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Conseil de la radiodiffusion et des télécommunications canadiennes
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Developing Guidelines for Co-development and Indigenous Engagements

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[2] +The Indigenous Relations Team was involved throughout this project and the drafting of this report to support integration of lessons regarding engaging Indigenous peoples within the work of the CRTC. However, the content of the report including recommendations contained herein are my own.

I. INTRODUCTION

In recent years, the *Canadian Radio-television and Telecommunications Commission* (CRTC) has engaged with Indigenous peoples and organizations on several proceedings; three of the most significant examples include:

- Telecom in the Far North: looked to improve access to affordable, high-quality telecommunications (internet and telephone) services in Nunavut, the Northwest Territories, the Yukon, 17 communities in northern British Columbia, and in Fort Fitzgerald, Alberta.
- Indigenous Broadcasting Policy: reviewing and updating the policy on Indigenous broadcasting so that online and traditional (radio and television) broadcasting in Canada can best support the creation, presentation and discoverability of Indigenous content throughout the broadcasting system. This review is being done in close collaboration with First Nations, Inuit, and Métis peoples.
- Broadband Fund Review: reviewing the Broadband Fund to improve the speed and efficiency of the funding process, help advance reconciliation with Indigenous peoples, and increase Canadians' access to high-speed Internet and cellphone services. The Broadband Fund was created to improve Internet and cellphone services in rural, remote, and Indigenous areas across Canada.

Despite these intensive engagement sessions, the CRTC does not currently have a harmonized approach to co-developing policies, regulations, or conditions of service with Indigenous peoples. Each matter listed above had engaged Indigenous peoples in different ways. For example, in 2019, when the CRTC reviewed its Indigenous Broadcasting Policy, it began to explore how it can co-develop policies with Indigenous peoples. Specifically, an Indigenous firm, INDsight Consulting, authored a document titled "Indigenous Co-development and Engagement: Wise Practices." Additional CRTC early engagement sessions — facilitated by the Indigenous Leadership Development Institute (ILDI) — resulted in the publication of a "What You Said" report, which helped to articulate how Indigenous peoples would like to engage in the development of broadcasting policies.

In April of 2025, the CRTC engaged Brenda Gunn as a consultant (the consultant) to help the CRTC identify ways to standardize efforts to engage Indigenous peoples, governments, organizations, businesses, and individuals to, as much as possible, co-develop conditions of service, regulations and/or regulatory policies under both the *Broadcasting Act* and the *Telecommunications Act*. Brenda Gunn is a full professor of law at the University of Manitoba, and an expert member on the United Nations Permanent Forum on Indigenous Issues. She has been accepted as an expert on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), with over 20 years of experience in researching the alignment of international and domestic law on Indigenous rights by the Federal Court of Canada, as well as qualified as an expert on international law and a human rights-based approaches before the National Inquiry into Missing and Murdered Indigenous Women and Girls. She has also been invited to appear before Parliamentary and Senate Standing Committees on issues related to the UNDRIP and its implementation in Canada.

The goal of this report is to propose concrete steps the CRTC could follow for engagement with Indigenous peoples that are (i) consistent with its statutory mandate and CRTC Rules of Practice and Procedure and (ii) satisfactory for Indigenous peoples. To this end, the report is focused on recommendations to improve CRTC policies, procedures and practices to better engage with Indigenous peoples. Any challenges discussed are meant to identify institutional challenges that exist within current CRTC regulatory framework, not to criticize any individual or department within the CRTC.

Achieving the goal of this report requires writing a report with several different audiences in mind: CRTC staff and Commissioners, Indigenous peoples, governments, organizations and businesses with whom the consultant met during this project, other broadcasting and telecommunication industry people who engage with the CRTC. Each of these different audiences brings their own perspective, knowledge and background to the subject matter of this report. As will be discussed in greater detail below, the recommendations stem from meetings with various Indigenous governments, Indigenous peoples, and Indigenous organizations, CRTC staff, review of CRTC policies and the consultant's expertise on Indigenous peoples' rights in Canadian and international law and thus the report represents multiple voices. The report undertakes to synthesize, honour and accurately represent the multitude of voices.

This report uses the term “Indigenous peoples” as an umbrella term throughout report to refer to First Nations, Inuit, and Métis peoples. The phrase “Indigenous peoples with whom we met” is used more specifically to refer to the Indigenous people engaged during the report development process which included Indigenous governments, Indigenous organizations, Indigenous rights holders, Indigenous broadcasting license holders, Indigenous businesses, and Indigenous political / advocacy organizations. “Indigenous peoples with whom we met” is used for simplicity and ease of reading. The use of this condensed phrase in the report and the recommendations is not meant to diminish the need for future policy development regarding engaging with Indigenous peoples to understand, reflect and address the distinctions between First Nations, Inuit, and Métis peoples. Additionally, future policy development regarding engaging with Indigenous peoples must also recognize and respect the distinction between Indigenous governments, Indigenous rights holders, Indigenous organizations (political and advocacy) and Indigenous broadcasting and telecommunication licensees and businesses. While each of these bodies has an interest in the work of the CRTC and may want to participate in various processes, the CRTC has specific obligations to Indigenous rights holders when policies or decisions impact Indigenous peoples’ rights. This distinction between rights holders and organizations must be respected when undertaking future policy development work.

The focus on the duty to consultation and accommodation, and the resultant spectrum approach to determining the content of consultation has led to different standards ranging from engagement, consultation, to co-development. A brief baseline understanding of these terms will be provided here as they are used throughout the report. There is no generally accepted definition of these different terms; what is provided below are various understandings coming from publicly available government documents and **Indigenous governments and organizations**, which align with the perspectives of the author, and some of the Indigenous peoples with whom we met.

Engagement:

- “Some Indigenous partners saw engagement as a broad two-way discussion or dialogue on a matter of interest to Indigenous peoples, while others defined it as an all-encompassing continuum of activities. In their view, meaningful engagement

includes things like active listening and knowledge sharing, and is intentional, transparent, accountable, and rooted in self-determination."[3]

- "Some departments understood engagement as a continuum of activities that can encompass consultation, cooperation and co-development. Others viewed engagement, like some of the perspectives shared by Indigenous partners, as building a foundation for long-term relationships with Indigenous partners."[4]

Consultation:

- "Talking together for mutual understanding."[5]
- "Consultation is not just a process of exchanging information. It also entails testing and being prepared to amend policy proposals in the light of information received, and providing feedback. Consultation therefore becomes a process which should ensure both parties are better informed . . . genuine consultation means a process that involves:
    - gathering information to test policy proposals
    - putting forward proposals that are not yet finalised
    - seeking [Indigenous peoples'] opinion on those proposals
    - informing [Indigenous peoples] of all relevant information upon which those proposals are based
    - not promoting but listening with an open mind to what [Indigenous peoples] have to say
    - being prepared to alter the original proposal
    - providing feedback both during the consultation process and after the decision-process."

Co-development:

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3 Department of Justice, Fourth annual progress report on implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act, August 2025, https://www.justice.gc.ca/eng/declaration/report-rapport/2025/p8.html, page 44. [Justice Fourth Report]

4 Justice Fourth Report, page 44.

5 Haida Nation v. British Columbia (Minister of Forests), [2004] 3 SCR 511, paragraph 43, citing T. Isaac and A. Knox, "The Crown's Duty to Consult Aboriginal People" (2003), 41 Alta. L. Rev. 49, at p. 61.

- “a collaborative process involving mutual respect, shared decision-making, and joint action between the Métis Nation and the Government of Canada. It is crucial for fostering sustainable and respectful partnerships.”[6]
- “Co-development is the process by which Inuit and the Crown work together in good faith to advance shared objectives, including to amend or modify existing initiatives or develop new ones”[7]
- “While there is no universally accepted definition of co-development, Canada has broadly understood it in the Crown-Indigenous context as referring to how the Crown and Indigenous peoples can actively engage and collaborate to inform the development of common proposals.”[8]

The next section of the report provides a more detailed overview of the process used in developing this report to provide readers with context for how the recommendations were developed. The report then provides an overview of relevant international law and its application in Canada before outlining recommendations for how the CRTC can work toward a more harmonized approach to co-developing policies, regulations, or conditions of service with Indigenous peoples. These recommendations are meant to support the CRTC in continuing to engage with Indigenous peoples in a good way, while addressing challenges to ensuring Indigenous peoples can fully and effectively participate in CRTC processes.

From the work toward developing this report, it is clear that there are many shared understandings between Indigenous peoples and CRTC staff of what’s working well within current CRTC processes, as well as some of the challenges with the current regulatory framework, which impacts the engagement with Indigenous peoples. The challenges identified are more systemic in nature, meaning that CRTC staff appreciate good practices for engagement, but felt constrained by the current regulatory framework. This shared understanding of what’s working and the challenges establishes a solid foundation from

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6 https://www.metisnation.ca/wp-content/uploads/2025/06/Co-Development-Hand-Out-Health-Forum-7-x-11-in.pdf.

7 https://www.itk.ca/wp-content/uploads/2022/11/ICPC-Co-Development-Principles.pdf.

8 Question Period Note: Approaches to Crown-Indigenous Co-development, Crown-Indigenous Relations and Northern Affairs Canada, Dec 13, 2019, Question Period Note: Approaches to Crown-Indigenous Co-development, Crown-Indigenous Relations and Northern Affairs Canada, Dec 13, 2019.

which to move forward. Importantly, all those engaged expressed a strong desire to work toward better engaging with Indigenous peoples. This enthusiasm to work with Indigenous peoples to proactively ensure Indigenous peoples can fully and effectively participate in CRTC processes is one of the most significant assets of the CRTC.

II. PROCESS

To identify best practices for co-development, the consultant met with CRTC staff to get a better understanding of what the CRTC does, how the CRTC functions, including how proceedings are run, the telecommunications cost award process, broadcasting cost award process and its relation to the broadcasting participation fund, and how CRTC decisions are made. The consultant met with members of the Indigenous Relations Team, Legal services, the Indigenous Broadcasting Policy Team, the Broadband Fund Team, and Telecom Policy Team.

These consultations with CRTC staff provided a broad understanding of how the CRTC operates and its legislative constraints. This information was necessary to understand how current practices and challenges align with the expectations for co-development and engagement with Indigenous peoples, and what work the CRTC has already undertaken to understand good practices for engaging with Indigenous peoples.

The consultant also reviewed key documents that inform the CRTC's work, including the:

- *Canadian Radio-television and Telecommunications Commission Act*,
- *Telecommunications Act*,
- *Broadcasting Act*,
- Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure,
- Order Issuing Directions to the CRTC re Sustainable and Equitable Broadcasting Regulatory Framework,
- Broadcasting Participation Fund (BPF),
- Guidelines for the Assessment of Costs,
- Indigenous broadcasting policy,
- What you said report: CRTC early engagement sessions,

- Broadcasting Notice of Consultation 2024-67,
- Indigenous Co-development and Engagement: Wise Practices,
- Consultation on telecommunications in the Far North,
- Telecom Notice of Consultation 2022-147,
- Review of the Broadband Fund,
- Principles respecting the Government of Canada's relationship with Indigenous peoples,
- Section 32 and 34 of the *Financial Administration Act*.

Finally, the consultant, along with the Indigenous Relations Team Manager and the Director of Strategic Planning and International Affairs at the CRTC met with several Indigenous governments, Indigenous political and advocacy organizations, and Indigenous broadcasters and telecommunications providers who have experience with the CRTC to share their experiences, including reflections after participating in various proceedings, meetings, license application and renewal processes. Most of the Indigenous peoples with whom we met had experience working on either broadcasting or telecommunications, which led to some challenges and recommendations being specifically connected to either broadcasting or telecommunications.

The consultant and CRTC staff met with the Assembly of First Nations, Manitoba Métis Federation, National Indigenous Economic Development Board, Indigenous Screen Office, Indigenous Music Office, APTN, Uvagut TV, First Mile Connectivity Consortium, Indigenous Connectivity Institute, Inuvialuit Regional Corporation, Native Women’s Association of Canada, and Makivvik. CRTC staff attendance at these meetings ensured that they benefited from hearing firsthand from the Indigenous peoples with whom we met and further supported building and maintaining good relationships between the various bodies and the CRTC.

These meetings were loosely structured and sought to identify what is working well within the CRTC’s current processes of engaging with Indigenous peoples, what the current challenges are and their perspectives on good practices for engaging Indigenous peoples. A backgrounder that overviewed the work of the CRTC and explained how the meeting fit within the broader goals of the CRTC (identified above) provided the following guiding questions for the meeting:

- How do your rights or work intersect with telecommunications and broadcasting?
- What is your interest and capacity regarding policy development on telecommunications and broadcasting?
- What is your experience engaging in CRTC proceedings?
- How do your existing consultation/engagement/co-development policies apply to CRTC proceedings?
- Can you share a good practice or experience of engaging with policy development?
- Previous proceedings have engaged with Indigenous peoples. Do the principles identified in previous proceedings provide a good basis for moving forward to developing a framework for the CRTC to engage with Indigenous peoples?
    - Focus on building relationships
    - Recognize and seek input from distinct Nations and their respective communities
    - Recognize Indigenous Broadcasting History and how we got here
    - Use of Indigenous languages and respectful wording in communications
    - Involve youth, elders, and knowledge keepers
    - Follow Indigenous protocols
    - Engage a variety of methods of outreach including in-person consultations
    - Provide compensation for participants
    - Communicate about the process in its early stages when possible
    - Build on the past and what has been previously done, don't start from scratch every time.
    - Report back on decisions in an accessible fashion
- How can policy development benefit your government/organization?
- Is there anything else you would like to share?

Once all the documentation was reviewed and the meetings completed, recommendations were compiled, which form the bulk this report. The draft of this report was then shared back to all peoples with whom we met with the opportunity to provide feedback, which was then incorporated into the final report.

III. RIGHT TO PARTICIPATE IN DECISION-MAKING AND FREE, PRIOR AND INFORMED CONSENT

In Canada, the focus for the past two decades has been on the duty to consult and accommodate. Under Haida *Nation,* the Crown has a duty to consult when they are contemplating conduct that impacts asserted or recognized Aboriginal and Treaty rights. Canadian courts have recognized that both the federal and provincial governments have a duty to consult and accommodate. Other administrative bodies have also been recognized as having a duty to consult. The federal government's "Section 35-pedia: a primer to understanding section 35 of the Constitution Act, 1982," states that "a statutory body acting on behalf of the Crown can trigger the duty to consult,"[9] and that "Tribunals may be empowered with both the power to carry out the Crown's duty to consult and the ability to adjudicate on the sufficiency of consultations."[10] The key factor is whether the regulatory agency possess the statutory powers to do what the duty to consult requires in the particular circumstances.[11]

The Supreme Court of Canada explained that "if the agency does not provide adequate consultation and accommodation, the Crown must provide further avenues for meaningful consultation and accommodation in order to fulfill the duty prior to project approval. Otherwise, the regulatory decision made on the basis of inadequate consultation will not satisfy constitutional standards and should be quashed on judicial review or appeal."[12] This was further elaborated upon in *Clyde River*, when the SCC held that

> If the Crown's duty to consult has been triggered, a decision maker may only proceed to approve a project if Crown consultation is adequate. … where the Crown's duty to consult an affected Indigenous group with respect to a project under *COGOA* remains unfulfilled, the NEB must withhold project approval. And,

9 Citing Clyde River (Hamlet) v Petroleum Geo - Services Inc., 2017 SCC 40 [Clyde River].

10 Citing Chippewas of the Thames First Nation v Enbridge Pipelines Inc., 2017 SCC 41 [Chippewas of the Thames].

11 Chippewas of the Thames, paragraph 32, citing Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, 2010 SCC 43, [2010] 2 S.C.R. 650 and Clyde River.

12 Chippewa of the Thames, paragraph 32.

where the NEB fails to do so, its approval decision should (as we have already said) be quashed on judicial review.[13]

With this jurisprudence, it seems clear that the CRTC may have a duty to consult if their decisions impact Indigenous peoples' rights, and the failure to fulfill the duty to consult may result in decisions being quashed.

While many government agencies continue to focus on determining whether they have a duty to consult under section 35(1) of the *Constitution Act, 1982*, the landscape is shifting toward recognizing the rights of Indigenous peoples as recognized in international human rights law. In international law, the right to participate in decision making and free, prior and informed consent are the standards by which governments (and government actors) are expected to fulfill. The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states that "the right to full and effective participation in external decision-making is of fundamental importance to Indigenous peoples' enjoyment of other human rights,"[14] and is intimately connected to the right to free, prior and informed consent (FPIC): "free, prior and informed consent is one of the most important principles, as a right, that Indigenous peoples believe can further protect their right to participation."[15] This section provides an overview the right to participate in decision-making and FPIC, and explains their application in Canada.

Indigenous peoples' right to participate in decision-making is a cornerstone right in international human rights law as "many Indigenous peoples remain vulnerable to top-down State interventions that take little or no account of their rights and circumstances. In many instances, this is an underlying cause for land dispossession, conflict, human rights violations, displacement and the loss of sustainable livelihoods."[16] Given the prevalence of top-down decision-making, the explains why fulfilling Indigenous peoples' right to FPIC is so critical as it restores Indigenous peoples' control over their land and resources; restores Indigenous peoples' cultural integrity, pride and self-esteem; and finally

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13 Clyde River, paragraph 39.

14 Human Rights Council, Final report of the study on indigenous peoples and the right to participate in decision-making - Report of the Expert Mechanism on the Rights of Indigenous Peoples, United Nations Document A/HRC/18/42, 17 August 2011, para 13 [EMRIP Report].

15 EMRIP Report, paragraph 63.

16 EMRIP Report, paragraph 15.

redresses "the power imbalance between Indigenous peoples and States, with a view to forging new partnerships based on rights and mutual respect between parties."[17]
Including Indigenous peoples in decision making that impacts their rights promotes reconciliation by moving beyond paternalistic colonial relations where government agencies make decisions for (or impacting) Indigenous peoples, toward relationships that respect the decision-making authority of both parties.
The EMRIP continues to explain that "Indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on their ability to determine the direction of their own societies, including in decision-making on matters that affect their rights and interests. This can still be a major factor contributing to their disadvantaged position. Decision-making rights and participation by Indigenous peoples in decisions that affect them is necessary to enable them to protect, inter alia, their cultures, including their languages and their lands, territories and resources."[18] The right to participate in decision-making and FPIC therefore provides a safeguard to Indigenous peoples' collective rights.[19]
The relationship between the right to participation in decision-making and other fundamental rights means that a breach of FPIC will also lead to a breach of other corelative rights such as self-determination, right to participate in decision-making, right to culture, right to lands, territories and natural resources. And conversely, fulfilling FPIC promotes and protects these related rights. When considering the protection and promotion of Indigenous peoples' rights in Canada, the right to participate in decision-making is thus critical in ensuring that Indigenous peoples' can both articulate their rights and how the pending decision may impact those rights.
The adoption of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) brought a lot of attention to the right to free, prior and informed consent (FPIC). However, FPIC was recognized within international human rights treaties before that passing of UNDRIP, and

17 Human Rights Council, Free, prior and informed consent: a human rights-based approach - Study of the Expert Mechanism on the Rights of Indigenous Peoples, United Nations Document A/HRC/39/62, 10 August 2018, paragraph 11 [EMRIP Study].

18 EMRIP Report, Annex, paragraph 1.
19 EMRIP Study, paragraph 13.

continues to be interpreted as an obligation under human rights treaties that Canada has signed and ratified.

The first robust articulation of FPIC came from the United Nations Committee on the Elimination of Racial Discrimination (CERD) based on interpretations of article 2 (eliminating racial discrimination) and article 5(d)(v) (right to property) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).[20] In the 1997 General Recommendation No XXIII: Rights of Indigenous Peoples, CERD calls on states to ensure that no decisions directly relating to Indigenous peoples' rights and interests are taken without their informed consent.[21] CERD continues then to especially call on states to "recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories."[22]

Beyond ICERD, both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) also include Indigenous peoples' right to FPIC.[23] The United Nations Human Rights Committee (HRC) has interpreted ICCPR article 27 (right to culture), as well as article 2 (nondiscrimination) as requiring FPIC before measures are taken that significantly impact Indigenous peoples' culture. The HRC has called on States to ensure Indigenous peoples' participation in decision making "on the basis of the principle of free, prior and informed consent"[24] The HRC found that the guarantee the participation of Indigenous peoples in decision-making processes under the ICCPR is required when measures "substantially compromise or

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20 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, 21 December 1965. [ICERD], International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR]. International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, 16 December 1966 [ICESCR].

21 Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIII: Indigenous Peoples, A/52/18, Annex V, 18 August 1997. [CERD General Recommendation]

22 CERD General Recommendation, paragraph 5.

23 International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR]. International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, 16 December 1966 [ICESCR].

24 Russian Federation, CCPR/C/RUS/CO/8, 1 December 2022, paragraph 41(a). See also Nicaragua, CCPR/C/NIC/CO/4, 30 November 2022, paragraph 42(a); Cambodia, CCPR/C/KHM/CO/3, 18 May 2022, paragraph 43(b).

interfere with the culturally significant economic activities" of Indigenous peoples.[25] More recently, the HRC's articulation around FPIC has strengthened requiring states to obtain FPIC "before any measure is adopted or implemented that may substantively compromise their way of life and culture."[26] In *Poma Poma*, the HRC found a violation of ICCPR articles 27 and 2(3)(a), noting that "participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community."[27]

The ICESCR article 15(1)(a) also recognizes the right of peoples to take part in cultural life, which has been interpreted as requiring states to obtain FPIC "when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk."[28] More recently, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expanded the right of FPIC in General Comment No. 21 where it recognized the right to cultural life includes the right to ensure respect for Indigenous peoples' cultural heritage and traditional cultural expressions; and so States must also respect the "free, prior and informed consent of Indigenous peoples in all matters covered by their specific rights."[29] The recognition of FPIC, has led the CESCR to recommend to States to "ensure that free, prior and informed consent is obtained from Indigenous peoples in relation to decisions that may directly affect the exercise of the economic, social and cultural rights."[30]

There is also some discussion by the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) and FPIC as well. In particular, General recommendation No. 39 (2022) on the rights of Indigenous women and Girls references

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25 Ángela Poma Poma v. Peru, CCPR/C/95/D/1457/2006, 24 April 2009, paragraph 7.6.

26 Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, paragraph 21. See also Costa Rica, CCPR/C/CRI/CO/6, 22 April 2016, paragraph 42(b); Dem. Rep. Congo, CCPR/C/COD/CO/4, 30 November 2017, paragraph 50(c).

27 Ángela Poma Poma v. Peru, CCPR/C/95/D/1457/2006, 24 April 2009, paragraph 7.6.

28 Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009, paragraph 55(e). [CESCR General Comment].

29 CESCR General Comment, paragraph 37.

30 Paraguay, E/C.12/PRY/CO/4, 20 March 2015, paragraph 6(a); see also Chile, E/C.12/CHL/CO/4, 7 July 2015, paragraph 8(b); Honduras, E/C.12/HND/CO/2, 11 July 2016, paragraph 12(c) (recommends consultation with a view to obtaining FPIC in relation to these decisions); Costa Rica, E/C.12/CRI/CO/5, 21 October 2016, paragraph 9(a) (recommends consultation with a view to obtaining FPIC in relation to these decisions); Colombia, E/C.12/COL/CO/6, 19 October 2017, paragraph 18 (recommends consultation with a view to obtaining FPIC in relation to these decisions).

the need for states to obtain FPIC from Indigenous women under the *Convention on the Elimination of All Forms of Discrimination against Women* (ICEDAW) articles 1 and 2 (non discrimination), articles 7, 8 and 14 (right to effective participation in political and public life), articles 10 and 12 (right to health), articles 3, 5, 13 and 14 (right to culture), article 13 and 14 (rights to lands, territories and natural resources), and finally articles 12 and 14 (right to a clean, healthy and sustainable environment).[31] CEDAW has particularly focused on recommendations to states to secure or require Indigenous women's FPIC in relation to resource development and exploitation of their lands and territories.[32]

Beyond these human rights treaties, there are many references to the right to participate in decision making and FPIC within UNDRIP (over 20 and six respectively). The EMRIP study on participation in decision-making lists UNDRIP articles 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 37, 38, and 40-41 as relating to participation in decision-making.[33] Regarding FPIC, UNDRIP articles 10 and 29 specifically require FPIC before states take action to relocate Indigenous peoples and storage of hazardous waste on Indigenous peoples' lands; articles 19 and 32 require states to undertake consultations with the aim of obtaining FPIC regarding administrative and legislative measures, and in relation to lands, territories and resources; and articles 11 and 28 speak to redress where prior state actions were taken without FPIC in relation to cultural property and Indigenous peoples' lands.

Beyond the global recognition of FPIC, there are regional human rights instruments that also recognize Indigenous peoples' right to FPIC. Specifically, the *American Convention on Human Rights* article 21 (right to property), and the *American Declaration on the Rights and Duties of Man* articles XVIII and XXIII (property and judicial protection).[34] These provisions

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31 CEDAW, General recommendation No.39 (2022) on the rights of Indigenous women and Girls, CEDAW/C/GC/39, 26 October 2022.

32 See Thailand, CEDAW/C/THA/CO/6-7, 24 July 2017 at para 43(c); Costa Rica, CEDAW/C/CRI/CO/7, 24 July 2017 at para 37(b); Mexico, CEDAW/C/MEX/CO/9, 25 July 2018 at para 46(c); Guyana, CEDAW/C/GUY/CO/9, 30 July 2019 at para 44(c); Plurinational State of Bolivia, CEDAW/C/BOL/CO/7, 12 July 2022 at para 34(b); Sweden, CEDAW/C/SWE/CO/10, 24 November 2021 at para 44(b); Indonesia, CEDAW/C/IDN/CO/8, 24 November 2021 at para 46(c); Ecuador, CEDAW/C/ECU/CO/10, 24 November 2021 at para 46(b); Honduras, CEDAW/C/HND/CO/9, 1 November 2022 at para 43(a); Peru, CEDAW/C/PER/CO/9, 1 March 2022 at para 42(a); Myanmar, CEDAW/C/MMR/CO/4-5, 25 July 2016 at para 43 (not only concerning Indigenous women); Liberia, CEDAW/C/LBR/CO/7-8, 29 October 2015 at para 42(d) (not only concerning Indigenous women).

33 EMRIP participation study annex advice at para 3.

34 Organization of American States (OAS), American Convention on Human Rights ("Pact of San Jose"), Costa Rica, 22 November 1969; Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, 2 May 1948, adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

have been widely considered by the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), most significantly in *Saramaka People v Suriname*.[35] The IACtHR held that "regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions"[36] Finally, it should be noted that the *American Declaration the Rights of Indigenous Peoples* also includes FPIC in articles XVII (cultural identity and integrity), XVIII (health), XXIII (participation), XXVIII (cultural heritage and intellectual property), and XXIX (development). The language in article XXIII is typical of the articulation of the right to FPIC: States shall consult and cooperate in good faith with the Indigenous peoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." This brief overview demonstrates how broadly recognized the right to participate in decision-making and FPIC is within international human rights law and its broad application to protect and promote the realization of other fundamental human rights of Indigenous peoples'. The report will now provide a brief overview of the content of the right to participate in decision-making and FPIC.

Regarding the content of FPIC, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) notes that FPIC "entitles Indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes."[37] Indigenous peoples' FPIC should be given through their freely chosen representatives and customary or other institutions.[38] Additionally, state governments must establish means for the full development of Indigenous peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this

35 Saramaka People v. Suriname, Series C No. 172, Judgment of 28 November 2007.

36 See Saramaka People v. Suriname, Series C No. 172, Judgment of 28 November 2007 at para. 134, see also paragraph 137.

37 EMRIP Report, Annex, paragraph 22.

38 UN Permanent Forum on Indigenous Issues, "Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples," United Nations Document E/C.19/2005/3, 17 February 2005, paragraph 47.

purpose.[39] FPIC is required when states are making decisions, or adopting measures that impact Indigenous peoples' rights such as lands, territories and resources, as well as cultural resources. International human rights bodies have also required states to obtain Indigenous peoples' FPIC before development on Indigenous peoples' lands.

These international standards of Indigenous peoples' right to participate in decision-making and FPIC are part of Canadian law, especially as recognized in UNDRIP. In *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*,[40] the Supreme Court of Canada (SCC) directly addressed the application of UNDRIP in Canada when it held that: UNDRIP is Parliament's framework for reconciliation;[41] UNDRIP is "a universal international human rights instrument with application in Canadian law";[42] UNDRIP has been incorporated into the country's positive law by the federal *UN Declaration on the Rights of Indigenous Peoples Act* [UNDA][43] and creates obligations on the government of Canada to make Canadian law more consistent with the UNDRIP.[44]

The majority of the BCCA has provided the most detailed analysis of the application of UNDRIP in Canada when it held:

> In my view, it follows that, wherever relevant, *UNDRIP* should be applied as a weighty source for the interpretation of Canadian law in accordance with the presumption of conformity, with due regard for the extent to which a relevant article expresses a binding international rule or general principle, minimum standard, or aspiration. In other words, unlike a typical international "soft law" instrument, *UNDRIP* should not be treated as a mere "non-binding international instrument" to which modest, moderate, or significant weight, or no weight at all, may be optionally ascribed in the interpretive exercise. As I see it, this interpretive

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39 Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted by the International Labour Organisation (ILO) on June 27, 1989, which entered into force on September 5, 1991, Article 6(1)(c).

40 Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 [Reference to FNIMCYF].

41 Reference to FNIMCYF, paragraph 3.

42 Reference to FNIMCYF, paragraph 4.

43 Reference to FNIMCYF, paragraph 15.

44 Reference to FNIMCYF, paragraphs 85-89.

> mandate is justified in light of the widespread international support for *UNDRIP*, Canada's unqualified international expression of commitment to its application and implementation, and, given Parliament's enactment of the *Federal Declaration Act*, attenuated concern with safeguarding the respective roles of the executive and legislative branches and protecting parliamentary sovereignty that normally constrain application of the presumption.[45]

As noted above, the right to participate in decision-making and FPIC are not only found in UNDRIP, but also in various human rights treaties which are binding on Canada. Given the application of UNDRIP in Canada through the presumption and conformity and the federal UNDA, all federal departments and agencies must ensure they uphold UNDRIP.

The federal government has recognized the mandatory nature of ensuring all Canadian laws (including all federal legislation) is consistent with UNDRIP. According to the "Interim guide for officials on how to assess consistency with the United Nations Declaration on the Rights of Indigenous Peoples" section 5 of *UNDA*, which states that "The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration," is a statutory obligation that applies to all federal department and ***agencies*** and their officials.[46] The Guide further explains that this obligation "applies whenever there is a potential intersection between a legislative or regulatory proposal and the UN Declaration."

As signalled by these cases, as well as others such as *Kebaowak*,[47] the standard in Canada is shifting from the duty to consult and accommodate toward fulfilling the rights set out in UNDRIP including the right to participate in decision-making and FPIC. For example, in *Kebaowek First Nation v. Canadian Nuclear Laboratories* (2025), in her analysis of whether the Canadian Nuclear Safety Commission made an error in law in determining that they

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45 Gitxaala v. British Columbia (Chief Gold Commissioner), 2025 BCCA 430, paragraph 129 [Gitxaala].

46 Canada, "Interim guide for officials on how to assess consistency with the United Nations Declaration on the Rights of Indigenous Peoples", June 2024, updated March 7, 2025.

https://www.justice.gc.ca/eng/declaration/ap-pa/guide/overview-vue.html in the UNDA section.

47 Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319 (CanLII) [Kebaowek].

did not have jurisdiction to determine if the UNDRIP and *UNDA* applied to the duty to consult and accommodate. Justice Blackhawk cited the *Reference* case to hold that the UNDRIP may be relied on to interpret Canadian law.[48] Citing *UNDA*, Justice Blackhawk held that "this requires all decision makers, including administrative tribunals that have the authority to determine questions of law such as the Commission, to actively consider how the UNDRIP may impact the interpretation of Canadian laws, including the fulfillment of section 35 constitutional obligations."[49] Justice Blackhawk then considered the duty to consult and accommodate in light of the right to free, prior and informed consent. She concluded that the duty to consult and accommodate is not limited to the current section 35(1) jurisprudence; more is required to ensure that the UNDRIP and *UNDA* are considered.[50]

IV. RECOMMENDATIONS

The balance of the report sets out recommendations toward developing a harmonized approach to engaging Indigenous peoples across the CRTC. The recommendations were developed based on the consultant's expertise on the rights of Indigenous peoples, the review of existing policies, practices and procedures, discussions with various CRTC staff and meetings with Indigenous peoples who have engaged with the CRTC. In particular, the recommendations build upon the identified positive practices of the CRTC's current engagement with Indigenous peoples, as well as address challenges that exist when engaging with Indigenous peoples. While the intention of this report is to set out recommendations which apply to all the CRTC and its staff, some challenges or recommendations were identified specifically relating to broadcasting or telecommunications, and thus some issues do specify broadcasting or telecommunications matters. The recommendations are meant to be implemented holistically. They are not a laundry list of activities; they are a roadmap for building good relationships with Indigenous peoples to co-develop an engagement policy.

48 Kebaowek, paragraph 76.

49 Kebaowek, paragraph 81.

50 Kebaowek, paragraph 132.

The recommendations fall into three broad categories: recommendations related to co-developing an engagement policy, recommendations related to working with Indigenous peoples generally, and recommendations to support CRTC's readiness to engage with Indigenous peoples. Each recommendation will be elaborated in greater detail below.

- **Recommendations related to co-developing an engagement policy**
  - Work with Indigenous peoples to co-develop a policy on how the CRTC engages with Indigenous peoples
  - Co-design the co-development process for the engagement policy
  - Employ a human-rights based approach in the co-development process and the engagement policy, which means recognizing Indigenous peoples as rights holders, not as stakeholders or consumers
  - Ensure appropriate funding for Indigenous peoples' participation in the co-development process
  - Be creative and flexible with existing rules and procedures to ensure Indigenous peoples can fully and effectively participate in CRTC processes
  - Take positive steps to ensure substantive equality in CRTC proceedings
  - Build upon existing reports and what has been noted as positive practices of the CRTC's engagement with Indigenous peoples
- **Recommendations related to working with Indigenous peoples generally**
  - Continue building good relationships with Indigenous peoples
  - Promote reciprocity in the relationship between Indigenous peoples and the CRTC
  - Provide accessible, effective, efficient and culturally appropriate communication
- **Recommendations to support CRTC's readiness to engage with Indigenous peoples**
  - Continue training all CRTC staff and Commissioners in line with the Truth and Reconciliation Commission's Calls To Action for government
  - Review of policies and procedures to ensure consistency with the UN *Declaration on the Rights of Indigenous Peoples*

The report now proceeds to explain in greater detail each recommendation, identifying where there is already a good practice within the CRTC's current processes to build upon, and addressing existing challenges.

Recommendations related to co-developing an engagement policy

The first set of recommendations relate specifically to co-developing an engagement policy. These recommendations provide the big picture of what is a co-development process, how to begin working toward co-development, and minimum criteria for co-development.

Recommendation: work with Indigenous peoples to co-develop a policy on how the CRTC engages with Indigenous peoples that is

- **Iterative**
- **Provides for Indigenous peoples' participation at all stages of decision-making**
- **Inclusive of feedback mechanisms and benchmarks**
- **Distinction based**
- **Allows for different types of engagement depending on the impacts / interest**
- **respects Indigenous peoples' own decision-making processes**

The CRTC should work together with Indigenous peoples to co-develop a policy on the engagement of Indigenous peoples. One of the first questions to be determined in the co-development process is what level of engagement Indigenous peoples deem appropriate for which CRTC processes, and what criteria or factors should be considered when determining the required level of engagement of Indigenous peoples. But, at a minimum, the process must ensure Indigenous peoples can "effectively determine the outcome of decision-making that affects them, not merely … be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation."[51]

51 EMRIP Report, Annex, paragraph 22.

Through the co-development process, it may be determined that the policy should in fact be a co-development policy—and not simply an engagement policy. At this point though, it is premature to recommend developing a co-development policy, as Indigenous peoples (the rightsholders as well as Indigenous industry stakeholders) must make that determination.

Co-development is an iterative process, where Indigenous peoples are involved at every stage. At a minimum, co-development follows this generalized process:

- engage Indigenous peoples to determine the process to be followed and come to a mutual agreement on the substantive matters to be addressed,
- co-develop a draft based on the information exchanged during the engagement,
- circulate the draft to Indigenous people,
- undergo another round of engagement where Indigenous peoples provide feedback,
- incorporate Indigenous peoples' feedback to the draft
- circulate the next draft to Indigenous peoples to ensure their feedback was properly incorporated
- address any remaining concerns before the item is finalized
- undertake follow up engagements to address any concerns arising from the process or issues arising from implementation.

Co-development requires that Indigenous peoples are engaged early in the process and at all stages of the process. Information provided to Indigenous peoples must be accessible for their full and effective participation. Recommendations related to communication are further explained below. Co-development requires that Indigenous peoples have input on multiple drafts, and ideally actually hold the pen when they request. Co-development processes need to be flexible and adapt as necessary. Further, the actual engagement policy developed through a co-development process will also need to be flexible and ideally produce an evergreen policy to address issues that arise with the interpretation and implementation of the policy.

The iterative process of co-development must ensure is an opportunity to provide feedback on processes. The CRTC should develop formal and informal mechanisms for

Indigenous peoples to provide feedback on their participation in various processes. This feedback should be then used to modify future processes.

Successful co-development will also clearly show how Indigenous peoples' rights and perspectives were included within the final product. When space is made for Indigenous peoples to share their perspectives and be part of the decision-making process, then the process must ensure that Indigenous peoples can speak and that their voices are heard by incorporating their perspectives into the draft. Some Indigenous peoples with whom we met noted that Indigenous peoples' submissions are increasingly more well received by CRTC. Previously, there was a sense of that Indigenous peoples' positions would not be reflected in decisions. While other Indigenous peoples with whom we met expressed a concern around the transparency of CRTC decisions, noting it is not always clear how information Indigenous peoples provided informed decisions.

Applying this to CRTC processes, it requires engagement before notice of consultation are issued, during the consultation process with the ability to review and have input on the draft decision, which may be achieved through releasing preliminary views, with the opportunity for Indigenous peoples to provide input and feedback. Further, co-development may also include opportunities for Indigenous peoples to provide feedback throughout implementation phases. While iterative and engaged processes may feel like it creates delay, most Indigenous peoples with whom we met expressed that engaging Indigenous peoples fully and early shortens the back end, avoiding resistance and opposition to decisions that are made.

The policy that results from this co-development process may not provide one standard approach to engaging Indigenous peoples for all CRTC activities. Rather, it may include different engagement processes depending on the CRTC activity, and the intersections with Indigenous peoples' rights and interests, and the different priorities of different Indigenous peoples. The process of co-developing the policy may need to consider each of the CRTC's activities individually:

- Issuing broadcasting licenses (through applications)
- Regulating telecommunications
- Providing funding for broadband infrastructure
- Making telecommunications and broadcasting policy decisions

- Addressing complaints about phone, internet or TV services
- Enforcing CRTC decisions

The co-development process provides space for the CRTC to engage in meaningful conversations with Indigenous peoples to understand when and how the engagement policy applies. For example, it is assumed that this engagement policy will apply very broadly to most CRTC activities, not just license renewals for Indigenous broadcasters, for example.

The engagement policy may not ultimately require co-development on every activity. For example, developing, reviewing and updating CRTC policies may require full co-development with Indigenous peoples, at least the aspects that impact Indigenous peoples' rights and interests (see recommendation on rights-based approach below). When determining what degree of engagement or participation in decision-making will occur at any stage of any proceeding, the engagement policy should follow international standards including UNDRIP, which

> requires that the free, prior and informed consent of Indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the Indigenous peoples concerned, relevant factors include the perspective and priorities of the Indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the Indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the Indigenous peoples concerned."[52]

The process to update the Indigenous Broadcasting Policy could be a potential model, or a starting reference point for policy co-development, if that is viewed as an appropriate by Indigenous peoples. It is possible that for other activities, the full and effective participation of Indigenous peoples may be facilitated through the usual proceeding process with slight modifications (which should be discussed and outlined in the co-development of the engagement policy). As noted above, these parameters are to be determined through the co-development process. Answering the questions surrounding

[52] EMRIP Report, Annex, paragraph 23.

when and how Indigenous peoples engage with the CRTC should form the foundation for the co-development of the engagement policy.

The processes used to co-develop this policy must follow Indigenous peoples' own decision-making processes, including cultural protocols. This means that the CRTC will have to identify ways to ensure Indigenous governments are part of the co-development process, to ensure that rights holders are directly engaged. Ensuring adequate funding for Indigenous peoples' full and effective participation will be critical to successful co-development.

It is difficult to identify what the substantive elements of the engagement policy will need to entail, but the policy will need to look at what current CRTC processes from notice to final decision need to be adapted to ensure Indigenous peoples can fully and effectively participate in CRTC processes. It was noted by one Indigenous government with whom we met that the policy should ensure opportunities for Indigenous peoples to have separate consultation processes, where input into CRTC proceedings can be done through bilateral meetings and put before the Commissioners.

The engagement policy will also need to address the distinctions between First Nations, Inuit and Métis peoples, as well as distinctions based on women and gender diverse people, on and off-reserve, urban and rural, as well as rights holders and Indigenous governments, policy / advocacy organizations, and license holders. Ultimately, the engagement policy will likely have different engagement strategies or sections for First Nations, Inuit and Métis peoples. Relevant examples of distinctions-based approaches can be seen in the federal UN Declaration Action Plan and the Indigenous Justice Strategy. The Manitoba Métis Federation (MMF) very clearly expressed the need for a distinctions-based approach taken to engaging Indigenous peoples. MMF formally requested to be a partner in the co-develop the CRTC's engagement framework.

Recommendation: co-design the co-development process for the engagement policy

If the co-development of an engagement policy follows typical CRTC processes, the engagement should include and explain the typical steps in a CRTC proceeding (outlined in the chart below). The CRTC makes decisions based on the public record developed through public consultation processes known as proceedings. Different phases of the

work are led by CRTC staff; however, all decisions are made by the CRTC Commissioners, who are federal appointees. Proceedings generally follow these basic steps:

Stage	**Explanation**	**Roles and Responsibilities**
Developing a notice of consultation	Pre-engagement / background research phases to inform and develop the notice of consultation. CRTC staff normally conducts this; however, an external consultant or facilitator may support engagement or research.	CRTC staff, sometimes with the support of an external consultant/facilitator for pre-engagement or research
Publishing a notice of consultation	Officially triggers the start of the proceeding. Consultations are open to the public.	CRTC staff proposes the scope of the Notice of consultation, but Commissioners need to approve it.
Developing the public record	Accept written submissions and oral submissions. Sometimes there is an in-person/virtual live hearing to collect further evidence. The public record allows other parties to comment on one another's viewpoints so that they can be tested. The public record further promotes transparency and accountability in the decision-making process.	CRTC staff monitors the public record and may propose additional requests for information if the public record contains gaps. CRTC Commissioners lead any in-person/virtual live hearing and ask questions to presenters.

Stage	Explanation	Roles and Responsibilities
Complete analysis and make recommendations	Staff assess the contents of the public record, different viewpoints and evidence submitted and base their recommendations on the record of the proceeding.	CRTC staff proposes options and makes a recommendation to CRTC Commissioners.
Decision	Issue of written decision, publicly posted on CRTC website.	CRTC Commissioners consider the evidence on the record, staff analysis and make a decision. CRTC staff draft the decision based on the instructions of the Commissioners.
Implementation of Decision	Follow up with implementation of the decision.	CRTC staff works within the CRTC and with external stakeholders, as required, to implement CRTC decisions.
Monitoring and Enforcement	If monitoring points to repeated or serious issues with compliance, then staff will flag to Commissioners for enforcement action.	CRTC staff monitors and any enforcement action requires CRTC Commissioner decision.

Sharing this procedural overview can provide a framework to determine how Indigenous peoples will be involved in the proceeding to co-develop the engagement policy. It is strongly recommended that the CRTC ensure that the next steps in the process of co-developing an engagement policy include early conversations with the Manitoba Métis

Federation (MMF) to determine a co-development process with the CRTC that meets MMF Resolution 8 on Consultation, as explicitly requested by MMF.[53] It is also strongly recommended to follow up with the Assembly of First Nations (AFN), and the Inuit Tapiriit Kanatami (ITK) to determine their interest and capacity in co-developing an engagement policy. It must be noted that AFN and ITK are not rights holders, nor are they governments representing rights holders. As umbrella political organizations, they can support and coordinate policy development. Further, both AFN and ITK can serve as conduits to connect with First Nation and Inuit governments and rights holders.

Noting that these processes can take time to fully develop, the CRTC should incorporate accountability measures including annual reporting to the Commissioners on the development on the process, which includes the feedback and perspectives of Indigenous peoples. The annual reporting should include benchmarks and publicly available metrics of Indigenous peoples' participation.

Recommendation: employ a human-rights based approach in the co-development process and the engagement policy, which recognizes Indigenous Peoples as rights holders, not as stakeholders or consumers.

The CRTC's work intersects with a variety of Indigenous peoples' rights beyond participation in decision making and consultation. Economic development and cultural revitalization were the most often cited rights by the Indigenous peoples with whom we met. Some of the Indigenous peoples with whom we met expressed interest in both the economic development opportunities related to infrastructure projects to address connectivity in remote, northern, and Indigenous communities; as well as noting the economic development opportunities that would arise from addressing the digital divide. On the broadcasting side, Indigenous peoples want to use modern technologies to promote and revitalize Indigenous languages and cultures. Addressing the digital divide, especially in the North and remote communities, is a priority for many Indigenous peoples, in part because the implications for education, healthcare, and access to emergency services. It was noted that some northern communities have lower digital literacy, which presents further complications.

[53] Manitoba Métis Federation, Resolution 8 on Engagement and Consultation, 2024: https://www.mmf.mb.ca/wcm-docs/docs/departments-engagement_and_consultation/engagement_consultation_resource_pamphlet.pdf.

Indigenous peoples are also increasingly asserting rights to spectrum, claiming it as a natural resource. To this end, many Indigenous peoples want to be active participants, some used the idea of shareholders, in the development of telecommunications infrastructure especially as much infrastructure runs through their territories. As noted above, telecommunications and broadcasting decisions also have the potential to impact Indigenous peoples' languages and cultures.

Given the significant impacts of CRTC's work on Indigenous peoples and their rights, the right to self-determination, the right to self-government, the right to participate in decision-making and free, prior, and informed consent are also implicated. As noted above, these rights are recognized in the UN *Declaration on the Rights of Indigenous Peoples*, which forms part of Canada's positive law through the federal UN *Declaration on the Rights of Indigenous Peoples Act* (UNDA) and creates positive obligations on Canada.[54]

Any engagement with Indigenous peoples must start from the place of recognition of Indigenous peoples as rights holders, and not stakeholders to be consulted. The preamble of the UNDRIP affirms "that Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such." The UNDRIP then sets out "the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world."[55] Therefore, a primary aim of UNDRIP is to recognize that Indigenous peoples are peoples, with the right to self-determination, the realization of which is critical for their survival and well-being. At its core, "Self-determination is an ongoing process in which institutions of decision-making are devised that enable Indigenous peoples to make decisions related to their internal and local affairs and to participate collectively in external decision-making processes."[56]

As rights holders, Indigenous peoples have the right to participate in decisions where their rights are specifically and especially impacted, as discussed above.[57] The fundamental human right to participate in decision-making needs to be implemented and considered in

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[54] Reference to FNIMCYF.

[55] UNDRIP, article 43.

[56] Human Rights Council, Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous peoples and the right to self-determination - Report of the Expert Mechanism on the Rights of Indigenous Peoples, 4 August 2021, United Nations Document A/HRC/48/75, paragraph 19.

[57] EMRIP Report.

the work of the CRTC, and its engagement with Indigenous peoples. The rights recognized under UNDRIP build upon existing Canadian jurisprudence on the duty to consult and accommodate and should guide the process to develop an engagement policy.

With this recognition of Indigenous peoples as rights holders, it is imperative that the co-development of an engagement policy take a rights-based approach. A rights-based approach requires that upholding Indigenous peoples' rights are the motive for the process, inform the process used, and are fulfilled in the substantive outcomes of the process. A rights-based approach would ensure that the CRTC, as an arm's length Crown agency, upholds the honour of the Crown when contemplating conduct that may impact Indigenous peoples' rights.[58]

As noted above, recognizing that much of the CRTC's work impacts a variety of Indigenous peoples' rights, and as such, the process must ensure Indigenous peoples are able to fully and effectively participate in the decision-making processes. Full and effective participation in the process leading to the rendering of a decision by CRTC may not require Indigenous peoples to be part of making the final decision. However, the distinction between participating in the process and being part of the decision-making should be discussed with Indigenous peoples.

It is worth reiterating here that Indigenous peoples have the right "to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. … Hence, the duty to obtain the free, prior and informed consent of Indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of Indigenous peoples' rights."[59] Interpretations of existing jurisprudence that is perceived to limit Indigenous peoples' participation will need to be reconsidered in light of evolving international human rights decisions and domestic case law on the duty to consult and accommodate and FPIC.

As part of a rights-based approach to co-developing an engagement policy, the processes used to co-develop the policy must follow Indigenous peoples' own decision-making processes including cultural protocols. This requires the CRTC to identify ways to ensure

[58] For a discussion on the role of regulatory bodies and the duty to consult, see Clyde River.

[59] EMRIP Report, paragraph 22.

Indigenous governments are part of the process. Here, it is important to follow the existing co-development / consultation guidelines developed by various Indigenous governments and organizations, some of which are included in the appendix.

One final note regarding a rights-based approach is that any barriers to Indigenous women's participation should be considered and addressed upfront, as well as the inclusion of a culturally relevant gender-based analysis of the policy and other decisions.[60] Additional considerations should also be made to develop a youth inclusion policy as part of the engagement strategy. The EMRIP specifically advises that "States should engage broadly with all potentially impacted Indigenous peoples, … in which they are encouraged to include women, children, youth and persons with disabilities… During each consultation, efforts should be made to understand the specific impacts on Indigenous women, children, youth and persons with disabilities."[61]

Recommendation: ensure appropriate funding for Indigenous Peoples' participation in the co-development process

Funding will be needed to support Indigenous peoples' participation in this process. The EMRIP report on FPIC highlights funding as a critical component of realizing FPIC: "States should ensure equality throughout the process and that the issue of the imbalance of power between the State and Indigenous peoples is addressed and mitigated, for example employing independent facilitators for consultations and establishing funding mechanisms that allow Indigenous peoples to have access to independent technical assistance and advice."[62]

As noted by most Indigenous peoples with whom we met, many Indigenous peoples do not have the funds to participate in CRTC processes due to a variety of circumstances. Many Indigenous organizations have limited and constrained funding, Indigenous telecommunication service providers who operate in a not-for-profit fashion, and Indigenous advocacy organizations and Indigenous governments who receive many

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[60] See for example, Native Women's Association of Canada, "A Culturally Relevant Gender-Based Analysis (CRGBA) Starter Kit: Introduction, Incorporation, and Illustrations of Use," June 2020: https://nwac-afac.ca/assets-knowledge-centre/A-Culturally-Relevant-Gender-Based-Analysis.pdf.

[61] EMRIP Study, paragraph 11.

[62] EMRIP Study paragraph 10.

demands for consultation and engagement, but have limited budgets available to undertake this work. While there may be challenges to funding under current CRTC regulatory framework, it is necessary for the co-development process to be successful. The lack of funding is a major barrier to Indigenous peoples' participation in CRTC processes and to co-developing policies. Indigenous peoples need various capacity funding, including necessary technical resources. Travel funds will be necessary for people to attend session.

While changes to the funding structure will take time, there should be shared understanding amongst CRTC staff of the different ways that Indigenous peoples and other public interest groups have been successful in receiving funding through the existing mechanisms. Some Indigenous peoples who have participated in CRTC processes have been successful in using the existing mechanism to gain some funding. The CRTC could connect Indigenous peoples with other public interest groups, or other organizations who have successfully received funding through the Telecom Cost Award Regime or the Broadcasting Participation Fund to share their experiences and how they navigated the process.

Currently, the CRTC does not have the ability to award grants and contributions. Rather, the CRTC has separate processes to reimburse public interest groups for certain costs incurred to participate in a CRTC process through the Telecom Cost Award process and the Broadcasting Participation fund. However, parties typically need to pay for these costs upfront and then must apply for reimbursement.

Even if existing funding mechanisms were not meant to cover expenses incurred by Indigenous peoples, simple adaptations may address several challenges. For example, expanding the definitions or understandings of consultants and expert witnesses in relation to the Telecom Cost Award guidelines to include Indigenous peoples, who have expertise in their rights and interests, could expand the reimbursement Indigenous peoples can claim for their participation.

Funding guidelines will need to consider the different costs associated with living and working in different parts of Canada, especially the north. Funding may also require consideration of whether the community members have access to banking; it was noted

that it is not uncommon for northern communities to not have access to banking within the community and therefore need to fly somewhere to deposit a cheque.

There are funding avenues that do exist. For example, the CRTC can enter into contracts for services related to their work, which it has done in the past. The hiring of external consultants to support pre-engagement work with Indigenous peoples may be necessary to lay the groundwork for a co-development process. Such a consultancy should work very closely with CRTC staff.

Recommendation: be creative and flexible with existing rules and procedures to ensure Indigenous Peoples can fully and effectively participate in CRTC processes

Meetings with CRTC staff and Indigenous peoples led to the identification of an array of challenges of engaging with Indigenous peoples within the current regulatory framework. However, the meetings also included conversations on how engagement can and is happening within the existing regulatory framework. The recommendation here is to bring forward the examples on how to be creative and flexible within the existing regulatory framework and apply this flexibility more broadly within the process to co-develop the engagement policy, and any other proceeding that impacts Indigenous peoples that the CRTC undertakes while the policy is being developed.

For example, some Indigenous peoples with whom we met raised concerns that the CRTC hearings are set up like court rooms. The hearings were described as incredibly imposing. Some people said that it was difficult to present to mostly non-Indigenous peoples. Some Indigenous peoples with whom we met indicated that not only were the hearings a foreign process, they went on to describing trauma that was created through the processes. It was noted that the CRTC processes felt like a court room, and one person said it felt like they were the victim having to give their statement in a criminal case. It was also noted by some that CRTC processes are focused on profit-based providers, making it extra challenging for community driven processes. Some also noted examples of the CRTC failing to follow appropriate protocols such as acknowledging and respecting Chiefs and Elders in the hearings.

Despite these serious challenges, there were examples provided of where the typical proceedings have been adapted. Some Indigenous peoples with whom we met noted that having a panel of First Nations providers to exchange face to face with Commissioners was

useful in sharing their perspectives. Some people noted that the opportunity to appear in person or remotely was helpful. Some people noted that it is helpful that proceedings occur in multiple phases, so that Indigenous peoples can provide a comment, intervention, and reply. In this way, voices that may not agree, may be able to work it out during the process, while also retaining diversity of voices and opportunity to agree and disagree with each other. Some Indigenous peoples noted that the CRTC is increasingly valuing Indigenous knowledge and lived experience within CRTC processes, recognizing that Indigenous peoples really are the experts in how they receive services. The ability to also provide digital and audio stories of what is happening on the ground was another useful way for Indigenous peoples to be able to participate in hearing.

The court-like hearing processes do not align with many Indigenous peoples' processes and could be trauma inducing, and so it is recommended that the CRTC continue to engage with Indigenous peoples and consider how to integrate Indigenous protocols into the processes to make a process more relaxing and not lose humanity in proceedings. Additionally, it is important to consider specific barriers Indigenous women may face when participating to ensure that women actually have equal opportunity to participate and can share their perspectives, which can include availability childcare and transportation. While this may require changes to the actual rules of procedures in some instances, in other instances it may require those making decisions regarding proceedings procedure continue to be flexible.

Another area of CRTC process that needs to be addressed, and where there appears to be some flexibility is around timelines. The strict timelines of CRTC processes were noted as presenting many challenges. For Indigenous organizations who have limited resources to translate research to policy and provide informed responses to CRTC consultations, existing timelines are often very challenging. The challenge of response times is amplified up North where there is less connectivity and it can take 4 weeks for mail to reach some communities in the Far North. While it is possible to get extensions, a letter requesting the extension must be sent to the Secretary General of the CRTC and all parties to the proceeding must be served.

However, it was noted by one Indigenous group with whom we met, that there does seem to be flexibility as the CRTC itself does not always provide strict timelines for themselves in

releasing decisions, even if they impose tight timelines on participants. Another Indigenous group with whom we met noted that for new and novel proceedings, the process has been adapted throughout as circumstances changed.

Another area where creativity and flexibility are required is addressing siloing of government processes. A challenge that was shared by many Indigenous peoples with whom we met was the way in which CRTC processes were siloed and separate from related issues addressed by other federal departments such as ISED. The siloing of government processes creates additional burdens and challenges for Indigenous peoples. It was explained that CRTC and ISED have overlapping mandates, for example, both support the expansion of broadband infrastructure in rural and remote areas yet often have different funding criteria and different priorities. This makes it hard for Indigenous peoples to navigate the system, for example when they are trying to identify and implement community driven processes to address the digital divide. It can also lead to gaps between ISED and CRTC, where neither department/agency wants to address the issue. It also leads to a duplication of effort for Indigenous parties who wish to interact with both ISED and CRTC as the information required is similar, but the reporting required is different and separate. To address this challenge, it is recommended that CRTC continue to connect with ISED, and other relevant government departments to see where synergies exist and how to best support Indigenous peoples to engage with ISED and CRTC. Coordination and information sharing, at a minimum, is critical to reduce consultation fatigue and overburdening Indigenous peoples with consultation requests.

Recommendation: take positive steps to address substantive equality in the work of CRTC

CRTC policies, procedures and practices need to promote and achieve substantive equality.[63] Part of ensuring substantive equality in CRTC processes is considering how systemic and adverse discrimination could be perpetuated by CRTC processes that fail to address the inequalities between Indigenous peoples and other major broadcasters and telecommunication businesses that also engage in CRTC processes. Substantive equality

[63] For a discussion on substantive equality, see First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2.

requires focusing on equality of opportunity to participate, addressing barriers to participation with an aim to equal outcomes. Finally, substantive equality is an important principle to incorporate in CRTC processes because Indigenous peoples are not simply stakeholders, but rights holders.

Currently, CRTC Rules of Procedure focus on formal equality and treating all parties the same, meaning that Indigenous peoples are required to participate in public proceedings, the same as any other member of the public or interested party. The EMRIP has advised that "The requirement that consultations be carried out through appropriate procedures implies that general public hearing processes are not normally regarded as sufficient to meet this procedural standard."[64] Formal equality promotes, reinforces and exacerbates existing inequalities between Indigenous peoples and others working within the broadcasting and telecommunications field. The insistence of formal equality is an example of systemic discrimination that particularly has a negative impact on Indigenous peoples.

The Indigenous Relations Team, and other support staff at the CRTC should be able to provide support to Indigenous peoples throughout the process to clarify the process and the impact it may have on Indigenous peoples and their rights. Navigating CRTC processes is highly technical, requiring significant resources that most Indigenous peoples and organizations do not have. Indigenous peoples should be able to meet with CRTC staff before appearing before CRTC Commissioners to further help them understand how to prepare and what to expect.

Some Indigenous peoples with whom we met noted that a regulatory lawyer is necessary to effectively participate in many CRTC processes. Most Indigenous peoples do not have funds to retain such expertise. In this heavily regulated area, one can read information on the website, but it is still very difficult for many to understand what the terms mean and the implications for their respective nations and organizations. Some noted that the policies and procedures were provided to Indigenous peoples, but no assistance in interpreting how they applied to Indigenous peoples. The lack of resources exacerbates the power imbalances between big corporations and Indigenous peoples. Some

[64] EMRIP Report, Annex, paragraph 8.

Indigenous peoples with whom we met expressed concern that they are disadvantaged as they do not have, nor can afford a large legal team.

Recommendation: build upon existing reports and what has been noted as positive practices of the CRTC's engagement with Indigenous Peoples

The work to co-develop a policy on engaging Indigenous peoples should continue building on what works, and what has already been learned through out previous processes. For example, the "What you Said Report" includes many principles that can inform future engagement, including

- Conduct in-person consultations
- Recognize and seek input from distinct Nations and their respective communities
- Recognize Indigenous Broadcasting History, Language and Cultural Protocols
    - History of Indigenous Broadcasting
    - Use of Indigenous languages and respectful wording
    - Involve youth, elders, and knowledge keepers
    - Protocol and Representation
- Methods of Outreach
- Compensation for participants
- Communication about the process
- Research - don't start from scratch, build on what's there – but start with question of whether it can be built upon
- Reporting on the new policy – report back – accessible
- Database of key contacts

Recommendations related to working with Indigenous Peoples generally

The next few recommendations provide some general guidance on working with Indigenous peoples in a good way, which follows Indigenous protocols and ways of engaging. These recommendations are meant to specifically inform the co-development of the engagement process and also apply more generally to the work of the CRTC. Addressing the recommendations in this section support a solid foundation for the work to co-develop the engagement policy.

Recommendation: continue building relationships

Working with Indigenous peoples requires building a mutually respectful relationship based on mutual trust. Trusting relationships is also a key component of fulfilling the "free" component of FPIC: "the relationship between the parties should include trust and good faith, and not suspicion, accusations, threats, criminalization, violence towards Indigenous peoples or prejudiced views towards them."[65]

Building relationships is an ongoing process that is best done in person. The goal of this relationship building is to establish partnerships, recognizing that Indigenous peoples are not simply stakeholders to be consulted. Indigenous peoples are rights holders, and many CRTC decisions impact these rights. Some Indigenous peoples with whom we met noted that trust has been built with the CRTC over the 25-year relationship. There was a sense that the trust went both ways (between the organization and the CRTC, and the CRTC and the organization). The trust has meant that collaborative approaches have been used when challenges arise, that the CRTC works with them to figure things out.

When building relationships, these relationships must be embedded throughout institutions (government to government, organization to organization) and not reliant on individuals, because if that person leaves the whole relationship could be lost and require building a new relationship. There was a general sense that the creation of the Indigenous Relations Team (IRT) is a major positive step forward for relationships with Indigenous peoples. Having a specific point of contact to help learn and navigate the CRTC processes was useful. For example, the IRT has proactively shared information on proceedings with Indigenous peoples and provided information sessions and info on how to participate in a proceeding.

Relationship building may be a slow process and must also be intentional; "moving at the speed of trust" with a "heart-centred approach," or personal approach. When starting to build relationships, umbrella organizations can help connect with specific communities and rights holders, especially as many communities may have limited capacity and receive many engagement requests.

[65] EMRIP Study, paragraph 20(b).

One of the key good practices of engaging with Indigenous peoples is to learn and understand the history and context of Indigenous peoples and organizations to understand their values, protocols, expertise, interests, challenges, and relationships with government institutions. Knowing the community is also helpful in understanding when it is an appropriate time to engage the community, are there certain times when the community is in ceremony or hunting on the land resulting in fewer people available to attend meetings. This may vary community to community, nation to nation.

The relevant history and context include understanding the Treaty history and modern context of these Treaties, what were the original agreements and what are the ongoing grievances that exist. Understanding the governance structure within communities is necessary for engagement and relationship building. Reading and understanding any existing consultation / engagement / co-development guidelines before reaching out is critical. Building good relations requires knowing the legal context for the relationship between Indigenous peoples and the Crown (and Crown corporations and arm's length agencies). Abiding by the guidelines set down by the Supreme Court of Canada is crucial. The CRTC must build relationships with Indigenous peoples across Canada, representing the distinctions and diversity of First Nations, Inuit, and Métis peoples' perspectives. There is further diversity related to gender and sexual identity, living in urban or rural areas, on or off reserve, Indigenous language spoken, etc.

Building respectful relationships as part of engaging with Indigenous peoples also requires understanding the reality on the ground for Indigenous peoples, particularly those living in rural, remote, and northern areas. One example provided was how the shift from analog to digital cellular towers meant that many analog towers are no longer maintained and so some communities have less access. For example, the climate change is increasing instability and changing conditions on the land, and without cell coverage increases people are at a greater risk if an emergency arises when out on the land. Some of the ramifications are particularly gendered impacts, including getting emergency support for domestic violence if there is no phone access in the house, especially if there are children. The harshness of the environment makes it even more challenging to seek assistance.

An important aspect of building relationships is being present in Indigenous communities – meeting with Indigenous peoples in their communities. This means travelling up north, even though it's expensive. Various suggestions on activities that could be undertaken to be more present in communities including attending community events, ceremonies and job fairs in communities to inspire Indigenous students to work at the CRTC, attend Indigenous festivals like Imaginative to be visible and show genuine interest in Indigenous peoples – not just as a sponsor, but having people present at the tradeshows, presenting awards. Having Executives and Commissioners also present demonstrates organizational commitment to the relationship with Indigenous peoples. Little NHL hockey tournament is a significant family-oriented event in Ontario; being present in social settings where people can get to know each other on the personal side helps build trust. Attending these community events may require personal time, though supporting individuals to build these results should be a part of the relationship strategy. Engaging with youth provides a longer runaway to make the impact, and start a longer relationship.

The goal of being more present in Indigenous communities is to help build connections, demonstrating that the CRTC belongs to you, breaking down the divide between CRTC and Indigenous peoples. This is part of a proactive strategy on building relationships, not just going to communities to engage when required.

Some Indigenous peoples with whom we met noted that the CRTC needs to recognize that many Indigenous leaders and technical staff may be part of the "sandwich generation," meaning they are taking care of their own children, while also supporting aging parents who went to Residential School. Another contextual factor to understand is that many Indigenous organizations are relatively new and may not have stable, permanent funding, which may impact their capacity. Acknowledging these challenges can support greater understanding between partners. There is also the need to appreciate some of the unique challenges that Indigenous peoples face in the broadcasting and telecommunications industry. For example, it was noted that many Indigenous artists start making art later in life, for a variety of reasons including crowded housing with little to no space to put in the hours to develop their craft.

Accountability and transparency are critical foundations for building trusting relationships. Some Indigenous peoples with whom we met expressed concern regarding accountability

in the regulatory monitoring and compliance processes, particularly in relation to companies that are meant to connect rural, remote, and Indigenous communities. There is the sense that the CRTC relies on self-reported information from companies, which may not accurately reflect communities' experience. Further, there is a sense that companies take advantage of the remoteness of Indigenous communities knowing that there is not likely to be spot audits or investigations, thus perpetuating inequality in access. Self-reporting then puts the onus (and all the responsibility) to challenge the validity of these reports onto Indigenous peoples, who as noted are already dealing with many demands and limited resources. This was also noted as a concern for some Indigenous peoples as it could lead to shutting down opportunities for Indigenous peoples to engage in their own community-driven processes for connectivity. This holds back digital equality and undermines Indigenous peoples' self-determination. Many Indigenous peoples we spoke with noted that without these checks and balances the impacts are life and death for many Indigenous peoples due to the remoteness of many communities, and lack of redundancies in telecommunication infrastructure.

Recommendation: promote reciprocity

Related to the idea of relationship building is the idea of reciprocity. Engaging with Indigenous peoples requires a commitment to reciprocity, meaning that both the CRTC and Indigenous peoples benefit from the partnership. Reciprocity requires shifting away from mentalities where engagement is viewed as giving something to Indigenous peoples. Some Indigenous peoples with whom we met explained how engagement processes can feel very extractive, where governments and government agencies take knowledge, time, and energy away from Indigenous peoples to meet minimum consultation requirements without giving anything back to Indigenous peoples. While governments and other agencies may believe the "give" is the act of consultation, Indigenous peoples may experience consultation as extractive as they are put in precarious positions where it is necessary defend themselves and their rights from encroachment.

Reciprocity might necessitate positive actions by the CRTC to support Indigenous peoples in achieving their aspirations directly related to telecommunications and broadcasting, but also broader aspirations which may be implicated by CRTC decisions. Engagement should

provide benefit to Indigenous peoples—beyond simply feeding into a CRTC decision. There should be tangible benefits—financial, recognition or otherwise—for Indigenous peoples' participation in these systems. Conversations around reciprocity should be undertaken in co-development process and general relationship building situations.

Recommendation: provide accessible, timely, effective, efficient and culturally appropriate communication

Accessible, effective, timely, efficient, and culturally appropriate communication is imperative to developing and maintaining good relationships. This the "informed" component of FPIC. The EMRIP explains that "the information made available should be both sufficiently quantitative and qualitative, as well as objective, accurate and clear."[66] "Informed" also requires that the information provided is "in a form that is accessible and understandable, including in a language that the Indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of Indigenous peoples and their languages."[67] The UN Permanent Forum on Indigenous Issues' (UNPFII) Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples further details that informed means, at a minimum, the information provided covers

a. The nature, size, pace, reversibility and scope of any proposed project or activity;
b. The reason(s) for or purpose(s) of the project and/or activity;
c. The duration of the above;
d. The locality of areas that will be affected;
e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;
f. Personnel likely to be involved in the execution of the proposed project (including Indigenous peoples, private sector staff, research institutions, government employees and others);

[66] EMRIP Study, paragraph 22(a).

[67] Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, United Nations Document, E/C.19/2005/3, paragraph 47(IV). [PFII Report]

g. Procedures that the project may entail.[68]

One of the challenges noted by both CRTC staff and Indigenous peoples with whom we met is that of limited resources and capacity of Indigenous peoples to engage in CRTC processes. Staff within many Indigenous governments and organizations are often wearing multiple hats with demands exceeding capacity. Indigenous governments and organizations in these situations must prioritize what work will be undertaken, which may result in important processes not receiving input from Indigenous peoples. The limited capacity of Indigenous governments and organizations must be remembered when providing information, recognizing that Indigenous peoples' governments and organizations may not have capacity to read all information and so other methods of communication and briefing may be needed. It is incumbent upon the CRTC to ensure that Indigenous peoples understand the necessary implications of the decision and have the necessary time to determine the impacts and determine their own perspective on the situation.

There was overwhelming consensus from the Indigenous peoples with whom we met that the volume of email communications that many Indigenous governments and organizations receive is daunting. The volume of emails is related to the multiple hats many staff wear, as well as the sheer volume of active files, the diversity of topics and governments processes in which they are engaged. Further, the technical information provided within CRTC emails does not always clearly identify the ramifications of pending decisions for Indigenous peoples, which could facilitate Indigenous peoples' participation in the processes, or at least support decision-making processes on whether to prioritize participating in the specific process in question. Using different methods of communications, such as following emails with phone calls, using faxes, local radio stations are needed to reach Indigenous peoples. Several Indigenous peoples with whom we met noted receiving follow up prompting communication is helpful given the heavy workload of many staff.

Many Indigenous peoples with whom we met noted that the in-person meetings with the CRTC have been important for building relationships and gaining a better sense of

[68] PFII Report, paragraph 46.

relevant information. It is important that many of these meetings occurred in Indigenous communities. In addition to the in-person meetings, the sector meetings (with Indigenous broadcasters) is a great space for Indigenous peoples to learn from one another about their experiences with the CRTC.

The translation of CRTC documents into Indigenous languages was also noted as a major positive development. Indigenous peoples appreciated the investment in resources and told in Indigenous languages. Though it was noted that there continues to be work done to expand the translation of CRTC documents into Indigenous languages. For example, it was noted that not all CRTC information is available in Inuktitut and therefore might not be accessible to all Inuit.

Recommendations to support CRTC's readiness to engage with Indigenous Peoples

Recommendation: continue training all CRTC staff and Commissioners in line with the Truth and Reconciliation Commission's Calls To Action for government.

Working toward a co-development policy should be carried out while ongoing training is occurring for all CRTC staff and Commissioners in relation to Indigenous peoples. Ensuring that the engagement policy is fully implemented throughout the CRTC requires shifts in perspectives and understanding of Indigenous peoples' interests within the CRTC – away from Indigenous Peoples as consumers who need special protection and measures, to a strengths-based focus on Indigenous peoples' rights holders.

This training can be guided by the TRC calls to action for government staff training. Additionally, I would highlight the need to ensure all staff and Commissioners have competencies in the following areas:

- Understanding Indigenous peoples' rights
- CRTC's obligations (as a quasi-government body) toward Indigenous peoples
- Systemic discrimination and unconscious bias
- Understanding procedural fairness and proactively reaching out / separate processes for Indigenous peoples
- More training and tracking of training of CRTC staff regarding the calls to action

- Understanding of CRTC policies against UNDRIP standards, and government commitments under the UN Declaration on the Rights of Indigenous Peoples Act.

Recommendation: undertake a review of CRTC policies and procedures to ensure consistency with the UN *Declaration on the Rights of Indigenous Peoples*

As part of the process of co-developing a policy on engaging with Indigenous peoples, it is recommended that the CRTC undertake a review (with Indigenous peoples) of its current policies and procedures for their consistency with the UN *Declaration on the Rights of Indigenous Peoples*, as set out in the federal *UN Declaration on the Rights of Indigenous Peoples Act* (UNDA). This process should further include a culturally relevant gender-based analysis. Working toward aligning the CRTC's policies and procedures may contribute to building trust between the CRTC and Indigenous peoples, and address some concerns regarding the CRTC as a colonial institution and an arm of the government.

Part of this review may also require re-considering how the CRTC interprets and understands its mandate. Many decisions and actions (or inactions) of the CRTC have larger impacts on Indigenous peoples. The CRTC can play an active role in addressing the socio-economic disparities in Canada by recognizing the social implications of its decisions. These issues could fall under the CRTC's work around affordability, access, and reliability. There were many challenges noted that connect back to the fact that current CRTC processes are not designed to facilitate Indigenous peoples' participation due to the lack of funding, tight timelines, highly technical nature, and the incongruence with Indigenous protocols. Not only do the processes not facilitate Indigenous peoples' participation, in fact, CRTC processes may perpetuate systemic discrimination. Another challenge is that the CRTC has been hesitant to consider the social impacts of their decisions. Systems are not neutral but rather reflect and perpetuate the values of those who designed them. Therefore, for the CRTC's work to align with UNDRIP, including the processes and procedures, positive steps must be taken to address the disconnect and be inclusive of Indigenous peoples and their cultures, values, and perspectives. It is important to note that disconnect is not always due to the legislative framework, but rather may be more embedded in the policies, procedures, and practices of the CRTC, which falls within the CRTC's purview.

As noted earlier, the CRTC's work intersects with Indigenous peoples' rights and aspirations. The work of the CRTC could be reconsidered to promote Indigenous peoples' rights. Unfortunately, there were many examples provided where the work of the CRTC undercuts Indigenous peoples' rights. For example, telecommunications is viewed as a commodity and not right, there is concern that the work to connect Indigenous communities has not prioritized ownership and control by people living in the regions. This business approach has negative impacts and has created another area in which Indigenous peoples are further behind than other parts of Canada regarding reliable and affordable connectivity solutions.

There is a perception that most telecommunication organizations focus on the business and financial viability (competitiveness) of connecting Indigenous communities. The focus on the business case and not the human rights aspect of connectivity contributes to the socio-economic disparity of Indigenous peoples. This approach is reflected in CRTC processes which have no formal recognition of Indigenous peoples' rights. The nature of the industries the CRTC regulates means that there is always a social-cultural impact of the CRTC's decisions on the people that use the service. The failure to consider the socio-cultural aspects of issues can lead to missed opportunities for positive measures to be taken.

One example that was provided regarding the broader impacts of CRTC works that has a particular gender dimension was the issue regarding the cost for incarcerated Indigenous peoples to contact loved ones. The ramifications of these costs have an even greater impact on Indigenous women as there are so few women's prisons across the country, that many Indigenous women are incarcerated a long distance from their homes and so do not have families visit them. The Native Women's Association of Canada shared that people with access to family, and a support network have better outcomes upon release and do better while incarcerated. The cost of phone calls in many prisons further cut Indigenous peoples' off from their communities. In this way, the regulation of telecommunications by the CRTC could contribute to the ongoing issue of systemic racism and overrepresentation of Indigenous peoples in the justice system. While this issue of access and affordability of long-distance telephone services for incarcerated women was not on top of the list of concerns regarding the impacts of CRTC's work, it is included here

as it has a particularly significant gender dimension and demonstrates the interconnection of the colonial systems and how these systems, when they do not work together to create positive change, can perpetuate systemic discrimination.

Another area where the CRTC could consider the broader socio-economic implications of their work, is how CRTC decisions impact access to information about Indigenous peoples. For example, some Indigenous peoples with whom we met noted that the CRTC sets the tone for broadcasting in Canada. A definition, for example of what Indigenous content is, created by the CRTC has ripple effects including in the development of other funding opportunities. Additionally, it was noted that while it is important to have more Indigenous content available, it is important that this content is also developed by, for and with Indigenous peoples. The CRTC must consider the role it can and should play in leveling the playing field for Indigenous peoples to develop Indigenous content. By setting a policy for increased Indigenous content, without considering who is making that content can create opportunism whereby non-Indigenous broadcasters with little to no experience working with Indigenous peoples engage in content development for profit without benefiting Indigenous peoples. This challenge has been described as narrative sovereignty.

Further, as noted by some Indigenous peoples with whom we met, in undertaking work to promote and recognize narrative sovereignty, it is important that the CRTC not devise processes that pit Indigenous peoples against one another, which contributes to further erosion of relationships between Indigenous peoples. This may happen when Indigenous peoples have to vie for the same funding, or compete against one another to be the single licensee in an area. Part of the solution here may relate to earlier recommendations around transparency in decision-making and clear and effective communication.

However, these concerns around how CRTC may create wedges between communities are not completely distinct from issues regarding how demand for Indigenous content is ascertained, as was noted by some Indigenous peoples with whom we met. It is challenging to ascertain demand as Numeris, the primary provider of television audience measurements, only has meters in urban centres; there are none on reserve, none in the north, none for satellite users. As Numeris data is the currency of broadcasters and commercials, the lack of representation of Indigenous peoples gives a potentially false impression that there is not a market for Indigenous content. Through this process,

Indigenous peoples are made invisible and are told they do not count. Determining demand is further challenged as Indigenous broadcasters' channels many not be as discoverable given the location (numbering) of their channels. This means that the public is less likely to "stumble" into Indigenous content, and must seek it out further disadvantaging Indigenous broadcasters. The discoverability of Indigenous content may also negatively impact demand, creating a vicious circle.

One final aspect where there may not be consistency with UNDRIP is the lack of an Indigenous or Northern Commissioner. While there is currently an Indigenous commissioner who represents BC and Yukon, the next Commissioner representing the BC/Yukon Region may not be Indigenous. Concern was further raised specifically regarding Northern regions being represented by Commissioners based in southern parts of Canada as Northern regions have unique realities that are vastly different from southern realities. Part of self-determination and the right to participate in decision-making is having Indigenous peoples speaking for themselves. Some Indigenous peoples with whom we met felt that this would be best achieved by an Indigenous Commissioner.

V. CONCLUSION

This report set out steps that the CRTC can take toward developing a consistent approach to engaging Indigenous peoples across the broadcasting and telecommunications sector. The goal of these recommendations is to build upon the existing good practices within the CRTC, and lessons learned through past engagements and building relationships with Indigenous peoples.

There is generally a shared understanding among Indigenous peoples with whom we met and CRTC staff of many practices that are working well, including current relationship-building efforts, early engagement in select proceedings, the work of the Indigenous Relations Team, and increased recognition of Indigenous knowledge and lived experience as valuable evidence in hearings. At the same time, the report identifies systemic challenges that limit Indigenous peoples' full and effective participation in CRTC processes. These challenges are rooted not in individual actions, but in the existing regulatory framework, including funding limitations, timelines, procedures grounded in

formal equality, and approaches that insufficiently account for Indigenous peoples as rights holders.

The findings of this report make clear that a harmonized, rights-based approach to engaging Indigenous peoples that is co-developed with Indigenous peoples, is both necessary and achievable within the CRTC's mandate. It is commendable that the CRTC is seeking to proactively develop an engagement policy that considers co-develop and not waiting for it to be mandated after lengthy litigation or legislative amendments. By engaging in the process to develop an engagement policy proactively, the CRTC remains in control of policy and is able to build relationships with Indigenous peoples through the co-development process.

Indigenous peoples with whom we met consistently emphasized that engagement must move beyond consultation toward co-development, grounded in recognition of Indigenous rights, distinctions between First Nations, Inuit and Métis peoples, and respect for Indigenous governance, protocols, and decision-making structures. The report also underscores that meaningful co-development is inseparable from substantive equality. Without addressing resource disparities, procedural rigidity, and systemic barriers, Indigenous peoples' participation within CRTC processes will remain uneven and inequitable.

The recommendations set out in this report provide a roadmap for the CRTC to move forward in a manner that is principled, practical, and responsive to Indigenous peoples' rights and lived realities. They are intended to be implemented holistically, as mutually reinforcing measures that collectively support stronger relationships, more effective participation, and better regulatory outcomes.

As an initial step, it is recommended that the CRTC work to co-develop a process for creating an Indigenous engagement (and potentially co-development) policy, and prioritize early engagement with Indigenous peoples throughout CRTC processes during the development of the policy. Working toward an engagement policy should include following up with the Manitoba Métis Federation, as requested, and engaging with First Nations and Inuit partners to determine interest, capacity, and appropriate approaches for their participation in the process. The engagement policy development process should be informed by a rights-based and distinctions-based approach and include attention to

gender, youth, and regional considerations, particularly the realities of northern, remote, and Indigenous communities. Adequate and accessible funding to support Indigenous peoples' participation must be addressed at the outset to ensure the legitimacy and success of this process. In parallel, the CRTC should continue strengthening its internal readiness by advancing training for staff and Commissioners, reviewing policies and procedures for consistency with the UN *Declaration on the Rights of Indigenous Peoples*, and identifying opportunities within existing rules to apply flexibility and creativity to better support Indigenous participation.

Finally, this report invites the CRTC to view its engagement with Indigenous peoples not as a discrete procedural requirement, but as supporting the development of an ongoing relationship grounded in reciprocity, accountability, and mutual respect. By working to implement the recommendations, the CRTC has an opportunity to ensure its regulation of broadcasting and telecommunications supports Indigenous peoples' rights.

Appendix A: Co-Development Resources and Guidelines

Assembly of First Nations, “Co-Development Position Paper on April 5, 2022.”

Human Rights Council, “Free, Prior and informed consent: a human rights-based approach -Study of the Expert Mechanism on the Rights of Indigenous Peoples,” 10 August 2018, UN Doc A/HRC/39/62.

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Inuit-Crown Partnership Committee, “Inuit-Crown Co-development Principles,” https://www.itk.ca/wp-content/uploads/2022/11/ICPC-Co-Development-Principles.pdf.

Manitoba Métis Federation, “Resolution 8: Engagement and Consultation,” https://www.mmf.mb.ca/wcm-docs/docs/departments-engagement_and_consultation/engagement_consultation_resource_pamphlet.pdf.

Métis National Council, “Co-development Principles: A Guide to Collaboration Between the Métis Nation and the Government of Canada,” https://www.metisnation.ca/wp-content/uploads/2025/06/Co-Development-Hand-Out-Health-Forum-7-x-11-in.pdf.

UN Permanent Forum on Indigenous Issues, “Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples,” UN Doc E/C.19/2005/3, 17 February 2005.

University of Manitoba, Community Engaged Learning, “Working in Good Ways: a framework and resources for Indigenous community engagement,” https://umanitoba.ca/sites/default/files/2021-05/framework-guide.pdf.

Appendix B: Case law on duty to consult and UNDRIP

Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5.

Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319.

Gitxaala v. British Columbia (Chief Gold Commissioner), 2025 BCCA 430.

Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, 2010 SCC 43, [2010] 2 S.C.R. 650.

Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40, [2017] 1 SCR 1069.

Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2017 SCC 41, [2017] 1 S.C.R. 1099.

First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2.