013) about who identified the VECs, the rationale for the choice of VECs, and if there was Indigenous input other than the Indigenous proponents of the project (Kirchhoff, Tsuji, & Whitelaw, 2013).

During the same time period that the Kabinakagami River Waterpower Project EA was being conducted, the Comprehensive Study Report EA for the Lower Mattagami River Hydroelectric Complex Project in the Moose River Basin of northern Ontario was completed (Ontario Power Generation Inc., & Moose Cree First Nation, 2009). In this Comprehensive Study Report EA, the Moose Cree First Nation provided a description of the existing environment from their worldview, because the description of the environment is an integral part of the EA process (Ontario Power Generation Inc., & Moose Cree First Nation, 2009), and is essential for identifying potential impacts from different perspectives. The Moose Cree description of the environment (see Table 4.2 for more details):

comes from our [Cree] worldview as a people which make up one of many parts of our environment. This is intended to provide

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<sup>21</sup> Table 1.2 Valued Ecosystem Components from Hatch (2013, p. 1-15)

counterpoise to the western concept of the environment that is statistical and quantitative in nature [see the Canadian Environmental Assessment Act (2012) definition of the environment above] and does not by itself adequately capture the spiritual, cultural and physiological connection of the Moose Cree people to nature and our deep rooted sense of reciprocity with the land, water and animals...We believe that a western-scientific view of the environment is important, but equally valuable, is our unique way of perceiving, knowing and describing our environment.

Our social (ritual, ceremony, feast) and cultural (hunting, fishing, trapping) practices regarding the natural resources of our homelands have been built on spiritual relationships and understandings of the land, water and wildlife. Thus, a sacred acknowledgement and bond to the natural world, our place and responsibilities within it sustains us and continues to ensure our existence...The Moose Cree have awareness, knowledge, understanding, philosophy and truth that stem from their ancient relationships with the natural world. Likewise, the Moose Cree respect that 'others' as well have different paths to awareness and knowledge of their worlds; none greater or better than the other. (Ontario Power Generation Inc., & Moose Cree First Nation, 2009, p. 4-1 to 4-9).

**Table 4.2 A brief description of the Moose Cree perspective of the environment (Ontario Power Generation Inc., & Moose Cree First Nation, 2009, p. 4-3 to 4-9).**

<b>Iliuu: People</b>	<p>“Mushkegowuk’, meaning ‘people of the muskeg or land”</p> <p>“The animals were the true First Peoples”</p>
<b>Kaan Duuhood Ki Skehl Ta Moon: Hunting and Gathering Knowledge</b>	<p>adaptation and “a body of traditional knowledge and wisdom that was culturally transmitted through generations of Moose Cree”</p>
<b>Askii: Land</b>	<p>gathering, collection, provision; “We love our land and have a special, sacred attachment to it. Our philosophy is we believe that we must care for the land as it has cared for us... The land is the sacred resting places of our ancestors and together, forms our collective cultural memory and oral history”</p>
<b>Niipii: Water</b>	<p>“Water is the source of our life and is one of the most valued elements in our environment. Clean water contributes to spiritual, mental and physical wellbeing. We’ve always been able to trust its refreshment, nourishment and nutrients... In our belief system, fish were so important that our Elders spoke of and believed in a fish “master” that cared for all fish.”</p>
<b>Leh Leh Win: Air</b>	<p>“Our ancestors knew that clean air is also needed in a healthy environment.”</p>
<b>Niipin, Da Kaw Kuk, Pi Poon, Siigwiin: Seasons</b>	<p>“Our ancestors viewed the animals, fish, birds, rivers, lakes and land as inter-connected, so today we know that we are only one small part in the greater world of land and animals... depend on the seasonal changes”</p>
<b>Moose Cree Laws: Principles of Reciprocity</b>	<p>“You see the fundamental laws or principles that we have followed came from the land and animals. The trees, animals, fish and birds gave themselves to us, but they expected us to acknowledge, respect and honour those who had given life so that we may live.”</p>

<p><b><i>Kampanii Ookamauu:</i></b>  <b>Hudson Bay</b>  <b>Company “Boss”</b></p>	<p><b>Historic Economic Relationships</b></p> <p>“We engaged in the fur trade [since 1670]. Also, we hunted geese, ducks, caribou and other food such as fish to help the HBC [Hudson’s Bay Company] posts survive in our harsh environment. Many times, the HBC and the fur trade would not have survived without our knowledge of the land, animals and climate in the James Bay region.”</p> <p><b>Towards a New Economic Relationship</b></p> <p>“Corporations such as the Ontario Power Generation (OPG) are seeking a new relationship with our peoples. In the spirit of our forefathers, both our groups will practice respectful business dealings and conscientious environmental stewardship based upon the philosophies, knowledge and technology of both our societies.”</p>
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In order to address the question of *green for whom* with respect to the Kabinakagami River Waterpower Project in northern Ontario, Canada, it is important to incorporate both a non-Indigenous scientific perspective and an Indigenous perspective from northern Ontario First Nations, and use these perspectives in a complementary manner to synthesize a definition that is respectful to both (Tsuji & Ho, 2002). The perspectives of Constance Lake First Nation, the co-proponent of the Kabinakagami River Waterpower Project, is especially important due to their role in this project; the downstream First Nations on the Albany River, namely, Fort Albany and Kashechewan are also of importance due to the realm of influence.

## **4.3 Methods**

### **4.3.1 Rationale for the Research Approach**

In the past, Indigenous knowledge was transmitted orally within and between generations, being both cumulative and dynamic (Stevenson, 1996). Indigenous knowledge was often considered anecdotal by colonizers (Cruikshank, 1981), but the Berger Inquiry (Gamble, 1978), the World Commission on Environment and Development (1987), the “Earth Summit” (UN Conference on the Environment, 1992), and the Convention on Biological Diversity (UN Environment Programme, 1992) started to change peoples’ perceptions and increased the credibility of Indigenous knowledge worldwide. For complex resource development and environmental issues, such as hydroelectric development on Indigenous homelands, the use of different perspectives gives a more complete understanding of an issue (Alcoze, 1992; Greer, 1992; Lalonde, 1993; Tsuji & Ho, 2002). This two-perspective, or “two-eyed seeing”, approach prioritizes the need to “Learn...to see from one eye with the best in...Indigenous ways of knowing, and from the other eye with the best in Western (or mainstream) ways of knowing...and learn to use both these eyes” (Marshall & Bartlett, 2010, slide 15).

This hybridized approach boasts increased synthesis of knowledge from additional sources, but it is also an important step towards a sustainable future for *green energy*. The importance of focusing on the term *green energy* is explained and explored in previous chapters. Concerning the necessity of an Indigenous component on this topic, it is a necessity for a number of reasons. The first argument is that First Nations hold inherent rights and rights granted to them as part of the treaties from the founding of Canada; this is a topic that has been explored previously. The second, and more complex argument, is that they must be consulted as stakeholders on this topic. Insofar as they are stakeholders, this is within expectations; however, it should be acknowledged that in order to proceed towards sustainability, certain considerations must be given that enhance the overall sustainability of this arrangement.

Equity and democratic governance are recognized as important criteria for sustainability (Gibson & Hassan, 2005). The inference at work is that if there is to be respectful, inclusive participation there must be accommodations that ensure vulnerable and disadvantaged groups are given proper considerations that allow for them to effectively participate in the discussion. By

facilitating meaningful interactions with Indigenous perspectives, this research grazes over the democratic component for sustainability, and special considerations allow the discussion to elevate Indigenous opinions and perspectives to places that may otherwise be inaccessible; this falls in line with intragenerational equity. These forms of sustainability considerations are by no means exhaustive and should be viewed as the bare minimum from an ethical perspective in a manner that is not unlike the philosophy presented within the Government of Canada's research ethics concerning humans and Indigenous populations (Government of Canada, 2020).

The alternative to a fully inclusive approach would be to use one or some of the perspectives presented. The problems with this are mentioned previously in the argument for a hybridized approach; such approaches would neglect to fully utilize democratic components for the purpose of sustainability. At worst, approaches that focus on a single definition that is politically driven, important perspectives such as the Indigenous view would be neglected. This style of conduct and philosophy is also similar to the apparent rationale for Gardner's work on a framework for consultative evaluation where she utilized class EA materials provided by the government as a base and supplemented it with Indigenous input (Gardner, Kirchhoff, & Tsuji, 2015). The goal of this research is to replicate that level of efficacy.

With this said, this portion of research will make use of science and Indigenous knowledge as complementary sources of knowledge will be the approach used in the present study. Primary and secondary data will be collected and analyzed, to ascertain what was known about the impacts of hydroelectric development and whether the evidence supports the *green energy* assertion for hydroelectric development on Indigenous homelands.

#### **4.3.2 Data and Analyses**

The approach used for the purposes of data collection and analyses focuses on a systematic review style due to the narrow and predetermined scope of the research found within this section (Grant & Booth, 2009). The foundation had been set by previous chapters, which allowed for a guided approach to the topics of interest; the data pool for this topic is exhaustible on a practical level; thus, a systematic review was considered to be possible. The question and relevant content are clearly defined, and the pool of knowledge is readily accessible.

While the conditions for a systematic review of the content are favorable, there are other methods that may have been used to great efficacy with respect to alternative approaches or supplements to this research. One method that was under specific consideration was that of a semi-structured, key informant interview (Wilson, 2014; Moon et. al, 2016). The key informant type was given consideration because of this research's focus on representatives, industry terms and the ability to clearly perceive the impacts. With respect to the structure of the interview, a semi-structured style was deemed to be effective allowing a considerable amount of freedom for the interviewees to express their perceptions and thoughts while allowing framework for guiding them

to appropriate topics. These types of interviews would yield valuable information; however, there are several considerations that weighed case studies more favorably.

The case study information utilized in this research already made use of interviews for the purposes of research. While this is not a substitute, there is a moderate amount of overlap; additionally, temporal context of the case study and interviews were conducted. While the case study is much less flexible with the sort of information obtained, it is much more contextually relevant due to its temporal proximity to the event. This specific case study also presents the rare instance of analyzing a project with an Indigenous group as a proponent, which serves as strong justification for its use (Yin, 2014). Another one of the key draws to a case study is the application and observation of ideas and concepts in practice. Thought experiments suffice if you speak in ideals; however, case studies allow for further depth and analysis due to the complexity of the situation granted by its full context. This style of research also falls in line with the curriculum (see chapter one).

These reasonings also hold strong as exclusions for other projects that are more accessible, but less contextually relevant. The fact that this case is well-documented to the extent that it provides a good opportunity to interact with a key instance that can closely interact with the Green Energy Act (see chapter two) and the Indigenous proponents (see chapter three) (Government of Canada, 2020). There are also a number of factors that make interviews either unfeasible or less than ideal that range from scope to context. Arguably, the most effective study would be the ones that are conducted in close temporal proximity to the target time of study, which is close to the time of Bill 150; however, this is impossible, and the interviews conducted with the case study are presented as the next best option.

However, this work is not without recourse; there are many records recorded during this time that provide accounts that cover topics that are conducive towards the research question. The most notable of these accounts are the transcriptions of the debates that took place within the standing committee; these are further supplemented by research conducted by my predecessors on similar topics. These two main sources of information are invaluable due to their relevancy in a temporal context.

With this rationale in mind, data was collected from primary sources to present a northern Ontario, First Nations perspective on the environment including the value of the environment in addition to the Moose Cree First Nation viewpoint. Hansard verbatim transcripts of the Standing Committee on General Government public hearings for Bill 173 (the Mining Amendment Act, 2009) and Bill 191 (the Far North Act, 2010) were being considered during the same time period that the Kabinakagami River Waterpower Project EA was being conducted (Hatch, 2013); consequently, they are of contextual value with respect to the research question. These Hansard transcripts were read in their entirety. Bills 173 and 191, and Bill 150 (the Green Energy Act, 2009) were important, because of the potential impacts resource development would have in northern Ontario. The Hansard transcripts for the Green Energy Act (2009) public hearings were read in their entirety, but

were not included in the present study, because Indigenous content was limited and not from elected-First Nations representatives<sup>22</sup>.

The comments from the Constance Lake First Nation open houses for the Kabinakagami River Waterpower Project (Hatch, 2013) were read in their entirety, and provided insight into the deeply divided community with respect to the hydroelectric project. For the Kabinakagami River Waterpower Project Report EA produced by Hatch (2013), a summative-content approach (Hsieh & Shannon, 2005) was used in addition to the analyses hereafter described. The key word used was “value” to elucidate how environmental values were defined by the members of Constance Lake First Nation.

Correspondence requests for a bump-up of the Kabinakagami River Hydroelectric Project from a Class EA to a more comprehensive Individual EA, by Chief Andrew Solomon of Fort Albany First Nation (2012), and his successor Chief Rex Knapaysweet (2013) are used to give insight into the perspective of this downriver community with respect to the environment and potential impacts of the project.

Other sources of primary data included interviews from previous studies with Albany River First Nations downstream of Constance Lake First Nation. Initially, the primary data were organized by hand into themes on paper (Bryman, Teevan, & Bell, 2009), using a deductive thematic organizational approach. Primary data were also analyzed inductively and iteratively letting “themes” emerge from the data itself (Hsieh & Shannon, 2005).

Secondary data were collected through a guided, mixed methods literature review. This review was meant to be exhaustive within the particular scope of the research to demonstrate and identify literature describing the impacts, or lack thereof, of hydroelectric development, especially in northern Ontario and on Indigenous lands. This information is contextually relevant but is done to establish the state of the field. As such, deep readings of the literature and strict appraisal processes were unnecessary. Certainly, conducting the review in a systematic approach would have been exhaustive, rigorous and easily replicable; however, the end results would have been similar if not the same due to the goal of this review.

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<sup>22</sup> Chiefs & Councils are a construct of the *Indian Act, 2011*, and are elected by communities at the First Nations’ level of government. Chiefs & Councils are the local governing body. Tribal Councils (and other supra-level First Nations organizations) consist of First Nations Chiefs in a regional or provincial or territorial area, and are a political body. Grand Chiefs & Deputy Grand Chiefs are typically not elected by the people, but some are elected regionally by the people (e.g. Grand Chief & Deputy Grand Chief of the Mushkegowuk Tribal Council).

## 4.4 Results and Discussion

### 4.4.1 A First Nations' Perspective of Northern Ontario and Its Value

The First Nations' people of northern Ontario revere the environment, and believe it is their inherent right and duty to protect the environment for future generations as seen in the following passages:

The north is our homeland and we govern and protect it through our inherent right, given to us by the Creator. Since time immemorial, our people have exercised our inherent right and protected the lands. That is why they are still in pristine condition. And we will continue to protect our lands for future generations...the far north, it's only First Nations people who live there. We have lived there for close to 10,000 years and we have preserved the natural environment up until now. We will continue to protect the natural environment (Grand Chief of Nishnawbe Aski Nation<sup>23</sup>, Stan Beardy, 2009, p. 828-831)

Our concepts of preserving Mother Nature...We are one with the land, we depend on it to feed our families, and we have thousands of years of intergenerational experience with how to live in harmony with the land and preserve it, not destroy it in a few years [through resource development] (Councilor for Kitchenuhmaykoosib Inninuwug (also known as Big Trout Lake First Nation), Sam McKay, 2009, p. 912).

While non-Indigenous people assume that the Far North of Ontario (Figure 4.1) is untouched by human activity, and a new frontier waiting to be developed, this is far from the truth, as elucidated by the First Nations' people that live there:

We are the north. It is our land, and we govern and protect by our inherent right given to us by the Creator. We have protected and governed the lands for thousands of years. The legacy of our care is that our use has been next to invisible. To you, the lands look untouched. They aren't. They've just been touched by the Anishnawbe in accordance with Anishnawbe laws and customs. That's why the lands are in the condition they are in. We will continue to protect and govern the lands for future generations.

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<sup>23</sup> Nishnawbe Aski Nation is a Tribal Council that covers most of northern Ontario, and contains in its membership 49 individual First Nations. (Undated)

There is a story that was conveyed to me by a number of elders in one of our meetings just about a month ago, a story that reflects on the care that we have given the land. They talked about the days when they used to move from area to area within their lands and camped, using spruce boughs for bedding. They said that as they were growing up, it was their task that was given to them by their grandmothers to gather up the spruce boughs after, when they were breaking camp, and make sure they were burned in one area, and that the land they had camped on for two or three weeks or two or three months would be taken back to its natural form. That was how they looked after the land. He said that now, today, Ontario is penalizing us because they're saying that that land is untouched by us. (Special Envoy of Nishnawbe Aski Nation, Frank Beardy, 2009, p. 953)

A lot of people say it's our last frontier. What the government instead should be doing is congratulating all of the First Nations and NAN territories for keeping the land in its natural state: the way it is. We have not contaminated and harmed our land. (Chief of Weenusk First Nation, George Hunter, 2009, p. 956)

Reciprocity is foundational to First Nations' relationships with the land. First Nations care for the land but the land also cares for them:

One of the other things that I want to state today is: The protection of our homelands—we're not talking provincial public lands here; we're talking First Nation lands. Get that right. The far north is First Nations land... This land where I come from is very, very important. As a First Nation, we're probably the only First Nation in northern Ontario or in Ontario that doesn't run social assistance or welfare programs for our membership because the land looks after us. We have an abundance of fish, wildlife, waterfowl and stuff, and as a result, the land is our social welfare system, and we would like to keep it that way. We've got good, clean water and we can dip our cups into any of our river and creek systems without worrying. (Chief of Weenusk First Nation, George Hunter, 2009, p. 956)

The majority of our members are living in poverty...[and] we have a significant housing crisis. Our school is contaminated and we can't drink water from our tap. Further, we are routinely evacuated from our community during break up, yet despite all this I believe we are one of the wealthiest First Nations in Canada. We still have our language, our culture and we are still able to go out on our land and

to engage in our traditional aboriginal practices. (Chief of Attawapiskat First Nation, Theresa Hall, 2009, p. 981)

This balance between First Nations' stewardship and "next to invisible use" of the land (Special Envoy of Nishnawbe Aski Nation, Frank Beardy, 2009, p. 953) becomes unbalanced with resource development. Other northern Ontario First Nations that have experienced resource development first hand give warning to the far north Chiefs:

When we're talking about the land, the people are connected to the land. First Nations people are stewards of the land; it's part of us...you [Government of Ontario] polluted everything; you polluted all south of 50. You cut every tree; you've ruined it. Species are at risk, the moose population is going down, the marten population is crumbling, and still you want more. You want to go north of 50 now; you want to go north there because you've ruined it here. I've warned the northern chiefs. I live south of the 50th parallel, and I've seen the behaviour. The behaviour hasn't changed one bit. These people are here to protect their homelands that belong to them. It doesn't belong to Ontario. (Chief of Chapleau Cree First Nation, Keeter Corston, 2009, p. 955-956)

our lands...been protected for thousands of years. European people have come here, and look what they've developed; they've developed a land of disaster. They take all the revenues and whatever and leave, and leave us with nothing. Then we have to do the cleanup, and we have to live with that for 100 years. Our people are getting sick from all these industries that are coming around our territory.

In the far north, we're just starting to face that. I'm in the Timmins area, where development is very, very high. We've got the mining industry and the forest industry, where they leave a lot of pollutants behind. We worry about our water. We have some of the cleanest water in Canada, and we still have to worry about it because of the development that's happening around us. Yet you [Government of Ontario] give these permits out to them like it was nothing...We've got to think about tomorrow. We've got to think about our kids, our children who are coming. What are we going to leave them? Are they going to live on nothing?

I was talking about development with the hydro dams and the damage they've done. They washed away our graveyards into the lakes, and yet development still happens...Development, yes, but...We have to come to some sort of conclusion on how we're going to develop our territories...We can't even go hunting; we can't

even go fishing...You [Government of Ontario] took us off our land. You took us away from our home so you can develop industry...The point is what? Destroying the lands, our rivers, our waters? What kind of water are we drinking today? It all has to be treated...I don't think First Nations have ever destroyed any lands. I can't think of any. (Chief of Wahgoshig First Nation, David Babin, 2009, p. 955)

Adding further, Elders assert that “what good is money when the land is ruined” and “nothing will replace the land.”<sup>24</sup> Thus, it is unsurprising that the Elders take a hardline stance with respect to development:

I am one of the elders amongst many others as I represent the east Mushkegowuk territory...I just wanted to say that the elders here, the Nishnawbe Aski, some of them are there behind me, and the many other elders—our job is to give advice to our chiefs, to remember not to give their land anymore to anyone, to try to keep their land, what is left out there, for us people.

The provincial government is issuing permits without any consultation with us. And this is why we give advice to our chiefs that enough is enough. We will hold what is left out there and then we will fight for it...our land is not for sale. It is not for sale. We want to keep that. (Elder of the Mushkegowuk Territory, northern Ontario, Gregory Koostachin, 2009, p. 958)

#### **4.4.2 An Albany River First Nations' Perspective of the Environment and Its Value**

In a land use planning initiative requested by Fort Albany First Nation, Minkin, Whitelaw, McCarthy, & Tsuji (2014) conducted semi-directed interviews with Fort Albany First Nation Chief & Councilors and Elders, and EA training sessions (McCarthy, Whitelaw, & Tsuji, 2010) with Chief & Council, and personnel from Peetabeck Health Services.<sup>25</sup> During the training sessions, participants were “asked to identify what they valued most with respect to environmental, social, cultural and economic issues or VECs” to supplement the interview data (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 4). A number of VECs or “substantive values” were identified, during the semi-directed

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<sup>24</sup> Quotes from a focus group with Elders (Meachren, 2007; n= 7 female residing in the Elders' complex, born and raised in Moose Factory, northern Ontario).

<sup>25</sup> Peetabeck Health Services is the health wing of Fort Albany First Nation, Ontario (North East Health Line, 2019).

interviews and the training sessions; these should be viewed as not being mutually exclusive (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 5-13):

#### **4.4.3 An Albany River First Nations' Perspective of the Environment and Its Value, Food Resources**

The land was mentioned as a source of food (e.g. moose, *Alces alces*; fish; waterfowl; caribou, *Rangifer tarandus*; berries; Labrador tea, *Rhododendron groenlandicum*), and referred to as “our grocery store” and “our garden” (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 5). The land was reported as being important to long-term food security: “People go up the river to go moose hunting, get their moose for the whole year. It’s a matter of saving money because meat is so expensive. That’s our grocery site there” (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 5-6). Further, there was a preference for wild foods by participants, because of the social and health benefits associated with procuring and consuming food from the land. However, threats to these food resources were identified, being related to mines and dams, destroying wildlife habitat and contaminating the food that they consumed.

#### **4.4.4 An Albany River First Nations' Perspective of the Environment and Its Value, Travel Routes**

The Albany River and its tributaries were identified as an important transportation network: “This river, that’s our highway, we call it. We go to Constance Lake from here to get something, up the river and moose hunting. We don’t want any dams, like me, I don’t want any dams on the river myself. It’s going to be hard for the people too if we have dams on the river. That’s where we brought our meat from, on the river...” (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 6)

#### **4.4.5 An Albany River First Nations' Perspective of the Environment and Its Value, Water Resources**

In addition, the Albany River and its tributaries were viewed as sources of high-quality drinking water. The main threats to the quality of the water were identified as hydroelectric development and mining.

#### **4.4.6 An Albany River First Nations' Perspective of the Environment and Its Value, Forest and Timber Resources**

The wasting of resources was identified as not being in keeping with First Nations values, such as, when timber was wasted when the James Bay hydroelectric transmission corridor was recently cleared. Protection of the forest habitat from flooding associated with hydroelectric development was viewed as being of importance.

#### **4.4.7 An Albany River First Nations' Perspective of the Environment and Its Value, Recreation and Connection**

Activities in the Albany River basin were referred to as being important not only for connecting to the land, but also for reinforcing social connections:

"We go there, we go up the river for family outings...Like we do that on maybe Mother's Day or Father's Day, take the whole family camping, geese there, roast over the fire."

"I would say like once a guy needs time for himself they go in the bush, it's quite spiritual. Because you're lost, where are you going to go? When you're in the bush, you're not lost." (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 9)

#### **4.4.8 An Albany River First Nations' Perspective of the Environment and Its Value, Knowledge Transfer and Tradition**

Rebuilding Indigenous knowledge and values on the land was seen as being important, especially in the climate of colonialism: "Me, along with most community members, were...a product of the residential school system...While I was down south, I lost how to hunt and trap. But when I came back home, luckily my dad, my in-laws, were able to teach me back those – how to hunt, how to trap...And we have to bring that [hunting and trapping skills] back...We have to keep that alive."

"And what I'm hoping with the land use planning is that they'll want to go back, go backwards and learn about where they come from. You know, "this is where my parents trapped, this is where my grandparents trapped, and this is important to us because I have a connection there" ...I encourage anybody right now to just go, go build a tent frame, just build it! Just show that there is a connection to us in that area, on that land where you're putting it because right now, somebody is walking in [our traditional territory] without our knowledge, and these are people who are staking [mining] claims, you know, they're just staking it left and right." (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 10)

#### **4.4.9 An Albany River First Nations' Perspective of the Environment and Its Value, Stewardship and Environmental Protection**

This value connects all the other categories and can be simply put as, protect "what the Creator gave us for our sustenance and cultural pursuits" (Minkin, Whitelaw, McCarthy, & Tsuji, 2014, p. 12).

In short, cultural history and preservation is of utmost importance. By protecting the land, one is also protecting traditional subsistence activities that are of great importance, socially, culturally, and economically. Further, in land use planning, precautionary measures are needed to

ensure that future development does not unduly impact the land and in turn the Cree way of life (Minkin, Whitelaw, McCarthy, & Tsuji, 2014).

The following are passages from the former Chiefs of Kashechewan First Nation and Fort Albany First Nation, the two First Nations downriver of the proposed Kabinakagami River Waterpower Project, to provide their perspectives of the land, and what happens when First Nations people are separated from the land, respectively.

We live in the north. The land up north is our home. It's our lifeline, it's our bloodline of who we are. The land up north is not an untouched land. Our people, my ancestors, travelled that land. All over the area of my land, you can see sacred burial grounds, where my people died, where they lost their loved ones during the winter months. So it's not an untouched land; it's not a land that has been discovered. We've been there for thousands and thousands of years. We were very nomadic people. We are still closely tied to the land. Like I said, that is our bloodline, our lifeline. Without land, we will [not] be Cree people of James Bay.

I've got grandkids. I want a future for them. I want to teach them about the land that I grew up in, where my grandparents taught me. I don't want them to see a sign that says, "No hunting. Private property"...I am a community of 1,600 people. I am in the mouth of James Bay in the Albany River. Right now, the province of Ontario is drooling over my river to develop for energy. That is my highway; the river is my highway. The river is my area of hunting... as a chief of my community and in my land [I state that]...there are [First Nations'] footprints all over the place in my territory, that signifies that my people were out in the land. (Chief of Kashechewan First Nation, Jonathon Solomon, 2009, p. 954)

It was stated earlier that we're nomadic people, and the treaty<sup>26</sup> gave us something really different. A lot of people are displaced. The young people today don't know who they are. Their identity is lost. So you have a high rate of suicide. Those are the symptoms of the treaties and the policy-making of the governments. (Chief of Fort Albany First Nation, Andrew Solomon, 2009, p. 953)

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<sup>26</sup> In Canada, Indian lands could only be acquired through the signing of treaties, between the said Indians and the British Crown (or representatives of the British Crown) (Government of Canada, 1763; Cauchon & Cockburn, 1867; Henry, 2006).

## 4.5 A Constance Lake First Nations' Perspective of the Environment and Its Value

In a workshop held on 26 June 2010, which included individual and group sessions with Constance Lake First Nation community members, specific questions were asked including: "What are your values on the Kabinakagami River?"; and "What are your thoughts (benefits, fears, concerns, etc.) on these Projects?" (Hatch, 2013, p. 2-23). Recorded meeting minutes were said to be available in Appendix C4 (Hatch, 2013), but nothing could be found in Appendix C4 related specifically to the environmental "value" question. Appendix C4 only contained the Kabinakagami River Project presentation, and a section entitled "Discussions with Members of Constance Lake First Nation" (Hatch, 2013, Appendix C4) which included "highlights":

- moose calve on islands between Site 8 Amisk and Site 7 Neekik
- importance of sturgeon and whitefish
- importance of fish for food in the past and present for the community...
- sturgeon spawn at the Wall

Content analysis using the keyword "value" came up negative with respect to environmental value information from a Constance Lake First Nations' perspective in the Kabinakagami River Waterpower Project Report EA (Hatch, 2013)

It would be expected that Constance Lake First Nation as a co-proponent of the Kabinakagami River Waterpower Project would have been fully supportive and involved in all project activities. However, this was not the case due to the schism in the community. The results of the 17 August 2010 referendum held in Constance Lake First Nation by their Chief & Council did not support the Kabinakagami River Project (see Table 4.1 for a chronology of events); however, Chief & Council moved ahead with the project in spite of losing the referendum. In a letter dated 24 August 2010, sent to the Royal Canadian Mounted Police (RCMP),<sup>27</sup> a member of Constance Lake First Nation voiced their concerns about the Kabinakagami River Hydro Projects:

First Concern: Today, we have developer coming to our community wanting to start hydro projects on our traditional territory and seeking our approval to start these projects. Daming the river will have an environmental impact on the river system, which will also

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<sup>27</sup> The Royal Canadian Mounted Police (RCMP) are Canada's national police force. With respect to Ontario, there is the Ontario Provincial Police force. First Nations have their own police force with First Nations officers.

have affect fish and wildlife...we have use this river for our survival and we are not going to stop use it now. This river must be protected for future generation...We value this river as must as the developer value money. Therefore, it will be a great disaster to built these four hydro projects on this river. You may wonder why I am writing this letter to you about my concern. I believe that RCMP is federal police force in Canada and have a jurisdiction over Natives people and lands.

Second Concern: On August 17, 2010, we had a referendum to decide wheater or not to approve these four proposed hydro projects on our land. The outcome of the vote was close, the result was no vote to the projects...They are those who are disappointed with the results of the voting, thus, want to alter and interfere with the results of the vote, this is unconstitutional under the law of Canada...As a representative of the Queen and people of Canada, I would like you to talk to hydro developer to stop harassing our people, in regard to the projects. I am writing this letter because our Chief is not listening to our concerns. (Hatch, 2013, Appendix C7, Anonymous, 2010).

In December 2010, Indian and Northern Affairs Canada (INAC)<sup>28</sup> opinioned that the referendum of 17 August 2010 was outside their jurisdiction, because the project was on Constance Lake First Nation traditional territory, not reserve land<sup>29</sup> (Table 4.1). Thus, in February 2011, Constance Lake First Nation Chief & Council moved forward on the hydroelectric project based on the INAC letter.

In a follow-up letter to the RCMP, dated 9 February 2011, by the same member of Constance Lake First Nation who voiced concerns in the earlier letter about the Kabinakagami River Hydro Project, provided an update of the situation and concerns about violence in the community:

[RCMP] never responded my letter...On Monday February, 07, 2011, at general membership meeting, the chief and with three other councilors informed the people, that the referendum that was held in August, 2010, is not valid, because the vote was very close; the result was 105 members were against and 79 were fore the hydro project. At February, 08, 2011 meeting some band members became very angry at chief and three council members when

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<sup>28</sup> Indigenous and Northern Affairs Canada was dissolved on 15 July 2019 and made into two separate departments: Indigenous Services Canada; and Crown-Indigenous Relation and Northern Affairs (Government of Canada, 2020).

<sup>29</sup> With the signing of Treaty No. 9 (1905), “reserve” lands were set aside for Indians.

informed that chief and council signed the proposed hydro project agreement, without the membership consent. Today, the chief and three councilors are under heavy fire; some of us are afraid this issue could escalate to violent among our own people; elders see this happening should Northland Power Co. continue to intervene with our affairs...we want peace in our homeland, we do not need civil arrest...I asking you to communicate with Northland Power about our concerns toward the project. I would appreciate your quick respond to this regard. (Hatch, 2013, Appendix C7, Anonymous, 2011)

In June 2011, a new Constance Lake First Nation Chief & Council were voted in by the community; on 21 November 2011, there was a vote of non-confidence for the new Chief Roger Wesley by the majority of the membership. The Hydro Dam Petition had 117 community member signatures. There was a petition because the new Chief: “Failed to honor and respect the referendum that was held August, 2011...to approve or reject Northland Power proposal;” and “Failed to recognize and respect community Elder’s wisdom, knowledge and advice towards the betterment of Constance Lake community” (Hatch, 2013, Appendix C7). The Hydro Dam Petition stated: “We the Constance Lake First Nation want nothing to do with the Hydro Dam Project because it will kill our wildlife and be a negative impact on our community. Think about your children and their children’s children.” (Hatch, 2013)

On 26 November 2011, the Elder Joe Taylor made a statement (Hatch, 2013, Appendix C7):

Some men from the reserve come down the river to set fish lines and give fish to Elders in the community. In the summer this river is use to go to the big rivers (Kenogami and Fort Albany). In the fall lots of moose hunters go down on Kabina River [the Kabinakagami River]. Some moose hunters go to the big rivers for holidays; they don’t care if they get their moose, some want to stay longer to enjoy the land and rivers: some want to stay longer to get away from the city...Also, during stay in summer at Mammattawa I met people from Ogoki and Fort Albany and Kashechewan going up the the Kabina River to visit relatives in Constance Lake...I want to say this river is very important to many people, specially the young people in the community of Constance Lake, they going to use this river for many years to come. It’s heritage river for thousands of years and we will continue to use this river...Let the river run free for next generation.

An Open House was held at the Constance Lake First Nation Community Centre on 8 December 2011, and although 40 people attended, only two left comment sheets. The issues raised during the

Open House are presented in Table 4.3. Also on this date, the spokesperson for the Elders and people of Constance Lake First Nation released a statement (Hatch, 2013, Appendix C7):

I am totally oppose Northland hydro development project on Kabinakagami River. This river is a heritage for Constance Lake First Nation people for thousands of years...The hydro project will have an ecological impact on humans, fish & wildlife, insects and birds. They are sturgeon, trout, walleye on the project sites, they are spawning grounds for these fish habitats areas and they will be impacted during the construction activities and will also have long term impacts. Bald eagles and ospreys depend on this river for their survival, they fish on the rapids to feed their young. For the last ten years the water level is remarkable low than normal, due to climate change as result its has a impacted on traditional travel on the river...On the day when Northland introduce the propose project some Band members were opposed the project, its causes a division on our people...referendum [held]...Unfortunately, the results of the vote was not honoured by the previous Chief and some Council members...Again on November, 2011 there was a petition circulating community opposing the hydro project over 120 signatures were collected. Still present Chief is not responding to the petition. We value the river...This is our river it [economic benefits from the hydro project] will not solve the community social problems that were facing today. We say no to the proposed project, it will cause significant adverse environment.

At the Open House on 14 January 2012, a total of nine people attended and one comment sheet was left (Table 4.3). Lastly, an anonymous Elder (Hatch, 2013, Appendix C7, p. 1-6) left an insightful commentary on the Kabinakagami River Waterpower Project:

Hydro electricity is perceived to a clean form of energy...Almost all Hydro electric projects relied on the impoundment of water flow, to ensure the turbine received a constant supply of water power throughout the year. The flooded lands is no longer...habitat for terrestrial animals, the flooded lands also disrupt the ground water level in the vicinity along to the rivers...water levels in the impoundment will rise and fall seasonally...destabilizes the shore line...bacteria [changes]...inorganic mercury into biologically actives...methylmercury...fish which concentrate the mercury in their flesh...Human that eat the fish will accumulate high concentration of mercury...The Northern [Quebec] Cree nation known first hand experienced the consequences of massive flooded lands...eliminated much of the opportunity for traditional life.

Native spiritual and ecological knowledge has intrinsic values and worth regardless of its resonances with or confirmation by modern and western scientific values. Mutually enriching the native and scientific ways of knowing about nature each traditional aspect has much to learn from each other.

Clearly, most Constance Lake First Nations value the land and the Kabinakagami River, and want to preserve it for future generations, but there is still a group in their community that is in a leadership position that is pro-hydroelectric development.

**Table 4.3 Issues raised by Constance Lake First Nation community members at open houses for the Kabinakagami Waterpower River Project either on comment sheets and/or during discussions (Hatch, 2013, Table 2.3 and Table 2.5).**

<b>Number of People Raising the Issue</b>	<b>Issue</b>
8 December 2011 Open House <sup>1</sup>	
3	Concerned about long term impacts on water quantity
1	Negative impact to hunting
4	Negative impact to fishing and fish spawning
1	Negative impacts to heritage value and archaeological sites of the River
2	Negative impacts to wildlife populations
2	Concerned about the lack of regard for democratic process
2	Concern regarding long term impacts and use for future generations
1	Negative impact to inundated land, loss of wildlife habitat
1	Negative or change to groundwater levels
1	Negative impact of Erosion and Sedimentation
1	Negative impact of Methyl Mercury and related health and social impacts
1	Concerned regarding the impacts of climate change
14 January 2012 Open House <sup>2</sup>	

-	Concern regarding the environment
-	Concern regarding job opportunities
-	Concern regarding enforcement of ownership
-	Concern regarding navigation in the river downstream from Roger's Road Landing
-	Will the Project have effects on downstream First Nations (e.g. Fort Albany First Nation)?
-	Will this Project affect the fishery?
-	Will this Project affect wildlife?
-	Will the Project provide jobs during construction and for the long-term?
-	Can the CLFN community purchase power at a discounted rate from the Project?
-	Will the Project result in economic benefits to the CLFN?
-	Will the Project cause the river to run dry?
-	Will fish passage facilities be present?
-	A diversion structure should be installed on the Kabinakagami River upstream from the Projects to divert flow from the river into Constance Lake to refresh it and improve its health
-	How big is the dam?
-	Will the facility be stable under flooding conditions?
-	What will happen to ice during the winter?
-	What will happen to moose populations around the Project?
-	Will the dams cause sediment and grime to build up behind them?
-	Will fish be killed in the turbines?
-	Will access to the sites be prevented for safety reasons?

<sup>1</sup> No indication if people responding for each issue are unique, that is, no information given on the total sample size.

<sup>2</sup> No indication of the number of respondents for each issue.

#### 4.6 The Downriver Perspective of the Kabinakagami River Waterpower Project Proposed for the Albany River: Fort Albany First Nation

Historically, the rivers and waterways of Ontario were the primary means of transportation and substantial source of resources for the Indigenous Communities that preceded colonization. Thus, it comes as no surprise that Fort Albany First Nation opposed hydroelectric development on the Albany River, where they have had no input:

We can't stress the importance of this proposed development [Kabinakagami River Waterpower Project] and its potential negative impacts to our community in strong enough terms. The participants at the community meeting of May 10<sup>th</sup> highlighted the relationship between the land, the river and our wellbeing over past, current and future generations. It is this connection that requires us to take an active role in this proposed development and ensure a proper EA process is followed; one that includes our knowledge and influence. (Chief of Fort Albany First Nation, A. Solomon, 2012, p. 1)

Taking into account the discussions that Fort Albany First Nation and Kashechewan First Nation had with the Ontario Power Generation and the Government of Ontario, with respect to the potential hydroelectric sites of Hat Island and Chard River in the Albany River Basin (Mushkegowuk Environmental Research Centre, 2009), the identified study area of the Kabinakagami River Waterpower Project EA (Hatch, 2012) was restrictive and should have included Fort Albany and Kashechewan First Nations, **“since they are downstream from the project and have the potential to be impacted by the project** (Chief of Fort Albany First Nation, A. Solomon, 2012, p. 2). There were also technical issues with water quality, fish passage, river ice, water temperature; this was compounded by the inadequacy of the Cumulative Effects Assessment conducted (Solomon, 2012) that needed to be addressed in the Kabinakagami River Waterpower Project EA (Hatch, 2012). The Chief of Fort Albany First Nation, A. Solomon (2012, p. 4) remarks:

An overall observation is the lack of scientific evidence, modelling or comparative project analysis conducted as part of this Class environmental assessment [i.e. the Kabinakagami River Waterpower Project EA]. The overwhelming majority of claims made appear to be based on best professional judgement, the weakest type of prediction available to environmental assessment practitioners. This inevitably results in the impossibility of verifying the accuracy of predictions and the efficacy of mitigation measures.

Chief A. Solomon ends his request letter to the Minister of the Ontario Ministry of Environment, J. Bradley, to bump-up the Kabinakagami Waterpower River Project's Ontario Water Association's Class EA to a more comprehensive Individual EA, with the following paragraph:

In summary, we want to return to the importance of this project to our people and our spiritual connection to the land and the Albany watershed. Prior to first contact with settlers, our footprint on the land was minimal and, for the most part, the land remained unspoiled. The women of our First Nation are particularly concerned with this proposal as they are considered the water keepers. During the community meeting of May 10<sup>th</sup>, 2012, this point was made clear: the connection between the land, water, and life is integral to our people. And this is why we are taking this proposal seriously and have the full expectation that we will be properly consulted and our Traditional Knowledge will be collected and influence the decision on this project and future projects in the watershed. As already stated, we request that you require the proponent to carry out an Individual EA of this project. (Solomon, 2012, p. 10)

Due to Chief Solomon's bump-up request letter was submitted during the Draft Kabinakagami Waterpower River Project Environmental Report's 30-day public review, he was informed by Minister Bradley that the request for bump-up should be made during the Final Kabinakagami Waterpower River Project Environmental Report's 30-day public review (see Table 4.1 for a chronology of events).

Thus, Chief A. Solomon's successor in Fort Albany First Nation, Chief R. Knapaysweet, subsequently sent in another bump-up request letter on behalf of the community (Knapaysweet, 2013) during the Final Kabinakagami Waterpower River Project Environmental Report's 30-day public review (Table 4.1). Chief Knapaysweet (2013, p. 1) reiterates that "there is a long history of Fort Albany First Nation using that area for subsistence activities." It is for this reason that Chief Knapaysweet identifies project effects on the fish population are of importance and must be addressed in a meaningful way, based on science and Indigenous knowledge (see Table 4.4 for details).

**Table 4.4 A brief presentation of several concerns raised by Chief R. Knapaysweet (2013) of Fort Albany First Nation in his bump-up letter request, to Minister Bradley of the Ontario Ministry of the Environment with respect to the Final Kabinakagami Waterpower River Project Environmental Report (i.e., Environmental Assessment Report; Hatch, 2013). The corresponding text in the Final Kabinakagami Waterpower River Project Environmental Report, Chief Knapaysweet referred to in his letter, is also presented.**

<b>Comments made by Chief Rex Knapaysweet (2013) of Fort Albany First Nation</b>	<b>Corresponding text in the Final Kabinakagami Waterpower River Project Environmental Report (Hatch, 2013) referred to by Chief Knapaysweet (2013)</b>
<p>[Unsubstantiated claims are made by the proponent in their Environmental Report in the absence of data, leading to] <b>the impossibility of verifying the accuracy of predictions and the efficacy of mitigation measures.</b> This is unacceptable, especially for a project in unmanaged waterways in a location that is not data-rich.</p> <p>In this regard, the proponent argues that [p. 6] [see next column over]</p>	<p><i>Small hydro Projects, particularly strict run-of- river projects such as the proposed, do have predictable and mitigable effects (page 2-10),</i></p>
<p>But then contradicts itself on a number of occasions [p. 6]: [see next column over]</p>	<p><i>No scientific evidence is available regarding the adverse effects of blockage of fish movements at this particular location on the Kabinakagami River (page 2-12).</i></p>
<p>This means <b>the proponent does not know what will happen to fish populations</b> as a result of this project, and are basing their qualitative “prediction” on their so called</p>	

<p>expert opinion. <u>In other words, this project does not have predictable effects, as claimed by the proponent</u>, in terms of the implications of blocking fish movement in the Kabinakagami River [p. 6].</p>	
<p>Another similar example in regards to how this project does not have predictable effects [p. 6]: [see next column over]</p>	<p><i>Methyl mercury production due to initial head pond inundation is anticipated to be returned to natural baseline levels over a period of up to 30 years. <u>Predictions regarding climate change within the Study Area are not known to be available to accurately predict the increase in air temperatures (and associated corresponding increase in water temperature) that would occur within the timeframe of expected duration of elevated methyl mercury production within the Project head ponds (page 2-33).</u></i></p>
<p>These examples highlight how a number of the effects of this project are not predictable, and using expert opinion as the main “source of information” to make decisions about potential impacts and relative significance of impacts is inadequate and unacceptable. <u>Impact prediction should be grounded in the evidence presented during the assessment and formulated in a way that can be tested and used for monitoring and follow-up.</u> This issue also speaks to the inadequacy of the use of a Class EA to evaluate a hydro project in this proposed location. [p. 6]</p>	

<p>[Furthermore] having water flow data only from 1951 to 1986 raises a number of concerns. The first is that there is a lack of quantitative scientific information (baseline information regarding water flow) available on the Kabinakagami River or Albany River...Adding to this issue is the fact (from our observations) that the Albany River water levels have been at historical lows in recent years, making moose hunting, fishing and the use of the waterway in general, difficult...the predictions are based on out-of-date data for the Kabinakagami River...during the Fort Albany First Nation community meeting on May 10<sup>th</sup>, 2012...a number of elders indicated concern with recent changing water flows in this watershed system, likely changes resulting from our changing climate, an issue poorly addressed in the draft ER and the final ER, as also previously identified by an MOE letter dated March 16, 2012. The March 16 letter stated “we believe there should be a fuller recognition and consideration of the implications of climate change, particularly as the hydrological regime and dependent ecological processes which are expressed through Valued Ecosystem Components and Valued Socioeconomic Components may respond over the operational life of the facilities”. [p. 7]</p>	<p>Hydrology Review (Appendix D)</p>
<p>In addition, the developer claims that the [p. 7] [see next column over]</p>	<p><i>effects of climate change interacting with the project may be reversible if climate change started reversing (under “Reversibility of Effects” category, page 7-24)</i></p>
<p>This is an absurd statement based on no scientific evidence or on any of the current climate change trends identified in the scientific literature. [p. 7]</p>	
<p>Moreover, under “probability of effect”, the developer claims that [p. 7] [see next column over]</p>	<p><i>The probability of climate change occurring within the lifetime of the Project to the degree where effects on environmental may occur (sic) due to</i></p>

	<p><i>operations of the Project is Unknown.</i> [7-24]</p>
<p>[This] again goes against the most recent scientific evidence available in the international scientific literature. <b>The probability of climate change happening is not unknown, but high. What is unknown is how climate change will affect this project, or, in other words, the implications of climate change on this project and the combined effects with the proposed project on the river. And this, again, goes against the proponent’s claims that this hydro project has predictable and mitigable effects.</b> [p. 7]</p>	
<p>Fish passage</p> <p><u>The proponent makes clear that fish passage will not be used as it was determined by them that it was not feasible due to the height of the dam.</u> However, <b>this statement should be accompanied by scientific evidence</b> to substantiate such a strong statement. There has been successful examples of fish passage for the fish population present in this area (e.g., brook trout and lake sturgeon) such as ‘vertical slot fishway’ (Thiem et al., 2011) and ‘spiral fish ladder’ (DFO, 2010), therefore <b>the argument that fish passage would not provide positive effects is not substantiated by the scientific literature, and we do not accept this project proceeding without a more careful examination of using fish passage to provide upstream and downstream migration of fish population in the Kabinakagami River.</b></p> <p>In addition, the proponent claims that [p. 8] [see next column over]</p>	<p><i>blockage of fish passage would not have significant adverse effects on the fish community. Some species, such as Lake Sturgeon and Brook Trout may decrease in the head ponds, but will continue to maintain productive populations downstream from the facilities</i> (page 2-21)</p>
<p>Again, <b>these statements about no significant adverse effects associated with fish blockage are based on the proponent’s “expert opinion” and need to be accompanied by scientific evidence to have any relevance for decision making.</b></p>	

<p>Furthermore, in regards to the use of fish passage, the proponent indicates that the Department of Fisheries and Oceans (DFO) states that upstream and downstream fish passages would normally have to be considered for such a Project. However, DFO indicated that if the Constance Lake FN did not identify fish passage as a management objective, then DFO would give consideration to not making this a requirement of the Project. <b>This aspect of the environmental assessment is of great concern to our First Nation. <u>We identify fish passage as a paramount management objective within this watershed that we have used traditionally for a long time, and will not accept a design that does not provide for upstream and downstream fish passage.</u></b></p> <p>In addition, fish passage is considered an essential feature of any dam today, and it is also one of the <b>mitigation measures suggested by the OWA Class EA document (OWA, 2012: page 91), and it is a requirement under the Fisheries Act, 22(2): “the design of the dam and/or barriers must allow for the safe passage of both ascending and descending migratory fish”</b>. Obstructions, such as dams, which prevent access to spawning grounds are well known to have severe impacts on several sturgeon species (Ferguson and Duckworth, 1997, Cooke et al., 2002, Dadswell, 2006). For example, in the Moose River basin, Ontario, it has been estimated that the natural range of lake sturgeon has been reduced by at least 30% as a result of dam construction (MNR, 2008). <b>Therefore, all the evidence points to the contrary of what the proponent is claiming, and upstream and downstream fish passages should be incorporated on all 4 hydro facilities.</b> [p. 8]</p>	
<p>There is no evidence provided that Constance Lake community members are even aware that Sturgeon will not be able to move upstream and <b>we, Fort Albany First Nation, disagree that only Constance Lake should have a say in the future population of Sturgeon on this reach of the river.</b> Our peoples (FAFN) have traditionally used the</p>	

Albany and many of its tributaries and are absolutely opposed to the destruction of this fish habitat. [p. 11]	
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Ferguson, M. M. and Duckworth, G. A. (1997). The status and distribution of lake sturgeon (*Acipenser fulvescens*) in the Canadian provinces of Manitoba, Ontario and Quebec: a genetic perspective. *Environmental Biology of Fishes*. (48), 299-309.

Cooke, D. W., Leach, S. D. and Isley, J. J. (2002). Behavior and lack of upstream passage for shortnose sturgeon at a hydroelectric facility and navigation lock complex. *American Fisheries Society Symposium*. (28), 101-110.

Dadswell, M. J. (2006). A review of the status of Atlantic sturgeon in Canada with comparisons to populations in the United States and Europe. *Fisheries*. (31), 218-229.

OWA (2012). *Class Environmental Assessment for Waterpower Projects*. (3<sup>rd</sup> edition). Ontario Waterpower Association. Peterborough, Ontario.

## 4.7 The Scientific Perspective

Historically, there has been a disconnection between what the public believes are the environmental and social consequences of hydroelectric development projects and what is actually occurring (Rosenberg, Bodaly, & Usher, 1995). Hydroelectric development is not as benign, as first thought, with impacts including the following: emission of greenhouse gases; methylmercury bioaccumulation; and habitat change including fragmentation (Rosenberg et al. 1997).

### 4.7.1 Greenhouse Gases

While the public may believe that hydropower projects avoid greenhouse gas emission (Mattman, Logar, & Brouwer, 2016), this unfortunately is a misconception (Deemer et al., 2016). As stated by Rosenberg et al. (1997, p. 33), “the flooding of forests in the course of reservoir creation... results in a flux of greenhouse gases to the atmosphere.” From an emission standpoint, hydropower is not emission-free (Bilotta et al. 2016).

### 4.7.2 Methylmercury Bioaccumulation

After impoundment for hydroelectric generation purposes, the flooded area undergoes a change. Organic matter containing inorganic mercury undergoes bacterial decomposition in the flooded area, whereby the inorganic mercury is transformed by the bacteria into methyl mercury, with most of the methyl mercury remaining in the flooded soil (Bilodeau et al 2017). However, a portion of the methyl mercury enters the food chain “through aquatic organisms at the bottom of the food chain such as zooplankton, insect larvae, or benthic organisms and is biomagnified through the food chain, reaching maximum concentrations in piscivorous fish” (Bilodeau et al 2017, p. 493-494). Typically, it has been reported worldwide that the methyl mercury in the water and fish decreases over time post-impoundment (AMAP, 2011), as long as there is no additional flooding (Bilodeau et al 2017). Methyl mercury concentrations in non-piscivorous fish, such as, whitefish (*Coregonus clupeaformis*) decreased faster than in piscivorous fish, such as, walleye (*Sander vitreus*) and northern pike (*Esox lucius*); by 30 years post-impoundment the methyl mercury concentration in most (not all) fish species were at background levels (AMAP 2011 p. 104). In the eastern James Bay region of northern Quebec, Canada, “concentrations of all [fish] species increased rapidly after impoundment, peaking after 4–11 yr in nonpiscivorous species and after 9–14 yr in piscivorous species, at levels 2–8 times higher than those measured in surrounding natural lakes...[a return to background levels, typically occurred] after 10–20 yr for all non-piscivorous species and after 20– 31 yr in most piscivorous species, if no additional flooding occurred” (Bilodeau et al 2017, p. 493).

In the proposed Kabinakagami River Project, the concentration of methyl mercury in reservoir fish is predicted to increase 1.7-2.0 fold above baseline concentrations (Reed Harris Environmental Ltd. 2012). Downstream, fish mercury concentrations may increase, but “validated predictive models do not exist yet to predict peak fish Hg concentrations downstream or the

distance downstream that increases may occur” (Reed Harris Environmental Ltd. 2012, p. 30). Elevated levels of mercury in fish are expected to persist in piscivorous fish approximately 30 years (Reed Harris Environmental Ltd. 2012, p. 30).

#### **4.7.3 Fragmentation**

Hydroelectric dams and reservoirs provide hydraulic head; thus, the release of water through turbines on a timetable can match periods of energy demands (i.e., yearly, seasonal, and with run-of-river impoundments, daily; Renofalt, Jansson, & Nilsson, 2010). However, through impoundment, the river system is fragmented, and altered river flows reduce flow velocity and the number of rapids, altering wetland and floodplain ecosystems (Renofalt, Jansson, & Nilsson, 2010). Dams also disrupt the dispersal and movement of riverine organisms; alter the in-channel physical environment; and impact riverine biodiversity and species abundance. Worldwide, freshwater ecosystems are now among the most threatened ecosystems (Renofalt, Jansson, & Nilsson, 2010; Anderson et al. 2015)

For river systems with hydropower facilities, the passage of fish downriver through the facility may result in exposure to a number of stressors such as: rapid decompression, blade strike and collision, which unduly impacts fish morbidity and mortality (Colotelo et al. 2016). The passage of migrating fish upriver can be accommodated through the incorporation of fish bypasses (Renofalt, Jansson, & Nilsson, 2010); these fish passes come in many different forms.<sup>30</sup> It should be emphasized that no fish passages were included in the proposed Kabinakagami River Waterpower Project’s designs for the run-of-river power-generation facilities. The lack of fish passages was duly noted by Fort Albany First Nation Chief Knapaysweet, in his request for bump-up letter to Minister Bradley of the Ontario Ministry of the Environment (Table 4.4).

#### **4.8 Social Impacts**

Social impacts can occur upstream of the hydroelectric site, at the dam, and/or downstream of the dam. Impacts include but are not limited to displacement of Indigenous people off of their traditional lands, and the alteration of their culture and way of life; and the loss of sources of income, such as, trapping and subsistence activities through barriers being erected to a variety of ecological services (Kahn, Freitas, & Petre, 2014).

#### **4.9 Run-of-the-River Hydroelectric Facilities**

The proposed Kabinakagami River Waterpower Project incorporates four run-of-the-river installations, which are reported to cause less environmental damage compared to the large

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<sup>30</sup> Technical Fish Passes (Food and Agriculture Organization of the United Nations, 2002).

impoundments that have historically been used with hydroelectric power generation (Hatch, 2013). The relatively benign impacts of run-of-river generation facilities have been espoused for decades (Anderson et al. 2015), pointing to the design of the dam: “In the run-of-the-river hydroelectric projects, the purpose of the dam is essentially to direct and control the flow of the stream and little water is impounded” (Baxter, 1977, p. 256). However, there is limited peer-reviewed studies (Bilotta et al. 2016) to support the assumption that run-of-the-river facilities are environmentally less damaging; and results from studies of downstream ecological effects of small human-made impoundments have been mixed (Mbaka & Mwanika, 2015).

In a review by Anderson et al. (2015), they report that the use of in-channel barriers with water flow alteration can have a myriad of potential physical and ecological effects. For example, the fragmentation of the river may impact the downstream movement of sediment, organic matter, nutrients, plant propagules, aquatic organisms including fish; and upstream movement of migratory fish would be impeded (Anderson et al. 2015). The physical habitat would also be altered; a lentic environment would be created with raised water levels upstream of the dam, with reduced flow variability, velocity and turbulence (Anderson et al. 2015). Meanwhile, downstream from the dam, it has been suggested that the higher velocity and more turbulent flow exiting the run-of-the-river facility would erode bed sediment, undercut banks, and impact bar formation (Anderson et al. 2015).

In a study by Bilotta et al. (2016) examining the effects of run-of-the-river facilities on fish communities in temperate streams and rivers, analyses revealed a significant effect of run-of-the-river facilities during construction and operation on a number of fish species. Run-of-the-river facilities have relatively lower, but not zero, greenhouse gas emissions compared to other sources of power generation (Bilotta et al. 2016; Deemer et al. 2016).

#### **4.10 Green for Whom?**

When addressing the titular question of *green for whom* typical hydroelectric development is not *green*, insofar as impacts to the environment are mostly negative and oftentimes quite severe. It was consistently mentioned by the Chiefs of northern Ontario, First Nations have an inherent right and responsibility to care for the land, leaving the land seemingly untouched, and with reciprocity the land will care for them. Reiterating, First Nations people see the land as being irreplaceable and when on-the-land activities take place, the use of the environment should be “next to invisible” (F. Beardy, 2009). Clearly, this is not the case with hydroelectric projects. Even though run-of-the-river hydroelectric facilities have been espoused as being more benign in their impact with respect to the environment, than typical hydroelectric developments employing larger dams in their design, in reality, this is not the case. Run-of-the-river hydroelectric facilities still require in-river barriers that

fragment the river system, impoundment of water, cause fish morbidity and mortality when the fish pass through the turbines, and flooding still results in mercury bioaccumulation in fish.

Although mercury bioaccumulation in fish has been reported to return to background levels in most (but not all) species of fish 30-years post-impoundment, this still means that generations of First Nations people would not be consuming the mercury-contaminated fish, as mercury is a known neurotoxin. Further, generations of First Nations people would not be able to participate in their traditional pursuits related to fishing that have benefits beyond food procurement and consumption; this includes intergenerational transference of knowledge while on the land, and social and cultural interactions (Tsuji & Nieboer, 1999).

If citizens of southern Ontario were told that they could no longer obtain one of their favourite and culturally significant pieces of cuisine for at least 30 years, because the food was contaminated and the reason why the food was contaminated was due to a supposed *green energy* project; there would be a reckoning. Moreover, the people would be equally upset in finding out that this *green energy* project was endorsed by the Government of Ontario, and safeguarding measures were not in place.

An important factor when examining the question, *green for whom*, is determining the geospatial scale. In the political deliberations in the Ontario Legislative Assembly<sup>31</sup> with respect to the Green Energy Act (2009), the importance of mitigating climate change by reducing greenhouse gas emissions through *green energy* was consistently mentioned by the Members of Provincial Parliament. The Ontario Minister of Energy and Infrastructure, G. Smitherman (2009a, p. 4952) wanted Ontario to “join the ranks of global green power leaders like Denmark, Germany and Spain.” The Government of Ontario had only a global perspective with respect to *green energy* generation; this is to say that the decreased emissions of greenhouse gases would help combat global warming, but there was gross negligence paid to potential local effects of *green energy* generation. Global warming is an important issue and needs to be addressed, but the vulnerable minority of Indigenous populations should not have to bear the brunt of the burden.

In addition, the Government of Ontario’s Liberal-Party electoral base was located in southern Ontario, and most potential hydroelectric development sites were located in northern Ontario (Government of Ontario, 2008); thus, it is evident that there was quite possibly political motives involved in the location of these *green energy* projects. Southern Ontarians would never see the impacts of hydroelectric development in northern Ontario, but would reap the benefits, while the First Nations in northern Ontario, would bear the burden of the development. To southern Ontarians, hydroelectric power generation is *green*, because hydroelectric power generation emits

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<sup>31</sup> The Ontario Legislative Assembly is a unicameral chamber composed of Members of Provincial Parliament.

less greenhouse gases than carbon-based sources, and southern Ontarians would feel like the Province of Ontario was contributing to the fight against climate change.

In the case study, Northland Power Inc. as a co-proponent of the Kabinakagami River Waterpower Project would reap financial benefits from the *green energy* project, but bear none of the environmental impacts associated with the project. Northland Power Inc.'s costs would only be financial. In contrast, Constance Lake First Nation, as a co-proponent of the Kabinakagami River Waterpower Project with Northland Power Inc. would reap financial benefits and bear the environmental impacts associated with the run-of-the-river hydroelectric development. As these impacts would not be trivial, there was a schism in the community of Constance Lake First Nation for those who supported First Nations traditional values, and those who put resource development and associated monetary benefits first. The way that the referendum result was mishandled, ended any chance of a reconciliation. The majority of Constance Lake First Nation community did not view the Kabinakagami River Waterpower Project as being *green* with minimal effects on the environment and their way of life.

Geospatial location is also important, regionally, with respect to hydroelectric projects. Fort Albany First Nation and Kashechewan First Nation being downstream of the Kabinakagami River Waterpower Project would not reap any financial benefits from the project, but bear the downstream costs associated with the development. This is why the downstream First Nations wanted a more comprehensive Individual EA done rather than a Class EA. Ideally, no development would have been the best option, but being informed so late in the EA process (Table 4.1), the next best option was the bump-up letter request (Table 4.4). Although run-of-river hydroelectric projects are smaller in scale compared to hydroelectric projects that incorporate large dams, as Chief Knapaysweet (2013) points out in his bump-up letter: it is the cumulative effects of not only the four run-of-river facilities described in the Kabinakagami River Waterpower Project, but also the two run-of-river facilities slated for future consideration. Furthermore, the proposed Chard River and Hat Island hydroelectric facilities proposed for the Albany River by Ontario Power Generation must be considered in any cumulative effects predictions (Knapaysweet, 2013). Development projects in northern Ontario must not be dealt with on a project-by-project basis; they must be examined strategically as a group using a regional approach.<sup>32</sup>

Despite river habitat fragmentation being covered extensively in Chief Knapaysweet (2013) bump-up letter request (Table 4.4), one issue that was not covered was the potential non-riverine habitat fragmentation caused by construction of hydroelectric transmission corridors, except for the mention of timber wastage. Fragmentation of the environment by transmission-line corridors has

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<sup>32</sup> Canadian Council of Ministers of the Environment (Undated).

been reported in the literature (Willyard, Tikalsky, & Mullins, 2004; Manitoba Hydro, 2010). This issue will be briefly addressed because access to the power grid and end source user is a requirement of hydroelectric power generation, and it is relevant to answer the question: *green for whom?*

The James Bay transmission corridor will be utilized as an example, because this transmission line is relatively recent and is located in the Far North of Ontario, in the western James Bay region. In a study by McEachren, Whitelaw, McCarthy, & Tsuji (2011), it was found by utilizing Indigenous knowledge that due to the erection of the transmission line corridors, significant impacts on waterfowl migration directly impacted western James Bay Cree's ability to partake in waterfowl harvesting activities. These impacts were non-uniform and dependent on the geospatial location of the peoples' camps along the hydroelectric corridor. Although the construction of the proposed transmission line for the Kabinakagami River Waterpower Project would probably only impact traditional pursuits for the Constance Lake First Nation people, this may not be the case, because the new transmission corridor fragments the terrestrial and aerial environment and could change migration patterns not only for waterfowl but also moose.

#### 4.11 Conclusion

Worldwide, many countries have developed initiatives to develop certification standards for *green electricity* and *green labelling* of hydroelectric power generation (Renofalt, Jansson, & Nilsson, 2010), but it must always be remembered that calling something *green* does not make it so, and that the *green* moniker is always attached from a non-Indigenous political perspective. Hydroelectric power generation will always have negative impacts on the environment, this is not conjecture, it is fact, from both Indigenous and scientific perspectives. To label hydroelectric power *green* is a misnomer, because of the extensive fragmentation of the aquatic, terrestrial, and aerial spaces that occur and its impact on biota. Only from a political perspective, such as, the Green Energy Act (2009)<sup>33</sup> can hydroelectric power generation ever be *green* because, as it has been shown, hydroelectric power is not inherently *green*. Renewable? Yes, but not *green* from any other perspective. Furthermore, when the social benefits of *green energy* are touted: "to improve human welfare, reduce energy related risks, social inequalities and poverty, promote intergenerational equality, and foster new opportunities for human development" (Mundaca et al., 2016, p. 1285), it must be emphasized that these social benefits are for the non-Indigenous populations. This is why (Kahn, Freitas, & Petrere, 2014, p. 6063) refer to "False Shades of Green" in reference to

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<sup>33</sup> The *Green Energy Act (2009)* passed by the Liberal Government of Ontario was repealed on 6 December, 2018, by Conservative Government of Ontario by An Act to repeal the Green Energy Act, 2009 and to amend the Electricity Act, 1998, the Environmental Protection Act, the Planning Act and various other statutes (Environmental Registry of Ontario, 2018).

hydroelectric development, especially with respect to Indigenous people in the Amazon River basin. We must be wary of innocuous or feel good titles, because titles can be misleading and mask hidden government agendas.

Lastly, it must be emphasized that the downstream First Nations on the Albany River are not against development *per se*:

We are not against development [but it is never a partnership taking into account a First Nations' perspective]. All we're saying is, we continue to live in poverty while the province gets wealthier and richer... (Chief of Kashechewan First Nation, Jonathon Solomon, 2009, p. 954)

What these First Nations would like to see is a reciprocal relationship that also respects their worldview. Otherwise, a situation will exist, whereby reconciliation will be difficult:

The Creator gave me a beautiful garden to watch and maintain. I was told to take from it only what I needed to survive. The Creator has also given the white man his own garden to watch and maintain. The white man came and destroyed the garden I was told to care for. How would the white man feel if we had gone and destroyed his garden? What would happen to us? We'd be put into jail and called criminals. So ask yourself who has committed the crime? - *Chisasibi elder*, speaking about the La Grande Hydroelectric Project (Nishiiyu Council of Elders, undated, p. 1)

## **Chapter 5 Conclusion**

### **5.1 Definition of *Green Energy* Within the Green Energy Act**

The second chapter outlined that the Green Energy Act was flawed insofar as it did not contain a definition for the central term of *green energy*. Even in lieu of official documents surrounding the policy, there was no trace of a definition to be found. The only semblance of a definition is found within the parliamentary debates during its conception stages as Bill 150 and the official website for the Green Energy Act. The definition produced on the official website mirrors the sentiments presented by the Progressive Conservative Party Opposition during the debates of 2009; however, no such changes were made to the Green Energy Act during the course of its life until its repeal of January 2019. Thus, in line with the primary unit of analysis – the policy documents – it is concluded that the Green Energy Act’s definition of *green energy* was absent, and it was not clear whose definition was used or implied to be used when interacting with the policy.

### **5.2 Ontario’s Duty to Consult and Fiduciary Duty in the Context of Bill 150**

It is identified within this section that *green energy* is a term that has positive connotations for reasons that range from its association with the colour green to its relationship with the environment. It is identified by multiple individuals, especially within the parliamentary debates, that it is hard to oppose a policy like the Green Energy Act due to its use of *green energy* within the title; even if it is not present anywhere else, this makes it difficult to contest. Consequently, Bill 150 received royal assent with ease while maintaining definitional ambiguity and its connotations despite the input from various Members of Parliament.

This type of labeling is also argued to be at least partially responsible for the accelerated consultation process, which is one of the points of analysis for this chapter, and the lack of a strong opposition to the policy. It is not as if the process was devoid of opposition; it is the fact that opposition was left to the wayside, as it was identified in the Hansard transcriptions – the other object of analysis. For these reasons, the Green Energy Act did not receive the attention it was due to refine the Bill to make it truly fall under the blanket of *green energy*. The lesson which must be learned is that we must be wary of labelling of all forms, lest one allows a wolf into the hen house.

### **5.3 Case Study: The Kabinakagami River Waterpower Project**

Lastly, an effective case is made for the subjectivity of the definition of *green energy* using the Kabinakagami River Waterpower Project as a case study. In this case study, it was shown that there were two explicit views concerning the definition of *green energy* by way of Valued Ecosystem Components: the scientific perspectives and the Indigenous perspectives. Neither of these views were reflected in the final document, or in the Environmental Assessments that occurred for this

project. Instead, there was a third view that was never explicitly stated; its criteria were not identified, nor was its source. This leads back to the overall question, objective and argument of “Green for whom?”

The amount of objection present within Indigenous communities with respect to the Kabinakagami River Waterpower Project is also evident that the definition of *green energy*, or lack thereof as it has been shown, is insufficient. This deficiency can be directly inferred from the lack of a proper and thorough consultation process concerning the definition in the birthing of the Green Energy Act. As it has been stated before, it should not be assumed that seemingly benign terms, such as *green energy*, are also benign in other contexts, especially political. Special care must be given to create an effective policy that does not violate any other rights, such as the Canadian government’s *fiduciary duty* to the Indigenous peoples of Canada and the *duty to consult*.

## 5.4 Synthesis

The guiding concept of this research can be concisely asked as the question: Green for whom? In the second chapter great lengths were taken to establish not only the lack of a definition of *green energy*, but also the context surrounding the term. It is not the case that the term was too ambiguous or simply was not addressed. There were individuals who proposed definitions of *green energy* and asked for it to be defined. At that time, there were resources that were available for the effective formulation of a definition, and some other policies used these resources to great effect; however, Ontario did not provide a definition, nor did they ever add one.

The third chapter constructively builds upon the second chapter to identify political representatives that engaged in discussions concerning the definition. There are also numerous instances that indicate the current government’s plans for the act’s implementation and their rationale for doing so; the conservative argument is to state that there were political and financial influences that affected how the act, Bill 150 in its infancy, was handled. One possible interpretation of the situation could be that those who created the Green Energy Act saw it as a means of remedying the dire financial situation under the guise of being progressive and environmentally-minded.

The fourth chapter identifies the perceptions of *green energy* and the Green Energy Act from a number of perspectives, which includes an Indigenous proponent. Throughout the research, discourse and interactions the concept of *green energy* had become muddled with concerns, subtle agendas and ambiguity. The many Indigenous Communities, such as the ones involved in the Kabinakagami River Waterpower Project, did not consider the Green Energy Act inherently *green*. Other stakeholders did not actively identify it as *green*. The policy, itself, was not identified as *green* within its own text. The government’s actions demonstrated that they did not consider it *green*, as others interpreted it to mean. The wealth of scholarly literature on the ecological impacts

demonstrate that it was not *green* for the ecological environment. Then, who considered the Green Energy Act *green*? From whom was it *green* for? Was there adequate consideration given to this group for whom it was meant?

Given all the evidence gathered through this research, I would like to say that the Green Energy Act was not *green* for anyone, unless we interpret *green* to be the colour of money. However, even then, the lack of considerations given for a sustainable framework of *green energy* ensured that the *green* was short-lived. Its critiques and subsequent repeal stand as indicators of its shortcomings, which can be concisely defined as an inability to function as a tool for sustainable growth. The policy's intent was muddled by various motives and failed to function as a boon for the environment – the ecological environment and humans. There was no person or group or entity involved in the question of: “Green for whom?”, and that was the problem.

## 5.5 Limitations

Many considerations have been made with respect to optimizing the research outputs of each section; however, despite this optimization, it must be acknowledged that it is not perfect. Broadly speaking, the research that has been conducted has been acknowledged to be conducted in such a way that abides by the limitations and constraints of a Master's thesis. This means that a number of sections can be expanded in further detail; a prime example of this would be the literature concerning the definition of *green energy*. While the majority of this research has been made to address this topic, there are many parts that are left unmentioned. At the basest level, there is a wealth of literature on the topic of *green energy* and policies; the research I conducted addressing this only mentions several applicable policies that are of the most relevant to the overarching arguments. This is to say that this research, although thorough in its undertaking, is a starting point, rather than the end point.

Additionally, it must be recognized that the primary focus of this research has been solely upon the province of Ontario, Canada. Exceptions have been mentioned in a comparative capacity; however, even within Canada, there are other provinces that have wrestled with the concept of *green energy*. It is not feasibly to cover all of these points within the scope of this research; so, they must settle for the minor acknowledgement within the limitations of this research. Given these conditions, it would not be impossible for the definition of *green energy* used for comparative analysis to change in accordance with the additional information; however, the changes should only be slight. Research was conducted with this in mind, to provide a general and malleable definition of *green energy* that would satisfy and encompass a number of variants.

There is also a question of gray literature when chapter two addressed the topic of temporally accurate sources. A number of the sources that were investigated were problematic insofar as they needed to be accessed by an archive, or they were missing altogether. It is possible

that important information became inaccessible with certain sources being unreachable. While this problem was acknowledged and remedied as effectively as possible, it was not completely solved. The only solace in this statement is that any further findings would not affect the overall argument concerning the central issue of the definition within the policy, because all of the necessary information was available, and it is the crux of this research. The only parts that would fathomably change are interpretations and intentions; these topics have already been interpreted with that possibility in consideration; so, it is not foreseeable that any large changes would occur due to this unless there was an overwhelming wealth of gray literature that emerged to contradict many of the other primary sources.

The third chapter has similar themes with respect to limitations, but many of them are derivative of the second chapter. To the contrary, for this chapter, many of the issues concerning gray literature are alleviated due to the content that is being analyzed are government-archived transcripts that are organized rather meticulously. However, this is not to say that their archiving is flawless; a handful of their transcriptions are inaccessible due to broken links or other reasons. These complications did not impact the research much due to the existence of hardcopy records.

Conversely, the fourth chapter stands in stark contrast to the previous chapters with respect to its use of more than just primary sources to build the arguments. A handful of the literature uses secondary sources as a means of supplementing and informing the evaluation of primary literature; while their limitations are taken into consideration, it is still a matter of relying on other scholars' work as a basis for some of the arguments presented in this chapter. If there is fault or flaw in their work, it will have complications for the research presented here.

One particular consideration that has been given thought is the question of temporal relevance. Much of the research performed by other scholars within this chapter appears to be sound and logical in their respective contexts; however, that is precisely the concern. The context has changed drastically over the decade since the Green Energy Act's first implementation. Research that used the 3<sup>rd</sup> edition of the Ontario Waterpower Association Class EAs is outdated by five versions (Government of Ontario, 2020). However, because these limitations and potential problems were considered during the course of the research, this topic was investigated and the research that has been conducted still bears relevance due to the quality and merit of the research at the time of its creation. Despite there being almost a decade and five further versions with changes, much of the core content and ideals contained within that content have remained the same and relevant. While changes have not had large impacts on the research, they are still constrained by the period during which they were created. If anything, I believe there would be merit in conducting new studies on the same topic if only to provide an update to the research presented by other scholars; if nothing else, it will affirm the strength of the original literature.

## 5.6 Suggestions

While this is a comprehensive project, it is far from exhaustive. Even with the inclusion of certain topics and scholars, it is far from the ideal. On the premise, there is a wealth of literature and research I would suggest for further reading and research; however, in an effort to be concise, I will limit myself to three main suggestions.

The first suggestion is further investigation into the topic of green energy with respect to both temporal and geographical contexts. It has been demonstrated within chapter two that the definition of Green Energy has changed over the course of countries and years. It would be conducive to our understanding of the topic to fully document these differences and how the definition has evolved with respect to each context. This could be used in a predictive strategy to create more effective definitions for the purpose of policies and policy evaluation on the topic of *green energy*.

My second suggestion is with respect to a closer reading of the political and legal context surrounding issues of policy. It has been shown that the duty to consult and fiduciary duty are both applicable and relevant terms within this context; however, it would be useful to identify to what extent these responsibilities are effective. In some of the legal cases that have been cited, they have set precedents; conducting further analysis on the topic can better prepare law and policy makers for the questions that ensue from the venture into gray or ambiguous territory.

Lastly, I would suggest further reading on the evaluation of the consultative process. Notably, Gardner et al (2014) provided an effective and inclusive framework for evaluation by synthesizing a variety of relevant sources that spanned multiple important stakeholders. However, this research is almost a decade old and there have been revisions to some of the documents. While I have verified that the changes do not impact the validity of the framework, the state of knowledge and our perceptions have evolved since the time of its creation. It is possible that the wider body of literature on the consultative process would provide further insight towards the synthesis of a more effective standard. Regrettably, this could not be done within the scope of this research; however, I will leave it as a note here for a possible future project.

## 5.7 Significance

By identifying the lack of a definition and a source for this definition, we can properly interact with the question of “Green for whom?” The answer is “We don’t know.”, and that is precisely the problem. This may not be the answer we may have hoped for, but it is an answer that allows us to improve and build upon these missteps so that we can become more mindful of the aspects of a policy involving the topic of *green energy* that are essential. Within the Green Energy Act, this central flaw was a lack of clarity in the definition of its core term of *green energy*. This is an insight that extends beyond the localized borders of the Green Energy Act and can be applied at an

international scale; it is always necessary to define the terms that are used, especially within documents that hold as much sway as energy policies.

This research also identifies some of the underlying factors that contributed to the neglect of the Green Energy Act's definitions, or lack thereof. These factors came in the form of party-specific agendas and perspectives that held significant influence on what parties perceived to be important and affected by prospective projects. The aim is not to denounce the values of any single party, specifically; but, it aims to bring these differences to light so that they may be accounted. Through their identification and possible reconciliation, we hold a higher possibility of avoiding both ineffective discussions and conflicts at latter points. These topics are especially important when one or more parties have special considerations that must be given, or are of a vulnerable group; this is what we have seen with the Green Energy Act and the Indigenous communities of Ontario through the *duty to consult* and the government's *fiduciary duty*.

While it is impossible to make right the wrongs of the Green Energy Act due to its repeal in January 2019, these insights allow us to be mindful of future energy policies and address the concepts that are vital to their existence. This is to say that despite its repeal, there will be more energy policies that take a more environmentally beneficial stance in this era of climate change and the role humans play in this event. If there are to be more policies under *green energy*, or any similar label, we must be vigilant and mindful of our past follies so that we do not threaten to make the same mistakes that caused the downfall of predecessors like the Green Energy Act. If nothing else, the Green Energy Act serves as a cautionary tale for those that dabble in the realm of environmentally-friendly energy policy.

## **5.8 The COVID-19 Economic Recovery Act**

At the beginning of my research, the Green Energy Act was in its age of twilight; however, over the course of my research, I witnessed its repeal in January of 2019. With the act repealed, there is little way in recourse for this research to amend the act directly as it is no longer in effect. However, this is not to say that the research is useless. To the contrary, due to the length of time that my research spans, the world has also come to witness the COVID-19 pandemic that has strained a number of our systems, including our economies. As one may recall (see chapter one), such circumstances are what precluded the Green Energy Act.

Similarly, Ontario has seen the initiation of the COVID-19 Economic Recovery Act as of July 21, 2020 (Bill 197, 2020). It was also an omnibus bill that included a section dedicated to revisions of Ontario's Environmental Assessment Act. Bill 197 (The COVID-19 Economic Recovery Act) took two weeks to receive Royal Assent from its first reading on July 8<sup>th</sup> to its Assent on July 21<sup>st</sup> (Bill 197, 2020) As one might expect, given this thesis, the COVID-19 Economic Recovery Act has a number of positive connotations associated with it that mask the revisions it aims to enact.

The Canadian Environmental Law Association covers a number of the problematic points in their address during the process and after it had received Royal Assent (Environmental Registry of Ontario, 2020; Canadian Environmental Law Association, 2020a). They are one of many groups that found issue with the bill and chose to speak up against it (Canadian Environmental Law Association, 2020b). Presently, the Minister of Environment, Conservation and Parks and the Minister of Municipal Affairs and Housing are awaiting hearing in divisional court over Bill 197 on allegations related to a lack of consultation; the hearing is set to take place in early 2021 (Canadian Environmental Law Association, 2020c).

I believe this clearly demonstrates the significance and relevance of the research conducted within this thesis. My only regret is that this was not completed sooner, so it might have seen some application and use before the current ordeal.

## **5.9 Closing**

The Green Energy Act did not contain a definition of *green energy*, nor was there any evidence of who specifically contributed to this and future interpretations. The process of Bill 150 did not include a proper consultation process with respect to potentially affected Indigenous communities; and the *green energy* rhetoric is primarily politically driven with little input from marginalized, vulnerable minorities such as Indigenous peoples. These realities have been demonstrated through analysis of official documents, the Kabinakagami River Waterpower Project, and Bills 173 and 191. The Kabinakagami case study also demonstrates that scientific opinions on the matter of *green energy* were also largely ignored. Consequently, we are left with an unsatisfying answer to the question of “Green for whom?” It is not known for whom it is green for, but we are aware of who it is not green for – the plethora of groups that are not represented within the policy and its interpretations.

Despite this, there is a wealth of knowledge we can glean from our failings; we know how we have failed and why these failures came to be. So, for the benefit of future generations, I would suggest this research and the related documents as a cautionary tale against some of the many points of interest when interacting with *green energy* policy in any capacity. While the decade of 2009 to 2019 may not have been the dawn of *green energy* in Ontario that people had wanted to see, it is certain that it is not the last time we will see an effort to better the province and the environment.

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