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City of Kingston - Third Crossing of the Cataraqui River -  
Parks Canada Environmental Impact Analysis  
Detailed Impact Analysis

## Appendix Q

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**- DISCUSSION DRAFT -**

**The Third Crossing Project  
Report on Indigenous Consultation**

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30 August 2019

## **1. The Third Crossing Report on Indigenous Consultation**

On 14 June 2017, Council of the City of Kingston approved the construction of a bridge known as the Third Crossing of the Cataraqui River. Scope of the approval included final bridge design, construction procurement, and construction completion and was subject only to confirmation of funding from upper levels of government. Based on the findings of the Environmental Assessment (2009 to 2013), the chosen location for a bridge is a link between Gore Road on the east side of the river and John Counter Boulevard on the west. In addition to findings under the Environmental Assessment process, the Third Crossing project is also supported by work undertaken over previous years not only through the Preliminary Design stage (2016-2017) but also the City's Official Plan, Urban Growth Strategy, Transportation Master Plan, Fire Master Plan, Development Charges Background Study, and the Long-Range Financial Plan.

The City of Kingston undertook an Environmental Assessment from 2009 to 2013 to evaluate the need for and the feasibility of implementing additional transportation capacity across the Cataraqui River, which forms part of the Rideau Canal, a designated UNESCO World Heritage Site, National Historic Site, and Canadian Heritage River. The EA is proceeding as a Schedule C undertaking, in accordance with the requirements of the Ontario Municipal Class EA, October 2000, as amended in 2007. As the project involved potential construction within lands under Federal jurisdiction or ownership and may involve a number of Federal approvals, the EA reflected the Canadian Environmental Assessment Act requirements.

As part of the EA process, the need to undertake consultations with applicable Indigenous communities was identified. In this report, the basis for consultation during and after the EA phase as well as the results are reported under the following headings:

- Introduction to Indigenous Consultation and Report Methodology
- The Respective Roles of Crown and Municipalities in Indigenous Consultation
- The Lower Cataraqui - Kingston Indigenous Context
- The Scope of Consultation and Indigenous Interests
- Consultation during the Third Crossing Environmental Assessment
- Consultation during the Third Crossing Preliminary Design
- Consultations during the Third Crossing Post-Preliminary Design Detailed Design and Construction Phases

The Design-Build IPD model was selected as the appropriate project delivery model for the Third Crossing due to other models not providing similar risk management or best value for money as well as available City staff competencies and increased opportunity for design innovation. Through the RFP process and a resulting contract based on the American Architects' Association model, the City of

Kingston will obtain the services of a multi-disciplinary IPD team. Through the IPD team, the following components will be obtained within a fixed budget:

- review of Environmental Assessment and Preliminary Design documents as well as other applicable records;
- final bridge design based on preceding decisions and preparatory work;
- assess all applicable constructability considerations including staging and methodology for undertaking the work by (i) temporary parallel bridge, (ii) dredging canal and barge and/or (iii) road deck extension and (vi) other suitable methods; and
- execution of bridge construction from mobilization to minimum two-year warranty period.

The project will also be undertaken in compliance with consultation outcomes which have resulted in the documents and decisions made above. The project is managed through the municipal Project Management Team (PMT) which will interact with the IPD team and may also, from time to time, acquire the services of such owners advisors as it deems appropriate.

Throughout the post-EA phases of the Third Crossing project, the Indigenous Consultations which started in 2009 continue.

## 2. Introduction to Indigenous Consultation and Report Methodology

The following statement from Francis Jennings, an American historian on the Indigenous history of New England and the Great Lakes region, illustrates a key factual principle which modern North American society, including Canada, still must acknowledge and respond to the pre-existence of and the continuing co-relationship with First Nations and other Indigenous groups.

*...modern American society is the product not only of interaction between colonists and natives but of contributions from both. Traditionally historians conceived of our present cultural as a transplantation of European culture to American soil. In this interpretation the Indians have been assigned the role of a mere foil, an opposing and distinct element whose only contribution was to stimulate the energy and ingenuity of the European dispossessors. This interpretation seems fallacious to me because of the symbiotic interdependence that prevailed between the two societies in America for well over two centuries. Modern American society evolved from that web of interrelationship, and if much of the Indian contribution is not immediately available nowadays, neither is very much of the Anglo-Saxon. We are not less the offspring of our ancestors because their bodies have been buried. Our society, like all others, is the product of its entire antecedent history, with all the human generations thereof.<sup>1</sup>*

The Supreme Court of Canada in the 2010 *Rio Tinto* ruling affirmed a similar principle when it described the legal source of the duty of Canadian government entities to consult with Indigenous communities on projects which may affect their interests:

*The duty to consult is grounded in the honour of the Crown. It is a corollary of the Crown's obligation to achieve the just settlement of Aboriginal claims through the treaty process. While the treaty claims process is ongoing, there is an implied duty to consult with the Aboriginal claimants on matters that may adversely affect their treaty and Aboriginal rights, and to accommodate those interests in the spirit of reconciliation: Haida Nation, at para. 20. As stated in Haida Nation, at para. 25:*

*Put simply, Canada's Aboriginal Peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests.<sup>2</sup>*

Accordingly, the Canadian constitutional framework takes into account that the Indigenous Peoples of Canada were here first as sovereign peoples who were never conquered. Further, the Crown has an

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<sup>1</sup> *The Invasion of America: Indians, Colonialism and The Cant of Conquest* by Francis Jennings (Univ. of North Carolina Press, 1975) p. viii-ix.

<sup>2</sup> *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at para 32. See also the local case *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534 (CanLII) at para 45:

*The answer has been clear for almost 20 years in the jurisprudence of the Supreme Court of Canada – consultation, negotiation, accommodation, and ultimately, reconciliation of Aboriginal rights and other important, but at times, conflicting interests... The honour of the Crown requires that it act as a committed participant in the undoubtedly complex process of consultation and reconciliation...*

obligation, based on its own inherent honour, to achieve just settlement of claims affecting Indigenous interests raised by First Nations. Additionally, the duty to consult with Indigenous Peoples is the preferred method Canadian governments have to explore and resolve those claims.

Beyond the discourse of “claims”, treaties and relationships with Indigenous Peoples since the time of contact have also involved on-going relationships. Early treaties in Atlantic Canada between the Crown and the Mi’kmaq are known as “Peace and Friendship” treaties<sup>3</sup>. In the eastern Great Lakes region, relations with the *Haudenosaunee* or the Six Nations of the Iroquois are based on the Covenant Chain dating back to 1677<sup>4</sup>. Pacts like these and others related to the Lower Cataraqui river valley are also based on higher notions such as alliance and respect for mutual dignity.

In addition to the First Nations relationship to the Lower Cataraqui, consideration must also be given to the relationship of the area to the Métis nation, now located primarily in northern Ontario and into the Canadian Prairies as well as the neighbouring areas of the United States. As the Supreme Court of Canada noted in the 2003 *Powley* decision, although Europeans were clearly present in the Upper Great Lakes area from the early days of exploration, they actually discouraged settlement of this region. Prior to the establishment of British Kingston, exploration and goods transportation passing through the area was undertaken by *voyageurs* or *coureurs de bois*. The Court *Powley* accepted that:

*Intermarriage between First Nations and Inuit women and European fur traders and fishermen produced children, but the birth of new Indigenous cultures took longer. At first, the children of mixed unions were brought up in the traditions of their mothers or (less often) their fathers. Gradually, however, distinct Métis cultures emerged, combining European and First Nations or Inuit heritages in unique ways. Economics played a major role in this process. The special qualities and skills of the Métis population made them indispensable members of Aboriginal/non-Indigenous economic partnerships, and that association contributed to the shaping of their cultures. . . . As interpreters, diplomats, guides, couriers, freighters, traders and suppliers, the early Métis people contributed massively to European penetration of North America.<sup>56</sup>*

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<sup>3</sup> For a general introduction, see “Peace and Friendship Treaties” at the web page: [http://www.canadiana.ca/citm/themes/Aboriginals/Aboriginals2\\_e.html#peace](http://www.canadiana.ca/citm/themes/Aboriginals/Aboriginals2_e.html#peace)

<sup>4</sup> See *The Ambiguous Iroquois Empire*, by Francis Jennings (Norton, 1984) at pages 148-149.

<sup>5</sup> R. v. *Powley* 2003 SCC 43 at 10. The passage continues:

*The French referred to the fur trade Métis as coureurs de bois (forest runners) and bois brulés (burnt-wood people) in recognition of their wilderness occupations and their dark complexions. The Labrador Métis (whose culture had early roots) were originally called “liveryers” or “settlers”, those who remained in the fishing settlements year-round rather than returning periodically to Europe or Newfoundland. The Cree people expressed the Métis character in the term Otepayemsuak, meaning the “independent ones”. Just as the late 1600s and 1700s saw flux in the composition of local First Nations, it was also a time of change in the Lower Cataraqui region from the European perspective. Under the control of New France from the rebuilding of Fort Frontenac in 1695 to its fall in 1758, the area then remained as occupied territory<sup>5</sup> until the Treaty of Paris in 1763. Pursuant to the subsequent Royal Proclamation of 1763, the area is included in the Indian Territories due to its location south of the 45<sup>th</sup> parallel north.<sup>5</sup> Under the 1774 Quebec Act, it becomes included in the Province of Quebec under British rule until 1791 when it is included in Upper Canada.*

<sup>6</sup> See also *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99 where the SCC confirmed that (1) the historical, philosophical, and linguistic contexts establish that “Indians” in s. 91(24) includes all Indigenous peoples, including non-status Indians

As a result, projects like the Third Crossing of the Cataraqui River must be assessed for their impact on Indigenous interests which might be identified by the applicable First Nation, Métis or Inuit peoples to ensure constitutional obligations are met. This assessment can also be undertaken mindful of the opportunity to strengthen relations between communities between the Indigenous and non-Indigenous communities. To undertake that task, a number of inquiries have been undertaken:

- The particular First Nations and other Indigenous Peoples connected to, and whose interests are affected by, the region of the Lower Cataraqui river valley must be identified.
- The current test in law for determining issued to be addressed with those Indigenous Peoples through consultation has to be reviewed.
- An approach to the application of the legal standard for consultation to the region in question and the affected people must be developed.
- The actual results of the use of the standard for consultation through meetings and other forms of communications have to be reported.

Rather than being seen as simple technical steps towards a final report, these inquiries have been intended to be undertaken in that spirit of hope, respect, trust, curiosity and friendship that the dignity of the relationship requires. This Report was first prepared in support of the Environmental Assessment Study of the Third Crossing of the Lower Cataraqui as was directed to be undertaken by the Council of the City of Kingston by resolutions dated 20 January 2009 and 20 April 2010<sup>7</sup> and then has been amended and further developed through the Preliminary Design phase. It is also to be added to through as well as the Detailed Design and Construction phases.

This report has been prepared to describe the steps undertaken towards that goal and also to set out the responses and results throughout the consultation process. During the Environmental Assessment phase (2009-13) the report was researched and written primarily by Alan McLeod, Senior Legal Council, Corporation of the City of Kingston with the review and editorial comments of others including Dr Brian Osborne, retired professor, Queen's University as well as Paul Williams, Mohawk Nation Council of Chiefs. It was circulated in draft form out to the First Nation and Indigenous Peoples which have been the subjects of this consultation process described in the sections below and also provided in draft to representatives of Parks Canada, the Federal Department which oversees ownership and administration of the riverbed of the Lower Cataraqui River, site of any future potential bridge which may be built subject to future approval of the Council of the City of Kingston.

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and Métis and that (2) Federal jurisdiction over Métis and non-status Indians does not mean that all provincial legislation pertaining to Métis and non-status Indians is inherently ultra vires - the operation of statutes enacted by both levels of government continues.

<sup>7</sup> See Report to Council 09-037 ([http://www.cityofkingston.ca/pdf/council/agenda/2009/A04\\_Rpt17.pdf](http://www.cityofkingston.ca/pdf/council/agenda/2009/A04_Rpt17.pdf)) as well as Report to Council 10-135, 20 April 2010 ([http://www.cityofkingston.ca/pdf/council/agenda/2010/COU\\_A1210-10135.pdf](http://www.cityofkingston.ca/pdf/council/agenda/2010/COU_A1210-10135.pdf))

### 3. The Respective Roles of Crown and Municipalities in Indigenous Consultation

As described in greater detail in section 5 below, the obligations of governments within Canada to the Indigenous Peoples are rooted in the duty of the Crown. That obligation is primarily exercised by the Federal level of government on behalf of Her Majesty the Queen in the Right of Canada pursuant to section 91(24) of the *Constitution Act, 1867*<sup>8</sup> as well as the section 35 of the *Constitution Act, 1982*<sup>9</sup>. Section 35 states:

35. (1) *The existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.*
- (2) *In this Act, "Aboriginal Peoples of Canada"<sup>10</sup> includes the Indian, Inuit and Métis peoples of Canada.*
- (3) *For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.*
- (4) *Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

As a result of these constitutional obligations, an understanding of all Aboriginal and treaty rights must be established along with a statement of the current legal framework in which the constitutional obligation is exercised. Central to create that understanding is the general Honour of the Crown as well as the duties to consult and accommodate which are obligations to First Nations which have been recognized as being components within proper exercise of the fiduciary duties demanded by the Honour of the Crown. As stated, these concepts are elaborated in greater detail in section 5 below.

It is important to note that in Canada, however, the municipal level of government is not itself the Crown<sup>11</sup> and that the honour of the Crown from which the duty to consult arises cannot be delegated<sup>12</sup> to a municipality or any other third party. However, with greater and greater downloading of administrative responsibility, municipalities find themselves engaged with subject matters formerly administered by the Federal and Provincial levels of government which constitute the Crown. Further, municipalities engage more and more with upper levels of government as stakeholders in projects like the Environmental Assessment of the Third Crossing. In addition, in the present Environmental Assessment Study, the City is the landowner of two significant pre-contact archeological sites within a

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<sup>8</sup> 30 & 31 Victoria, c. 3 (U.K.), R.S.C. 1985, App. II, No. 11.

<sup>9</sup> Schedule B of the Canada Act 1982 (UK).

<sup>10</sup> Through consultations with the Metis Nation of Ontario held on 14 October 2017, the use of "First Nations" and "First People" as an umbrella term for all Indigenous peoples was discussed and indicated to be disrespectful. In this document as of that date the updated term "Indigenous Peoples" is used to include First Nations, Inuit and Metis peoples collectively.

<sup>11</sup> See *Gardner v. Williams Lake (City)*, 2006 BCCA 307 where the Court states at para 24:

*Local governments, however, are the creatures of the provincial legislature, bound by their provincial enabling legislation. This case, therefore, does not engage the honour of the Crown or the heightened responsibility that comes with that principle in cases engaging Aboriginal questions.*

<sup>12</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, at para 56.



few hundred metres of the proposed route of any future crossing. Further, through the Provincial level Environmental Assessment, certain commitments to consult were imposed upon the City by Ontario's Minister of Environment as set out in his letters of June 2013 to both the City of Kingston and Paul Williams, representative of the Mohawk Nation Council of Chiefs.<sup>13</sup> Similarly, at the Federal level the construction permit approval required from Parks Canada includes a requirement to satisfactory conduct a consultation and accommodation process. In addition to these requirements, the upper level funding agreements related to the Third Crossing Project entered into in 2018 include consultation requirements as well as confirmation of the role the City is playing in undertaking the obligation on behalf of the Crown.<sup>14</sup> As a result, the City's project staff have two departments at the provincial level as well as two at the federal level to keep in mind and keep informed on consultation throughout the life of the project.

Accordingly, while the municipal level is not the Crown, the City of Kingston is not immune from issues arising from consultation so the municipality is well advised to engage collaboratively with relevant upper level government bodies such as Parks Canada as well as its Indigenous neighbours under the umbrella of one consultation process to ensure meaningful discourse is achieved and good relations are maintained through a principled approach.

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<sup>13</sup> See in particular the letter of the Hon. Jim Bradley, Minister of the Environment, 20 June 2013 to Paul Williams, archived in project records.

<sup>14</sup> See, for example, an email from Deborah Campbell, Senior Environmental Review and Approvals Officer for Infrastructure Canada dated 9 October 2018, located in project archives which states:

*In light of recent Court decisions, INFC asks that in your next round of communications with First Nations that you please include a note that reflects that INFC is funding this Project and that INFC will be relying on the City's engagement and consultation activities to meet INFC's Duty to Consult.*

See also the email in response from Lynn Pardoe of OMAFRA dated 10 October 2018 located in project archives stating: "As I am sure Alan has already noted, this would be the same for the Province - you are our agent on the Duty to Consult."

#### 4. The Lower Cataraqui - Kingston Indigenous Context

Any assessment of the implications of the potential for adverse affect on Indigenous interests by any given project must be made in the context of the history of the Indigenous presence within the region in question. While this report is far too brief a document to give full justice to the rich experience in the region of Kingston, it is possible to make certain observations which inform the legal analysis of consultation obligations arising in this region including, as shall be described in more detail later, the key legal question of the date of contact between Europeans and the Indigenous Peoples.

The pre-contact and post-contact history of the region of Kingston is complex. The establishment of a European presence occurs far earlier here and its Indigenous context is much more multi-faceted compared to most other cities in Ontario. The confluence of the mouth of the Cataraqui<sup>15</sup> River with the upper reaches of the St. Lawrence River and the eastern end of Lake Ontario has been a place populated by many communities over many generations and centuries.

A number of separate First Nations - before and after contact with Europeans – have lived in and near what is now known as Kingston. It is known that communities of Late Woodlands people (present approximately 1200 to 1450) and the St. Lawrence Iroquois (present in the 1500s) were known to exist and perhaps even co-exist but later developed or merged into their modern descendant First Nations. The Belle Island burial site<sup>16</sup> near the proposed site of the Third Crossing relates to the Late Woodlands culture. A number of sites related to the St. Lawrence Iroquois from the same time period have been identified near and on Fort Drum in Jefferson County, New York about 50 km to the south west of Kingston<sup>17</sup> as well as near Cape Vincent New York, the nearest community in that state to Kingston, 15 km to the south.<sup>18</sup> Jacques Cartier encountered the eastern part of the St. Lawrence Iroquois in Quebec during his explorations of the 1530s.<sup>19</sup>

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<sup>15</sup> See also the online version of *L'Encyclopédie de l'histoire du Québec*, located at

<http://faculty.marianopolis.edu/c.belanger/quebechistory/encyclopedia/Cataraqui-CanadianHistory.htm> and the entry for "Cataraqui":

*The name is derived from the Iroquois Katarakne, which means "the place where one hides." See L. Gérin, Cataraqui, Fort Frontenac, Kingston (Trans, Roy. Soc. Can., 1933).*

Other resources indicate a meaning that is more related to meeting than hiding as well as "clay bank rising out of the water":

<http://www.oldandsold.com/canada/kingston-5.shtml>. See also the report "Tsi Niiionkwahskò:ten", Mohawk Nation Council of Chiefs, Nov 2011, archived in project records, at page 6 which translates the word as "a place where there is clay."

<sup>16</sup> See Report to Council 06-232, dated 3 October 2006 "Belle Island Cultural Heritage Site Protection Strategy" at

[https://www.cityofkingston.ca/cok/council/agenda/2006/A21\\_Rpt110.pdf](https://www.cityofkingston.ca/cok/council/agenda/2006/A21_Rpt110.pdf)

<sup>17</sup> *In the North Country: The Archeology and History of Twelve Thousand Years at Fort Drum*, by Georgess McHargue (Timeslines Inc., 1998), pp 4 to 13.

<sup>18</sup> *Public Archaeology Facility Report, Cultural Resouce Management Report, Phase 1A Cultural Resource Assessment, Cape Vincent Wind Power Project*, (November 29, 2007) by Samuel M. Kudrle, Public Archaeology Facility, at page 4 and pages 14 to 17.

<sup>19</sup> See *The Children of Aataentsic: a History of the Huron People to 1660, Volume 1* by Bruce G. Trigger (McGill-Queen's Press - MQUP, 1987) pages 214 to 225. Pressures on this people, which disappears before 1600, are variously described as being from or assimilated by regional Huron, neighbouring Five Nation Iroquois or Algonquin and even Atlantic Canadian Mi'kmaq and their first European contacts in the Gulf of St. Lawrence.

European contact in the region of Kingston goes back to at least the early 1600s with the 1615 expedition of Samuel de Champlain which passed through the vicinity of what is now Kingston.<sup>20</sup> From at least that time, the region in which Kingston is located has been subject to the influence of the French and British empires as well as the early development of the United States of America and also after 1614<sup>21</sup> the governmental and, even with the English take over in the mid-1600s, continuing cultural and mercantile Dutch presence at Albany, New York.<sup>22</sup> For example, former regional residents Huron / Wendat peoples now in Quebec and the mid-west of the United States were displaced from southeast and central Ontario in the 1640s,<sup>23</sup> after suffering dramatic depopulation from epidemics from 1634 to 1640<sup>24</sup>, when the Dutch at Albany changed long standing policy and armed their allies causing one in a series of shifts in the balance of regional Indigenous powers.<sup>25</sup>

After the establishment of Fort Frontenac by New France at the mouth of the Catarauqui in 1673 as part of its efforts to re-establish trading routes into the western Great Lakes, the Indigenous experience in the area of Kingston was even more subject to local European presence and the flux generated by European conflicts exported into the eastern Great Lakes Basin.<sup>26</sup> To the near north, up the Catarauqui and into the Rideau River valley, New France had a continuing relationship with the Algonquin of the

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<sup>20</sup> See *Champlain: the Birth of French America* by Litalien, Roth and Vaugeois at page 186 including this brief passage describing the 1615 route taken by a joint French Huron military force moving from the area of Georgian Bay against the Dutch allied Iroquois in what is now western New York:

*...They crossed the eastern end of Lake Ontario, "which is the entrance to the great river Saint Lawrence", a region that Champlain appreciated ("very large islands"), on 5 October.*

<sup>21</sup> See *A Short History of Quebec*, by Dickinson and Young, (McGill-Queen's Press - MQUP, 1987, 4<sup>th</sup> ed.) at page 20.

<sup>22</sup> See, for example, reference in *The Jesuit Relations and Allied Documents, Vol. LVII*, page 29, note iii, at web page [http://puffin.creighton.edu/jesuit/relations/relations\\_57.html](http://puffin.creighton.edu/jesuit/relations/relations_57.html) related to the mission role of Fort Frontenac:

*...Lamberville also says, in another letter to Frontenac (Oct. 29, 1673): "I learn that the dutch have made so many proposals to the Iroquois to get rid of us that, if you had not at Katarokoui won their leading men by your liberality and complaisance, We believe that all the frenchmen here [at Onondaga] would be by this time either dead, or driven from this country."*

<sup>23</sup> See: *The Arbor Ridge Site: A Study in Settlement Dynamics and Population Movement during the Fifteenth Century at the eastern end of Lake Ontario* by Nicholas Robert Adams, MA submission, Queen's University, School of Archaeology and Ancient History, October 2003.

<sup>24</sup> See *Natives and Newcomers: Canada's Heroic Age Reconsidered* by Bruce G. Trigger (McGill-Queens Press - MQUP, 1985) at pages 242 to 251.

<sup>25</sup> *The Ambiguous Iroquois Empire: the Covenant Chain confederation of Indian tribes with English colonies from its beginnings to the Lancaster Treaty of 1744* by Francis Jennings (Norton & Company, 1990) at page 99. See also See "A Voyage to North-America: undertaken by command of the present king of France ; containing the geographical description and natural history of Canada and Louisiana ; with the customs, manners, trade and religion of the inhabitants ; a description of the lakes and rivers, with their navigation and manner of passing the Great Cataracts" volume 1 [<https://books.google.ca/books?id=AWBKAAAYAAJ&pg=PA162#v=onepage&q&f=false>] at p 166 by Pierre-François-Xavier de Charlevoix where he stated in 1721:

*This is remarked particularly of the Hurons, that tho' scarcely any longer a Nation, and reduced to two villages not very large, and at a great distance once from another; yet they are the Soul of all the Councils when they consult on any general Affairs."*

Note also how from pp167-68, Charlevoix wrote of a former Confederacy or Union between the Iroquois or Algonquins which had been broken at some point in the past and "*made a quarrel between these two people that hath been never reconciled.*" He describes the alliance as economic, the sharing of Iroquois harvest and Algonquin hunting.

<sup>26</sup> For example, the movement of the Mississauga peoples in the 1690s from the north shore of Lake Huron south to the north shore of Lake Ontario is concurrent with successful French efforts against English and Iroquois trade and military interests throughout the Great Lakes basin: see, *Historical Atlas of Canada*, by Geoffrey J. Matthews, at page 85. Similarly, the movement into what is Ontario by the Loyalist majority of the Iroquois in the 1780s occurs after British loss in the American Revolution.

Ottawa River valley.<sup>27</sup> To the west, these connections as well as community transitions are illustrated by the nearest lake shore community to Cataraqui, the village of Ganneous<sup>28</sup> at the mouth of the Napanee River. Identified as being either an Oneida or Seneca community from 1665 to 1687, it becomes the site of a Mississauga one from 1696.<sup>29</sup> Efforts were undertaken under Frontenac from 1675 to 1687 to create an Iroquois settlement at Cataraqui which were ultimately not successful.<sup>30</sup> The movement south of the Mississauga<sup>31</sup> from north of Lake Huron to north of Lake Ontario with influence as far east as Brockville<sup>32</sup>, was concurrent with a broader Ojibwe migration and French military action against Iroquoia in the 1690s.<sup>33</sup> It also coincided with a period of treaty making between First Nations throughout the

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<sup>27</sup> See *Lovelace v. Ontario*, 2000 SCC 37, [2000] 1 S.C.R. 950 for a discussion of the interconnected southern Algonquin and neighbouring peoples where Iacobucci, J. stated at para 9:

*...this is a case which immediately invokes a deep appreciation for the diversity of Canada's Aboriginal population... Given this complexity, it is neither possible nor desirable to draw bright lines between or among any of the Aboriginal communities involved in these proceedings, especially given the limits of the litigation record in the appeal.*

<sup>28</sup> Approximately 40 kilometres to the west of Kingston. See *Handbook of American Indians North of Mexico*, by Frederick Webb Hodge (Smithsonian, 1912) at page 487.

<sup>29</sup> *Atlas of Great Lakes Indian History*, H.H.Tanner, ed., (Univ. Oklahoma Press, 1987) at page 33, Map 6. See also "Lake Ontario Maritime Cultural Landscape," by B.J. Ford (Phd dissertation, Texas A&M, 2009) who identified Ganneous as Seneca and also at 89 where it is stated: *The Ojibwe in turn began to press into southern Ontario during the 1680s and 1690s, taking the region from the Iroquois. According to Native American oral tradition this conquest was achieved with minimal French assistance, but the presence of an expanded fur market no doubt influenced the territorial expansion (White and Montgomery 1993: 32).*

<sup>30</sup> See "Iroquois Settlement at Fort Frontenac in the Seventeenth and Early Eighteenth Centuries" by Nick Adams (1986), *Ontario Archaeology* 46:5-20 in which the effort to settle an Iroquois at Fort Frontenac from 1675 to 1687 is described as are the dual factors of failure: the poor soil and changing French political and military policy against the Iroquois. See also *Royal Fort Frontenac*, by Richard A. Preston, ed. Leopold Lamontagne (Toronto : Champlain Society, 1958).

<sup>31</sup> See "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada" by Donald B Smith in *Historical Essays on Upper Canada*, page 23 to 51 at page 26. Mississauga is the name for the eastern most of the Ojibwe peoples who moved into southern Ontario at this time. Their place name of Etobicoke continues to be used.

<sup>32</sup> "Imagined Spaces, Constructed Boundaries, Conflicting Claims: A Legacy of Post colonial Conflict in Eastern Ontario" by Huitema, Osborne and Ripmeester (2002) *International Journal of Canadian Studies*, Vol. 25 (Spring 2002), pages 87 to 112 at page 93.

<sup>33</sup> *Ibid.*, pages 26 to 27. See also *The Two Hendricks: Unraveling a Mohawk Mystery* by E. Hinderaker (Harvard University Press, 2010) at page 58 to 58 where factors related to the weakening of Iroquois regional control are discussed such as the decimation of the Iroquois population in upstate New York from 1650 to 1700, the French alliance and resulting movement of French allied Iroquois communities to Kahnawake near Montreal as well as the capture at Fort Frontenac and transport into Mediterranean galley slavery of a large portion of the Iroquois leadership in 1686 survivors of which were released only in the late 1690s. See also Osbourne and Ripmeester, footnote 23, *infra* on the related Ojibwe oral tradition:

*...towards the close of the seventeenth century, several factors precipitated a bloody conflict: the Iroquois had murdered Ojibwe warriors; the need to clear the way for trade with the French; to regain the land of the western Hurons; to drive the Iroquois from peninsular Ontario; and pressures from Hurons adopted by the Ojibwe, to redress injustices done them by the Iroquois...*

See also the 1657 map "Novae Franciae accurata delineation" by Fr.Franceso Bressani which details the mid-1600s French understanding of the First Nations of New France, including those bordering Lake Huron at this French National Library webpage:

<http://gallica.bnf.fr/ark:/12148/btv1b6700080d>. See also "History and General Description of New France" by Pierre-François-Xavier de Charlevoix [[https://en.wikipedia.org/wiki/Pierre\\_Fran%C3%A7ois\\_Xavier\\_de\\_Charlevoix](https://en.wikipedia.org/wiki/Pierre_Fran%C3%A7ois_Xavier_de_Charlevoix)] in particular volume 3 at pp 198-2014 on early dealings at Fort Cataraqui [<https://books.google.ca/books?id=DeZ5AAAAMAAJ&pg=PA213#v=onepage&q=Cataraqui&f=false>] as well as volume 5 at pp 12 to 22 on the 1696 campaign against Onondaga.

[<https://books.google.ca/books?id=pPUMAQAAMAAJ&vq=cataraqui&pg=PA22#v=onepage&q=Cat&f=false>].

Great Lakes culminating in 1701.<sup>34</sup> While the Mississauga community continued to live further west at Quinte<sup>35</sup> and is connected to French Catholic Recollect missions at both Quinte and Cataraqui dating from as early as the 1660s,<sup>36</sup> the site of Ganneous itself is described as being not occupied by 1721<sup>37</sup> at a time when the Lower Cataraqui was also being used by the Algonquins to the near north.<sup>38</sup> In letters dated 14 and 16 May 1721, Pierre-François-Xavier de Charlevoix recorded staying at Cataraqui on his travels westward into western New France. He noted both Iroquois families and “some Missisaguez, an Algonquin Nation” as living there and where he also witnessed a Mississauga war-song.<sup>39</sup> Ganneous is near the later location of the continuing Mohawk community at Tyendinaga<sup>40</sup> founded in 1784<sup>41</sup> under leadership of Loyalist Mohawk Captain John Deserontyon.<sup>42</sup> These successive and dramatic shifts in local First Nation population were triggered in reasonably large part by the influence of European alliances and all occurred within the span of ninety-seven years.

During this same span of a century, connections between the British Crown and the Six Nations of the Iroquois Confederacy strengthen, especially for particular local purposes with the Mohawk Nation. The Iroquois relationship with the Crown included a number of phases but continued after the relocation of the both the New York Loyalist and large Iroquois populations from central New York into what became Upper Canada from 1776 to 1784.<sup>43</sup> That alliance was also not exclusive. Mississauga and other First

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<sup>34</sup> See *The Ambiguous Iroquois Empire* by Francis Jennings (Norton, 1984) at pp 203-213 on the pressures on the Iroquois from Ojibwe advances, French attack as well as New York colonial and English political manipulations which coincided with a 50% drop in population from 1689 to 1700, citing among other sources, *The Journal of Major John Norton, 1816* published by the Champlain Society (Toronto, 1970) which can be accessed on-line at: <http://link.library.utoronto.ca/champlain/search.cfm?lang=eng>.

<sup>35</sup> The Mississauga of Quinte community was near the site of the 1787 Carrying Place Treaty between the British under Sir John Johnson and Chiefs of the Mississauga approximately 100 km to the west of Kingston. See website “Carrying Place of the Bay of Quinte National Historic Site of Canada” <http://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=13814>.

<sup>36</sup> See footnote 16, *supra*, at page 37 and Map 8.

<sup>37</sup> *Ibid.*, at page 41, Map 9 and at page 59, Map 13.

<sup>38</sup> “Imagined Spaces, Constructed Boundaries, Conflicting Claims: A Legacy of Post colonial Conflict in Eastern Ontario” by Huitema, Osborne and Ripmeester (2002) *International Journal of Canadian Studies*, Vol. 25 (Spring 2002), pages 87 at page 94, especially Fig. 1. See also Information Report to Council 13-069, 22 January 2012 at: [https://www.cityofkingston.ca/documents/10180/108884/COU\\_A0413-13069.pdf](https://www.cityofkingston.ca/documents/10180/108884/COU_A0413-13069.pdf)

<sup>39</sup> See “A Voyage to North-America: undertaken by command of the present king of France ; containing the geographical description and natural history of Canada and Louisiana ; with the customs, manners, trade and religion of the inhabitants ; a description of the lakes and rivers, with their navigation and manner of passing the Great Cataracts” by Pierre-François-Xavier de Charlevoix volume 1 at p 162 and pp 176-77: <https://books.google.ca/books?id=AWBKAAAAYAAJ&pg=PA162#v=onepage&q&f=false>

<sup>40</sup> The Mohawk community at Tyendinaga has distinct connections to the Lower Mohawk castle at Fort Hunter in central New York. See *Joseph Brant* by Isabel Thompson Kelsay (Syracuse University Press, 1984) at page 370. The community also stayed primarily at Lachine, Quebec from 1776 to 1784.

<sup>41</sup> See also web page “History of Tyendinaga” at <http://www.m bq-tmt.org/community/history-of-tyendinaga>: “After travelling by canoe from Lachine, Quebec, our ancestors arrived on the shores of the Bay of Quinte on May 22, 1784. About 20 families, approximately 100-125 people, were met by Mississaugas who lived in the area.”

<sup>42</sup> Captain John Deserontyon fought along side both Sir William Johnson in the French and Indian War of the 1750s and with his son, Sir John Johnson, in the American Revolution including at the Battle of Oriskany in 1777. See Deserontyon (Odeserundiye), John (Captain John), Dictionary of Canadian Biography Online at <http://www.biographi.ca/009004-119.01-e.php?Biold=36490>.

<sup>43</sup> The Mohawk Nation was originally located between east of the Hudson, in the Adirondacks and south to the river valleys between Albany and Utica, New York. It served as the Eastern Gate to the rest of the Confederacy and, as a result, was the first of the Iroquois nations to make

Nations peoples also supported British Crown interests at that time, including by both providing military support to the Crown from 1775 to 1783 at its American Revolution base nearby Carleton Island,<sup>44</sup> and allowing for the settlement of what is now Kingston through the undocumented transaction called the Crawford Purchase from the Mississauga of 1783.<sup>45</sup> <sup>46</sup> The British Crown also strengthened its ties with the nearby Onondaga of Oswegatchie who, from 1750s to the end of the century, were present on both sides of the upper St. Lawrence from what is now Cornwall to Gananoque and who frequently traveled to the Lower Cataraqui.<sup>47</sup>

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contact with Europeans. See *Isaac v. Davey* (1974), 51 D. L.R. (3d) 170 (Ont. C.A.) from pages 173 to 174 for judicial discussion of the history background related to the relocation of the Loyalist aspect of the Iroquois Confederacy into what is now Ontario. Mohawk Nation Council of Chiefs has confirmed by email dated 7 March 2012 from representative Paul Williams to Alan McLeod, Senior Legal Counsel, City of Kingston that “it is the traditional government of the entire Mohawk Nation. That includes the Mohawk communities of Kahnawake, Kanehsatake, Akwesasne, Wahta, Kente (Tyendinaga) and the Mohawk people at Ohsweken (Grand River Territory). The Mohawk Nation’s council fire is at Akwesasne. There are no other Mohawk Nations. The Mohawk Nation Council of Chiefs is not a band council elected pursuant to the Indian Act: it is the government that has existed for centuries, and with whom the Crown has direct treaty relations.”

<sup>44</sup> “Kingston, Bedford, Grape Island, Alnwick: The Odyssey of the Kingston Mississauga” by Osborne and Ripmeester (1995) *Historic Kingston*, Vol. 43, 84-112.

<sup>45</sup> See footnote 14, supra, at page 31. Through the unwritten agreement with Captain Crawford, the British gained access to all the lands from Gananoque to river emptying into the Bay of Quinte. It is important to note that the “purchase” is subject to different interpretations from the Mississauga, Iroquois and British points of view. See summary of correspondence of Major Ross at Cataraqui, October 1783 at <http://haldimand-collection.ca/b-126-correspondence-with-major-ross-and-others-at-catarauqui-1783-to-1786> as well as the summary of correspondence from Sir John Johnson to Governor Haldimand, 17 November 1783 at <http://haldimand-collection.ca/b-115-correspondence-with-brigadier-general-sir-john-johnson1782-to-1784>. See also Kelsay at footnote 29, supra:

*...General Haldimand empowered Sir John Johnson to buy land on the north side of Lake Ontario for future settlers, both white and Indian. Though Joseph claimed the Six Nations were the real owners of the land and none else need be consulted, the Mississaugas (a branch of the Chippewas) were on the spot and Haldimand thought it best to satisfy them. The purchase when through in the autumn of 1783.*

The Mississauga present at the making of the agreement might also have been surprised at the nature of the “purchase” if the summary of Captain Crawford’s own report to Sir John Johnson of 9 October 1783 reflects events accurately:

*...he has purchased all the lands from Toniata or Onagara River to a river in the Bay of Quinté, within eight leagues of the bottom of the bay, including all the islands, extending from the lake back as far as a man can travel in a day. The chiefs claim the land at the bottom of the bay, but he believes it can be got on the same terms as the rest. The terms; the satisfaction of the Mississaugas that the white people are coming to live among them.* [Emphasis added.]

See : <http://haldimand-collection.ca/b-158-letters-from-officers-of-the-royal-regiment-of-new-york-1776-to-1783>.

<sup>46</sup> While included in First Nation areas of influence, the site of Kingston was not settled during the period from the fall of Fort Frontenac in 1758 to the settlement of the Loyalists starting in 1783. See, for example, *The Journal of Captain Walter Butler on a Voyage along the North Shore of Lake Ontario, from the 8<sup>th</sup> to the 16<sup>th</sup> of March, 1779*, at [http://www.aandc.org.research/walter\\_butler.html](http://www.aandc.org.research/walter_butler.html). Butler reports on 16 March no Indigenous presence from the Duck Islands to the Lower Cataraqui:

*Many persons not acquainted with the passage have taken down the bay supposing it to be the entrance of the river, and in coming from the river have imagined the main to the west be the entrance of the river, and in coming from the river have imagined the main to the west to be islands from its appearance, and go likewise down this bay. Traders go in two days to the before mentioned small lake inhabited by the Mississaugas. Continued rowing till the mouth of the Caderouqua Bay... a few miles off in the lake there is no knowing one place from the other. Nothing but the walls of the barracks and houses remain of the Fort...*

<sup>47</sup> See *Aboriginal Ontario: historical perspectives on the First Nations* by Edward S. Rogers, Donald B. Smith (Dundurn Press Ltd., 1994) at pages 105 and 106; also *Journals of Major Robert Rogers*, Todish, ed., (Purple Mountain Press, 2002) at pages 209-210. Members of this community of the Onondaga are met by Rogers at the Lower Cataraqui in 1760 where his party spends three days with them, Sept. 23- 25:

*We embarked and rowed the remainder of that night and the whole day following, till we came to the place where formerly stood the old Fort Frontinac, where we found some Indian hunters from Oswegachi... There were about five hundred acres of cleared ground about it which, tho’ covered with clover seemed bad and rocky, and interspersed with some pine trees. The Indians here seemed to be*



At this point in the history of the Lower Cataraqui, an additional people may be added to the narrative. While there is no evidence that the Métis people were located in what is now Kingston during the same 18<sup>th</sup> century, the story of the Métis people does include the St. Lawrence and eastern Great Lake routes by which the *coureurs de bois* traveled just as French explorers of the continent's interior headquartered at Fort Frontenac like Lasalle,<sup>48</sup> de Tonty<sup>49</sup> and Hennepin<sup>50</sup> had before them in the 1600s. Further, records related to Fort Frontenac indicate that in the 1740s and 1750s catholicized Indigenous individuals were buried locally generally identified as "Iroquois of the Lake" but including "some Mississauga and a Sioux" according to archaeologist Nick Adam<sup>51</sup> indicating some relationship between the fort on the mouth of the Cataraqui and the movement of Indigenous individuals.

Throughout the period between contact and, roughly, end of the American Revolution, Indigenous concepts of boundaries and relationships with the land, each other as well as with non-Indigenous colonizing empires were more complex than and quite distinct from contemporary European as well as current generally accepted Canadian concepts.<sup>52</sup> At times of diminished pressure such as prior to contact, distances between Indigenous communities created buffer zones of overlapping resource use confirmed by careful truces or neighbourly pacts. In other contexts such as 1700s tensions between New France and New England and, again, in upstate New York during the American Revolution, buffers hundreds of kilometers wide reflected danger zones often forged by European alliances. At the end of the American Revolution these buffers disappear altogether with the British army and navy facing American forces directly across rivers such as the St. Lawrence and Niagara.<sup>53</sup>

Through the decades of conflict with the United States that followed the American Revolution and the eventual establishment of peaceable relations in the decades following the War of 1812, the British and later Canadian relationship with - and policies related to - regional First Nations moves from mutually beneficial and interdependent alliances through a time of boundary making, paternalism, further

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*well pleased with the news we brought them of the surrender of all Canada, and supplied us with great plenty of venison and wild fowl.*

<sup>48</sup> See biography of René-Robert Cavelier de La Salle at: [https://en.wikipedia.org/wiki/Ren%C3%A9-Robert\\_Cavelier,\\_Sieur\\_de\\_La\\_Salle](https://en.wikipedia.org/wiki/Ren%C3%A9-Robert_Cavelier,_Sieur_de_La_Salle)

<sup>49</sup> See biography of Henri de Tonty/Tonti at: [http://www.biographi.ca/en/bio/tonty\\_henri\\_2E.html](http://www.biographi.ca/en/bio/tonty_henri_2E.html)

<sup>50</sup> See biography of Louis Hennepin at: <http://www.newadvent.org/cathen/07215c.htm>

<sup>51</sup> "Iroquois Settlement at Fort Frontenac in the Seventeen and Early Eighteenth Centuries" by Nick Adams (1986) *Ontario Archaeologist*, No. 456, page 5. See also *Travels in Canada*, Rochefoucault-Liancourt (1795) in *Thirteen Report of the Bureau of Archives for the Province of Ontario*, Alexander Fraser, ed. (Wilgress, Toronto: 1916) at pages 82 to 88 which describes merry, singing Canadian bateau rowers along the southern trading route from Montreal to the hinterland of Illinois through Kingston and Niagara-on-the-Lake (then Newark) as well as the northern trading route via the Ottawa River, Lake Nipissing to Lake Huron at <https://archive.org/stream/travelsincanada100larouoft>.

<sup>52</sup> See footnote 22 supra where, at page 91 it is stated:

*...The Euro-Canadian attempts to record boundaries on paper were incomprehensible to Native people...government officials were well aware that the cartography established boundaries imposed by them were not well understood by the Natives in their ontology of space and place..."*

<sup>53</sup> See, for example, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution*, (Alfred A. Knopf, 2006)

religious conversion and resettlement to cultural denial and attempted assimilation.<sup>54</sup> The destabilizing implications of these shifts in policy can be witnessed in the affecting the movements of the Mississauga people with, first, its strong associations with the British community ultimately settled at Kingston from the 1770s, followed by relocation starting in the 1820s to Grape Island as well as Bedford Twp, 55 km to the north east of Kingston, and then on to its present location at Alderville 120 kilometres to the west of Kingston.<sup>55</sup>

What the above brief and unavoidably general summary provides is a glimpse into the fluidity and complexity of the Indigenous relationship with the Lower Cataraqui river valley. Based on that reality, the City of Kingston has adopted an inclusive approach to its own dealings initially with its neighbouring First Nations based on the opportunities presented by the resolution of the Belle Island burial grounds of the Late Woodland peoples<sup>56</sup> and moving more broadly into the developing understanding of the duty to consult across a wide range of projects. The consultations with Indigenous peoples on the Third Crossing environmental assessment, design and construction phases have sought to continue and build upon that approach.

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<sup>54</sup> See, for example, *His Majesty's Indian Allies: British Indian Policy in the Defence of Canada, 1774 – 1815*, by Robert S. Allen (Dundurn Press, 1993) especially chapter 8 "From Warriors to Wards". See also *Sacred Feathers* by Donald B. Smith (Univ. of Toronto Press, 1999 reprint) on the early history of the conversion of a large part of the Mississauga to Methodism beginning in the 1820s. See "The Friendship Wampum: Maintaining Traditional Practices in Our Contemporary Interactions in the Valley of the Kiji Sibi" by Paula Sherman in *Lighting the Eighth Fire*, Leanne Simpson, ed., (Arbeirer Ring Publishing, 2008) at pages 111 to 125 including this statement on cultural denial at page 113:

*We have been forced to endure wave after wave of colonial policies that were designed to eliminate us from the consciousness of Canada while also appropriating our lands and resources for the sole use of settler societies.*

<sup>55</sup> Footnote 18, *supra*, at pages 90 to 92 on the implications of government settlement policy upon Mississauga perceptions of place. See also "The Mississaugas Between Two World: Strategic Adjustments to Changing Landscapes of Power" by Osborne and Ripmeester in *The Canadian Journal of Native Studies* XVII, 2 (1997) pages 259 to 291 especially from 278 to 283 on the occupation of Wolfe Lake, Bedford Twp in the 1830s. See also *Algonquin of Golden Lake Claim, Index to Primary Documents*, an area of occupation by Algonquin and Nippising led by Shawainpinessi from the more easterly Lake of Two Mountains community in the late 1830s and 1840s:

[http://www.thealgonquinway.ca/publications/JoanHolmesReports\\_10\\_20.pdf](http://www.thealgonquinway.ca/publications/JoanHolmesReports_10_20.pdf) Also see "Notes on the History, Customs, and Beliefs of the Mississauga Indians" by A. F. Chamberlain, *The Journal of American Folklore*, Vol. 1, No. 2 (Jul. - Sep., 1888), pp. 150-160 at <https://www.istor.org/stable/pdf/533821.pdf> at page 159 where it states:

*Under date of June 8, 1888, I received a communication from Mr. John Thackeray, the Indian agent at the Mississauga settlement at Alnwick, from which I quote: "I laid your communication before a general meeting of the Indians here, held on the 4th inst. They state that they have no old songs, stories, or beliefs peculiar to them; in fact, a great many of the Indians here cannot speak the Indian language." The writer hopes soon to investigate this subject thoroughly.*

Chamberlain, like Charlevoix at page 177 at footnote 37 *supra*, notes use of the "Chichikoue" or a gourd full of pebbles as well as drums to accompany Mississauga singing prior to the of the community conversion to Methodism.

<sup>56</sup> See Report to Council, No.: 06-232 "Belle Island Cultural Heritage Protection Strategy" dated 3 October 2006:

[http://www.cityofkingston.ca/pdf/council/agenda/2006/A21\\_Rpt110.pdf](http://www.cityofkingston.ca/pdf/council/agenda/2006/A21_Rpt110.pdf)



## 5. The Scope of Consultation and Indigenous Interests

### i. General

Determining claims related to Indigenous interests are inevitably detailed. The proceedings at the trial which eventually led to the landmark 1997 Supreme Court of Canada ruling in *Delgamuukw*<sup>57</sup> were heard by the court for 374 days. In 2010, the Supreme Court of Canada in the *Rio Tinto* ruling confirmed that the purpose of consultation was not only based on the honour of the Crown but also, because of that honour, related to the onerous demands of the trial process:

*The duty to consult described in Haida Nation derives from the need to protect Aboriginal interests while land and resource claims are ongoing or when the proposed action may impinge on an Aboriginal right. Absent this duty, Aboriginal groups seeking to protect their interests pending a final settlement would need to commence litigation and seek interlocutory injunctions to halt the threatening activity. These remedies have proven time-consuming, expensive, and are often ineffective. Moreover, with a few exceptions, many Aboriginal groups have limited success in obtaining injunctions to halt development or activities on the land in order to protect contested Aboriginal or treaty rights.*<sup>58</sup>

Accordingly, it has been established that consultations must be undertaken with the awareness not only of the constitutional fiduciary duty of the Crown to protect Indigenous interests but also that the process stand as a surrogate for a full court process. As such, consultation is a means to ensure Indigenous interests and rights are identified and respected without engaging the time and resources required from all parties by recourse to the trial and appeal process.

These interests arise in the legal contexts of treaties entered into with the British Crown and, later, the Government of Canada as well as through the assertion of inherent Indigenous rights. They may also be identified in requests for participation, explorations of cultural identity or asserted in the political realm. While not all interests have equal status before the law, appreciating their scope may shed light on their implications within the consultation process.

These interests are also contextual to each people. In 2003, the Supreme Court of Canada ruled upon recognition of the Indigenous rights of the Métis people in the case *R. v. Powley*.<sup>59</sup> Interestingly, the SCC took it upon itself to explain the nature of the Métis early on in the ruling:

*The term "Métis" in s. 35 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European forebears. Métis communities evolved*

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<sup>57</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para 5.

<sup>58</sup> *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at para 33.

<sup>59</sup> *R. v. Powley* 2003 SCC 43.

*and flourished prior to the entrenchment of European control, when the influence of European settlers and political institutions became pre-eminent.*<sup>60</sup>

The *Powley* ruling established that the view that Métis rights find their origin in the pre-contact practices of their Indigenous ancestors must be rejected.

*...the test for Métis practices should focus on identifying those practices, customs and traditions that are integral to the Métis community's distinctive existence and relationship to the land. This unique history can most appropriately be accommodated by a post-contact but pre-control test that identifies the time when Europeans effectively established political and legal control in a particular area.*<sup>61</sup>

In the 2016 *Daniels* ruling, the Supreme Court of Canada confirmed the obligations of the Federal government: "the historical, philosophical, and linguistic contexts establish that "Indians" in s. 91(24) includes *all* Aboriginal Indigenous peoples, including non-status Indians and Métis."<sup>62</sup>

The law has developed in other respects as well. In July of 2017, two rulings were issued by the Supreme Court of Canada which elaborated key procedural matters related to the constitutional duty to consult whose rights may be imposed upon by a project undertaken or approved by the Crown. In *Clyde River (Hamlet) v. Petroleum Geo -Services Inc.*,<sup>63</sup> the SCC determined that while the Crown may rely on the NEB's process to fulfill its duty to consult, the consultation and accommodation efforts in the case were inadequate and fell short in several respects. In *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*,<sup>64</sup> the SCC held that the process undertaken by the Federal level tribunal was sufficient to satisfy the Crown's duty to consult. The SCC held that the Crown must provide avenues for meaningful consultation and accommodation prior to project approval. A decision made on the basis of inadequate consultation will not satisfy constitutional standards and should be quashed.

A number of principles about the process of consultation can be drawn from this pair of 2017 rulings:

- The Crown must take asserted Indigenous and treaty rights and interests into consideration and accommodated them where appropriate.
- The duty to consult is not the vehicle to address historical grievances. The subject of the consultation is the impact on the claimed rights of the current issue or project under consideration.

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<sup>60</sup> *Powley*, supra, para 10.

<sup>61</sup> *Powley*, supra, para 37.

<sup>62</sup> *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 19.

<sup>63</sup> *Clyde River (Hamlet) v. Petroleum Geo -Services Inc.*, 2017 SCC 40.

<sup>64</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41.

- Indigenous Peoples who claim rights in relation to the issue or project under consideration must be provided with an adequate opportunity to participate in the decision-making process.
- The Crown or the agent of the Crown must assess the potential impacts on the rights of claimant groups. Where the risk of negative consequences was minimal and could be mitigated, the consultation duty is honoured.
- In order to mitigate potential risks, the Crown or agent of the Crown should provide appropriate accommodation.<sup>65</sup>

Related to the accommodation obligation, in the *Chippewas of the Thames* ruling, the SCC noted that the First Nation was provided with participant funding which allowed them to prepare and tender evidence including an expertly prepared “preliminary” traditional land use study. In the *Clyde River* no such funding was provided which resulted in the Court noting:

*Although the appellants submitted scientific evidence to the NEB, this was done without participant funding. Again, this stands in contrast to Chippewas of the Thames, where the consultation process was far more robust. In that case, the NEB held oral hearings, the appellants received funding to participate in the hearings, and they had the opportunity to present evidence and a final argument. While these procedural protections are characteristic of an adversarial process, they may be required for meaningful consultation (Haida, at para. 41) and do not transform its underlying objective: fostering reconciliation by promoting an ongoing relationship (Carrier Sekani, at para. 38).<sup>66</sup>*

The need to build relationships through accommodation was illustrated in August 2018 by the Federal Court of Appeal in its recent decision in *Tsleil-Waututh Nation v. Canada (Attorney General)*.<sup>67</sup> There the court found that the Federal government had failed “to engage, dialogue meaningfully and grapple with the concerns expressed to it in good faith by the Indigenous applicants so as to explore possible accommodation of these concerns.” The blunt conclusions of the Court of Appeal, after its finding that the government’s consultation plan was acceptable, on the failing to move to accommodation are worth setting out in full:

*[756] ...as the above review shows, missing was a genuine and sustained effort to pursue meaningful, two-way dialogue. Very few responses were provided by Canada’s representatives in the consultation meetings. When a response was provided it was brief, and did not further two-way dialogue. Too often the response was that the consultation team would put the concerns before the decision-makers for consideration.*

<sup>65</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, supra.

<sup>66</sup> *Clyde River (Hamlet) v. Petroleum Geo -Services Inc.*, supra at para 47. See also the ruling from the Federal Court of Appeal in *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, [2016] 3 FCR 96, 2015 FCA 222 where it is stated at para 14:

*At the hearing, the Appellant described its treaty and Aboriginal rights through written evidence, including a preliminary Traditional Land Use study outlining the use of land adjacent to the Line 9 right of way, and oral representations. The evidence contained expressions of the Appellant’s deep spiritual connection to its traditional land and resources and its concerns with respect to potential threats to its treaty and Aboriginal rights that could arise from the approval of the Project. In addition, the Appellant’s Chief’s affidavit stated that the Appellant was entitled to share in the revenues that were being generated by the transportation of oil through Line 9.*

<sup>67</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153

[757] Where responses were provided in writing, either in letters or in the Crown Consultation Report or its appendices, the responses were generic. There was no indication that serious consideration was given to whether any of the Board's findings were unreasonable or wrong. Nor was there any indication that serious consideration was given to amending or supplementing the Board's recommended conditions.

[758] Canada acknowledged it owed a duty of deep consultation to each Indigenous applicant. More was required of Canada.

It is important to note that the law has not achieved a final position in relation to matters of Indigenous law any more than it has in many other areas of jurisprudence. Just as the history of First Nations in the Lower Cataraqui river valley is a story of peoples subject forces of change over time so, too, is the state of the Indigenous law in Canada in flux. Court rulings have not displayed the level of consistency one might wish for in their use of concepts or even words and phrases when describing Indigenous culture or rights. Further, the facts upon which these judicial rulings are based arise from on a wide range of cultural traditions and ecological settings which differ in significant ways depending on the location of the case in question.

This reality reminds one of cases in which the concept of "interest identification" as described in *Rio Tinto* is tempered by judicial acknowledgement that the relationship between the law and First Nations is not without serious problems. The Ontario Court of Appeal in 2008, when considering a ruling of contempt of court involving members of eastern Ontario's Ardoch Algonquin First Nation, stated:

*Although Gladue was focused primarily on the serious problem of excessive imprisonment of Aboriginal Peoples, the case in a broader sense draws attention to the state of the justice system's engagement with Canada's First Nations. I note three factors in particular that were highlighted in Gladue: the estrangement of Aboriginal Peoples from the Canadian justice system, the impact of years of dislocation, and whether imprisonment would be meaningful to the community of which the offender is a member.*<sup>68</sup>

Additionally, the City acknowledges that a single approach to consultation may not satisfy certain indigenous groups even though others are satisfied with the process. In the 2007 case *Hiawatha First Nation v. Ontario (Minister of the Environment)*,<sup>69</sup> the Ontario Divisional Court reviewed a consultation process created by an archeological consulting firm retained by the Ontario Realty Corporation which was given the name Founding First Nations Circle, a process the Court called "informal."<sup>70</sup> The Court found that "the Huron-Wendat Nation supports the Founding First Nations Circle and regards the results as a historic accomplishment" but also that:

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<sup>68</sup> *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534 at para 57 citing *R. v. Gladue*, (1999), 133 C.C.C. (3d) 385. See also *Canadian Forest Products Inc. v. Sam*, 2011 BCSC 676 in which frustrations with delays in implementation of a claims settlement negotiated in 2001 led to the granting of a 2011 injunction in favour of a First Nation to prevent the harvesting of timber protected under that settlement.

<sup>69</sup> *Hiawatha First Nation v. Ontario (Minister of the Environment)*, 2007 CanLII 3485 (ON SCDC)

<sup>70</sup> *Ibid.*, para 39.

[37] Chief Marsden of Alderville First Nation swears that he knew nothing about the Seaton land exchange before late June 2006 and denies that he told Kris Nahrgang or anyone else he was content to let Scugog take the lead.

[38] It appears that the Mnjikaning Chippewas of Georgina Island and Beausoleil First Nations did not receive notice, nor were they consulted. Hiawatha received the notices and a presentation to council which they appeared to support, Alderville and Curve Lake got the notices and perhaps a phone call, and Scugog was deeply involved in the consultation.<sup>71</sup>

In light of the awareness that processes can fail – even well intentioned ones - the City of Kingston recognizes that issues of estrangement and even identity must be acknowledged through the consultation process requiring that it undertake meaningful research, seek out and receive information from specific applicable Indigenous communities<sup>72</sup> and also and act upon its responsibilities thoughtfully and honestly through direct consultation.

## ii. Cultural Interests of Indigenous Peoples

Consideration of the interest of Indigenous Peoples in consultations is a key source of understanding the nature of the conversation required to be held. Sometimes, the interest is simply a matter of getting their voice in the conversation as a procedural matter. In 2008, eastern Ontario Algonquins objected to the National Capital Commission plans to build a bridge over the Ottawa River “without having any meaningful discussions.”<sup>73</sup> More and more often, given recognition by appellate courts of the duty to consult, the door to discussion may be open and led to resolutions such as in the recent 2010 settlement of the treaty-based Toronto Island claim between the Mississauga of the New Credit and the Federal Government.<sup>74</sup> There are, however, still instances in which the courts themselves reveal their own challenges of understanding and accommodating Indigenous interests.<sup>75</sup>

Once participation in consultation is achieved, government bodies may face cultural interests which, on the one hand, layer upon and even bolster generally held public points of view. On the other hand,

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<sup>71</sup> *Ibid.*, paras 37-38.

<sup>72</sup> This is somewhat intentionally distinct from the implications of this curious statement from the 2007 Hiawatha ruling, *Ibid.*, para 70: “*In this case, given that the interests of the Anishnaabeg as a whole were implicated, deep consultation at the level of each of the individual First Nation Applicants was not required.*”

<sup>73</sup> “Algonquins seek full hearing as NCC plans Ottawa bridge,” by Patrick Dare, *Ottawa Citizen*, 22 October 2008, page A1. See also “Algonquin bands in fight for NCC site’s artifacts,” by Dave Rogers, *Ottawa Citizen*, 6 December 2009 and these comments on inclusivity and identification: “...Marie Lemay, the NCC’s chief executive officer, said she was surprised the Kitigan Zibi band did not recognize the Ottawa River as a boundary and promised to consult with the band about future archeological finds. “A lot of us have assumed that there are Ontario Algonquins and Quebec Algonquins, but for the Algonquins the boundary doesn’t exist,” Lemay said. “The agreement we have now is that if there are other archaeological digs like this in the future we will inform both sides...”

<sup>74</sup> “Toronto Island land claim settlement paid: Mississaugas plan downtown presence,” *The Bulletin Downtown Toronto*, 21 December 2010. Web page reviewed 21 December 2010. See also “Toronto Purchase Update,” August 2010, at News, Toronto Purchase/Brant Tract Land Claim <http://www.newcreditfirstnation.com/images/stories/TorontoPurchaseUpdate.pdf>.

<sup>75</sup> See, for example, *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, footnote 43, *supra*. See also Ardoch Algonquin First Nation announcement of release of Robert Lovelace and others at <http://www.aafna.ca/court.html>

cultural interests may challenge non-Indigenous interests or, more simply, points of view. An example of the first apparently readily understood point of view is environmental stewardship. In a 2010 Environmental Assessment of a railway bridge, Council and Community comments were received from the Mohawk of the Bay of Quinte related to noise impacts, salmon spawning habitat considerations as well as the lack of consideration of other wildlife impacts during and after construction.<sup>76</sup> Similarly, archeological considerations are immediately identifiable as having a tie to Indigenous communities presently or formerly in a region in question.

Developing interests may be identified through consultations which challenge popular understanding. These may include the meaning of the cultural context of the landscape and how it affects issues of design from appropriate naming of new infrastructure to the use of materials. They may also involve the implications of form that require discussion of the applicable Indigenous sensibilities if they are to be appropriately addressed. For example, in the tensions related to exploratory uranium mining to the north of the Lower Cataraqui, one factor that is not always appreciated is that the wild rice, or *manoomiin*, growing in the region and the stewardship for its setting also ties in to the cultural understanding that the rice in particular and the region in general is considered sacred - resulting in a call to a high degree of stewardship by the Ardoch Algonquin First Nation.<sup>77</sup> Additionally, space and landscape may be the location of what a modern materialist view might describe as mythology and story but which may be viewed from an Indigenous perspective as an active living source of everything from gifts to perils as well as the community's cultural foundation.<sup>78</sup>

The 2017 ruling of the SCC in *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*<sup>79</sup> challenges notions related to the extension of the Indigenous perspective of a non-material worldview:

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<sup>76</sup> See, for example, "Record of Concordance & Accommodations," Stantec, 20 July 2010, pages 7 to 14, located online at <http://www.mbcq-tmt.org/assets/RecordofConcordanceAccommodations2010July221.pdf>.

<sup>77</sup> See *Dishonour of the Crown* by Paula Sherman (Arbeiter Ring Publishing, 2008). See in particular the introduction by Leanne Simpson which explains that the wild rice also is remembered as a gift shared in the 1800s by the Mississauga people of the Trent River valley to the Ardoch Algonquin of the Mississippi River valley for safekeeping by extended planting after the expropriation of lands to build the Trent-Severn waterway. See also *Lovelace v. Ontario*, [2000] 1 SCR 950, 2000 SCC 37 (CanLII) at <http://canlii.ca/t/525f> for discussion by the SCC of the nature of the Ardoch community.

<sup>78</sup> See in particular the report "Tsi Niionkwahskò:ten", Mohawk Nation Council of Chiefs, Nov 2011, archived in project records. See also *Sacred Feathers* by Donald B. Smith (Univ. of Toronto Press, 1999 reprint) at pages 5 to 16 on the complex Anishinaabeg spiritual environment in and around the western end of Lake Ontario and neighbouring river valleys. See also *Stories From the Six Worlds, Micmac Legends* by Ruth Holmes Whitehead (Halifax, 1988 and 2006) for analogous or at least comparative descriptions of the cosmological view of another northeastern North American First Nation.

<sup>79</sup> *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)* 2017 SCC 54 at paras 70 to 75 at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16816/index.do>. But see the following in the dissent a para:

This approach also risks excluding Indigenous religious freedom claims involving land from the scope of s. 2(a) protection. As indicated, there is an inextricable link between spirituality and land in Indigenous religious traditions. In this context, state action that impacts land can sever the spiritual connection to the divine, rendering Indigenous beliefs and practices devoid of their spiritual significance. My colleagues have not taken this unique and central feature of Indigenous religion into account. Their approach therefore risks foreclosing the protections of s. 2(a) of the *Charter* to substantial elements of Indigenous religious traditions.

[73] *The Ktunaxa argue that the Big M Drug Mart definition of the s. 2(a) guarantee has been subsequently enriched by an understanding that freedom of religion has a communal aspect, and that the state cannot act in a way that constrains or destroys the communal dimension of a religion. Grizzly Bear Spirit's continued occupation of Qat'muk is essential to the communal aspect of Ktunaxa religious beliefs and practices, they assert. State action that drives Grizzly Bear Spirit from Qat'muk will, the Ktunaxa say, "constrain" or "interfere" with — indeed destroy — the communal aspect of s. 2(a) protection.*

[74] *The difficulty with this argument is that the communal aspect of the claim is also confined to the scope of freedom of religion under s. 2(a). It is true that freedom of religion under s. 2(a) has a communal aspect: Loyola; Hutterian Brethren, at para. 89; Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village), 2004 SCC 48, [2004] 2 S.C.R. 650. But the communal aspects of freedom of religion do not, and should not, extend s. 2(a)'s protection beyond the freedom to have beliefs and the freedom to manifest them.*

Consultation may be put at risk through lack of openness to the appreciation of the role of Indigenous participation or, more fundamentally, the importance of the meaning of place and the resulting political implications.<sup>80</sup> The consultation table may be seen on one hand as insufficient to serve as a venue to explore and assert interests. On the other, identified interests may be caught up with issues of community identity or even political discourse, both external and internal.<sup>81</sup> As a result, a reasonable level of accommodation and balance must be achieved if consultations are to succeed.

### iii. Legal Interests of Indigenous Peoples

In addition to the points of view Indigenous Peoples bring to a particular consultation, interests which have already been identified in law which must be taken into account. These legal interests can be generally described as being either treaty rights or Indigenous rights. Indigenous and treaty rights differ from conventional contracts in both origin and structure.<sup>82</sup> Both Indigenous and treaty rights possess a unique, *sui generis* nature. In each case, however, the honour of the Crown is engaged through its relationship with Indigenous Peoples<sup>83</sup> and must be kept in mind as a guiding principle when engaging in consultation.

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<sup>80</sup> See "The Friendship Wampum: Maintaining Traditional Practices in Our Contemporary Interactions in the Valley of the Kiji Sibi" by Paula Sherman in *Lighting the Eighth Fire*, Leanne Simpson, ed., (Arbeirer Ring Publishing, 2008) at pages 111 to 125 including this statement at page 112 on the present day relationship of the Ardoch Algonquin community, described as a confederation of Omamiwinini families, to its surroundings:

*...the land and waterscapes in that section of territory continue to be under the autonomy and jurisdictions of these families and the community as a collective entity. No part of the Omamiwinini Territory was ever surrendered or sold to the Crown, in spite of the fact that both the federal and provincial governments operate out of our territory on a daily basis.*

<sup>81</sup> See, for example, *Thinking in Indian: A John Mohawk Reader*, Jose Barreiro, ed. (Fulcrum, 2010).

<sup>82</sup> *R. v. Badger*, 1996 CanLII 236 (S.C.C.), [1996] 1 S.C.R. 771 at para 76.

<sup>83</sup> See *Drew v. Newfoundland and Labrador (Minister of Government Services and Lands)*, 2006 NLCA 53 (CanLII) at para 95, citing *Guerin v. The Queen*, [1984] 1 S.C.R. 335, at p. 382 and *Simon v. The Queen*, [1985] 2 S.C.R. 387] at p. 404.

Treaty rights arose from the many documented binding transactions which have been entered into between government officials acting as representatives of the Crown and specific Indigenous communities to resolve specific issues of the day from the early 1700s to the present day. They are to be read to give their provisions the sense which they would naturally have held for the parties at the time they were entered into. The words in these treaties should be liberally construed with ambiguities or doubtful expressions should be resolved in favour of the Indigenous signatories.<sup>84</sup> Local examples of treaty agreements with First Nations are problematic. They may be considered to include the 1783 Crawford Purchase from the Mississauga, the 1793 grant to the Tyendinaga Mohawk by the Simcoe Deed as well as the 1873 grant by the Crown to the Algonquin at Golden Lake, Renfrew County but each of these may be considered unilateral documents which were not the result of any council with due authority giving assent to either the transaction or the scope of their implications. Other documents in the form of negotiated surrenders to the Crown, such as the surrender by the Mississauga of Alnwick under Surrender 77, also indicate some dispute among Indigenous Peoples as to which may claim which lands.<sup>85</sup>

Indigenous rights, by comparison, are not dependent on a transaction with the Crown. They arise from the simple fact of the Indigenous presence prior to the arrival of Europeans or, as relates to the Metis, the development of a people. This has been described as follows:

*...the range of Aboriginal rights — flows from the process of reconciliation just described. Taking the Aboriginal perspective into account does not mean that a particular right, like title to the land, is established. The question is what modern right best corresponds to the pre-sovereignty Aboriginal practice, examined from the Aboriginal perspective. Different Aboriginal practices correspond to different modern rights. This Court has rejected the view of a dominant right to title to the land, from which other rights, like the right to hunt or fish, flow... It is more accurate to speak of a variety of independent Aboriginal rights.<sup>86</sup>*

To establish an Indigenous right, it has to be determined whether a practice is ancestral and whether it is a practical integral to a culture that has continuity to the present day. It has to be recalled, however, that consultation is not a process under which rights are established. Defining the scope of Indigenous and treaty rights helps understand the obligations to consult with applicable people, but it is not definitive. While guided by the scope of established rights, meaningful consultation is not limited to them. The goal of consultation is to identify and consider the implications of government action on what have been described as “interests.” Consultation takes into account that it is a procedural step

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<sup>84</sup> *R. v. Morris*, [2006] 2 S.C.R. 915, 2006 SCC 59 at para 29.

<sup>85</sup> See also Surrender 77 from the Mississauga of Alnwick to the Crown, July 1856 which states:

*That the Mississaguas of Alnwick cede the islands belonging to them in the Bay of Quinte, Lake Ontario, Weller's Bay and the River St. Lawrence, and certain parcels of territory on the mainland. That to the islands in the Bay of Quinte and Lake Ontario their title is undisputed. That the ground on the mainland and the islands in the St. Lawrence are claimed by other parties.*

See *Indian Treaties and Surrenders, from 1680 to 1890*, Vol. 1 (B. Chamberlin, 1891) at page 208 located at: <http://www.canadiana.org/view/91942/95>

<sup>86</sup> *R. v. Marshall*; *R. v. Bernard*, 2005 SCC 43, [2005] 2 S.C.R. 220 at paras 52 and 53 citing *R. v. Adams*, [1996] 3 S.C.R. 101 at para. 26; *R. v. Côté*, [1996] 3 S.C.R. 139 at paras. 35-39.



intended both to avoid litigation or other forms of delay and also to resolve issues through the eventual establishment of claims or treaty execution.<sup>87</sup>

The difference between interests and rights is also illustrated by the scope of treaties. Rights set out in treaties, especially in earlier treaties related to eastern Canada, were not always defined as part of comprehensive surrender of all interests in the land. As with any agreement, they were deals required to confirm particular relationships between the parties based on pressing interests of the day. Further, the same land or people may be the subject of a succession of treaties over a number of generations. Local examples of Indigenous claims to land include the Algonquin claim to the Ottawa River watershed and the claim to sections of the Thousand Islands.

#### iv. Sources of Supporting Information

Inquiries into the relevant factual basis for consultation must be made but it must be made with the goal of identifying a broad range of interests and not just established rights. The sources of evidence of these interests can be considered to include the following:

- Oral history
- Archeological record
- Date of Contact
- Non-treaty documentary record
- Information from other similar consultations

There may be other factors to take into consideration but these sources of information not only inform the claims but also the manner in which consultation should be undertaken. A brief introduction to these sources can be understood from a review of key passages in case law as well as the application to identified local facts.

- a. Oral History: Oral history has been acknowledged to be an important source of information supporting claims to rights. The Supreme Court of Canada in 2005 described the nature of Indigenous oral history in this way:

*Underlying all these issues is the need for a sensitive and generous approach to the evidence tendered to establish Aboriginal rights, be they the right to title or lesser rights to fish, hunt or gather. Aboriginal Peoples did not write down events in their pre-sovereignty histories. Therefore, orally transmitted history must be accepted, provided the conditions of usefulness and reasonable reliability set out in Mitchell v. M.N.R., 2001 SCC 33 (CanLII), [2001] 1 S.C.R. 911, 2001 SCC 33, are respected. Usefulness asks whether the oral history provides evidence that would not otherwise be available or evidence of the Aboriginal perspective on the right claimed.*

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<sup>87</sup> *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at para 33.

*Reasonable reliability ensures that the witness represents a credible source of the particular people's history. In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts.<sup>88</sup>*

For purposes of the Third Crossing EA consultation, the team needs to be open to the acceptance and review of orally transmitted history that may be offered by a representative of an Indigenous People.

b. The Archeological Record: Courts rely upon the archeological record as part of the overall consideration of evidence, giving it an equal role but not superior consideration. This treatment can be observed in passage from a 2007 ruling of the British Columbia Supreme Court involving a claim to Indigenous title:

*I acknowledge the archeological record is clear that some of the pit houses in the area are of a non-Tsilhqot'in origin. When I weigh the entirety of the evidence including: Lane's work, the oral traditions I heard at trial, the archeological and anthropological evidence, and the historical evidence; it does not reveal to me the presence of any other Aboriginal group in the Claim Area in the late eighteenth or early nineteenth century. I am not able to conclude that relevant oral traditions were kept from me during the course of this trial. I heard what was available to be heard.<sup>89</sup>*

The passage is helpful in confirming that not only is the archeological record taken into account but that it must be balanced and evaluated in light of the other sources of information including oral history. Review of the archeological record has been undertaken as part of the overall EA process and in ensuing consultations.

c. Date of Contact: The date from an interest or claim to a right arises must be considered as part of any consultation. The development of cultural practices giving rise to interests and rights existed both in time as well as geographical location. Just as all treaties should not be expected to capture all issues arising between the Crown and a people throughout history, not all Indigenous practices trigger legal rights or interests due to the time frame of the activity. To be recognized as a right, the practices must have existed at the certain point in time described as "pre-contact" or, as regards Metis claims, "pre-control." The approach to establishing the nature and dating of a practice was described in 2006 by the Supreme Court of Canada as follows:

*That this is the relevant time should not suggest, however, that the Aboriginal group claiming the right must accomplish the next to impossible task of producing conclusive evidence from pre-contact times about the practices, customs and traditions of their community. It would be entirely contrary to the spirit and intent of s. 35(1) to define Aboriginal rights in such a fashion so as to preclude in practice any successful claim for the existence of such a right. The evidence relied upon by the applicant and the courts may relate to Aboriginal practices, customs and traditions*

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<sup>88</sup> *R. v. Marshall; R. v. Bernard*, 2005 SCC 43, [2005] 2 S.C.R. 220 at para 68.

<sup>89</sup> *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700 (CanLII) at para 187.

*post-contact; it simply needs to be directed at demonstrating which aspects of the Aboriginal community and society have their origins pre-contact. It is those practices, customs and traditions that can be rooted in the pre-contact societies of the Aboriginal community in question that will constitute Aboriginal rights .<sup>90</sup>*

The test is not strict and, again, is not determinative in the context of consultation and interests. Just as flexibility is important with regard to the relevant time frame during which the practice occurred when considering it a right<sup>91</sup>, flexibility must also be kept in mind when considering the same practice in relation to the description of an interest. Each must be connected to the distinctive culture of the Indigenous People in question but for purposes of consultation greater generosity may shape discussion.

That being stated, the date of contact for each community remains especially relevant in the context of the Lower Cataraqui. Due to the rich history of the valley and the peoples who have been here before and after contact with Europeans, it is important to describe current understanding of when that contact may have occurred. These examples of local First Nations indicate some of the complexities of the question of the date of contact:

- Algonquin: while associated in Ontario with the Ottawa River watershed and the Morrison Island near Pembroke, the extension of Algonquin culture on the Ottawa's tributary the Rideau River and the proximity of the watershed to the head of the Cataraqui River may give rise to suggestions as to where they may have been located at the time of contact with the earliest French missionaries in the first decades of the 1600s. The establishment of a Recollet mission at what is now Kingston at about 1670<sup>92</sup> may have included contact north into the Algonquin community as much as east to the Oneida at Ganneous<sup>93</sup> and south into the Iroquois territory of upstate New York.
- Mississauga: the villages of the north shore of Lake Ontario are understood to have been occupied by the Mississauga towards the end of the 1600s.<sup>94</sup> While it is an open question as to the degree to which interests guided this migration, there is no question that these communities had been in contact for decades with missionaries and traders from New France.
- Mohawk: prior to contact, the home of the Mohawk Nation lay in the Mohawk Valley of present-day New York State and north into the Adirondacks but they traveled widely including further north into the St. Lawrence valley.<sup>95</sup> They were in contact with English colonists as early

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<sup>90</sup> *R. v. Sappier; R. v. Gray*, [2006] 2 S.C.R. 686, 2006 SCC 54 at para 34 citing *R. v. Van der Peet*, 1996 CanLII 216 (S.C.C.), [1996] 2 S.C.R. 507 at para 62 and *Mitchell v. M.N.R.*, 2001 SCC 33 (CanLII), [2001] 1 S.C.R. 911, 2001 SCC 33 at para 29.

<sup>91</sup> *R. v. Sappier; R. v. Gray*, [2006] 2 S.C.R. 686, 2006 SCC 54 at para 32.

<sup>92</sup> *Atlas of Great Lakes Indian History*, H.H.Tanner, ed., (Univ. Oklahoma Press, 1987) at page 37.

<sup>93</sup> *Atlas of Great Lakes Indian History*, H.H.Tanner, ed., (Univ. Oklahoma Press, 1987) at page 33. See also "Discovery and Exploration of the Bay of Quinte" by James H. Coyne, *Papers and Records*, Ontario Historical Society, Vol. 5, 1904 at page 16.

<sup>94</sup> *Atlas of Great Lakes Indian History*, H.H.Tanner, ed., (Univ. Oklahoma Press, 1987) at page 34.

<sup>95</sup> *Mitchell v. M.N.R.*, 2001 SCC 33, [2001] 1 S.C.R. 911 at para 41.

as the 1630s, maintaining influence into New England through transportation and communications routes such as what is now called the Mohawk Trail through the northeastern Berkshires of Massachusetts.<sup>96</sup>

- Onondaga: the Onondaga Nation brought a legal proceeding action in New York state courts<sup>97</sup> for a declaration of certain rights in relation to lands that reach to the St. Lawrence River, a few miles south of Kingston.<sup>98</sup> Onondaga are recorded as being in contact with British soldiers at what is now Kingston in 1760.<sup>99</sup> They are also, however, involved in regional conflict with New France as early as 1615.<sup>100</sup>

These brief observations give more than a sense of the overlapping interests which may exist in relation to establishing relevant dating in the Lower Cataraqui river valley context as well as the challenge which may be faced in seeking to definitively allocate what might be considered interests or claims to each separate Indigenous People. Unlike the arrival of European explorers on the eastern coast of North America in the sixteenth and seventeenth centuries, the inland immigration of Europeans and the effect of contact happened over a long period of time and in a number of ways.

d. Non-treaty Documentary Record: The role of the non-treaty documentary record is illustrated in this passage from a 2010 ruling on a motion brought by the Province of British Columbia.

*The petitioner, while not commenting on whether the respondents' historical research is complete, say that the area in this case was far less remote than the area in the Nemaiah Valley case, a case where there were 870 historical exhibits and 2,400 documents related to private land grants and tenures in the claim area. The petitioner says that although their view is that a claim to the whole of the Watershed is bound to fail, nevertheless the attempt to prove it involves evidence in relation to all internal locations and tracts, and the documentary record on the title issue, the petitioner says, will be extensive.<sup>101</sup>*

Consideration of claims or interests must occur within the context of historical research of the existing documentary record. As can be seen from the passage above, however, the sheer volume of that record and its review can be overwhelming. Determining the proper scope of the record can

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<sup>96</sup> See *John Winthrop: American's Forgotten Founding Father* by Francis J. Bremner (Oxford University Press, 2003) at page 271 including this reference to the aftermath of the destruction of the Pequots:

*Many Pequots were killed, and close to two hundred surrendered. Sassacus and some of his chief undersachems escaped, but their hope of refuge among the Mohawk was an illusion. That tribe, understanding English power, attached and killed the Pequot leaders, then sent Sassacus's scalp to the Boston authorities as proof of their friendship with the English.*

<sup>97</sup> See *Complaint for Declaratory Judgment* of Onondaga Nation at [http://www.onondaganation.org/mediafiles/pdfs/lgl\\_declaratory.pdf](http://www.onondaganation.org/mediafiles/pdfs/lgl_declaratory.pdf)

<sup>98</sup> *Ibid.*, see para. 18 as well as a map of the lands at <http://www.onondaganation.org/mediafiles/pdfs/landmap1.pdf>

<sup>99</sup> *Journals of Major Robert Rogers*, Todish, ed., (Purple Mountain Press, 2002) at pages 209-210.

<sup>100</sup> See *Champlain: the Birth of French America* by Litalien, Roth and Vaugeois, *supra*. See also *Champlain's Dream* by David Hackett Fischer (Random House of Canada, 2009) at pages 330 to 333.

<sup>101</sup> *British Columbia (Forests and Range) v. Okanagan Indian Band*, 2010 BCSC 1088 (CanLII) at para 104.

become an issue within itself. Within the court processes, the consideration of the documentary record in addition to the other sources of information can lead to massive demands on time and resources. For example, the trial in the 2007 *Tsilhqot'in Nation v. British Columbia* case lasted at least four years from the first taking of evidence to the judge's ruling, a ruling that runs 1382 paragraphs.<sup>102</sup>

As consultation is a process to divert resolution of Indigenous claims from the courts in order to reduce the demands on time and resources, consultation processes need to establish a means to both receive and efficiently absorb the available record. It may also require moving away from the adversarial approach of the justice system in which parties cross-examine the details and implications of evidence brought forward by each party to a co-operative one of seeking a reasonably accurate understanding of history as set out in all sources of information including the documentary record.

e. The Results of Other Similar Consultation Processes: In addition to these sources which have been identified by the courts through recent decades of claims litigation, review should be undertaken of the record of other relevant consultations. Consultation is no longer a fresh concept and a body of literature has come into being through the preparation of Environmental Assessment reports and other documents from other consultation processes. These documents are more and more readily available through the internet as well as published news reports concerning consultations in projects.

Review of the results of other similar consultation processes ensures that a relatively consistent approach is undertaken in relation to each project, that best practices are identified, and also that gaps in understanding that undermine the goals of meaningful consultation are avoided. It also can be taken to respect that the demands of consultation processes placed upon First Nations are not directly of their asking and that communities drawn into consultation often have limited resources.

v. Conclusions on the Scope of Consultation and First Nations Interests

As can be seen, the scope of the First Nations interests and the available sources of evidence supporting those interests are varied and complex. This complexity is further compounded by the rich diversity of First Nations experience in the Lower Cataraqui valley. This report and the consultations undertaken by the City of Kingston in relation to the Third Crossing project can only hope to be based upon a summary of the history and relations which have existed over the centuries in this place. It is work, however, undertaken with the expectation of a sufficient level of integrity and the achievement of usefulness that will help not only the municipality but also the indigenous consultation partners going forward.

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<sup>102</sup> See *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700 (CanLii)

## 6. Indigenous Consultation in the Third Crossing Project Environmental Assessment Phase

From 2009 to 2013, staff of the City of Kingston engaged in consultations with applicable First Nations representatives on the Third Crossing EA Study as part of the overall EA Study Team led by JR Richards for the City of Kingston. The Groups consulted with, the nature of the consultations and the results of the consultations are described in the following sections.

### i. Indigenous Consultation Group Contacts

Staff of the City of Kingston has undertaken its consultations with First Nations in the Third Crossing EA Project based on existing understanding and relationships drawing from past consultations. It has also sought to build its understanding of First Nations interests and strengthen its relationships with First Nation neighbours with the goal of establishing a benchmark for future work with regard to the Third Crossing project as well as throughout other projects including non-construction aspects of municipal life. Building upon this commitment, the list of First Nations, Indigenous groups and other interested parties/stakeholders that have been consulted to date either through meetings or regular mailings include the following;

Mohawk Nation Council of Chiefs  
Secretary  
Grand River Territory  
Ohsweken, Ontario  
NOA 1MO

Mississaugas of Alderville First Nation  
Chief James R. Marsden  
P.O. Box 4  
Roseneath, Ontario  
K0K 2X0

Ardoch Algonquin First Nation  
Mireille Lapointe, Co-chief,  
Box 91  
26 Spring Street  
Westport, Ontario  
K0G 1X0

Huron-Wendat Nation  
Luc Laine, Representative  
255, Rue Chef Mishwl-Lave  
Wendake, Quebec  
G0A 4V0

Métis Nation of Ontario  
Melanie Paradis,  
Director of Lands, Resources and  
Consultations  
75 Sherbourne St., Suite 222,  
Toronto, ON M5A 2P9.

Mohawks of the Bay of Quinte  
Consultation Office  
Administration Building  
13 Old York Rd.,  
Tyendinaga Mohawk Territory, ON  
K0K 1X0

Shabot Obaadjiwan First Nation  
Chief Doreen Davis  
29649-7 Hwy,  
Arden, ON  
K0H 1B0

Algonquins of Ontario,  
Consultations Office,  
31 Riverside Drive, Suite 101,  
Pembroke. ON  
K8A 8R6

Algonquins of Pikwàkanagàn  
1657A Mishomis Inamo  
Pikwàkanagàn  
Golden Lake ON  
K0J 1X0

Mohawk Council of Akwesansne  
Department of Environment,  
P.O. Box 579  
Cornwall Ontario  
K6H 5T3

## ii. Key Consultations Undertaken

The following key meetings and communications have been held in the preparation of this on the dates indicated:

- |                    |   |
|--------------------|---|
| 10 September 2009: | Meeting with Chief James Marsden, Mississauga of Alderville First Nation, Alan McLeod, Alderville Council Offices.  |
| 1 February 2010:   | First general mailing to First Nations and other interested parties/stakeholders <ul style="list-style-type: none"><li>• Stage 1 Update</li></ul>   |
| 10 February 2010:  | Meeting with Chief James Marsden, Councilor David Mowat, Mississauga of Alderville First Nation; Alan McLeod, Brian Osborne, City of Kingston.  |
| 16 March 2010:     | Meeting with Co-Chief Mareille Lapointe, Ardoch Algonquin First Nation with Alan McLeod and Brian Osborne, City Hall, Kingston, Ontario.  |
| 15 June 2010:      | Meeting with Chief James Marsden, Mississauga of Alderville First Nation; Alan McLeod, City of Kingston.  |
| 9 September 2010:  | Meeting with Paul Williams, Mohawk Nation Council of Chiefs; Alan McLeod, City of Kingston.   |
| 5 November 2010:   | Second general mailing to First Nations and other interested parties/stakeholders <ul style="list-style-type: none"><li>• Stage 1 Summary Report to the Council of the City of Kingston, April 2010</li><li>• Status Update Report, July 2010/August 2010</li><li>• Status Update Report, September 2010</li><li>• Status Update Report, October 2010</li></ul>   |
| 2 December 2010:   | Letter dated 2 December 2010, from Elizabeth F. Nanticoke, Acting Director, Department of Environment, Mohawk Council of Akwesasne to Alan McLeod, EA Project Team was advised that Mohawk Council of Akwesasne asked that Mohawks of Bay of Quinte – Tyendinaga be considered point of contact for this project as part of co-ordinated approach to consultations.   |
| 9 December 2010:   | Meeting with Co-Chief Mareille Lapointe, Ardoch Algonquin First Nation with Alan McLeod and Brian Osborne, City Hall, Kingston, Ontario.  |
| 31 January 2011:   | Meeting with Chief James Marsden, Mississauga of Alderville First Nation, Brian Osborne, Kingston, Ontario in which a number of opportunities for extending the meaningful consultation were identified: <ul style="list-style-type: none"><li>• Archeological monitoring.</li><li>• Review of archeological studies.</li><li>• Review and comments on design as well as native plantings and effect of project on ecology on land and in the river.</li><li>• Comments on design including opportunities to provide sympathetic treatments and avoid inappropriate elements.</li></ul> |

- 23 February 2011: Meeting with Paul Williams, Mohawk Nation Council of Chiefs; Alan McLeod, City of Kingston.
- 21 March 2011: Third general mailing to First Nations and other interested parties/stakeholders
- Public Meeting Notice
  - East Side Archeological Assessment – Fieldwork Report
  - Project Status Report – January
  - Project Status Report – February
  - January TAC meeting Agenda
- 15 April 2011 Mailing to Office of Algonquins of Ontario upon request received April 12, 2011 to be added to general list:
- Stage 1 Summary Report to the Council of the City of Kingston, April 2010
  - Status Update Report, July 2010/August 2010
  - Status Update Report, September 2010
  - Public Meeting Notice
  - East Side Archeological Assessment – Fieldwork Report
  - Project Status Report – January
  - Project Status Report – February
  - January TAC meeting Agenda
- 17 August 2011 Fourth general mailing to First Nations and other interested parties/stakeholders
- Project Status Report – March 2011
  - Project Status Report – May 2011
  - Project Status Report – June 2011
  - Project Status Report – July 2011
  - Agenda & Information Package, Technical Advisory Committee – 28 July 2011
  - Technical Advisory Committee Draft Meeting Notes – 28 July 2011
  - Summary Update on Third Crossing EA First Nations Consultation Process – 29 July 2011
- 6 September 2011: Meeting with Paul Williams, Mohawk Nation Council of Chiefs; Alan McLeod, City of Kingston; Brian Osborne, Kingston, Ontario, Dan Franco, City of Kingston; Wes Paetkau, JLR. Discussion of draft document from Mohawk Nation Council of Chiefs
- 15 December 2011: Fifth mailing to First Nations and other interested parties/stakeholders:
- Discussion Draft Third Crossing EA First Nations Consultation Process – 15 December 2011
  - *Tsi Niionkwahsko:ten – Cataraqui River: Proposed Third Crossing – Mohawk Nation Council of Chiefs, November 2011*
  - October Status Report Update.
- 16 February 2012: Sixth mailing to be sent to First Nations and other interested parties/stakeholders
- Discussion Draft Third Crossing EA First Nations Consultation Process – 15 December 2011
  - *Tsi Niionkwahsko:ten – Cataraqui River: Proposed Third Crossing – Mohawk Nation Council of Chiefs, November 2011*
  - December Status Report Update
  - January Status Report Update.
  - Summary of Important Mailouts and Meetings To Date, 14 February 2012



- List of specialty reports prepared for EA process now available via City of Kingston Internet.

23 February 2012: Telephone discussion with Melanie Paradis, Director, Lands, Resources and Consultation. Alan McLeod was advised that the EA Study area was not within the rights consultation area for the Métis Nation of Ontario. This was confirmed by letter dated 23 February 2012 from Alan McLeod to Melanie Paradis, Director, 75 Sherbourne St., Suite 222, Toronto, ON M5A 2P9.

7 March 2012 Telephone discussion with Luc Laine, *charge de project* for Ontario, Huron-Wendat Nation. Mr. Laine indicated receipt and review of mailings described above including *Discussion Draft #4 of The Third Crossing Environmental Assessment Report on First Nations Consultation*, dated 15 March 2012. Alan McLeod advised that draft report was shared with staff and consultants with Huron-Wendat Nation and that comments were to be received by City of Kingston within weeks.

22 March 2012 Meeting with Chief James Marsden, Councilor David Mowat, Mississauga of Alderville First Nation; Alan McLeod, Brian Osborne, City of Kingston; Wes Paetkau, JLR; Pam Buell, Heather Thomson, Pam LaMarche, Parks Canada. Site tour of proposed location of Third Crossing, presentation of EA Study Report findings, review of MNCC concerns, discussion of accommodations to be confirmed in EA Study Report findings.

8 May 2012: Seventh mailing to be sent to First Nations and other interested parties/stakeholders providing Notice of Completion.

9 May 2012: Meeting with Paul Williams, Mohawk Nation Council of Chiefs; Alan McLeod, City of Kingston; Brian Osborne, Kingston, Ontario, Dan Franco, City of Kingston; Wes Paetkau, JLR. Discussion of draft document from Mohawk Nation Council of Chiefs

May 31, 2012 The MNCC Part II Order was requested under the Provincial EA process by Mohawk Nation Council of Chiefs official.

10 August 2012: Face to face meeting with Paul Williams and Amber Adams, Mohawk Nation Council of Chiefs; Dan Franco, City of Kingston; Dan LaLande, Wes Paetkau, JLR; Pam Buell, Heather Thomson, Parks Canada. Discussion of 22 points of comment from Mohawk Nation Council of Chiefs.

September 6 2012 Email sent from City to MNCC that provided summary notes (draft minutes) of the August 10, 2012 meeting. These notes represent the City's interpretation of the August 10, 2012 meeting and have requested the MNCC to review and provide comment to finalize the minutes.

October 18, 2012 Letter sent from MNCC to City that describes several principles that have not been agreed upon between the MNCC and the City.

November 2, 2012 Email sent from City to MNCC asking if the MNCC has reviewed the draft minutes and to confirm agreement on the items discussed in that meeting.

November 2, 2012	Email from MNCC to City stating that the MNCC sent the City draft agreement which incorporates the MNCC's interpretation of the meeting.
November 9, 2012	Phone call between the City and the MNCC. City confirms understood consensus achieved that the remaining process to focus upon was the supplemental report, an elaboration on the discussions in the supplemental report and that the report will proceed through a City committee and on to Council.
November 10, 2012	Email from City to MNCC acknowledging that the City received "Kingston Draft Agreement NEED DATE". This email also notified MNCC that the Province has requested an update to our discussions and that the City and MNCC met on August 10, 2012 and verbally reached agreement on 20 of the 22 points of principle raised by the MNCC in the MNCC's November 2011 Report, that of which their Part II Order is based upon. The City assured the MNCC that a summary of City/MNCC discussions will be documented in a supplemental report to the EA.
November 15, 2012	Email from City to MNCC that included a November 15, 2012 letter from the City to the MNCC. This letter states the City's interpretation as to where the current discussions are at and that we have reached a principled disagreement on the cable stay design. This letter also notifies that the Province will be receiving the letter.
November 15, 2012	Formal email from the City to the Province that provides response to four question/answers regarding the status of consultation with the MNCC. Of particular note email expressly confirms, " <i>The City has made clear that the City will not enter an agreement with the MNCC at this time.</i> "
November 19, 2012	Email from Province to the City requesting that the City reconfirm if the MNCC is speaking on behalf of the Mohawks Bay of Quinte.
November 21, 2012	Letter from Paul Williams for MNCC to Mohawks Bay of Quinte setting out process of consultations between City and MNCC and confirming the Supplemental Report to be prepared.
November 26, 2012	Email from City to Province stating that the City is still seeking a formal response from the MNCC reconfirming MNCC represents the Mohawk Bay of Quinte and that the City is still working on producing a supplemental report.
November 30, 2012	Email sent from MNCC to the City stating several questions that requires clarification of the process going forward.
November 30, 2012	Email sent from City to MNCC in response to MNCC inquiries.
January 14, 2013	Phone call between City and Province. Discussion involved a consultation update between the City and MNCC such as the City will produce a supplemental report regardless of Province's decision on MNCC Part II Order; that no meeting date set between the City and MNCC; the City was working on an action plan that would be presented to City Council on February 19, 2013.

January 29, 2013	Email from MNCC to City with MNCC proposing to have a face to face meeting with City.
February 4, 2013	Email from the City to the MNCC that included February 4 2013 letter that answered several questions from MNCC's November 30, 2012 email such as what the process going forward is; who is authoring the supplemental report; what is left to be done; who does what, and when the provincial process will be completed.
February 6, 2013	Meeting between City and MNCC with Paul Williams and Amber Adams, Mohawk Nation Council of Chiefs; Dan Franco and Alan McLeod, City of Kingston. Individual notes were taken of discussions related to last few points of disagreement and process to move forward through supplemental report as well as future discussions at time of lease negotiations at Federal level. City confirmed City cannot guarantee time frames that are being requested by the MNCC.
February 8, 2013	Email from City to Province that provides a highlight of the February 6, 2013 meeting between the City and MNCC. City confirmed City cannot guarantee time frames that are being requested by the MNCC.
February 11, 2013	Email from City to MNCC that included various attachments. Of particular note, the City's comments (from November 8, 2012, internal files) to MNCC's "Kingston Bridge Agreement" was now formally submitted to MNCC in this email as "Bridge Agreement Comments February 11, 2013".
February 27, 2013	Email from MNCC to City stating that the MNCC had a discussion with the Province regarding the Third Crossing and the MNCC's Part II Order. Of particular note, information between the City, MNCC, and Province was consistent and that any agreement would consist of three categories, mainly what we agree with now, what we agree upon in principle but differ to detailed design, and matters that we have a principled disagreement.
March 1, 2013	Email from City to MNCC stating that the City does not have any direction in proceeding past the Provincial process at this time. The City also stated that City Council will be having a priority setting session within two months that may/ may not provide direction on the Third Crossing.
March 5, 2013	Phone call between City and Province. Discussion involved a consultation update on the City/MNCC discussions. The Province inquired if the City was nearing a withdrawal of MNCC's Part II Order. The City responded saying that the City is not in a position to guarantee timelines on specific tasks as requested by the MNCC. The City stipulated this clearly both verbally (February 6, 2013 meeting) and the February 11, 2013 comments.
March 18, 2013	Email from City to MNCC that informs the MNCC that the priority setting session is end of April 2013. Two scenarios were entertained as a prelude depending on the outcome of the priority setting session.
March 18, 2013	Email from MNCC to City that describes the MNCC's position on two issues. The MNCC want certainty of timelines for discussions with the Federal Government; and secondly, how to conclude an agreement on those three categories, mainly what we agree with

now, what we agree upon in principle but differ to detailed design, and matters that we have a principled disagreement.

- April 8, 2013                      Email from MNCC to City that includes “Kingston Agreement April 2013” which is an updated version of the “Kingston Bridge Agreement DATE NEEDED”.
- April 8, 2013                      Email from MNCC to City that includes a “March 5, 2013 Letter” and a consideration of mitigating ice movement issues on the bridge’s pylon (if it were a cable stay design).
- April 17, 2013                    Phone call between City and Province in that the City informed the Province that the MNCC provided a new version “Kingston Agreement April 2013” on April 8, 2013; that the interpretation of minutes (City) and agreement (MNCC) differ in key areas (an agreement is a form of minutes for MNCC); the new agreement still has time commitments; the City cannot guarantee time commitments as written; the Bridge Agreement Comments February 11, 2013” already stated this; the City was not successful in obtaining a withdrawal; the City to compile chronology of consultations to submit to the Province for a decision.
- April 19, 2013                    Email from the City to Province stating that the City cannot agree to the principles documented in the new agreement as City confirmed City cannot guarantee time frames that are being requested by the MNCC. City confirms it was not successful in obtaining a withdrawal.
- June 20, 2013                    Province issues Decision Letters on Part II Order appeals. Decision Letter to Paul Williams sets out Minister’s Review of Issues raised on behalf of MNCC.

Other communications have been held by way of phone calls and emails throughout the consultation period.

iii. EA Responses to Consultation Processes and Accommodations Provided or Proposed

As a result of the consultation processes set out above, the following forms of accommodations were provided or are proposed to be provided to the First Nations and Metis representatives as indicated below.

<p>Mohawk Nation Council of Chiefs</p>	<p>In response to consultations undertaken with the Mohawk Nation Council of Chiefs, the City of Kingston provided resources requested to undertake Documents provided as a result of research:</p> <p>i) <i>Preliminary Report, Cataraqui River Crossing</i>, September 6, 2011  ii) <i>Tsi Niionkwahsko:ten – Cataraqui River: Proposed Third Crossing</i>, November 2011</p> <p>November 2011 Report included 22 recommendations from MNCC. Discussions continued with MNCC representatives in face to face meetings. Correspondence from MNCC representative to Minister seeking Part II compliance forwarded 31 May 2012. Accommodation to be provided: Identification of the recommendations of the MNCC and requirement for further consultation / participation at time of future design and construction to be set out in Supplemental EA Study Report. Details of the recommendation and process discussions continue but significant agreement reached on 20 of 22 points of discussion. Supplemental Report to be prepared for Council of City of Kingston detailing outcome of this continued process. Continued discussion referenced in Provincial EA Order.</p>
<p>Alderville First Nation</p>	<p>In response to consultations undertaken primarily through document sharing and a series of meetings with leadership representatives of Alderville FN, opportunities for extending the meaningful consultation were identified:</p> <ul style="list-style-type: none"> <li>• Archeological monitoring.</li> <li>• Review of archeological studies.</li> <li>• Review and comments on design as well as native plantings and effect of project on ecology on land and in the river.</li> <li>• Comments on design including opportunities to provide sympathetic treatments and avoid inappropriate elements.</li> </ul> <p>Accommodation to be provided: Identification of the requests of the Alderville FN and requirement for further consultation / participation at time of future design and construction to be set out in the EA Study Report. Satisfaction on the process undertaken received from Chief Marsden at meeting of 22 March 2012.</p>
<p>Ardoch Algonquin First Nation</p>	<p>In response to consultations undertaken primarily through document sharing and a series of meetings with leadership representatives of Ardoch Algonquin First Nation. Accommodation to be provided: no further consultation requirement necessary in accordance with <i>Haida</i> ruling acknowledgement that notice to First Nation may suffice in appropriate circumstance.</p>
<p>Huron-Wendat First Nation</p>	<p>In response to consultations undertaken primarily through document sharing and telephone communications, formal response is anticipated. No response received from representatives of Huron-Wendat First Nation. Accommodation to be provided: no further consultation requirement necessary in accordance with <i>Haida</i> ruling acknowledgement that notice to First Nation may suffice in appropriate circumstance.</p>

<p>Métis Nation of Ontario. Melanie Paradis, Director, Lands, Resources and Consultation</p>	<p>In response to consultations undertaken primarily through telephone discussion by letter, by dated 23 February 2012 from Alan McLeod to Melanie Paradis it was confirmed that the EA Study area was not within the rights consultation area for the Métis Nation of Ontario. Accommodation to be provided: no further consultation necessary.</p>
<p>Mohawk Council of Akwesasne</p>	<p>By letter dated 2 December 2010, from Elizabeth F. Nanticoke, Acting Director, Department of Environment, Mohawk Council of Akwesasne to Alan McLeod, EA Project Team was advised that Mohawk Council of Akwesasne asked that Mohawks of Bay of Quinte – Tyendinaga be considered point of contact for this project as part of co-ordinated approach to consultations. Accommodation to be provided: no further consultation requirement necessary based on the request received and through the continuing MNCC discussions.</p>
<p>Mohawks of the Bay of Quinte – Tyendinaga</p>	<p>In response to consultations undertaken primarily through document sharing, no response has been received from Mohawks of the Bay of Quinte. Correspondence dated 31 May 2012 received 12 June 2012 from R. Donald Maracle, Chief, Mohawks of the Bay of Quinte. Communications received after receipt of Notice of Completion and close of comment period under Provincial EA process. Further communication sent from Paul Williams for MNCC dated 21 November 2012 to Chief Maracle with cc to City provided further update to which no response was provided. Accommodation to be provided: accommodated through the continuing MNCC discussions.</p>
<p>Shabot Obaadjiwan First Nation</p>	<p>In response to consultations undertaken primarily through document sharing, no response Received from Shabot Obaadjiwan First Nation. Accommodation to be provided: no further consultation requirement necessary in accordance with <i>Haida</i> ruling acknowledgement that notice to First Nation may suffices in appropriate circumstance.</p>
<p>Algonquins of Ontario</p>	<p>In response to consultations undertaken primarily through document sharing, Letter received dated 25 June 2012 from Janet Stavinga, Executive Director, Algonquins of Ontario indicating appreciation of level of information provided and decision not to give further comment. Letter also noted provision of information provided to Shabot Obaadjiwan First Nation since March 2009. Accommodation to be provided: no further consultation necessary.</p>
<p>Algonquins of Pikwàkanagàn</p>	<p>In response to consultations undertaken primarily through document sharing, no response has been received from Algonquins of Pikwàkanagàn. Accommodation to be provided: no further consultation requirement necessary in accordance with <i>Haida</i> ruling acknowledgement that notice to First Nation may suffice in appropriate circumstances.</p>

#### iv. Discussion on Responses to EA Consultation Process

It was identified in mid-2011 that the volume of comments received in response to the Third Crossing EA Consultation Plan had not been as great as expected or hoped for. Some issues were identified in discussions which potentially explained the lack of response.

Importantly, First Nations and Indigenous community leadership have stated that they lack resources to respond to all requests for consultation made of them, especially in light of their own resource demands for the administration of their own communities. Comments have been received and appreciated related to the lack of First Nations participation in the framing of the duty to consult as well as the uncertainty of the role of municipal government under that duty. As a result of comments received, it may have to be acknowledged that First Nations may have other priorities for their focus and limited resources. Efforts to ease that restriction may have to be undertaken.

In particular, the Lower Cataraqui River Valley has been the site of a number of Indigenous communities over time. The use of the area has included activities such as hunting, burial and transit but, as a border or buffer zone, it has also been from time to time a place of danger due to its location on the intersection of three great waterways. In addition, it has been identified in the Archeological Master Plan of the City of Kingston that the agricultural resources historically available in this area were limited compared to other areas in the eastern Lake Ontario region, though the marine and marshland resources were generous. The river valley may, as a result, not be perceived as core to the concerns of the First Nations in the consultation group. This is likely accentuated and made more complicated due to the dislocation caused by the intervention of Canadian settlement and governance.

While it is a continuing effort, the City of Kingston has sought to work with its First Nations and Indigenous community neighbours in a way that is positive and meaningful. Efforts to engage in an appropriate way include protection of Indigenous heritage sites such as the Belle Island burials and Outer Station fishing location which are located within a few hundred meters of the proposed site of any future Third Crossing. As a result, there may be an understanding grown out of previous consultations, communications and projects that the municipality is actively engaged with others in this First Nations consultation even though greater levels of response may have been anticipated and all response is welcome.

The City of Kingston responded to these challenges through the EA process. As a result of the low level of response as well as to meetings held comments received to mid-2011, the consultation plan was adjusted to add the following elements not initially anticipated at the outset of the consultation process:

- Advising and informing members of the EA Study Team Technical Advisory Committee on the importance of Indigenous experience which may be needed to be taken into account in considering environmental concerns as well as such implications of bridge design as First Nations and Indigenous aesthetics and even acoustics.

- Resources were provided upon request of the Mohawk Nation Council of Chiefs to undertake research on the *Haudenosaunee* perspective on the proposed Third Crossing. As a result, the following documents were presented.

i) Preliminary Report, Cataragui River Crossing, September 6, 2011

ii) Tsi Niionkwahsko:ten – Cataragui River: Proposed Third Crossing, November 2011

These reports resulted in review, and comment from the EA team communities from that tradition, as well as comment and contrast from communities from other First Nations. These reports also were reviewed by Parks Canada as part of the draft EA Study review and received comment. On 31 May 2012, the Mohawk Nation Council of Chiefs filed a Part II Order request under the Provincial EA process.

These extra steps did result in the consultation results as described in section 6(iii) above. It also led to more detailed discussions in particular with the Mohawk Nation Council of Chiefs. Further resulting meetings and communications with representatives of the Mohawk Nation Council of Chiefs in August 2012 to the identifications of a number of points of discussion many of which – but not all – were agreed to as being applicable in this project. The Mohawk Council of Chiefs has provided a statement on the points of discussion as attached as schedule “A” to this report. These points are summarized for the purposes of this report as follows:

1. Build for at least 120 years life: The position of the MNCC is that, to the best of the ability of the City, the bridge should be designed and built to have a life span of at least 120 years. This has specific consequences for bridge design and planning, some of which are the subject of the principles adopted in this agreement. The City of Kingston agrees with this statement of principle and its application to this project.
2. Context sensitive design: The position of the MNCC is that some recommendations made by the Mohawk Nation in its December, 2011 report address specific aspects of bridge design and construction. The parties agree to adopt those recommendations in principle, while deferring their more detailed consideration and implementation to the detail design phase of the bridge’s planning and construction. The matters deferred to the detail design phase will be the subject of further conversations between the City and the MNCC at that time, to incorporate those principles into the bridge design and its implementation. The result may be further agreements, to be added to this agreement. The City of Kingston agrees with this statement of principle and process.
3. Natural materials: The position of the MNCC is that natural materials should be used as much as possible in the design and construction of the bridge and supporting areas. Natural materials, for this purpose, are materials that have been subjected to less processing and refinement than



man-made materials. As a matter of principle, where in any aspect of the bridge there is a choice between natural and man-made materials, the natural materials will be used unless the man-made materials offer significant safety, durability, or environmental advantages or where the additional cost of natural materials would be prohibitive. As part of the detail design phase of the bridge planning, we will develop a process to examine, with respect to each aspect of the bridge, the availability of natural materials, and their relative safety, durability and longevity. The suitability of the materials for re-use or recycling will also be a factor in choice of materials. The City of Kingston agrees with this statement of principle and its application to this project.

4. Local materials. The position of the MNCC is that the use of local materials in the construction of the bridge links the bridge to the land from which it emerges. It promotes local employment. It reduces transportation costs. As a matter of principle, Kingston will seek to avoid using or buying materials for the construction of the bridge that originate more than 800 kilometres away. The process for evaluating components and materials for bridge construction will provide for a distinct step in considering the availability and appropriateness of local materials, using the same criteria as considering the use of natural materials. The City of Kingston agrees with this statement of principle and its application to this project.
5. Capacity and Expansion: The position of the MNCC is that (i) the bridge should be designed to have an eventual capacity of four lanes of traffic, but it should initially consist of two traffic lanes and the other lanes, on a separate track, would be used by cyclists and pedestrians and that (ii) conversion from two to four lanes, when proposed by the City, must be fully justified, and not only in terms of pressure for eastward development. Any preferred design would provide for a bridge that was initially two lanes, with pedestrian and bicycle access, and with provision for expanding to four lanes, but only if actual need for the expansion was justified in future. The City of Kingston agrees with this statement of principle and its application to this project.
6. Demand: Bridge should respond to actual and planned needs, and not to pressure from those who would develop the lands east of the river, in ways inconsistent with Kingston's urban planning. The MNCC and the City recognize that this discussion transcends the EA process outright and therefore agreed to defer to policy discussion at a later date.
7. Accelerated bridge construction: The position of the MNCC is that accelerated bridge construction techniques will reduce environmental impact, cost and waste, and speed up construction. Accelerated bridge construction involves creating a construction site near the location of the bridge, and a bridge design that will use components created on that construction site and transported to the bridge site to be assembled there. This reduces environmental impact, cost and waste, and speeds up construction. Application of those techniques and the selection of the construction site will be the subject of a separate

conversation at the detail design stage. Within three months after signing this agreement, Kingston and the Mohawk Nation will meet to review possible sites for accelerated bridge construction activities. During the design phase, Kingston will identify those parts of the bridge which it has concluded will be produced using accelerated bridge construction techniques. The City of Kingston agrees with this statement of principle and its application to this project.

8. Bridge deconstruction: The removal of the bridge from the site at a future date must be planned and confirmed at the same time as construction is approved. The position of the MNCC is that, within one year of the beginning of the design phase, Kingston will provide the Mohawk Nation with detailed plans for the dismantling of the bridge, the recycling or re-use of its material parts, and restoring the natural environment once the bridge is removed. Dismantling, recycling and restoration, together, are “decommissioning” the bridge. These plans will be filed with Ontario and Canada at the same time as the plans for the construction and maintenance of the bridge are filed. Decommissioning costs will be included in the life cycle assessment of the bridge and in Kingston’s estimates of the financial, social and environmental cost of the bridge. The City and the MNCC acknowledge that technology is likely to change during the lifetime of the bridge, and that methods and standards of decommissioning will evolve over time. The City of Kingston agrees with this statement of principle and its application to this project.
9. Monitoring systems: The position of the MNCC is that, for the state of health of the bridge, to supplement visual monitoring with advanced technology to monitor the condition of the bridge. The City of Kingston agrees with this statement of principle and its application to this project.
10. Renewable energy: The position of the MNCC is that to the extent possible, the bridge design will incorporate provision for the bridge to fulfill its energy needs with its own renewable energy sources. The goal is to have a bridge that has what is called a “zero carbon footprint,” even as the vehicles using the bridge continue to burden the natural environment. Photovoltaic and wind energy will be used where possible to provide electricity to meet the bridge’s energy demands, including de-icing the pavement. To reduce the bridge’s electrical consumption, the bridge will incorporate light-emitting-diode and other low-burden lighting. The bridge lighting will be designed to have as little impact on the night sky as possible. Bridge lighting will also be designed to prevent birds being attracted to the bridge at night, and to discourage bird collisions with the bridge. The City of Kingston agrees with this statement of principle and its application to this project.
11. Life Cycle assessment: The position of the MNCC is that the City Kingston will provide the Mohawk Nation with a detailed life cycle analysis for the bridge after the conclusion of Ontario’s Environmental Assessment of the bridge project, within one year after the beginning of the design phase, and at least one year before any final design decisions are made. In this regard,

“design phase” means that part of Kingston’s work on the bridge project that takes place after the City Council’s decision to proceed with the building of the bridge, and before actual construction begins. The City of Kingston agrees with this statement of principle and its application to this project.

12. Waste management: The position of the MNCC is that, during both construction and life cycle, bridge design, construction and operation will take waste management into account. Waste from the bridge, and especially waste from the winter use and de-icing of the bridge, will not be allowed to run into the river. Provision for rapid response by dedicated crews will assist in preventing damage. Permanent storm water drainage and management facilities will drain all roadway and bridge deck areas to an on-land storm water management facility for treatment. Special steps will be taken to remove any materials used by Kingston to deal with ice and snow on the bridge. Treatment will consist of the removal of sediment, solutes, and man-made chemicals from the water, as well as other naturalizing processes, so that any water that enters the river will be as much like existing river water as possible. Joint studies will ensure that water entering the river from the bridge or its water treatment facilities will do not harm to the riverine environment and its surrounding ecosystems. Kingston will install equipment to monitor the water entering the river from the bridge, and the Mohawk Nation will have full and prompt access to the reports generated by Kingston using that equipment. The City of Kingston agrees with this statement of principle and application to this project.
13. Ultra High Performance Pavement: The position of the MNCC is that ultra high performance pavement would result in lighter, more durable road beds, and would permit more flexibility in design. Kingston is committed to taking advantage of evolving technologies in bridge and road construction. The use of high performance materials, including Ultra High Performance Pavement, will result in environmental benefits, lighter, more durable road beds, and cost savings. In the design of the bridge, the choice of high performance materials will reduce the amount of materials required to be used. At the detail design stage of the project, high performance and light materials will be accorded preference in material selection. The City of Kingston agrees with this statement of principle and its application to this project.
14. Other materials: The position of the MNCC is that other high performance materials in all aspects of the bridge’s design and construction would lead to cost savings, environmental benefits and would allow more attractive bridge designs. Any detailed design should incorporate LED and other low-burden lighting. Pedestrian and cycling lanes design to provide variety and be as natural as possible. The City of Kingston agrees with this statement of principle and its application to this project.

15. Sound control: The position of the MNCC is that the Mohawk Nation, in its December 2011 report, explained some of the potentially serious impacts of bridge noise and vibration on the riverine environment, including upon fish and other aquatic life, birds and shore animals. Kingston's reaction was to deny that there had been any significant studies on the subject, and that it was not possible to make any assessment of the impact, because, for example, fish cannot communicate. The Mohawk Nation responded with a bibliography citing over 150 studies of bioacoustics impact on aquatic environments in northeastern North America and worldwide. Solution: In consultation with the Mohawk Nation, Kingston will design and undertake a preliminary study of this issue, which will include an evaluation of the riverine environment and the existing state of research on the question. During the selection of bridge design and during the detail design stage, a separate study will examine and propose mitigation measures, including bridge design features, to reduce and minimize noise and vibration from the bridge. The City of Kingston agrees with this statement of principle and its application to this project.
16. Lightweight vehicular use: The position of the MNCC is that (i) heavy commercial vehicles should be routed into Kingston over the Highway 401 crossing, and not over the bridge to enable the bridge to be built with lightweight construction materials and that (ii) public transportation route using the bridge should employ lightweight vehicles. The City of Kingston agrees with this statement of principle and its application to this project.

As noted, City staff were able to indicate support for the recommendations above many of which must be deferred to future detailed design or construction stages. The following recommendations were not able to be supported for the reasons and/or to the degree noted:

1. Context sensitive design: MNCC recommended that that the bridge should be considered a guest, a visitor to the river and the land, and not an owner or overlord. City agreed to the importance of the principle and its inclusion. The parties were not able to come to agreement as to the timing and the degree to which this ought to be implemented. But, as noted above, the City has agreed to implement training related to the concept when appropriate. The MNCC has stated:

*The Mohawk Nation is not convinced that Kingston's engineers and planners have actually understood or accepted the meaning and effects of context sensitive design, or how adopting that approach changes what the bridge will look and act like. The Mohawk Nation report sought to explain the aesthetic and philosophy involved, and Kingston's August 2012 responses to that document demonstrated what Mohawk representatives felt was a virtually complete lack of receptivity or understanding.*

*[The MNCC have proposed as a solution] that within six months of signing this agreement, the Mohawk Nation will invite key practitioners of context sensitive design to a two day session in*

*Kingston, to be designed by the Mohawk Nation and hosted by Kingston, and attended by Kingston decision-makers; Mohawk representatives; and federal and provincial government representatives who are likely to be involved in negotiations and decisions concerning the bridge. The workshop will include a joint effort to identify principles and aspects of context sensitive design to be implemented in the design and construction of the Third Crossing bridge.*

The City agrees with this principle but wishes to undertake this training at a future point in time when it would best assist the detailed design phase.

2. Riverbed trenching. MNCC suggested the City needed to supplement its knowledge about the impact of a permanent trench and water main on the river environment. City understands it has agreed to this principle and deferral to pre-design for implementation. It is not, however, clear that the City and the MNCC are in full agreement as the MNCC has stated:

*It would appear that Kingston misunderstood Parks Canada's stipulation: what was intended was a multi-faceted mitigation strategy, including habitat enhancement, water quality efforts, increased protection for sensitive lands, and other environmental protection and restoration measures. Instead, Kingston asserted that the trench would enhance biodiversity by providing increased habitat for pelagic species. The Mohawk Nation report of December 2011 demonstrated that this assertion was baseless for several reasons. The trench would fill in quite quickly. Fish would tend to avoid the trench. The only report on a Cataraqui River trench, in respect of a smaller water pipe downstream from Belle Island, indicated no enhancement of habitat and the increase in biodiversity came in the form of the round gobey, an invasive species.*

*[The MNCC have proposed as a solution that any] plan for dredging the river bed must be approved by Parks Canada Agency, the bed's owner. The Mohawk Nation proposes that it should be a party to any discussions between Kingston and Parks Canada about any proposed dredging, but that there is no present need for bilateral Kingston-Mohawk talks. The Mohawk Nation is interested in taking an active part in planning and implementing mitigation measures.*

3. Cable stay design. The MNCC explained how a cable stay design with a single pylon would be economical, would reduce the bridge's footprint in the river, and would respect the values of the Haudenosaunee by incorporating the symbols of the turtle and the Tree of Peace. The City indicated support for the incorporation of the turtle but noted that the interpretation of Parks Canada's bridge design guidelines and discussions at earlier Technical Advisory Committee meetings resulted in the project team selecting a low profile bridge design. A major factor for the project team to select the arch structure was that it was the lowest profile structure available that could give the highest chance of success of not being rejected according to both the Parks Canada's bridge design guidelines and through the later Federal environmental review process. In the project team's position, anything taller would have put the EA at risk of being

rejected. Therefore, a cable stay structure for the entire length was not further considered. The MNCC has stated:

*The Mohawk Nation feels strongly that its bridge design, both as a whole and with respect to its constituent elements and aesthetic, was not given a fair chance. The design was not presented to Kingston City Council nor to the Kingston public as an alternative, and the reasons for rejecting the design were seriously flawed. Kingston's failure to consider the Mohawk Nation's December 2011 report, and its refusal to fairly consider the Mohawk bridge design, have affected the credibility and integrity of the collaboration. Since bridge construction is more than ten years away, it is difficult for the Mohawk Nation to accept the idea that its design cannot be considered, because the actions already taken make it too late now. Further discussion is required, either to ensure that the Mohawk bridge design does get fair consideration, or to ensure that the oversights and superficial rejections do not happen again. There may be room for third-party assistance in this instance. With respect to a future move from a two-lane to a four-lane bridge, there needs to be some agreement on a process for justification and review.*

## 7. Preliminary Design Consultations (2016-17)

After the Third Crossing EA Project concluded there was a hiatus in consultation with the applicable Indigenous communities from December 2013 until September 2015 when the Council of the City of Kingston granted approval of the Preliminary Design Phase of the project. After the procurement process of retaining a prime consultant for the PD Phase project was concluded in February 2016, the consultation resumed as listed below.

17 February 2016:	Parks Canada advised that the Preliminary Design Phase of the project was being started and that the City's consultation team would be resuming.
1 March 2016:	Meeting between DF, AML and Peter Larivière, Manager, Indigenous Relations, Ontario Waterways Unit, Parks Canada.
30 March 2016:	<p>Project Status Update letter was also sent to:</p> <ul style="list-style-type: none"><li>• Mohawk Nation Council of Chiefs, Grand River Territory, Ohsweken, Ontario</li><li>• Mississaugas of Alderville First Nation, Alderville, Ontario</li><li>• Ardoch Algonquin First Nation, Ardoch, Ontario</li><li>• Huron-Wendat Nation, Wendake, Quebec</li><li>• Métis Nation of Ontario, Consultation Office, Toronto</li><li>• Mohawks of the Bay of Quinte, Tyendinaga Mohawk Territory, Ontario</li><li>• Shabot Obaadjiwan First Nation, Arden, Ontario</li><li>• Algonquins of Ontario, Consultation Office, Pembroke, Ontario</li><li>• Algonquins of Pikwàkanagàn, Golden Lake, Ontario</li><li>• Mohawk Council of Akwesansne, Environmental Program Office, Akwesansne, Ontario</li></ul> <p>This notification letter was also copied to Hon. David Zimmer, Minister, Ontario Ministry of Indigenous Affairs as well as the Department of Indigenous Affairs and Northern Development.</p>
30 May 2016:	Email from Amy Cowie, Mohawks of the Bay of Quinte to Dan Franco indicating interest archaeological monitoring of geotechnical field work.
20 July 2016:	Second information mail out update to same group. Included minutes and materials from first four Technical Advisory Committee meetings, the geotechnical work plan as well as materials from a sustainability charette.
25 July 2016:	Email from Mélanie Vincent, M.Sc.AJS, Gestation MV Management indicating the Huron-Wendat Nation, Wendake, wished to be involved to have a monitor on site for the archaeological assessments.
27 July 2016:	Telephone call to Amy Cowie, Mohawks of the Bay of Quinte, from Dan Franco detailing process of participating in marine archaeology monitoring at site of footings for Third Crossing of Cataraqui River

- 27 July 2016: Telephone call to Mélanie Vincent for Huron-Wendat Nation from Dan Franco detailing process of participating in marine archaeology monitoring at site of footings for Third Crossing of Cataraqui River.
- 2 August 2016: Email from Dan Franco to Amy Cowie, Mohawks of the Bay of Quinte, with information package related to geotech program.
- 2 August 2016: Email from Dan Franco to Mélanie Vincent for Huron-Wendat Nation with information package related to geotech program.
- 8 August 2016: Email from Mélanie Vincent for Huron-Wendat Nation indicating colleague Maxime Picard was continuing representation.
- 22 August 2016: Email from Peter Larivière, Manager, Indigenous Relations, Ontario Waterways Unit, Parks Canada including following:
- On March 1, 2016, we met along with Alan McLeod, to discuss the city of Kingston's engagement and consultation process to date with Indigenous communities on the matter of the proposed Third Crossing Project.*
- Upon review of the material presented at this meeting it was felt by Parks Canada, that the work undertaken by the City of Kingston to date has been of a high degree of engagement with local Indigenous communities, and would either meet or exceed Parks Canada's normal engagement processes for the current stage of the project. Parks Canada would recommend that the City of Kingston maintain its current level of engagement with the Indigenous communities and immediately prior to the issuance of any permit by Parks Canada it will simply need to contact the Indigenous communities by letter to ensure their satisfaction with the processes undertaken by the City of Kingston.*
- Parks Canada would also suggest that at some later stage of the projects development its presence at a formal consultation session between the City of Kingston and the Indigenous communities would further ensure that the level of consultation is sufficient to meet any legal obligation by Parks Canada.*
- It is highly unlikely that Parks Canada will need to undertake bilateral consultation with Indigenous communities on its responsibilities related to any permit required by the City of Kingston for the proposed Third Crossing Project...*
- 26 August 2016: Email from Dan Franco to Amy Cowie, Mohawks of the Bay of Quinte, with updated information related to geotech program.
- 26 August 2016: Email from Dan Franco to Mélanie Vincent for Huron-Wendat Nation with updated information related to geotech program.
- 30-31 August 2016: Emails between Dan Franco to Mélanie Vincent for Huron-Wendat Nation confirming Akian Sioui, monitor for Huron-Wendat Nation would be on site for marine geotech



- work. Also emails with Maxime Picard, Coordinateur de projets – Ontario, Huron-Wendat Nation.
- 31 August 2016: Email from Amy Cowie, Mohawks of the Bay of Quinte to Dan Franco indicating they have no monitor available to join the marine geotech work. Ask for updates on the progress of work.
- 14 September 2016: Akian Sioui, monitor for Huron-Wendat Nation on site for further monitoring of marine geotech work.
- 24 October 2016: Third information mail out update to same group. Included minutes and materials from Technical Advisory Committee meetings and Public Open House.
- 27 October 2016: Email from Mélanie Vincent for Huron-Wendat Nation to Dan Franco indicating  
*“...appreciate the time and cooperation from you, very appreciated and we are looking forward to work again with the City, maybe we should set up a meeting at some point so we can introduce you to more information about our Nation and interests and heritage...”*
- April 2017: Fourth information mail out update to same group. Included minutes and materials from Technical Advisory Committee meetings and Public Open House.
- 20 April 2017: Telephone call with Paul Williams, Mohawk Nation Council of Chiefs.
- 1 May 2017: Telephone call with Paul Williams, Mohawk Nation Council of Chiefs on C3 Project request to land at Belle Island and strategy to have them relocate.
- 2 May 2017: Telephone call with Paul Williams including Lanie Hurdle, Commissioner on Belle Island renaturalization.
- 11 May 2017: Fifth information mail out update to same group. Included minutes and materials from Public Open House as well as draft Preliminary Design Summary Report and draft Third Crossing Business Plan. Detailed Impact Assessment (DIA) also discussed:  
*The DIA process is continuing to be discussed at TAC meetings and will continue to progress throughout the life of the project. A component of the DIA requires documentation of public engagement and First Nations consultations. The City and First Nations consultations will be reviewed periodically by the Federal Government to ensure the consultation process is meeting their Federal DIA requirements. This consultation process will be documented in the final DIA report which is subject to final Federal approval which is a pre-requisite prior to the construction of the project.*
- 23 May 2017: Email from Linda Norheim, Manager, Lands, Resources and Consultations, Métis Nation of Ontario to Dan Franco requesting meeting with the MNO Region 6 Consultation Committee to discuss the Third Crossing project:

*The meeting would provide an opportunity for the Region 6 Consultation Committee to learn about the proposed crossing and it would also provide an opportunity for the Consultation Committee to introduce themselves to you and give a bit more context around the Métis communities in eastern Ontario.*

- 28 May 2017: Email from Dan Franco to Linda Norheim, Manager, Lands, Resources and Consultations, Métis Nation of Ontario confirming that City staff happy to meet and that funding to reimburse expenses available.
- 5 June 2017: Email from Linda Norheim, Manager, Lands, Resources and Consultations, Métis Nation of Ontario to Dan Franco discussing consultation process, confirming costs to be reimbursed and seeking a date in September or early October 2017.
- 7 June 2017: Email from Dan Franco to Linda Norheim, Manager, Lands, Resources and Consultations, Métis Nation of Ontario confirming that meeting set for the fall of 2017.

Other communications have been held by way of phone calls and emails throughout the consultation period.

## 8. Post-Preliminary Design Consultations (2017 - continuing)

The Preliminary Design Stage of the Third Crossing Project, begun in February 2016, concluded on 14 June 2017 with Council of the City of Kingston receiving the Preliminary Design Study Report prepared by the J.L. Richards consulting team for the Third Crossing of the Cataraqui River as well as the Business Plan prepared for the project. At the same meeting of Council held on 14 June 2017, staff were directed to undertake the completion of the Third Crossing project including final design, construction procurement, and construction completion. Approval of the post-preliminary design phases was contingent on funding approval from the Province of Ontario and the Government of Canada. Confirmation of Provincial participation in funding soon followed. On June 13, 2017, confirmation of Provincial funding for the project was confirmed. This was followed by, on 21 February 2018, confirmation of Federal funding.

Also on 21 February 2018, responsibility for who had participated in the project to date. In addition to the consultations with Indigenous the Third Crossing Project was transferred to a new Department, the Major Projects Office, which was staffed with personnel communities described below, the Major Projects office is retaining a number of indigenous consultancies with specific areas of expertise. These include:

- Amber Adams, PhD, eastern Great Lakes botany on naturalization and native planting; and
- Okwaho Equal Source, Shyra Barberstock, PhD, President, Tyendinaga Mohawk Territory, Ontario on innovation and entrepreneurship from an indigenous perspective. Okwaho contract concluded July 2019.

The hiring of these consultants reflects the interest of the City of Kingston to address the duty to accommodate which has been confirmed as being associated with the duty to consult by appellate level courts in cases such as the SCC 2017 ruling in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*<sup>103</sup> and that of the FCA *Tsleil-Waututh Nation v. Canada (Attorney General)*<sup>104</sup> in 2018. Based on those cases, the City of Kingston seeks to ensure that its discussions with the appropriate Indigenous groups reflect the both the depth of consultation and meaningfulness in accommodations that the courts now require. The City is undertaking these processes also in harmonization with indigenous resident interest in nearby Belle Park Master Plan development as well as protection and management of Belle Island, site of late woodland burials co-owned with Mohawk Nation Council of Chiefs.

Consultations and accommodations with First Nations partners related to this phase of the Third Crossing Project are listed below.

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<sup>103</sup> See footnote 61, *supra*.

<sup>104</sup> See footnote 65, *supra*.

30 June 2017: Email from Dan Franco to Linda Norheim, Manager, Lands, Resources and Consultations, Métis Nation of Ontario confirming municipal council approval of proceeding with Third Crossing project subject to upper level funding.

23 August 2017: Telephone call with Paul Williams, Mohawk Nation Council of Chiefs. Raise opportunity to link Belle Island renaturalization to Third Crossing through resourcing landscaping aspect.

6 October 2017: Telephone call with Paul Williams, Mohawk Nation Council of Chiefs. Discuss native plantings nursery opportunity.

14 October 2017: Meeting with Métis Nation of Ontario, Region 6. Followed up by sharing of documents with Linda Norheim, Manager, MNO.

3 November 2017: Telephone call with Paul Williams, Mohawk Nation Council of Chiefs. Discussion on Third Crossing through resourcing landscaping aspect. Discussion of *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 and religious belief.

28 February 2018 Telephone call with Paul Williams, Mohawk Nation Council of Chiefs. Discussion of recent *Williams Lake* 2018 SCC 4 ruling from SCC as well as role of accommodation within consultation. Follow up emails on accommodation.

8 March 2018 Email from Paul Williams, Mohawk Nation Council of Chiefs on accommodation requirement.

12 March 2018 Telephone call with Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation confirming 2018 fieldwork opportunities as well as role of accommodation within consultation. Discussed RFP and Maxime Picard indicated the community has a partnership in construction field and would review possible bidding on entire project. Handwritten notes available.

19 March 2018 Mail Out #6 sent by email to 11 consultation partner representatives.

20 March 2018 Email from Skye Anderson, Lands and Resources Communications Officer, Alderville First Nation requesting more information on the City of Kingston's Duty to Consult process regarding the Third Crossing project.

22 March 2018 Email from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation confirming that they will not, through their construction corporation, be bidding on the project so would want to resume discussions related to consultation and accommodation.

5 June 2018 Email to Paul Williams, Mohawk Nation Council of Chiefs as well as Curtis Lazone, Environment Officer, Akwesasne First Nation and others on neighbouring co-owned Belle Island. Removal of small footpath bridges nearby to Third Crossing project.

14 August 2018	Receipt and review of final draft of report on indigenous resident community input related to adjacent Belle Park Master Plan, prepared by Terri-Lynn Brennan, Phd. of Inclusive Voices Incorporated for City of Kingston, Recreation and Leisure.
15 September 2018	Mail Out #7 sent by email to 11 consultation partner representatives.
17 September 2018	Email from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation confirming receipt of Mail Out #7 and asking to discuss next steps by further telephone call.
17 September 2018	Email from Chief James Marsden Alderville First Nation describing desire to rekindle personal participation in discussions and also confirming ongoing work with City of Kingston Culture Department.
17 September 2018	Email to Chief James Marsden, Alderville First Nation welcoming revival of discussion and sharing two records related to the Mississauga of Alderville identified in City of Kingston research: (i) explorer Charlevoix travel record from 1720 including notes from observations of Mississauga present at Fort Frontenac and (ii) 1888 anthropological article which included include information provided from residents at Alderville.
26 September 2018	Email to Paul Williams, Mohawk Nation Council of Chiefs, coordinating travel to Six Nations with project design team members.
2 October 2018	Telephone conference call and email follow up with Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on marine geotechnical monitoring, incorporation of narrative design, coordination with Wendake Construction and other specific accommodation opportunities. Confirmed monitors will be present for this fall's geotechnical study.
3 October 2018	Telephone conference call with Amy Brant, Mohawks of the Bay of Quinte on marine geotechnical monitoring and other specific accommodation opportunities. Confirmed monitors will be present for this fall's geotechnical study.
9 October 2018	Emails from Paul Williams, Mohawk Nation Council of Chiefs, coordinating travel to Six Nations with project design team members.
10 October 2018	Email to Janet Stavinga, Executive Director, Algonquins of Ontario Consultation Office, Pembroke asking if a meeting on the project is of interest.
12 October 2018	Meeting with Okwaho, Shrya and Rye Barberstock, indigenous entrepreneur consultancy, on focusing approach to assisting with accommodations. Gave example of connecting Wendaki Constriction with procurement staff of Keiwit, project IPD team
17 October 2018	Meeting with Paul Williams, MNCC representative, and Amber Adams at Six Nations, Osheeken, Ontario. Review Parks Canada permit process and review of landscaping and native botany.

19 October 2018 Meeting with Chief James Marsden, Alderville First Nation, City Hall, Kingston. Joined by Brian Osborne, Professor Emeritus, Queens. University. Reviewed research to date, discussed recent Alderville FN settlement outcomes, historic records, opportunities for Alderville community participation.

23 October 2018 Marine Geotechnical Study at project site. Archaeological monitors present from Tyendinaga FN and Wendaki FN. Requested resources for monitors provided.

25 October 2018 Report to Susan Millar, Planner, Ontario Waterways, Parks Canada on status of consultation with Akwesasne FN through project 2008 to present.

October and November 2018: Barge located monitoring of marine geotechnical study by representatives of Huron-Wendat Nation as well as Mohawks of the Bay of Quinte.

25 October 2018: Email from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on marine geotechnical monitoring on geotechnical study status.

29 October 2018: Emails to and from Chief James Marsden, Alderville First Nation on tree inventory.

29 October 2018: Emails to and from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on tree inventory.

28 November 2018: Emails to and from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on tree inventory.

12 December 2018: Telephone conversation with Paul Williams and follow up emails, MNCC representative on project update and electricity demand of bridge.

14 December 2018: Emails to and from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on archaeological study.

3 January 2019 Email to Paul Williams, MNCC, on setting up MNCC EA Order letter review meeting, context sensitive design and cultural aspects of finishing work.

5-8 January 2019: Emails with Amber Adams, consultant and MNCC, on food and ecology guide study, species list review and comments on Indigenous consultation report.

6 January 2019 Email from Paul Williams, MNCC, on cultural finish and unsuccessful past efforts on MTO project.

15 January 2019 Emails with Amber Adams, consultant and MNCC, on eastern short tree inventory.

15 January 2019 Email to Chief Marsden, Alderville First Nation, on tree inventory, tree removal program and lumber sharing opportunity. Also request time to meet to discuss internship training opportunities,

24 January 2019	Letter to Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation confirming invoice process for payment and sharing thanks for participation in 2018 as well as look forward to continued collaboration under consultation.
25 January 2019	Email to Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation forwarding 2018 archaeological report.
28 January 2019	Emails from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation acknowledging receipt of 2018 archaeological report and expressing expectation to continue work on project.
4 February 2019	Arborist Response Report received from Amber Adams, consultant and MNCC. Forwarded to design engineering team for review and comment.
5 February 2019	Email to design engineering team re: MNCC EA Order letter compliance.
6 February 2019	Forwarding Indigenous Consultation Report for DFO review.
27 March 2019	Meeting with Okwaho Equal Source on potential tree replanting lumber delivery to neighbouring FN communities.
5 April 2019	Meeting with Hatch permit staff to review EA commitments to MNCC.
17 April 2019	Meetings with Paul Williams, MNCC on Belle Island and associated projects including Third Crossing.
24 May 2019	Email to Paul Williams, MNCC, providing update to the project and inviting him to the meet with Project Clusters on detail design.
4 June 2019	Paul Williams meeting with Dan Franco and members of construction team at offices of Kiewit, Oakville. Paul Williams joined team foundation and environmental clusters, reviewed MNCC list of consultation objectives set out in EA. Follow up email from Paul Williams on MNCC experience archeology practices.
4 June 2019	Mailout #8 sent to the twelve recipients of the larger indigenous consultation group
5 June 2019	Email from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation thanking for Mailout #8.
6 June 2019	Alan McLeod emails with Amber Adams on Public Open Houses in late June 2019 and survey of plant species for inclusion in denaturalisation planning.
7 June 2019	Dan Franco received telephone call from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation in response to Mailout #8. Interest indicated in subcontracting, construction labour, archaeological monitoring.
9 July 2019	Dan Franco emails to Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation advising of DF vacation and coordination in his absence.

10 June 2019	Dan Franco email to Paul Williams. with updated MNCC list, durability proposal, noise reports, DIA information.
11 June 2019	Dan Franco email to Amy Brant, MBQ, to inform them that some indigenous pottery artifacts were found during stage 2 archaeology field work on 612 John Counter.
13 June 2019	Dan Franco email to MBQ and MNCC on the state of archaeology on 612 JCB and that the City of Kingston and the MNCC developed an archaeology protocol in 2013 that may prove useful.
14 June 2019	Dan Franco email to MBQ and MNCC City inviting monitors for in stage 3 archaeology work for the following week.
17 June 2019	Dan Franco emailed stage 3 Golder proposal with MBQ and MNCC for their review.
25-28 June 2019	MBQ archaeology monitor onsite during Stage 3 for 612 JCB.
4 July 2019	City reached out to Huron Wendat to participate in the continuation of the stage 3 archeology work.
5 July 2019	Coordinating logistics with MBQ for next phase of stage 3 work.
8-10 July 2019	Huron Wendat archaeology monitor onsite for continuation of stage 3.
22 July 2019	Mark Van Buren emails with Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on Huron Wendat archaeology monitor onsite for continuation of stage 3.
23-24 July 2019	Huron Wendat archaeology monitor onsite for continuation of stage 3.
1 Aug 2019	City received notification that MBQ contact has changed from Amy to Lisa Maracle.
2 Aug 2019	Dan Franco email to MBQ and Huron Wendat regarding tree salvage opportunities commencing in two weeks.
6 Aug 2019	Dan Franco email to Alderville FN regarding tree salvage opportunities commencing in two weeks
8 August 2019.	Dan Franco spoke with Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation about tree salvage opportunity, arbourist report shared. Update on stage 3 archaeology work on 612 John Counter. Discussion on protection of the site preferred but if there are excavations that are needed, complete in a respectful and accommodating way and that they are participating.
9 August 2019	Telephone call to Dan Franco from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation indicating interest in tree salvage opportunity but that they need time on their end to review logistics.



12 August 2019 Telephone call to Dan Franco to Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation on logistics for tree opportunity. Maxime mentioned that some trees lose their value if they are cut too soon before they are used due to drying out and other potential limitations.

14 August 2019 Dan Franco email to Paul Williams, MNCC, regarding the Jones & Jones opportunity for a context sensitive landscape design for the project's shorelands as identified in Provincial EA process. Jones & Jones was referred by the MNCC.

14 August 2019 Dan Franco telephone call to Paul Williams, MNCC, regarding the Jones & Jones meeting. 1 or 2 day workshop proposed. MNCC confirming attendance and requested the inventory list for the artifacts that have been recovered as part of the Stage 3 archaeology on 612 John Counter Blvd for his review. List was sent by email.

16 August 2019 Dan Franco telephone call to Paul Williams, MNCC, on Jones and Jones workshop. Focus on helping build the story of the project to become a guest of the land instead of an owner.

16 August 2019 Dan Franco telephone call to Paul Williams, MNCC, on tree management plan including trees that are impacted by construction and the restoration plan for both the over and understory of the forest and the wildlife habitat opportunity that the project presents. Also discussed the upcoming environmental management plan process for ongoing monitoring and back-up plans to make sure restoration is successful. Update on the Jones & Jones workshop and upcoming public open houses.

21 August 2019 Dan Franco telephone call to Paul Williams, MNCC, on call received from a Kingston resident and discussed high level elements that were related to needs/justification for the project and the construction methodology being proposed (rock causeway in the river). Paul indicated that if Kingston is following their municipal processes, the MNCC are satisfied with Kingston's project progress.

21 August 2019 Dan Franco telephone call with Amber Adams, MNCC ethno-botanist. Adams requested update on latest project items prior to open houses.

22 August 2019 City info package sent to Jones & Jones for their review to help develop a scope of work for the workshop including Amber Adams arbourist comment report, Parks Canada scoping document.

23 August 2019 Mailout #9 sent to the twelve recipients of the larger indigenous consultation group including current draft DIA status and upcoming 30 day comment period, latest construction access in form of temporary rock causeway, invite to upcoming context sensitive design workshop.

26 August 2019 Telephone call to Dan Franco from Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation regarding receipt of mailout #9, status of archaeology work and tree salvage opportunity. Confirmed that stage 3 archaeology work continues on hold and that a meeting with Huron-Wendat logging specialist planned onsite August 27.

- 27 August 2019 Dan Franco meeting with Huron-Wendat logging specialist, discussion of the east shore trees. Tree cutting scheduling, access roads, the type of wood of interest, timing of tree pickup to avoid cut tree dry out, tree condition. Poor salvage value identified. Tree density is not high enough for a return on investment. City to with Huron Wendat.
- 27 August 2019 Dan Franco telephone call with Jones & Jones who confirmed understanding that language and storytelling is important to Indigenous people and have had success on past projects. The City elaborated on having Amber Adams on the team. Jones agreed beneficial for the project.
- 27 August 2019 Dan Franco telephone call from Curtis Lazore of Akwesasne In response to Mailout #9. Curtis provided some high level clarifications of how the Mohawk Council of Akwesasne are organized. Curtis suggested two more contacts from Akwesasne should be added to the mailout list being Beulah Hill, MNCC, and Grand Chief Abram Benedict. Curtis suggested that the mailout be accompanied with a brief project update. Curtis was very pleased when the City stated that the Mohawk Bay of Quinte/Tyendinaga have been participating in the archaeology programs throughout the project.
- 27 August 2019 Mailout # 9 sent to Beulah Hill, MNCC, with Third Crossing Summary document and tree report of Amber Adams.
- 27 August 2019 Mailout #9 to Grand Chief Abram Benedict of Mohawk Council of Akwesasne with Third Crossing Summary document and the December 2, 2010 letter from Mohawk Council of Akwesasne that indicated that coordination of the project go through Mohawk Bay of Quinte.
- 27 August 2019 Dan Franco received email from Grand Chief Abram Benedict, Akwesasne, that he appreciated the Mailout #9 update and instructed Dan Franco to continue working with the lead being Mohawk of Bay of Quinte (Tyendinaga) for the Third Crossing project.
- 28 August 2019 Dan Franco sent email to Maxime Picard, Project Coordinator, Ontario, Huron-Wendat Nation including summary of tree salvage opportunity. Maxime provided confirmation on August 28 email to Dan Franco that tree salvage opportunity would not provide a positive return on investment and so declined with thanks.

Other additional communications have been held by way of phone calls and emails throughout this phase of the consultation period. Travel expenses and other costs provided to representatives and monitors as standard practice.